



# COMMUNICATOR



## PRESIDENT'S MESSAGE

**2020** is coming to a close and what a year it has been. COVID-19, civil unrest, catastrophic wildfires throughout the state, Zoom meetings, virtual conferences and of course, last month's election. Congratulations to our members who were re-elected to Parks and Recreation District Boards and congratulations to newly elected Board Members.

Looking back on 2020, the word that I think describes CARPD and our member agencies is Resilience. Throughout the COVID-19 pandemic, Government Officials and Public Health Agencies have recognized the essential role of parks and outdoor recreation activity as vital to our quality of life and to our physical and mental health. I think we have met that challenge, keeping parks safely open for our communities, providing facilities and support for fire crews as they fought fires in our neighborhoods, adapting to often changing health orders while keeping our employees safe and healthy.

We at CARPD have continued to meet electronically and advocate legislatively for our member agencies. Our first ever virtual conference was a great success with 186 registered attendees from 38 different Districts. We are also very thankful for the 23 Sponsors who supported the conference. COVID Relief funds and Wildfire Mitigation Grants are high on our list of legislative priorities.

Zoom Webinars for the General Managers group have been popular and we plan to introduce Zoom Webinars for our Board Members on December 10, 2020. Our first ever Board Member Orientation will take place on Zoom on February 23, 2021. We hope you can attend.

2020 can't end early enough for me, but I look forward to 2021 with optimism. As you likely have heard, a second drug company has announced a coronavirus vaccine that is 94.5% effective. The Parks and Recreation profession has proven to be an essential service and we have met and exceeded the needs of our communities. We may be out of this in time to celebrate at the annual CARPD Conference in Monterey from April 28-May 1. An "in person event" would be tremendous!

In closing, I'd like to thank all of the Members, Staff and Sponsors who have remained so Resilient through this past year. Have a safe and Happy Holiday Season. In spite of all the challenges of 2020, we have many reasons to be thankful and optimistic.

Dennis Waespi,  
East Bay Regional  
Park District

President, CARPD



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### BOARD OF DIRECTORS:

- President:**  
Dennis Waespi
- Past President:**  
Rick Sloan
- President Elect:**  
Nick Schouten
- Secretary:**  
Michelle Lacy
- CFO:**  
Al McGreehan
- Directors:**  
Brian Danzl  
Michael Seaman  
Mark Johnson  
Doug Nickles  
Dean Wetter  
Stephen Fraher



## LEGISLATIVE UPDATE

By Russ Noack  
Public Policy Advocates LLC

While many news organizations have called the Presidential race and States have begun certifying their voting results, legal challenges and a defiant President Trump have ensured the high drama of the 2020 Election cycle will continue on as we head into December. The Biden-Harris ticket easily won California's 55 electoral votes by receiving nearly 64% of the vote. The strong relationship between the state's voters and close connection with the Vice President is already being heralded as an extremely favorable new factor in improving lines of communication between California and a new Administration after experiencing an often icy relationship with the Trump White House in recent times. Although it remains to be seen if the stalled COVID-19 \$1 trillion relief package for the states will get new life breathed into it in the upcoming weeks.

On the state level, Governor Newsom will welcome back to Sacramento a Legislature with his political allies solidly in control with the Democrats maintaining their supermajority in both Houses. It appears likely the Assembly will reconvene with 60 Democrats, 19 Republicans and 1 Independent and the Senate will come back with 31 Democrats and 9 Republicans.

The propositions placed on the California Ballot generally bucked the progressive trend of the rest of the election. Proposition 15, the "Split Roll Tax Measure" narrowly failed by a 52% to 48% margin. Prop. 15 would have increased taxes on commercial real property of greater than \$3 million by removing this category from the tax limits established by Proposition 13 back in 1978. In the aftermath, the proponents have pointed to the closeness of the vote as indicating accelerating movement toward success in the future and have vowed to bring it back again in two years. Additionally, keep an eye on a competing proposal, which was held this year so as to not compete with Prop. 15, sponsored by the California School Boards Association designed to impose higher personal income taxes on the wealthy and higher corporate income taxes on large businesses, which has been estimated would raise approximately \$15 billion a year.

The other significant development on the Ballot was the passage of Proposition 22 by an overwhelming 58.6% to 41.4% margin. Prop. 22 was the Uber, Lyft and DoorDash initiative designed to overturn Assembly Bill 5 to expressly allow their drivers and delivery persons to remain independent contractors rather than be classified as employees. The supporters spent over \$200 million on the campaign, which exceeded by ten times the amount various union organizations expended in opposing the measure. The wide margin of victory has some legislators and commentators believing that a renewed effort to overturn the law itself should be attempted when the Legislature returns in January. Although the prospects of a repeal of AB 5 are remote, since nearly all of the Democratic majority legislators voted for it to date, Assembly Member Kevin Kiley of Granite Bay has suggested that since "the voters emphatically rejected the premise of AB 5", a move to place it on the 2022 ballot may be in order.



As the election season draws to a close, legislators can now turn to firming up the public policy objectives they intend to champion in 2021. The CARPD Legislative Committee will be meeting in December to discuss these topics and many others and to identify opportunities to protect and promote recreation and parks as the new Legislative Session convenes in January. Happy New Year!

## NOW WHAT? INDEPENDENT CONTRACTORS IN CALIFORNIA

By Matthew Duarte  
Executive Director, CAPRI and CARPD

As we saw last year with the passage of AB5 and this year with Prop. 22, the classification of independent contractors as been an issue of significant focus in California. Of course, for most of our agencies, independent contractors play an important role in the delivery of many recreation program offerings. Whether they are instructing yoga classes, chair volleyball lessons, or a quilt-making group, it is vital that these recreation instructors are classified as independent contractor so as to ensure a diverse and affordable range of recreation services are available to the public.

However, when AB 5 went into effect in 2020, the ABC test as created by the 2018 California Supreme Court ruling in *Dynamex v. Superior Court* changed the game for many. While Uber, Lyft, and Doordash drivers got the headlines, public agencies also raised concerns about the fallout and impacts of the new law. CARPD was a vocal advocate this past legislative session attempting to carve out an exception for public entities that relied upon recreation instructors.

Although CA legislators balked at a specific exemption for our members, AB 2257 was passed with the intent of both clearing up confusion in the application of the law and also broadening the existing business-to-business exemption. For example, AB 5 permitted only a limited exemption from the stringent ABC Test provided that the contractor, among other things, “...*actually* contracts with other businesses to provide the same or similar services....” (Emphasis added.) For our recreation instructors, this was often a difficult requirement to fulfill. However, AB 2257 specifically amended that part of the exemption to require only that the business service provider “...*can* contract with other businesses...” (Emphasis added.) This small change is an important one and is likely good news for many CARPD members and its contracted instructors.

Under the law, if the instructor (or “service provider” as they are called in the Code) meets each of the prongs of Labor Code § 2776, the ABC Test from *Dynamex* will not apply. Instead the classification of the worker will be evaluated under the factors identified in the historic *Borello* decision or, stated another way pre-*Dynamex*/AB 5 law. This should provide a workable solution for many public agencies contracting with recreation instructors.

Here are the major conditions for the business-to-business exemption as found in Labor Code § 2776:

- The service provider is free from the direction and control of the District.
- The service provider is providing services directly to the District rather than to customers of the District.
- The service provider must have a written contract that specifies the payment amount, including the applicable rate of pay, for services to be performed, as well as the due date of payment for such services.
- If the work is performed where a service provider must have a business license or business tax registration, those requirements must be met.
- The service provider maintains a business location. This location may include the service provider’s residence.
- The business service provider can contract with other businesses to provide the same or similar services.
- The service provider advertises and holds itself out to the public as available to provide same or similar services.
- The service provider must have its own tools, vehicles, and equipment to perform the services.
- The service provider can negotiate its own rates.

Districts are encouraged to consult with their legal counsel and to review and evaluate each of their independent contractor relationships through the prism of this revised exemption to ensure compliance under California law.



## SPOTLIGHT: NEW CARPD GENERAL MANAGERS!

### **Emily Ballus** — Fulton-El Camino Recreation & Park District

- Education: BS-Sports Management, Guilford College (Greensboro, NC); MS-Sports Administration, St. Thomas University (Miami, FL); Doctoral courses in Sports Administration, U.S. Sports Academy
- Previous Position: Executive Director, Mary Graham Children's Foundation, Stockton, CA
- Favorite Recreational Activity: Running
- Favorite Candy or Treat: Reese's Peanut Butter Cups
- Fun Facts: Spent about 20 years in pro/international soccer. Major League Soccer's first-ever Director of Game and Player Operations; Marketing Programs Director for the 1999 FIFA Women's World Cup

### **James Wheeler** — Hayward Area Recreation & Park District

- Education: CSU Chico—BA Physical Education, BS Life Science
- Previous Position: Recreation, Arts and Community Services Director at Hayward Area Recreation and Park District; SF Rec and Park Dept ten years as a Neighborhood Area and Leisure Services Manager
- Favorite Recreational Activity: Sailing, Swimming, Volunteerism and Warriors games.
- Favorite Candy or Treat: See's Candy Almond Rocca
- Fun Facts: Honored to be a public servant and enjoys being involved in our professional associations.

### **Nicolas Chavez** — Hesperia Recreation & Park District

- Education: CSU Los Angeles—Bachelor's Degree, Political Science
- Previous Position: Assistant General Manager at Isla Vista Recreation & Park District
- Favorite Recreational Activity: Camping at Lime Kiln State Park in Big Sur California.
- Favorite Candy or Treat: Twix, hands down, the best candy ever made!
- Fun Facts: Enjoys the left and right Twix equally.

### **Derek Schweigart** — Highlands Recreation & Park District

- Education: BA in Government and Economics from St. Mary's College; MPA from CSU, East Bay.
- Previous Position: Community Services Director for the City of Menlo Park
- Favorite Recreational Activity: Hiking and exploring National and State Parks
- Favorite Candy or Treat: Dark Chocolate
- Fun Facts: Parent of 4 year old twins (boy and girl) and super into CrossFit.

### **Barry Ross** — Orangevale Recreation & Park District

- Education: Bachelor's Degree from the University of New Hampshire in Recreation & Parks with a concentration in Recreation Administration
- Previous Position: Recreation Superintendent for the Mission Oaks Recreation & Park District
- Favorite Recreational Activity: Tennis. Enjoys live music, theater and sporting events
- Favorite Candy or Treat: Snickers bars, Ben & Jerry ice cream, and most pies.
- Fun Facts: Ran the Boston Marathon, played baseball at San Quentin (against the inmates), and was "roadie for a day" for the band Candlebox.

## SPOTLIGHT: NEW STAFF



CAPRI & CARPD invite you to welcome the newest member of our team, Monica Breck! Monica will serve as Administrative Analyst responsible for a number of Administrative operations as well as delivering excellent service to our membership.

Monica has over 12 years of experience in risk pooling insurance from her time at CAPRI's excess insurer, PRISM. She is well versed in the administrative side of risk pooling, including managing underwriting functions and the annual

*Welcome!*

renewal process, as well as claims handling from initial claim reporting through file closure. She has a B.A. in Mathematics from Southern New Hampshire University. Monica is married with three kids: two boys and a girl. Her youngest, Emma, just started college this fall. Monica enjoys spending time with family and getting outdoors whenever possible to go running, paddle boarding, and hiking.

So, next time you call, please feel free to introduce yourself and welcome Monica to the CARPD Community!

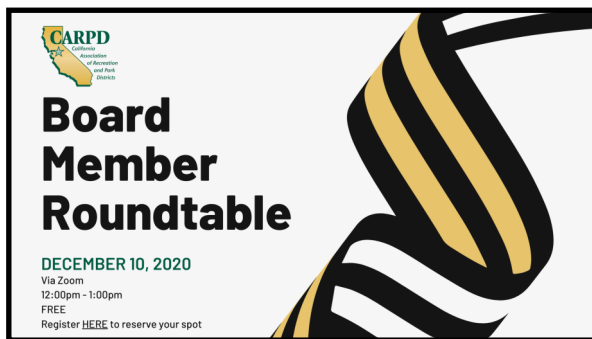
## CAPRI BOD ELECTION RESULTS

As you may know, this year was also an election year for CAPRI. In a tightly contested election, we are pleased to announce the winners: **Dean Wetter** of Valley-Wide Recreation & Park District and **Jill Nunes** of Cordova Recreation & Park District. We look forward to four years of service from these experienced and respected professionals. Thank you to those who voted and all those who submitted their names!

## SAVE THE DATES

December 10, 2020— Board Member Roundtable

April 28—May 1, 2021—CARPD Annual Conference  
Monterey, CA & Online via Zoom



February 23, 2021 — Board Member Orientation

