



## 2012-2013 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

# IS THERE EFFECTIVE OVERSIGHT OF CERTIFIED FARMERS' MARKETS IN SANTA CLARA COUNTY?

## Introduction

With the popularity of Certified Farmers' Markets (CFMs) growing in Santa Clara County (County), the Santa Clara County Civil Grand Jury (Grand Jury) inquired into the effectiveness of the County's oversight of the CFMs. The Grand Jury conducted an investigation in order to define the following issues:

- What is a CFM?
- Which County departments are responsible for the oversight of CFMs and how is the oversight being conducted?

The Grand Jury's investigation found the County's oversight agencies have set objectives to thoroughly inspect and oversee the County's CFMs, but they do not consistently and completely report the results for easy consumer review. Information that is complete and easy to review enables consumers to make more intelligent purchases.

## Background

CFMs are physical locations certified by the State of California through the enforcement officers of the County Agricultural Commissioner. Ongoing oversight and enforcement responsibilities are shared by the County Department of Agriculture and the County Department of Environmental Health. CFMs provide an opportunity for producers to sell commodities directly to consumers without meeting the usual size, standard pack, label, and container requirements for such products, although maturity and quality standards still must be met. Prior to 1977, the California Department of Food and Agriculture (CDFA) regulations required producers to properly size, standard pack and label their fresh fruits, nuts, and vegetables in standard containers to transport and sell in markets anywhere other than the farm site. In 1977 CDFA exempted producers from these requirements.<sup>1</sup>

Direct marketing has successfully provided opportunities for producers to sell directly to the public through CFMs. Currently there are between 30 and 45 CFMs operating at any given time in the county.

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<sup>1</sup> [http://www.cdfa.ca.gov/is/i\\_&\\_c/cfm.html](http://www.cdfa.ca.gov/is/i_&_c/cfm.html)

## Methodology

The Grand Jury interviewed representatives of county departments, visited seven CFMs, and reviewed the documents, indicated below, to understand the intent, processes, and implementation of the rules and regulations for CFMs.

### Interviews:

- County Department of Environmental Health, Consumer Protection Division
- County Department of Agriculture, Direct Marketing Program
- Certified Farmers' Market Visits:
  - Cambrian Park and the Sunnyvale Certified Farmers' Markets managed by Urban Village Farmers' Market Association.
  - Mountain View Certified Farmers' Market managed by the California Farmers' Markets Association.
  - Certified Farmers' Markets at Kaiser Medical Center in Santa Clara and San Jose, the Certified Farmers' Market at San Pedro Square, and the Berryessa Certified Farmers' Market, all of which are managed by the Pacific Coast Farmers' Market Association.
- Documents Reviewed: (Appendix A has additional documents)
  - California Department of Food & Agriculture cover letter from the Supervising Special Investigator, Inspection and Compliance Branch, explaining the changes in the regulations pertaining to Direct Marketing and Certified Farmers' Markets, which became effective September 17, 2011.
  - California Code of Regulations
  - California Department of Food & Agriculture Certified Farmers' Market Advisory Committee Meeting Minutes from 09/29/10 to 10/02/12
  - California Farmers' Markets Association Rules and Regulations for Certified Farmers' Markets, 01/01/09
  - Pacific Coast Farmers' Market Association Rules and Regulations for Certified Farmers' Markets, 2012
  - Urban Village Farmers' Market Association Rules and Regulations, 2010

## **Discussion**

### **What is a CFM?**

A Certified Farmers' Market is a market (1) operated by a local government agency, one or more certified producers, or a nonprofit organization; (2) certified by and operating in a location approved by the County Agricultural Commissioner; and (3) where farmers (or "producers") sell directly to consumers agricultural products or processed goods made from agricultural products that the farmers grow themselves ("direct marketing"). State law requires that the agricultural products meet certain health and safety standards. Provided that those standards are met, produce sold at a California Certified Farmers' Market is exempt from grade, size, labeling, packaging, and other such requirements for fruits, nuts, and vegetables.<sup>2</sup>

The largest farmers' market associations operating CFMs in the county are: California Farmers' Market Association, Pacific Coast Farmers' Market Association, and Urban Village Farmers' Market Association. Between them, they operate 20 CFMs. There are an additional 13 CFMs managed by nine other associations (three have seven between them; the other six have only one each).

Each of the farmers' market associations must have written bylaws. Each association appoints a market manager who coordinates and oversees the ongoing functioning of the CFM. The market manager is obligated to warn, cite and/or fine vendors that are not abiding by the law, and to report non-compliance(s) to the county agencies. Producers may sell their certified products at the CFM only with the approval of the market manager. Sale of noncertifiable food products at the CFM is allowed outside the market perimeter at the discretion of the market manager and association, depending on the product.<sup>3</sup>

The market manager is the front line of compliance at a CFM. In April and May of 2013, the CDFA offered voluntary market manager training in Santa Clara County. The training provided tools necessary to achieve success, whether the market manager was new or experienced.

### **Role of the County Agricultural Commissioner**

The County Department of Agriculture is responsible for enforcing the direct marketing regulations.

Producers control the production cycle from planting through harvesting. However, in order to sell their commodities at a CFM, the producers must obtain a Certified Producers' Certificate (CPC) from the County Agricultural Commissioner. A copy of the application for a CPC can be found at <http://www.cdfa.ca.gov/is/docs/CPC%20Final.pdf>.

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<sup>2</sup> [http://www.cdfa.ca.gov/is/i\\_&\\_c/standardization.html](http://www.cdfa.ca.gov/is/i_&_c/standardization.html)

<sup>3</sup> [www.cdfa.ca.gov/is/pdfs/Adopted\\_Text\\_reg\\_effective\\_9\\_11.pdf](http://www.cdfa.ca.gov/is/pdfs/Adopted_Text_reg_effective_9_11.pdf)

A biologist with the Department of Agriculture reviews the application received from the producer and inspects and verifies the location of production sites, storage sites, and the variety and types of commodities that are or will be grown. If changes to the certificate are required, appropriate comments are recorded on the inspection report. Certificates are valid for varying lengths of time, depending on the commodity involved. The certificate must be conspicuously posted at points of sale at the CFM so the consumer can be assured that products have been certified. Those items produced and listed on the certificate may be sold at a CFM location. Products that have not been certified or products that the producer has purchased and not produced may not be sold at the CFM location.

The Department of Agriculture also certifies the CFM, authorizing the site location and the validity of the operator status, ensuring that the operator is a non-profit agency, a producer, or government entity. If application is approved then a CFM site certificate is issued. An Application can be found at <http://www.cdfa.ca.gov/egov/farmersmarket/>.

During the Grand Jury visits to CFMs, it was observed that site certificates and the CPC were all posted in conspicuous places for customers to review.

In addition to inspecting the production sites, the County Department of Agriculture also inspects the Certified Farmers' Markets where the producers sell their products. The inspector uses the Farmer's Market Inspection Report to make certain that the stated regulations are being followed. The inspector walks around the CFM with a stopwatch, documenting the time used for the inspection, and a clipboard with the Inspection Report making notes documenting any violations. If violations are found, the producer is given a chance to correct the violation immediately. The items that are inspected include verifying that the:

- CFM is currently certified and the current site certificate posted.
- Load Lists (the list of products brought to the CFM to sell) are collected at the end of each market day.
- Producer is selling only products listed on the CPC.
- Non-Agricultural products are separated from the CFM.
- Current CPC is displayed.
- CPC is not expired.
- Scales used are properly sealed (scales must be tested and sealed by the County Division of Weights and Measures).
- Prepackaged, closed containers are labeled with IRQ (Identity of the product, person Responsible for the product, and the Quality of the product in the container).
- Organic registration and certification posted (if applicable).

In an interview with the County Department of Agriculture, the Grand Jury learned that the most common problems found in the inspections were producers selling products not on the CPC list and selling products as organic when the products are not certified as organic. As part of our inquiry, the Grand Jury also requested copies of Santa Clara County Farmers' Market Inspection Reports. We received Inspection Reports for Inspections from April 2011 through March 2012. The Inspection Reports clearly show the thorough nature of the specific items inspected. Violations are clearly listed; however, steps taken to correct the violations are not recorded on the Inspection Report. For example, if an inspection shows that a producer is selling products as organic when they are not organic, the inspector directs the producer to remove those products from the sales area and warns the producer that only certified organic products may be sold as organic. Not all inspectors record this correction. Recording this correction would be helpful in informing the consumer that corrective action has been taken and helps build trust in the CFM inspection program.

The Grand Jury also searched the county website to determine whether the Santa Clara County Farmer's Market Inspection Reports were available online but found that the reports are not posted for online review. By not posting the inspection reports online, consumers are not able to easily locate the inspection reports.

Violations reported to the CDFA by the County Department of Agriculture from April 2011 through March 2012 included:<sup>4</sup>

- Selling commodity not listed on Certified Producer's Certificate
- Selling non-certified commodity in Certified Farmers' Market
- Selling for 2<sup>nd</sup> producer without own products
- 2<sup>nd</sup> Producer not separated from Certified Producer's commodities
- No copy of state organic certification
- Selling organic products for another without the other vendor's organic registration
- No IRQ (**I**dentification of commodity, **R**esponsible party and **Q**uantity on packaged products)
- Failure to ensure valid Certified Producers' Certificate posted
- Valid Certified Producers Certificate not posted
- Failure to have site certificate
- Scale not sealed
- Load list [items sold] are not collected at the end of each market day

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<sup>4</sup> [www.cdfa.ca.gov/is/pdfs/CFM\\_Noncompliance\\_List.pdf](http://www.cdfa.ca.gov/is/pdfs/CFM_Noncompliance_List.pdf)

The public is able to view violations reported to the CDFA by the County Department of Agriculture for a particular market. The public is not, however, able to view the actual inspection reports that led to the report. The County Department of Agriculture should include the steps taken to correct violations on all of the Santa Clara County Farmers' Market Inspection Reports and should post these reports online for easy consumer review.

### **Role of the Department of Environmental Health**

The County Department of Environmental Health regulates the health and safety requirements for CFMs.

A CFM is a retail food facility and must obtain a health permit from the County Department of Environmental Health. The health permit must be posted in a conspicuous place at the CFM. The Grand Jury observed that health permits were posted in conspicuous places for customers to review.

The County Department of Environmental Health routinely inspects CFMs to ensure that all food sold is free from contamination and "fully fit for human consumption."

The County Department of Environmental Health's *Enforcement Policy and Procedures* guides staff when enforcement actions are required. The policy states that there are eleven "critical hazard factors" which warrant close monitoring, since they are major contributors to food-borne illness. These are:

- Food not kept free from contamination, adulteration, or spoilage (i.e. improper cooling of food in deep containers; cross contamination due to improper storage or preparation of raw foods; using dirty equipment in food preparation; obtaining food from unapproved sources).
- Improper temperature control of potentially hazardous foods.
- Unpackaged food served or returned from eating area; foods prepared, stored or handled from private homes.
- Employees preparing, serving or handling food or utensils in an unsanitary manner.
- Failure to wash hands before commencing work after using toilet facilities.
- Failure to provide hot and cold running water, hand washing cleaner, and towels or hot-air blowers in dispensers, within or adjacent to toilet rooms.
- Failure to provide fully equipped hand washing facilities.
- Failure to construct, maintain, and/or operate a food facility free of vermin (i.e. cockroaches, flies, and rodents).
- Failure to keep food facility equipment and utensils clean and in good repair.
- Failure to properly clean and sanitize equipment and utensils.
- Failure to provide hot and cold running water in food facility.

The County Department of Environmental Health's Environmental Health Specialist documents the conditions observed when performing inspections at CFMs on the Official Inspection Report (OIR). The Environmental Health Specialist performing the inspection is instructed to neatly prepare the report, make the findings clear to the reader, convey the nature of the violations, state the corrective actions taken, and complete the report in the field.

Interviews with County Department of Environmental Health staff revealed that the most frequent violations reported were: improper hand and utensil washing, the lack of permits on site, improper hot and cold holding temperatures, and lack of proper signage.

The Grand Jury requested copies of the 2011-2012 OIRs to determine what violations were noted in the field and what corrective actions were taken. The OIRs show the thorough nature of the County Department of Environmental Health inspections. Any code violations are clearly listed. However, the findings of the Environmental Health Specialist that led to the violations being cited are not listed by all the Specialists and the steps taken to correct the violations are not recorded by all the Specialists. For example, when sliced fruits are not covered properly, with tongs available to pick up the piece of fruit, the public could contaminate the fruit. The Health Specialist instructs the producer to get a covered container and tongs to correct the violation. By recording this correction it would be helpful in informing the consumer that corrective action has been taken. It also helps build trust in the health inspection program.

## **Conclusions**

CFMs provide an opportunity for producers to sell commodities they produce directly to consumers without meeting the usual size, standard pack, and container requirements for such products.<sup>5</sup> The direct marketing regulations are enforced by the County's Department of Agriculture and the health and safety aspects are enforced by the County's Department of Environmental Health. Both agencies conduct inspections.

The County Department of Agriculture should include the steps taken to correct violations on all of the Santa Clara County Farmers' Market Inspection Reports and should post these reports online for easy consumer review.

The County Department of Environmental Health should list the findings of the Environmental Health Specialist that led to the violations being cited and the steps taken to correct the violations recorded. Not all Health Specialists record these items.

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<sup>5</sup>[http://www.cdfa.ca.gov/is/i\\_&\\_c/standardization.html](http://www.cdfa.ca.gov/is/i_&_c/standardization.html)

## **Findings and Recommendations**

### **Finding 1**

Not all County Department of Agriculture CFM inspectors report the steps taken to correct the violations listed on the official Inspection Reports.

### **Recommendation 1**

All County Department of Agriculture CFM inspectors should include the steps taken to correct violations on all of the Santa Clara County Farmers' Market Inspection Reports.

### **Finding 2**

The County Department of Agriculture Farmers' Market Inspection Reports are not posted online at the County website.

### **Recommendation 2**

The County's Department of Agriculture should post all Farmer's Market Inspection Reports online for easy customer review.

### **Finding 3**

All County Department of Environmental Health Specialists do not include the steps taken to correct violations on all of the Official Inspection Reports.

### **Recommendation 3**

All County Department of Environmental Health Specialists should include the steps taken to correct violations on all the Official Inspection Reports.

### **Finding 4**

The County's Department of Environmental Health does not report the Environmental Health Specialist findings that lead to the violations cited on the Official Inspection Reports.

### **Recommendation 4**

All County Department of Environmental Health Specialists should include the findings that lead to the violations cited on the Official Inspection Reports.

## APPENDIX A - Documents Reviewed

Santa Clara County Certified Farmers' Markets

<http://www.sccgov.org/sites/ag/Farmers%27%20Markets/Documents/SantaClaraCoFarmersMarketlistHyperlink2012-L.pdf>

Urban Village Farmers' Market Association <http://www.urbanvillageonline.com/>

California Farmers' Market Association <http://cafarmersmkts.com/>

Pacific Coast Farmers' Market Association <http://www.pcfma.com/>

Japantown San Jose Certified Farmers' Market

<http://www.japantownsanjose.org/market.html>

Palo Alto Farmers' Market <http://pafarmersmarket.org/>

South Bay Farmers' Markets

<http://www.southbayfarmersmarkets.com/SouthBayFarmersMarket/Home.html>

West Coast Farmers Market Association <http://westcoastfarmersmarkets.org/>

The County of Santa Clara – Farmers' Markets

<http://www.sccgov.org/sites/ag/Farmers'%20Markets/Pages/Farmers'-Markets.aspx>

The County of Santa Clara – Certified Farmers' Market Info

<http://www.sccgov.org/sites/deh/Consumer%20Protection%20Division/Laws,%20Policies%20-%20Legal%20Issues/Pages/Certified-Farmers-Market-Info.aspx>

The County of Santa Clara – Pesticide Safety, Forms & Education, Information about Agricultural Permits, Commercial Pest Control, and Applicator Tests

<http://www.sccgov.org/sites/ag/Pesticide%20Safety,%20Forms,%20-%20Education/Pages/Pesticide-Safety--Forms---Education.aspx>

Santa Clara County Agricultural Department, Certified Producer's Certificate & Inspection Report

Santa Clara County Farmers' Market Inspection Report

California Department of Food & Agriculture Inspection and Compliance – Certified Farmers Market Program <http://www.cdffa.ca.gov/is/i & c/cfm.html>;

California Department of Food & Agriculture Listening Sessions 2010

<http://www.cdffa.ca.gov/is/i & c/cfm.html>

## APPENDIX A - continued

California Department of Food & Agriculture Certified Farmers' Market Advisory Committee Meeting 10/10/12 <http://cdfa.ca.gov/is/uploader/docs/CFMAC%2010-10-12%20Notice%20&%20Agenda.pdf>

Certified Farmers' Market Non-Compliance Worksheet  
[http://www.cdfa.ca.gov/is/pdfs/CFM\\_Noncompliance\\_List.pdf](http://www.cdfa.ca.gov/is/pdfs/CFM_Noncompliance_List.pdf)

Certified Farmers' Market Revoked, Suspended and/or Fined  
[http://www.cdfa.ca.gov/is/pdfs/CPC\\_Suspension\\_2012\\_2nd\\_quarter.pdf](http://www.cdfa.ca.gov/is/pdfs/CPC_Suspension_2012_2nd_quarter.pdf)

CA.Gov Certified Farmers Market Program & Inspection Services Division Regulations  
<http://www.cdfa.ca.gov/is/Regulations.html>

Environmental Health Requirements for Certified Farmers' Markets rev. July 2008  
[http://www.ccdeh.com/document/doc\\_view/191-environmental-health-requirements-for-certified-farmers-markets](http://www.ccdeh.com/document/doc_view/191-environmental-health-requirements-for-certified-farmers-markets)

Potentially Hazardous Food: The Evolving Definition of Temperature Control for Safety, June 26, 2005  
<http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodborneIllnessandRiskFactorReduction/RetailFoodRiskFactorStudies/ucm111302.htm>

Food-borne Illness: What Consumers Need to Know  
[http://www.fsis.usda.gov/FACTSheets/Foodborne\\_Illness\\_What\\_Consumers\\_Need\\_to\\_Know/index.asp](http://www.fsis.usda.gov/FACTSheets/Foodborne_Illness_What_Consumers_Need_to_Know/index.asp)

USDA Fact Sheet: Safe Food Handling, Danger Zone  
[http://www.fsis.usda.gov/FACTSheets/Danger\\_Zone/index.asp](http://www.fsis.usda.gov/FACTSheets/Danger_Zone/index.asp)

California Retail Food Code <http://www.cdph.ca.gov/services/Documents/fdbRFC.pdf>

California Department of Food & Agriculture Division of Inspection Services, 2010 Annual Report  
<http://www.cdfa.ca.gov/is/pdfs/reports/CDFAIInspectionServicesAnnualReport10.pdf>

Federal Organic Foods Production Act of 1990, including amendments as of January 1, 2004  
[http://www.farmlandinfo.org/documents/38361/Federal\\_Organic\\_Food\\_Production\\_Act.pdf](http://www.farmlandinfo.org/documents/38361/Federal_Organic_Food_Production_Act.pdf)

Study Says Organic Isn't Healthier? Here's Why It Still May Be Worth The Cost  
<http://www.forbes.com/sites/learnvest/2012/09/06/study-says-organic-isnt-healthier-heres-why-it-still-may-be-worth-the-cost-999/>

## APPENDIX A - continued

Stanford Scientists Cast Doubt on Advantages of Organic Meat and Produce  
[http://www.nytimes.com/2012/09/04/science/earth/study-questions-advantages-of-organic-meat-and-produce.html?\\_r=1&pagewanted=print](http://www.nytimes.com/2012/09/04/science/earth/study-questions-advantages-of-organic-meat-and-produce.html?_r=1&pagewanted=print)

More Farmers Markets Mean Better Health  
[http://www.mercurynews.com/opinion/ci\\_21285388/mercury-news-editorial-san-jose-more-farmers-markets](http://www.mercurynews.com/opinion/ci_21285388/mercury-news-editorial-san-jose-more-farmers-markets)

Associated Press <http://hosted2.ap.org/APDEFAULT/Terms>

AP Farmers Markets Surge as Local Demand Rises  
[http://seattletimes.com/html/business/technology/2018840203\\_apapfnusfarmersmarketsurge.html](http://seattletimes.com/html/business/technology/2018840203_apapfnusfarmersmarketsurge.html)

Bakersfield Man Pleads Guilty in Fertilizer Case  
<http://www.justice.gov/usao/cae/news/docs/2012/08-2012/08-06-12NelsonGuiltyplea.html>

Fruit Company IDs Products in Recall of Mangoes Due To Salmonella Risk  
<http://www.foxnews.com/health/2012/09/02/fruit-company-expands-recall-mangoes-due-to-salmonella-risk/>

Recall of Peanut Butters etc.  
<http://enews.earthlink.net/article/us?guid=20121001/5e4eb8f8-3534-45fe-b044-6f6d5e393246>

FDA Recalls Last 60 Days  
<http://www.sccgov.org/sites/deh/Consumer%20Protection%20Division/Food%20Recalls,%20Notices%20-%20Alerts/Pages/default.aspx>

Monsanto Supported Labeling Prop.37  
[http://www.mercurynews.com/elections/ci\\_21452920/monsanto-fighting-efforts-label-genetically-engineered-food-california](http://www.mercurynews.com/elections/ci_21452920/monsanto-fighting-efforts-label-genetically-engineered-food-california)

San Jose Water Pollution Control Plant Sees Exodus of 43% of its workforce  
<http://www.rebuildtheplant.org/go/doc/1823/258352>

Food Hubs Connect School Districts with Farmers  
[http://www.huffingtonpost.com/2012/09/03/food-hubs-connect-school- n\\_1851863.html](http://www.huffingtonpost.com/2012/09/03/food-hubs-connect-school- n_1851863.html)

Brown Act [http://ag.ca.gov/publications/2003\\_Intro\\_BrownAct.pdf](http://ag.ca.gov/publications/2003_Intro_BrownAct.pdf)

Will Mexico or Florida Provide Tomatoes to US Markets?  
<http://latino.foxnews.com/latino/lifestyle/2012/09/28/tomato-wars-us-may-side-florida-farmers-in-tomato-fight/?test=latestnews>

## APPENDIX A - continued

USDA Agriculture Marketing Service

<http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateA&navID=WholesaleandFarmersMarkets&leftNav=WholesaleandFarmersMarkets&page=WholesaleAndFarmersMarkets>

<http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&navID=WholesaleandFarmersMarkets&leftNav=WholesaleandFarmersMarkets&page=FMPP&description=Farmers%20Market%20Promotion%20Program&acct=fmpp>

<http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateC&navID=WholesaleandFarmersMarkets&leftNav=WholesaleandFarmersMarkets&page=FSMIP&description=Federal%20State%20Marketing%20Improvement%20Program&acct=gpfsmip>

<http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateA&navID=CommodityAreas&leftNav=CommodityAreas&page=CommodityAreas&acct=AMSPW>

<http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateA&navID=GradingCertificationandVerification&leftNav=GradingCertificationandVerification&page=GradingCertificationAndVerification&acct=AMSPW>

<http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateA&navID=FairTradingRegulations&leftNav=FairTradingRegulations&page=FairTradingRegulations&acct=AMSPW>

Biotechnology FAQs

<http://www.usda.gov/wps/portal/usda/usdahome?contentid=BiotechnologyFAQs.xml&navid=AGRICULTURE>

Biotechnology Glossary

<http://www.usda.gov/wps/portal/usda/usdahome?contentid=BiotechnologyGlosary.xml&navid=AGRICULTURE>

This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 6<sup>th</sup> day of June, 2013.

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Steven P. McPherson  
Foreperson

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Lyn H. Johnson  
Foreperson pro tem

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Chester F. Hayes  
Foreperson pro tem

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Francis A. Stephens  
Secretary