



**WHPA Chartering Committee  
Teleconference Summary Notes  
Wednesday, November 22, 2017  
Scheduled for 10:30am – 11:30am PST**

**Call to Order**

The WHPA Chartering Committee Chair (Chair), David Dias (JCEEP), called the meeting to order at 10:32 a.m. PST. The meeting was recorded for note purposes.

**Roll Call**

Wendy Worrell (WHPA Staff – InfoPlast) conducted roll call based on the current roster. As no voting panel has been assigned in favor of consensus voting, members are organized by voting eligibility status. 8 participants (or proxies) attended the meeting with a quorum (4+) of eligible members as indicated below:

P = Present at meeting A = Absent from meeting; if proxy has been assigned it will be noted below.				
Organization	First Name	Last Name	WHPA Category	Attendance
<b>Voting Eligible</b>				
CALBO (California Building Officials)	Bob	Barks	Codes & Standards Official (Association or Jurisdiction)	P
IHACI (Institute of Heating and Air Conditioning Industries)	Bob	Wiseman	Contractor Association	P
JCEEP (Joint Committee on Energy and Environmental Policy)	David	Dias	Organized Labor	P (Chair)
NCI (National Comfort Institute)	Mel	Johnson	Educator, Trainer	P
SynergyNexGen	Barbara	Hernesman	Energy Efficiency Program Consultant	P
<b>Voting Eligible (Upon Meeting Attendance)</b>				
ASHRAE	Ron	Jarnagin	Engineering Society	A
<b>WHPA Staff</b>				
Better Buildings, Inc.	Mark	Lowry	Other Stakeholder	P (WHPA Transition Lead)
InfoPlast	Wendy	Worrell	Other Stakeholder	P (Host/Scribe)
Key SEO	Judy	Johnson	Other Stakeholder	P (Work Product)

*\*\* Organization is Not a Member of the WHPA; + Individual is NOT Registered with the WHPA; (P) = Member Organization is Pending Approval from the WHPA Executive Committee.*

**AGENDA**

The following agenda was distributed to the WHPA Chartering Committee roster by WHPA Staff prior to the meeting, along with meeting reference slides:

**GENERAL REMINDERS**

- Adherence to the WHPA **Code of Conduct** is required.
- Disclose any potential conflicts of interest as it relates to meeting content, particularly prior to any votes that may occur.
- Identify yourself prior to speaking, clarifying the organization on whose behalf you are speaking, or if you are making a personal comment.
- Mute yourself when not speaking. (\*6 will take you on and off mute.)

**AGENDA ITEMS**

- 1) **Roll Call of Voting Members** – WHPA Staff (Wendy Worrell) – 5 min
- 2) **Chair’s Opening Comments** - Chair (David Dias, JCEEP) – 5 min
  - a. Welcome
  - b. Deliverable Needs
- 3) **Resource Documents Overview** – Mark Lowry (WHPA Staff, BBI) – 10 min
  - a. WHPA as Nonprofit Scoping
  - b. California Secretary of State Articles of Incorporation of a Nonprofit Public Benefit Corporation - 501(c)(3) (*NOTE: The attached .pdf is for example purposes. WHPA Staff is drafting a comparison of 501(c)(3) and 501(c)(6) for HSES Committee review this week.*)
  - c. California Nonprofit Benefit Corporation Sample Bylaws (from Public Counsel Law Center)
  - d. Current WHPA Vision, Mission, and Goals
- 4) **HSES Committee Decisions Recap** – HSES Co-Chair (Bob Wiseman, IHACI) – 5 min
- 5) **Entity Questions Discussion** – Chair (David Dias, JCEEP) - 30 min
- 6) **Next Steps** – Chair (David Dias, JCEEP) - 5 min
  - a. Next Meeting: November 29, 2017 from 12:00 – 1:00pm PST
  - b. Next Agenda: TBD
- 7) **Adjournment** by 11:30am PST – Chair (David Dias, JCEEP)



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**Chair's Opening Comments**

The Chair welcomed the meeting participants and reported that he wanted input from all to ensure gathering of all viewpoints.

The Chair confirmed the deliverable needs as follows:

- Incorporate HSES Committee Scoping Recommendations into Articles of Incorporation, Bylaws, etcetera as needed for Non-Profit Submission Package
  - Draft Content for Dec 8<sup>th</sup> HSES Committee Review
  - Final Content for Dec 13<sup>th</sup> Executive Committee Review

Per Chair inquiry, Mark Lowry (WHPA Staff – BBI) clarified that because the HVAC Stakeholder Engagement Strategy Committee (HSES) is being used as the larger forum for providing guidance to the detailed work the Chartering Committee is doing, there was desire for the Chartering Committee to bring the draft content to the HSES Committee for input and then bring final version to the Executive Committee (EC).

- The Chair confirmed that it was “okay with him” for either the HSES or Chartering Committee to present the deliverable.
- Mel Johnson (NCI) voiced his agreement that “it does not matter” if the Chartering or HSES Committee presents to the EC. He noted that other than confirming that the funding concerns are worked through, he did not see the need for it to go back and forth and suggested that the deliverable could go directly to the EC.
- It was pointed out that since the HSES Committee has IOU presence as well as CEC and CPUC representation, review at the HSES level would be a last opportunity to get their needed input for the funding discussion prior to EC escalation.

**Resource Documents Overview**

Mark Lowry (WHPA Staff – BBI) provided a high-level overview of the following resource documents per meeting slides 4-9:

- WHPA as Nonprofit Scoping
- California Secretary of State Articles of Incorporation of a Nonprofit Public Benefit Corporation - 501(c)(3) (*NOTE: The attached .pdf is for example purposes. WHPA Staff is drafting a comparison of 501(c)(3) and 501(c)(6) for HSES Committee review this week.*)
- California Nonprofit Benefit Corporation Sample Bylaws (from Public Counsel Law Center)
- Current WHPA Vision, Mission, and Goals

Mark Lowry (WHPA Staff – BBI) confirmed that the above content was previously presented in the HSES Committee and should be familiar to the meeting call participants. He clarified that when the documents were initially developed, he was looking at incorporating in California, but that after talking recently with an attorney about it, suggestion was made that Illinois and Washington, D.C. have easier paths toward incorporation. Regardless of where the non-profit corporation is founded, the basic steps are the same as defined on meeting slide 4, and were the basis for the scoping questions.

- Mel Johnson (NCI) voiced appreciation for the point Mark Lowry (WHPA Staff – BBI) raised and the helpfulness of the non-profit status comparison matrix shown onscreen.
- The Chair confirmed Mel Johnson’s (NCI) understanding that the HSES Committee is trying to make recommendations, but that the Chartering Committee has the opportunity to define the details.
- Mel Johnson (NCI) stated that “we need to be careful about limiting what this can do”, noting that it is not up to California to dictate where this can go, but that it is up to California to determine what to do with it. He suggested that WHPA should be focused more toward the Western United States rather than be limited to a specific size or region.
- Mark Lowry (WHPA Staff – BBI) reported that it does not really matter where WHPA establishes as a non-profit organization, as long as WHPA exists and functions, but cautioned that any recommendation to the EC should not limit the organization’s ability to be funded.
- The Chair commented that there will be more questions and discussion about funding, but noted that the concept of not limiting WHPA’s reach will also have funding considerations. The primary point is on changing WHPA to a non-profit structure.

**HSES Committee Decisions Recap**

WHPA HVAC Stakeholder Engagement Strategy (HSES) Committee Co-Chair, Bob Wiseman (IHACI), recapped the decisions made by the HSES Committee to date per meeting slides 10-14. Comments beyond slide content follow:



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- The HSES Committee generally noted that the existing WHPA system has been working, but that it needs to be modified to work in a non-profit structure.
- Decisions to remain California-centric and not expand to refrigeration presently were largely due to the need for expediency and because WHPA “is working”, so too much change other than to non-profit structure is not desired at this point.
- No answer has been developed yet for the question of if WHPA should be open to charitable contributions and for what type of non-profit status to pursue.
- As the HSES and Chartering Committees work in tandem, there will be questions for each group to discuss.

**Entity Questions Discussion**

The Chair (Dave Dias – JCEEP) reported that as a government agency, CSLB also needs to remain engaged along with CEC and CPUC. The Chair suggested that while not focused specifically on lobbying, the organization should be able to support a bill that is good for the industry.

- Barbara Hernesman (SynergyNexGen) clarified that 501(c)(3) corporations are strictly prohibited from political activities, but that other statuses, such as 501(c)(6) allow for focus on overall industry needs, which could offer education, trade shows, journals, etcetera on needed topics. Barbara encouraged that unless a decision has been made, both types should be discussed for determination of the best option(s).
- Mel Johnson (NCI) clarified that if a situation arises in which the organization might want to take a position, the Board of Directors and Executive Director would need to determine how they would want to position themselves to appropriately deal with that situation. Historically, WHPA was not made to intervene in the lobbying/political process.

The Chair clarified intent for the Non-Profit Status Comparison Matrix from Mark Lowry (WHPA Staff – BBI) to be fully reviewed at the next Chartering Committee meeting.

- Mark Lowry (WHPA Staff – BBI) reported that the Matrix he found was developed by an attorney and breaks needed content down pretty well.

Barbara Hernesman (SynergyNexGen) commented that the path needs to be decided to determine what other ways to go.

Bob Barks (CALBO) reported that he has been involved in two 501(c)(6) and one 501(c)(3) organization. Based on his experience, he “does not see” restrictions either way if WHPA wants to make comment on a public issue, but noted that the money is what needs to be watched. He clarified that the 501(c)(3) status does not allow funding to be received nor provided that would be considered lobbying or associated with voting or candidates. The organization itself is not limited from making public comments or providing letters on topics or subjects. The issues are where the money goes and how the money is used.

- The Chair commented that he “wants to keep it open” to enable the organization to still be able to talk with the CEC, for example, when something comes up.
- Barbara Hernesman (SynergyNexGen) reported that there are tax purpose restrictions on a 501(c)(3) that do not affect a 501(c)(6) organization. She clarified that there could be a political action committee within either, but that it does come down to where the money comes from and how it is used.
- Bob Barks (CALBO) voiced agreement that there is a distinction on a money level with those organization types and that the stricter regulations are in the 501(c)(3) status, particularly for the transfer from funds from the Corporation to organizations/person who might be doing some sort of political activity. He agreed that the 501(c)(6) has the ability to do some political action. He reported that based on Supreme Court activity, the organization is a person and as a unit, it could make statements and comments that way.
- The Chair asked if it would cost more money to fund a 501(c)(6) versus a 501(c)(3).
- Bob Barks (CALBO) commented that he did not think there would be a cost issue as both forms in California would need to provide financial statements and report them to the Secretary of State each year. He added that there does need to be an accountant to provide tax filings signed by the officer of the corporation even though it would be non-profit status.
- Barbara Hernesman (SynergyNexGen) reported that there is typically a quarterly meeting of the Board.
- Bob Barks (CALBO) added that there is a required annual meeting with at least 30-60 days’ notice. The financials would be provided for review at that meeting. Depending on how the bylaws are written, there would need to be a record of the meeting with quorum verification and voting clarification by the documented structure.

Barbara asked if given the deadlines to bring the conversation to the EC, if recommendation could be brought for the 501(c) route but not specific to (c)(3) or (c)(6).



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- Mark Lowry (WHPA Staff – BBI) clarified that the governance issues would need to be laid out prior to EC presentation so it is best to have a fundamental idea of the way to go.
- The Chair confirmed agreement and added that the recommendation would be made to the EC, so the EC can vote on it.
- Bob Barks (CALBO) reminded that the EC has the overall voting capacity for what the WHPA can do and that the HSES and Chartering Committee’s can only make recommendations and propose bylaws, etcetera that the WHPA should follow.

Mel Johnson (NCI) reported that he did some research on other companies that have done similar work and that Portland Energy Conservation was a 501(c)(3) before being acquired by CLEAResult. When he worked with the Utility, it was not an issue for CEC or CPUC to interact with the 501(c)(3). He noted his personal opinion that a 501(c)(3) is a more conservative approach “for the time we have”. He added that the biggest issue is that things are so expedited for the decision, noting that doing things in too aggressive a way might put funding at risk.

- Bob Barks (CALBO) voiced his agreement that being more conservative would also align with some of the concerns about the neutrality of WHPA and give the impression that WHPA is not just becoming another lobbying organization. He also noted that the decisions are not necessarily permanent, and that based on personal experience, State law does allow the bylaws to be rewritten down the road, but that it requires some thought.
- The Chair voiced appreciation for the clarification that filing could be changed.
- Mark Lowry (WHPA Staff – BBI) asked if the organization Bob Barks (CALBO) referenced also changed its nonprofit status with the IRS.
- Bob Barks (CALBO) confirmed that it did not change its nonprofit status, but that it was able to change its bylaws. He reported that changing from 501(c)(3) to another status would require the process to be completed again, and that the IRS approval letter is the critical document.
- Mark Lowry (WHPA Staff - BBI) confirmed that at RSES they had the IRS approval letter and the Articles of Incorporation available as needed for banks, etcetera for funding.

**ACTION:** The Chartering Committee to review the 501(c)3-4-6 Comparison Matrix in preparation for the November 29<sup>th</sup> Chartering Committee meeting.

Mark Lowry (WHPA Staff – BBI) commented that when reviewing the Matrix, thought should be given to if WHPA is more for a public purpose, a social welfare purpose, or for a membership purpose. (NOTE: The details for what each entails can be found in the Matrix “Purposes” row).

- Barbara Hernesman (SynergyNexGen) commented that she “gets stuck on 501(c)(6)” since WHPA has been focused as an organization membership. She noted that recent discussion indicated that the focus would still be on HVAC. If it is not expanding to other arenas, Barbara suggested that 501(c)(6) as the best option.
- Mark Lowry (WHPA Staff – BBI) clarified that typically the unifying force between the stakeholders is HVAC, but noted that the business interests are not always the same.
- The Chair commented that they should be in alignment with the WHPA vision, mission and goals.
- Barbara Hernesman (SynergyNexGen) noted that these are crucial decisions and that it is hard to define the vision, mission and goals without knowing the direction in which WHPA is going.
- Mel Johnson (NCI) clarified that initially WHPA was for the benefit of the public using ratepayer funds. As the time pressures affecting WHPA cannot be changed, he suggested keeping WHPA as closely aligned to the initial intent via 501(c)(3) status and changing it later if need be. He voiced his thought that taking it to another structure would “kill it” from a funding standpoint.
- Barbara Hernesman (SynergyNexGen) commented that if the focus is for public purpose than she confirms agreement with 501(c)(3) status.

Mel Johnson (NCI) suggested that if a general feel could be gained from where each participant is at, the language could start being developed to ensure the Chartering Committee can meet its deliverables.

- The Chair asked the group if enough information has been presented to make a decision.
- Barbara Hernesman (SynergyNexGen) said that Mel Johnson’s (NCI) clarification helped her and that if 501(c)(3) is the focus, then the Committee really needs to work on the vision and mission statement.



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**VOTE:** Mel Johnson (NCI) motioned and Bob Barks (CALBO) seconded the motion to focus on 501(c)(3) non-profit status for WHPA formation as a legal entity. Based on roll call voting, the motion passed with unanimous agreement by the eligible voting members (NCI, CALBO, IHACI, JCEEP, and SynergyNexGen) without further discussion or abstention.

**Next Steps**

Mark Lowry (WHPA Staff – BBI) reported that the HSES Chairs, the Chartering Committee Chair, and WHPA Staff had agreed that WHPA Staff would draft changes to the Charter, plus draft content for the Articles of Incorporation and the Bylaws based on Committee discussions, but noted that there might not be enough to do that yet.

**ACTION:** Based on current decisions, WHPA Staff to draft initial edits to the existing WHPA Mission, Vision and Goals for review at the next Chartering Committee meeting.

**SUGGESTION:** Barbara Hernesman (SynergyNexGen) commented that the last bullet of the existing WHPA Goal 3.1 that reads, “Serve as a credible, reliable, influential, and effective resource” should be the vision or mission instead of a goal.

The Chair reminded that the next Chartering Committee meeting is scheduled for Wednesday, November 29, 2017 from 11:00am – 12:00pm PST. The agenda will primarily focus on the Vision, Mission, and Goals for a 501(c)(3) non-profit entity structure.

**Adjournment**

The Chair adjourned the meeting at 11:35 p.m. PST.

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**Summary of Action Items and Key Decisions (from above)**

ACTION ITEMS

- **ACTION:** The Chartering Committee to review the 501(c)3-4-6 Comparison Matrix in preparation for the November 29<sup>th</sup> Chartering Committee meeting. (DONE)
- **ACTION:** Based on current decisions, WHPA Staff to draft initial edits to the existing WHPA Mission, Vision and Goals for review at the next Chartering Committee meeting. (DONE)

KEY DECISIONS

- **VOTE:** Mel Johnson (NCI) motioned and Bob Barks (CALBO) seconded the motion to focus on 501(c)(3) non-profit status for WHPA formation as a legal entity. Based on roll call voting, the motion passed with unanimous agreement by the eligible voting members (NCI, CALBO, IHACI, JCEEP, and SynergyNexGen) without further discussion or abstention.