

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
EXECUTIVE COMMITTEE
MEETING MINUTES**

July 18, 2013

1. CALL TO ORDER

Chairman Rocky Burks welcomed everyone and called the meeting to order at 10:00 a.m. at the Department of Rehabilitation, 721 Capitol Mall, Room 244, 2nd Floor, Sacramento, California 95814.

The off-site meeting locations for teleconference were Communities Actively Living Independent and Free, 634 South Spring Street, 2nd Floor, Los Angeles, California 90014, and Small Business California, 2311 Taraval Street, San Francisco, California 94116.

ROLL CALL

Committee Member Present: Sean Connelly, Office of Senator Corbett

Commissioners Present: Rocky Burks, Chairman
Scott Hauge, Vice Chairman (Teleconference)
Lillibeth Navarro (Teleconference)

Additional Commissioner Present: Betty Wilson (Teleconference)

Staff Present: Stephan Castellanos, Executive Director
Angela Jemmott, Program Analyst
Steven Funderburk, Office Technician

Also Present: Jodie Monaghan, Associate Mediator, Center for Collaborative Policy
Donald Parks, Applied Technology, Inc. (Teleconference)
Diane Russell, Department of Rehabilitation, Disability Access Services
Adam Sutkus, Associate Director, Center for Collaborative Policy

Staff Member Jemmott called the roll and announced a quorum was not yet present. A quorum was achieved after Committee Member Connelly and Commissioner Navarro arrived.

2. APPROVAL OF MEETING MINUTES (May 9, 2013) – ACTION

Committee Member Connelly requested his office name be entered in the Roll Call.

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Chair Burks requested identifying Commissioners Present who are members of the Committee, and then listing any additional Commissioners who are in attendance but not on the Committee. He requested the order of the names as listed in the Roll Call be changed to Committee Members Present, Commissioners Present, Additional Commissioners Present, Staff Present, and Also Present.

MOTION: Committee Member Connelly moved to approve the May 9, 2013, California Commission on Disability Access Executive Committee Meeting Minutes as amended. Vice Chairman Hauge seconded. Motion carried unanimously.

3. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA

There were no public comments.

4. GENERAL BUSINESS ITEMS

a. Demand Letter Project - Update

Executive Director Castellanos stated staff has been tabulating the data from demand letters and claims that have been filed in California since last September. The first posting of this information to the CCDA website includes a total of 944 claims or letters that the Commission has received through May. Every month, the Commission receives increasing numbers of claims and letters, indicating that people are aware of the law and are submitting their filings as required.

Information is available on the website listing the ADA violations key codes that staff has been using, from which the top ten violations will be extracted for the July 31st mandated posting. Some of the CCDA education programs will focus on the top ten violations, such as how to prevent a claim from being filed against a business, and solutions to the top ten identified violations. The Commission will work with the Department of Rehabilitation (DOR) to do as many of these programs as possible and have access to some of their educational tools. The Commission has a video on the website from the DOR, and there is another one coming out that will link to a number of different tools to be posted on the website to help business owners and persons with disabilities better understand the ADA law and help prevent lawsuits from occurring.

Executive Director Castellanos stated July 31st is the first mandated posting on the demand letters and claims. The Commission will post updates on the website on a quarterly basis until 2016, and will report their activity on this project to the Legislature annually, as required. He stated he hopes to learn a great deal through the data collection that will enable the Commission to better focus resources to those issues that appear to be the most problematic.

Executive Director Castellanos stated it is a big project that consumes a lot of time. The Commission will need to identify additional resources for the next four

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years in order to complete the data collection. The important part of this is the analysis. Recording the information is critical; the data is necessary, but there also need to be time and resources available to focus on analyzing it.

Commissioner Questions and Discussion

Vice Chair Hauge asked if staff knows how many are court filings and how many are warning letters. Executive Director Castellanos stated they are nearly all court filings. There are just a handful of warning letters.

Vice Chair Hauge asked if the list of ADA violations key codes are in rank order. Executive Director Castellanos stated they are not in rank order yet, but that they will be put in rank order before posting on the CCDA website.

Executive Director Castellanos added that there are very few lawsuits that do not have substance to them. The portion of them that are frivolous is negligible. Staff is not collecting data in terms of who wins or loses, but are collecting information on the type of claim that was filed and the type of violations. Staff is collecting additional information that is not required to be used internally for their own analysis, such as where claims are occurring the most and how many people are involved in this, in terms of firms and attorneys. But, there is no data on what the outcomes are.

Chair Burks stated his concern that, while there are the top ten issues that the Commission will be identifying, there are distinct differences between exterior and interior applications of a facility. He recommended the Commission discuss the top ten issues as to exterior barriers and interior barriers. California accessibility codes had major applications to the interior prior to the federal ADA, which means accessibility compliance efforts were concentrated to interior elements. The ADA brought a more stringent application to compliance efforts on exterior issues. He stated there need to be top ten issues on both interior and exterior barriers. They both have substance, but it will be incumbent upon the Commission to help educate, through outreach and education, on those interior and exterior elements that are creating barriers.

Executive Director Castellanos stated he wanted to recognize the DOR, as they have helped identify volunteers that have been supporting the data collection effort. They have made it possible to do the necessary work in sifting through thousands of pages of material and identifying and sorting the issues. The DOR also worked with Commissioner Seferian in offering support with their law interns and providing assistance in that area, too.

Introduction of New Staff Member

Chair Burks introduced and welcomed the new CCDA staff member, Steven Funderburk. Executive Director Castellanos praised Staff Member Funderburk's work and welcomed him to the CCDA.

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Action Items

- No action items.

b. Strategic Planning Project - Discussion

Executive Director Castellanos stated this update is in advance of the full Commission meeting next week, to allow the Executive Committee an opportunity to comment. Staff announced at the last meeting that they will be initiating a strategic planning effort to better focus the Commission and to tackle the issue of outreach and education. They have brought in a consultant team from Sacramento State University's Center for Collaborative Policy.

Executive Director Castellanos stated the Center has recently worked with the Division of the State Architect (DSA) on their code development revisions and public process. Staff selected the team because of their familiarity with government organization and what it takes to create a better-functioning, stronger, more robust government agency.

He introduced Adam Sutkus, associate director, and Jodie Monaghan, associate mediator, from the Center, who gave a presentation about how the plan will be organized.

Presentation

Mr. Sutkus stated he and Ms. Monaghan appreciate the opportunity to present to the Executive Committee and to work with Executive Director Castellanos and Staff Members Jemmott and Funderburk, and for the opportunity and privilege to have a part in this project. Mr. Sutkus has been with the Center for eight years, and Ms. Monaghan has been with the Center for almost twelve years.

The Center for Collaborative Policy is part of the academic side of Sacramento State University's Social Science Interdisciplinary Studies School. It is a standalone center, a nonprofit consulting firm, with the mission to help organizations build capacity, work better, and better engage with their stakeholder communities; to enhance public policy capacity; and to develop systems to help governments improve.

The Center comes into organizations with conflict between agencies on a complex public policy issue, and then formulates a design to work with the issues, stakeholders, and players; facilitates the meetings; manages the process; develops a plan to progress with regard to a collective viewpoint; and works through traditional, academic-based, basic concepts of public policy mediation, facilitation, and interspace negotiation. The Center utilizes a systematic process to work with organizations and move through a methodical process over time - it can be years or days, depending on the issues to work through - of identifying issues and developing a process to reach a resolution based on interests that is acceptable to all parties.

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Mr. Sutkus stated this is one end of the spectrum - the full-blown dispute resolution between public policy agencies. However, over the last several years, the Center has been spending more time on the front end of organizational design and collaborative governance, where they work with an organization not unlike this Commission. The Center is doing organization diagnosis, strategic planning, and other elements on the front end as opposed to the back end. They are looking more internally, to help organizations redesign their systems and work with key stakeholder groups in a way that can be most effective up front. That can take the shape of a strategic plan or a workshop, where organizations reach out to a diverse set of stakeholders around the state to get feedback in an organized and structured format to lead toward a public policy conclusion. Minimum resources and maximum efficiency are needed, which is how the Center comes into play.

Mr. Sutkus and Ms. Monaghan have worked on many projects and strategic planning efforts over the years. Mr. Sutkus believes they make a good team and looks forward to helping this Commission.

Ms. Monaghan stated the Commission's report to the Legislature, in compliance with Senate Bill (SB) 1186, which also includes enabling legislation of SB 1608, is a rich starting point. The Center will focus on the refinement of the CCDA mission and the development of goals and objectives to support action planning. It is important that Commissioners understand that the Center's role is to help develop a strategic plan, but that, after its development, it will be up to the Commission to implement it.

The Center will put together a design team, typically made up of five to six people: Executive Director Castellanos, a representative Commissioner, a couple of key stakeholders, and others that the Commission appoints. The Center will develop the strategic plan with the design team.

Step 1 - One of the first things the Center would like to do is a stakeholder assessment, which consists of contacting twenty stakeholders, staff, and partners, and asking them what are the accomplishments for the issues, challenges, gaps - what they desire for the CCDA and disability access throughout the state. This process provides a snapshot of where the Commission is now and helps define the starting point.

The Center will incorporate the research contained in the report to the Legislature into a Summary Findings Report. The Center will likely conduct a web survey, where people can provide input. The Summary Findings Report will be reviewed with the full Commission to ensure the Center is on target.

Step 2 - Next, the Center will design and hold a strategic planning session. Ms. Monaghan recommended a two-day session, so there will be adequate time for Commissioners to look at mission vision, goals, and objectives, and finally create

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an implementable action plan. The Center will create a working draft as the byproduct of Step 2.

Step 3 - Ms. Monaghan suggested holding a validation workshop in both the north and south. A workshop would reach stakeholders and associations and give them an opportunity to weigh in.

Step 4 - The Center will create a second draft that defines the action plan. A key part of this step is to create a governance structure, in order to implement the strategic plan once it is completed.

Step 5 - The Center will produce a final draft of the strategic plan, bring it before the Commission for approval, create some sort of public access, and then post it to the website.

Ms. Monaghan stated the Center is looking to do the startup and assessment in July through September, create the Summary Findings Report in October, plan for and hold the strategic planning session, and create the initial draft by the end of the year. The Commission has a deadline at the end of January to provide an update report to the Legislature. She recommended showing that progress is being made and having, at the least, a draft plan. Then, in January through March, that would give the opportunity to hold the validation workshops, refine the strategic plan, and present it to the Commission for approval.

Ms. Monaghan stated creating and implementing a strategic plan and including a progress report in the January report to the Legislature will elevate the visibility of the CCDA within the entire state. This would offer an opportunity to create real buy-in from stakeholder groups. The Center will prepare a thoughtful strategic plan, incorporating how the CCDA wants to move forward, engage their various constituencies, and change the face of disability access in the state. She emphasized the importance of creating a governance structure, so there is ongoing implementation.

Executive Director Castellanos stated the Commission is in a unique position of conflict, expressed through all the lawsuits and letters, that requires better resolution in order to move ahead, and will address this through collaboration within government and with stakeholders. The Legislature created a Commission that includes six persons who represent the disability community and five persons who represent the business community, with the goal of bringing these groups together to create positive solutions to increase access in California.

The Legislature also instructed that the Commission be part of a collaborative; the notion of a governance structure is critical. He stated his hope that one of the outcomes of the strategic planning process will be increased collaboration and partnership with stakeholders, and that the Commission will find better ways of making all the incredible work done on access in California more accessible to

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the communities and generate more relevant, useful tools, as the Legislature would like the Commission to do.

Commissioner Questions and Discussion

Commissioner Wilson suggested creating a Committee to assist in developing collaboration and achieving some of these goals. Some of this could come from community-based organizations and private industry as a support team. This is an important part of the strategic plan so that the Commission can serve people and have collaborative efforts statewide.

Commissioner Navarro suggested that consultants plan ways of overcoming the possible difficulties of full implementation into the strategic plan.

Chair Burks stated he has urged the development of a proper mission and vision statement since the design of this Commission, and thanked the Center for their presentation today. He stated he shared Commissioner Wilson's concerns for the need of a design team as proposed by the Center, and stated he will work with the executive director to ensure that the design team addresses both internal and external compliance.

He liked Ms. Monaghan's concept of a web survey, but recommended separate surveys for the disability community and the business community. Both communities have the ultimate desire of achieving the same outcome - to reduce litigation as it pertains to accessibility compliance under state and federal laws - but they are divided due to differing perceptions, both experiential and attitudinal.

Chair Burks recommended that Commissioners view the legal presentation about drive-by lawsuits, given yesterday by the United States Access Board and the Disability and Business Technical Assistance Center, and sponsored by the DOR. He shared his concerns about internal and external compliance efforts, and the difference between the federal ADA, which contains the more stringent applications dealing with the exterior of a building, and Title 24, which deals with the more strategic and serious applications of the interior of a building. The DSA has worked to unify and amalgamate the conflicts; that code will be implemented at the first of the year, twenty-three years after the ADA.

Chair Burks emphasized the need for the Center to address the two populations, the business and disability communities, and the two criteria, interior and exterior compliance, in order to accomplish the ultimate, unified goal of achieving a compliance effort to reduce lawsuits.

Commissioner Wilson stated she would like to be a part of the design team to develop that interface with the Center and to help determine a strategic plan that will benefit all communities. She stated she would like to work through outreach efforts as well as create interdependence, which benefits the larger part of the community.

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Chair Burks asked that Commissioner Wilson work with Executive Director Castellanos on this. He thanked her for her willingness to work in the Outreach and Education Committee and for stepping up to be part of the design team.

Commissioner Wilson recommended recruiting volunteers from universities and colleges in Sacramento to assist with the research and data analysis, and doing the two surveys as soon as possible. Chair Burks agreed.

Chair Burks stated the Commission is empowered by legislation to generate a response, but there is no empowering language as to the mechanism of implementation. It makes operational collaboration difficult in establishing corporate relationships and looking to them to sponsor, through corporate donations and contributions to further the efforts of the Commission, when the Commission does not have any spending authority for that money.

He asked members of the Legislature and the Department of Finance (DOF) for that information, but no one seems to offer any guidance or direction. He stated his confusion as to that operational capacity to generate income that is outside of the legislative process to operate this organization and do the implementation, because nothing is going to be done for free unless a lot of people step up to the plate and do in-kind service.

Executive Director Castellanos stated staff has discussed resources with the Center. He recommended first determining what the Commission will do, based on what the expectation is, and then determining where the resources are going to come from to do it. By building visibility for the organization, the Commission can receive input on a continuing basis, to continue to refresh the program and grow the organization to get that twenty-three-year process down to a much shorter timeframe.

Right now, the relationship between these groups in many instances is not very positive. The cultural issue that has arisen through lawsuits has created the need for a discussion about respecting civil rights, and providing access on a fair and equitable basis. However, considering the DOR and the DSA, the challenge is not insurmountable. Executive Director Castellanos stated the Commission is in a unique position to merge interests to create a positive solution.

Chair Burks recommended that the consultants listen to the DOR legal presentation given yesterday on drive-by lawsuits. It may be helpful for the Center in developing the direction of this Commission strategically to achieve its mission to help expose the reasons for high litigation in the state of California.

Mr. Sutkus stated what the Center has done historically is to come in as a neutral third party, to properly apply structure and approach, and to help everyone bring their issues and perspectives in the right way to collaborative dialogue in a structured format, to ultimately come out with a supported strategic plan from both communities. This is a doable process.

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Chair Burks recommended adding a link to the CCDAs website to the legal presentation by the US Access Board and Business and Technical Assistance Center to bring together a legal group of people. Refining the Commission's mission and vision statements refined is extremely important.

Commissioner Navarro stated the ADA is an unfunded mandate; however, part of the Commission's work, parallel to outreach and education, is to consider costs of compliance. But, if there is enough study, perhaps part of the funding could be used to examine the economic structures, which have the support of the ADA, that perhaps neither the private nor government sector are using or aware of.

Vice Chair Hauge agreed that receiving proper funding to fulfill the Commission's function is important, but also that the overarching goals proposed by the Center are important to laying the groundwork of what will be accomplished with that funding.

Chair Burks agreed. He stated many of the Centers for Independent Living, in terms of development of SB 262, were involved with the voluntary CASp program. The initial intent of the CASp program's process was to gather a skilled set of people who understood both federal and state accessibility requirements where there was not an amalgamated code. This Commission's challenge is to create directional tools to be transparent in the process of building trust.

Part of the Centers for Independent Living's effort, as with some other disability organizations, is to solidly offer opportunity for the CASp program to be an income generator and develop compliance efforts in their local communities. Chair Burks stated he saw the California Chamber of Commerce being a large player in the collaboration, because it is members of local communities and their local chambers of commerce that are most affected. Many of the twenty-nine Centers for Independent Living, in concert with the DOR, have done outreach and education through accessibility compliance seminars. However, it seemed attendance was highest when the seminars cost a large amount of money. The Center for Collaborative Policy will need to determine how cost affects participation.

Vice Chair Hauge stated he was involved in a similar process in San Francisco about ten years ago, but the business community of San Francisco has since become more sensitized regarding this kind of meeting.

Chair Burks stated the restructuring of the legal avenues that were implemented in California to put courts under the state's jurisdiction prevented local counties from having budgetary control over superior courts. This Commission is developing the data as to whether a suit is being filed in state or federal court.

Ms. Russell suggested a blog called the co-discussion group. Chair Burks explained that this blog allows code-savvy people to communicate with each other in terms of applying the criteria of both federal and state codes.

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Vice Chair Hauge recommended incorporating the suggestion that accessibility will bring in customers into the outreach.

Executive Director Castellanos stated this may require some research. The DOR may have data about the economic impact of employing a person with disabilities. The incidence of unemployment or underemployment is significant in persons with disabilities.

Ms. Russell added that the DOR is creating a video, to be released in September, entitled "Boost Your Business," which help people learn about making their buildings and businesses more accessible to people with disabilities. Along with that video, there will be another one, entitled "Employment Today," on hiring people with disabilities.

Action Items

- No action items.

c. Appoint to Outreach Committee - Discussion

Chair Burks stated Vice Chair Hauge, Commissioner Navarro, and Commissioner Wilson have expressed a desire to be on the new Outreach Committee. He recommended adding at least one more business representative, and encouraged Commissioners and members of the public to submit possible names of candidates to Executive Director Castellanos and him.

Executive Director Castellanos stated this Committee could serve a significant function in the strategic planning process. He wanted to invite two partners, one in the DOR and one in the DSA, to participate. There has not yet been any internal discussion about legislative representatives. He welcomed recommendations for other participants.

Chair Burks stated, while involvement of the DOR and the DSA would be important to the Outreach and Education collaboration efforts, he also hoped for additional business representatives, including Regina Dick-Endrizzi of San Francisco and Commissioner Wilson's connections with a similar group in Los Angeles. It will be pivotal to have representatives from the DSA and the DOR, the building trades, the Chamber of Commerce, and the Legislature. He stated the discussion should be directed towards who these representatives could be.

Commissioner Navarro suggested representatives of the ILCs, as well.

Action Items

- Commissioners are to provide names of potential candidates for appointments to the Outreach and Education Committee to staff.
- Chairman Burks is to contact Regina Dick-Endrizzi.

d. Proposed Speaker(s) for Full Commission - Update

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Executive Director Castellanos reminded Commissioners to be on the lookout for people who are willing to give interesting presentations to the Commission on real-life experience or examples of success or failure. He encouraged using the public meetings and generating these presentations so that others can learn from them, as well. He stated he will try to balance the presentations at each meeting between a focus on persons with disabilities and persons with business success.

Action Items

- Commissioners are to provide names of potential presenters for Commission meetings to staff.

e. Bagley-Keene Refresher - Update

Executive Director Castellanos stated a Bagley-Keene refresher will be given at the full Commission meeting next week. It is an important training opportunity for all of the Commissioners. The Commission operates under the state provisions for open meetings; the refresher at the full Commission meeting will ensure that everyone is aware of what those provisions are. There will be a number of meetings around the strategic plan and opportunities for Commissioners to have transparent discussion. The presentation will be in the afternoon session next Wednesday.

Action Items

- No action items.

f. Executive Report

Executive Director Castellanos stated most of the work staff has been doing is around the data collection from the lawsuits occurring in California. Steven Funderburk is a great addition to the staff. Staff spent a lot of time toward the yearend working with the consultant teams. The consultant for the website is Teranomics, and they will be presenting at the full Commission meeting next week. The release of the new website will coincide with the posting of the claims reporting data on July 31st.

Outreach. Since July 1st, when many provisions of SB 1186 took hold, staff has been fielding numerous phone calls and working closely with legislative staff member, Lindsey Scott-Florez. Many phone calls relate to a duty to disclose if buildings have been inspected by a CASp. Staff is developing a FAQ area of questions and responses on the website so that this information will not be lost. There is a need for a customer call support area. It is a complex area of law and regulation and staff has little ability to provide clarification there, but it needs to be considered as part of education and outreach efforts to some degree.

DSA, DOR, and CCDA Collaboration. The communication and collaboration with the DSA and the DOR is positive. The DOR has included the Commission as an

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agency under their Equal Access goal in their 2013 to 2018 Strategic Plan. The statement is that the CCDA will be working "in conjunction with DOR to develop and disseminate educational materials and information to public and private entities to promote and facilitate disability access." Executive Director Castellanos stated this is another indication of how much closer the two agencies are becoming as they work on the same kinds of issues and focus on outcomes.

Department of General Services (DGS). Staff had a problem in the past with Internet access and is trying to improve the ways they use technology and communicate. The DGS has been working with staff to bring a fiber cable into the building. The DOR has been a part of that, because they have to approve the use of their equipment, their closets, and their wiring for the high-speed cable to connect to the Commission office sublet from them.

Executive Director Castellanos recently met with the former executive director of the California Building Standards Commission (CBSC) and current staff member at the International Code Council (ICC), Dave Walls. They published the model code that California uses as a basis for Title 24. Mr. Walls is working with staff on code and access compliance training. There is a current requirement for architects, for example, to have five hours per year in accessibility training, but, outside that mandatory requirement, there is a significant and continuing need to increase training in terms of enforcement and design deficiencies.

Staffing. There are workload difficulties with the numerous efforts the Commission has underway. Staff is internally evaluating whether to ask for new positions or to look at other strategies, such as using retired annuitants, seasonal workers, or students to fill these temporary needs, if they are indeed temporary. Executive Director Castellanos stated he is looking at this, in terms of staff providing the type of support that the Commission needs and meeting the needs of the Commission at the same time.

5. DISABLED ACCESS LEGISLATIVE AND REGULATORY DEVELOPMENTS

a. Capitol Track Report - AB 223 and SB 550

Chair Burks stated this agenda item will be discussed at the full Commission meeting next week.

Committee Member Connelly asked if Chair Burks would like him to see if these bills have a two-year plan. Chair Burks stated that this would be helpful.

Action Items

- Committee Member Connelly is to see if AB 223 and SB 550 have a two-year plan.

6. BUDGET UPDATE

a. Monthly Report

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Chair Burks stated the error has been corrected with the DGS on this Monthly Budget Report.

He stated his appreciation for the DOR for their assistance in terms of workplace accommodations and equipment loans. It is extremely difficult for the executive director to operate without adequate desks and the necessary materials.

Chair Burks declared his frustration and disappointment that he had to tell the executive director that he was going to have his materials and supplies, as required by the state, only to have to relinquish them to the DOR because Prison Industries did not fulfill the agreed-upon order after 6-1/2 months. He extended his respect and appreciation to Executive Director Castellanos and his staff for their understanding and hard work.

Action Items

- No action items.

7. FUTURE AGENDA ITEMS

Chair Burks stated future agenda items will be discussed at the full Commission meeting next week.

8. ADJOURN

MOTION: Vice Chairman Hauge moved to adjourn the July 18, 2013, California Commission on Disability Access Executive Committee meeting. Committee Member Connelly seconded. Motion carried unanimously.

Chairman Burks adjourned the meeting at 12:07 p.m.