

8. TRANSPAC CCTA Representative Reports: Reports on the most recent CCTA Administration and Projects Committee (Member Pierce), Planning Committee (Member Durant), and CCTA meetings (Members Pierce and Durant)

Attachments:

- Items approved by the Authority on February 16 , 2011 for Circulation to the Regional Transportation Planning Committees (RTPCs), and items of interest;
- February 16, 2011 CCTA Executive Director's Report;
- January 19, 2011 CCTA meeting minutes



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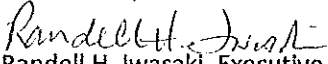
Karen Stepper

Robert Taylor

Randell H. Iwasaki,
 Executive Director

MEMORANDUM

To: Barbara Neustadter, TRANSPAC
 Andy Dillard, SWAT, TVTC
 John Cunningham, TRANSPLAN
 Christina Atienza, WCCTAC
 Richard Yee, LPMC

From: 
 Randell H. Iwasaki, Executive Director

Date: February 18, 2011

Re: Items approved by the Authority on February 16, 2011, for circulation to the Regional Transportation Planning Committees (RTPCs), and items of interest

At its February 16, 2011 meeting, the Authority discussed the following items, which may be of interest to the Regional Transportation Planning Committees:

1. **Legislation.** *The Authority received a staff report concerning a recent action on the part of the Metropolitan Transportation Commission (MTC) to sponsor state legislation that would call for the addition of two members to the Commission—one representing the City of Oakland and the other representing the City of San Jose. The Authority voted to support the legislation as it is currently written, and staff will monitor any changes going forward.*
2. **Proposed Securities and Exchange Commission (SEC) Regulations Pertaining to Municipal Advisors.** *The proposed regulations may require Authority Commissioners to register with the SEC as a "municipal advisor." It was recommended that the Authority comment on the proposed regulations and urge that appointed commissioners be excluded from SEC registering. The letter from Nossaman LLP to the SEC was approved by the Authority. (Attachment)*
3. **2011 Update to the Measure J Strategic Plan: Revenue Projections and Development Schedule.** *Staff provided an update on Measure J revenue projections, key policy issues to be addressed, and the schedule leading to adoption in July. The Authority approved the overall approach, schedule, and revenue projection to carry forward in the 2011 Update.*

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February 18, 2011

Page 2

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4. **Initiation of the 2013 Regional Transportation Plan "Call for Projects"**. In anticipation of MTC's release of a "Call for Projects" for the 2013 Regional Transportation Plan (RTP) by the end of February 2011, staff proposed to begin working with the Regional Transportation Planning Committees (RTPCs) and Transit Operators on developing a 25-year financially-constrained project list for submittal to MTC in April. In order for a transportation project to receive state and/or federal transportation funding, it must first be included in the RTP. *Staff reported that MTC's Call for Projects had been received, and provided an overview of the process and timeline for project submittals to MTC. Staff was authorized to issue a "Call for Projects" for the 2013 RTP update.*
 5. **Decennial "State of the System" Update:** *Staff reported that due to the recession, overall traffic volumes in Contra Costa had gone down, and based upon recent data, traffic levels in 2010 are generally lower than previous levels for 2000. The presentation included a brief overview of the current trends, and implications for planning and forecasting activities.*
 6. **SB 375 Implementation Update.** *Staff reported on recent meetings and events pertaining to the implementation of SB 375 and the development of a Sustainable Communities Strategy for the Bay Area.*



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Refer To File #: 280443-0001

February 16, 2011

Elizabeth M. Murphy
 Secretary
 Securities and Exchange Commission
 100 F Street, NE.,
 Washington, DC
 20549-1090

Re: File No. S7-45-10

Ladies and Gentlemen,

This letter is submitted by Nossaman LLP on behalf of several of our public sector clients, in response to the request of the Securities and Exchange Commission (the "Commission") for comments on proposed permanent rules 15Ba1-1 through 15Ba1-7 ("the Rules") designed to give effect to provisions of Title IX of the Dodd-Frank Act that, among other things, would establish a permanent registration regime with the Commission for municipal advisors and would impose certain record-keeping requirements on such advisors.

We support the Commission's effort to implement a registration system permitting municipal advisors to satisfy the registration requirement imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"); however we also believe that the definition of "Municipal Advisor," which as contemplated in the Rules would include appointed members of a governing body of a municipal entity that are not elected ex officio members, is broader than necessary and may possibly curtail the quality of services available to municipal entities.

Employee Exclusion Overly Narrow

The definition of "municipal advisor" excludes persons who are municipal entities or "employees of a municipal entity." Comments on the precursor to the Rules noted that this definition would not automatically exclude a person who serves on the governing body of a municipal entity, such as a board member, a county commissioner or city councilman. The commenter stated that because such persons are not technically "employees" of the municipal entity (but rather are "unpaid volunteers"), these persons would not fall within the exclusion from the definition of "municipal advisor" for "employees of a municipal entity" and, therefore, may have to register as municipal advisors. The commenter suggested, and our clients support, modifying the definition of "municipal advisor" to clearly exclude a person serving as an appointed or elected member of the governing body of a municipal entity.

Elizabeth M. Murphy
 February 16, 2011
 Page 2



Our clients have significant concerns regarding the Commission's proposed Rules relating to registration of "municipal advisors." In the commentary accompanying the proposed Rules, the Commission agreed with the suggestion that board members should be exempted, but limited the exclusion to *elected* board members. While the Commission proposes allowing an exemption for appointed board members that serve in an *ex officio* capacity due to their position as elected officials, the Commission expressed concern over including unelected appointees within the scope of the exclusion. The Commission reasoned that these appointees would not be "directly accountable for their performance to the citizens of the municipal entity."¹

Under the proposed Rules, directors or trustees of municipal entities may be required individually to register with the SEC and the Municipal Securities Rulemaking Board ("MSRB") and to comply with various recordkeeping and inspection rules. While there may be arguments that could be made that the proposed Rules would not require municipal entity directors or trustees to register as Municipal Advisors, we believe that these individuals who devote themselves to public service on a municipal entity board deserve clear guidance. The municipal entity community appears virtually unanimous in its opposition to the proposed Rules, reflecting various considerations, particularly the anticipated difficulty in obtaining qualified citizens to serve at the government's request on boards where such service may entail reporting and other obligations and expose the members to risks of noncompliance with the Rules.

State Laws Already Address and Extensively Regulate Appointee Board Member Responsibility and Accountability

Among the concerns the new Rules are proposed to address are the reliance by municipal authorities on "external advisors" and the perceived gaps in oversight within existing regulatory structures. The Commission notes in its commentary that, prior to the Dodd-Frank Act:

- Municipal advisors had traditionally been exempt from regulation to the extent they limited their advisory activities to advising municipal issuers as to the structuring of their financings; and
- Dealers who also act as municipal advisors were subject to regulation, but those regulations applied primarily to their business as dealers rather than their activities as municipal financial advisors.²

But these problems were related specifically to dealers and external advisors. States have been much more aggressive in regulating the actions of public officials, both elected and appointed, through conflict of interest and ethics laws. For example, California's Political Reform Act ("CAPRA") extensively regulates the actions of public agency officials, particularly targeting those in a position to manage public investments.

¹ *Id.*

² 76 Fed. Reg. at 827.

Elizabeth M. Murphy
February 16, 2011
Page 3




Under CAPRA, public officials³ must disclose assets and income which may be affected by their official actions, and may be disqualified from acting to avoid conflicts of interest.⁴ They are forbidden from using their positions to influence governmental decisions in which they have a financial interest.⁵ Each public agency is required develop conflict of interest policies, which must specifically list the offices and officials that "manage public investments." In the interest of transparency and accountability, these lists must to be posted to each agency's website in an identifiable and accessible manner.⁶

Appointees Should Be Exempt

Appointees serving on the governing body of a municipal entity should be excluded from the proposed Rules' definition of "municipal advisor," regardless of whether they were elected to such office, serve as ex officio members, or were appointed without election. Requiring these officials to register will increase the costs states and local governments must bear, reduce the number of qualified individuals willing to volunteer for such duties, and may reduce the quality of services available to municipal entities. States already extensively regulate the activities of public officials and enforce accountability through reporting measures similar to those contemplated by the Rules. We urge you to reconsider your suggested treatment of appointed members of a municipal entity's governing body, to allow them the same exemption provided to elected officials.

We would be glad to discuss any of these suggestions with any member of the Commission staff.

Sincerely,



Stanley S. Taylor III
of Nossaman/LLP

SST/ash1

³ Cal. Gov't Code §§ 82048, 87103, and 87105 (2010).

⁴ Cal. Gov't Code § 81002(c) (2010).

⁵ Cal. Gov't Code § 87100 (2010).

⁶ Cal. Gov't Code § 87314 (2010).



EXECUTIVE DIRECTOR'S REPORT
February 16, 2011

Granite Construction: January 12, 2011

Ross Chittenden and I agreed to meet with Granite Operating Group Vice President John Franich, Region Manager Pat Traverso, and North Coast Area Manager Steve Kaesler from Granite Construction to review Granite's reorganization. They were also interested in project schedules so they can be ready to prepare bids for the various projects that are forthcoming.

Spontaneous Ridesharing: January 12, 2011

Representative Worth, Martin Engelmann, and I met with Alex and Alexander Mehran to discuss the spontaneous ridesharing project that we were recently awarded by MTC as one of their innovative climate initiative grant program projects. Mr. Mehran expressed interest in including Bishop Ranch as a partner in the pilot program.

Federal Coordination with the City of Orinda: January 12, 2011

Arielle Bourgart, Ross Chittenden, Martin Engelmann, and I met with Orinda City Manager Janet Keeter, Director of Public Works Chuck Swanson, Legislative Director Monica Pacheco, and City Engineer Janice Carey to discuss CCTA's federal legislative engagement program. We had good dialogue with respect to the status of the federal transportation program, the state's transportation program, our program, and the Sustainable Communities Strategy (SCS). During the meeting, they asked if we could find a way to fund a rehabilitation project on Camino Pablo. The City needs about \$1 million to advertise the project. I said I would look into the federal Highways for Life program. While at the 2011 Transportation Research Board (TRB) Meeting in Washington, DC in January, I met with FHWA officials to discuss eligibility.

Contra Costa Public Managers Association: January 13, 2011

I attended the monthly meeting of this association. The January agenda was informative and allowed for discussion on current local issues among local agency representatives. Most of the discussion centered around the Governor's proposal to eliminate Redevelopment Agencies.

Congressman Garamendi: January 13, 2011

Arielle Bourgart, Ross Chittenden, and I met with Congressman Garamendi and his staff in his Walnut Creek office to review CCTA's federal engagement program and to share ideas of how to fund the upcoming transportation projects for Contra Costa County.

TRANSPLAN Meetings: January 13 & 27, 2011

Martin Engelmann, Ross Chittenden, and I attended the January 13 TRANSPLAN meeting. I introduced Ross to the TRANSPLAN Commissioners and staff. Martin gave an overview of the SB 375 implementation plan. After Martin's presentation, Ross answered a few questions about the eBART and SR 4 widening projects. Martin Engelmann attended a special meeting held on January 27, where on an 8-2 vote, TRANSPLAN recognized the East Contra Costa Regional Fee and Financing Authority (ECCRFFA) as the regional development mitigation program for East County, and determined that the City of Pittsburg was not in compliance with its obligations under the East County Action Plan to participate in a cooperative, multijurisdictional process for managing growth in the East County region.

In-House Staff Development Speaker Series: January 14, 2011

To help staff stay apprised of topics of interest and relevance to the Authority's mission, I have initiated a series of internal presentations to CCTA staff. This month, Martin Engelmann gave a presentation on SB 375 implementation.

Measure J funding: January 14 and 18, 2011

Randy Carlton briefed Commissioners Calloway and Mitchoff on the Authority's finances, including the nuances of the Authority's interest rate swap and status of Measure J revenue.

Self Help Counties Coalition (SHCC) Board Meeting: January 18, 2011

Arielle Bourgart, Ross Chittenden, and I attended the SHCC meeting in Sacramento. The Executive Director of SHCC provided a debriefing on the Focus on the Future 2010 meeting. Marlon Flournoy from Caltrans provided a briefing on the Project Initiation Document (PID) issue. Ross was named as the SHCC representative on the PID streamlining team. Gary Gutierrez, who is also from Caltrans, gave an update on the progress of COOP streamlining. Josh Shaw, the Executive Director of the California Transit Association, briefed the group on the Governor's budget and a proposed comprehensive fix for the Gas Tax Swap in light of the potential impacts of Propositions 22 and 26, and requested the members to brief their respective boards. He requested a letter of support from the SHCC. LA MTA's David Yale gave a presentation about a proposal to use an expanded TIFIA loan process to build a \$45 billion program for transportation. The expanded program will help that agency achieve its "30/10" program, i.e. to finance and build a 30 year program in 10 years.

California Transportation Commission (CTC) Meeting: January 20, 2011

Authority staff makes an effort to attend every CTC meeting. I attended the January meeting at the request of Caltrans to lend support for the I-80 ICM project. The project's revised baseline agreement and allocation request for two of the six projects needed an approval from the CTC to begin construction. All of the requests were approved at meeting. The CTC also approved the STIP Transportation Enhancement (TE) allocation of \$989,000 for Pittsburg's Bailey Road project.

2011 Transportation Research Board (TRB) Meeting: January 22 - 27, 2011

Ross Chittenden and I attended the 90th Annual Transportation Research Board (TRB) meeting, held January 23-27 in Washington, DC. I also attended the Long-Term Pavement Performance State Coordinator's meeting, held on Sunday, January 23rd. In addition to attending a number of informative sessions, we also met with Dan Mauer of Congressman Miller's office to review our federal engagement program, and also with Senate Environment and Public Works Committee (EPW) staff, who will be working on the Senate's version of the next 6-year federal surface transportation bill. At their request, Ross provided an update on the Gas Tax Swap. We also attended the first EPW hearing of the 112th Congress on Wednesday, January 26th, at which representatives from AASHTO, National Construction Alliance II, AGC and the National Industrial Transportation League spoke about the importance of investing in our transportation system. In addition, Ross and I met with Josh Franco of Congressman Garamendi's office, and delivered a copy of our federal engagement program.

Bay Area CMA Directors' Meeting: January 28, 2011

Arielle Bourgart, Ross Chittenden, Martin Engelmann, and I attended the monthly CMA meeting. In addition to the regular agenda items, Ross gave an update to the PID issue. Josh Shaw presented the Governor's proposed budget and the Gas Tax Swap fix.

Assembly Member Bonilla's Legislative Director: January 28, 2011

Cliff Costa, Assembly Member Bonilla's Legislative Director, met with CCTA staff to discuss proposed legislation. We indicated that the Authority had joined the statewide coalition of transportation interests

in supporting the provisions in the Governor's proposed budget aimed at protecting the funding for transportation that was established in last March's Gas Tax Swap. This will be key in ensuring funding for our projects going forward. We also discussed the proposals to (1) eliminate redevelopment agencies throughout the State; and (2) to begin a 'realignment' process, which would transfer responsibilities for services currently performed by the State to local agencies, and the potential impact of those actions on the transportation sector.

Expanded TRANSPAC meeting: January 28, 2011

The Authority hosted a special expanded TRANSPAC meeting in the Boardroom. Staff from CCTA, MTC, and ABAG attended the meeting to provide an overview of SB 375 and the effort to develop a Sustainable Communities Strategy (SCS) for Contra Costa and the Bay Area. The meeting was Chaired by Cindy Silva, Mayor of Walnut Creek, and was well attend by elected officials as well as by various City Managers and Planning Directors.

GOVERNING's Outlook in the States & Localities Conference: February 2, 2011

At GOVERNING's 2011 Outlook event held in Washington DC, I participated on the *Transportation's Top Issues* panel which focused on the outlook for federal and state transportation priorities, and provided an overview on issues to watch on the state and local level. My job was to give the audience an idea of what was happening in California.

MTC RTP Call for Projects - Freeway Performance Improvement (FPI) meeting: February 4, 2011

MTC and CCTA staff met to discuss the expedited process for projects to be included in the next update of the Regional Transportation Plan (RTP). The purpose of this meeting was to identify FPI-related strategic investments such as ramp metering, auxiliary lanes, etc. for submittal to MTC in response to the "Call for Projects."

Pittsburg City Council Meeting: February 7, 2011

Susan Miller and I gave a presentation on the status of the SR 4 widening project. Susan will also be providing an update to the Antioch City Council on February 8, 2011.

State Transportation Improvement Program (STIP) project delivery:

Several 2010-11 FY STIP projects will not meet the California Transportation Commission (CTC) requirements for timely use of funds. I have recently been asked to seek a one-time 12 month extension to this deadline for AC Transit's Richmond Parkway park-and-ride lot project (\$12.7 million STIP). I understand I will soon be asked to sign extension requests for the Hercules Intermodal Train Station (\$8 million) and a few TE projects. I've asked staff to develop monitoring tools to ensure that our STIP investments meet timely use of funds provisions.

Alameda 680 Express Lane Discussion and Tour -- February 9, 2011

Chair Taylor and Commissioners Durant, Metcalf and Peirce joined staff on a tour of the Alameda 680 Express Lane facility. The tour included a presentation by MTC Deputy Executive Director Andrew Fremier on MTC's plan to submit an application to the CTC for the Bay Area Express Lane backbone system that includes I-80 and I-680. We were joined by Supervisor Scott Haggerty who shared his experience with the Alameda Express Lane Authority JPA. Finally, Frank Furger, Executive Director of the express lane authority led a bus tour through the facility.



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Authority Board Meeting **MINUTES**

MEETING DATE: January 19, 2011

MEMBERS PRESENT: Robert Taylor (Chair), David Durant (Vice Chair), Janet Abelson, Newell Arnerich, Genoveva Calloway, Jim Frazier, Federal Glover, Dave Hudson, Joel Keller, Mike Metcalf, Karen Mitchoff, Julie Pierce, Bob Simmons,

STAFF PRESENT: Randell Iwasaki, Amin AbuAmara, Brad Beck, Arielle Bourgart, Randall Carlton, Ross Chittenden, Peter Engel, Martin Engelmann, Jack Hall, Matt Kelly, Susan Miller, Hisham Noeimi, Stan Taylor (Authority Counsel), Danice Rosenbohm (Executive Secretary)

MINUTES PREPARED BY: Danice Rosenbohm

A. CONVENE MEETING: *Chair Taylor* convened the meeting at 6:02 p.m.

B. PLEDGE OF ALLEGIANCE:

C. PUBLIC COMMENT: There were no public comments on items not on the agenda.

1.0 APPROVAL OF MINUTES: Authority Minutes of December 15, 2010.

ACTION: Commissioner Pierce moved to approve the Minutes of December 15, 2010, seconded by *Commissioner Frazier*. The motion passed unanimously, 8-0. (*Commissioners Abelson, Arnerich, and Calloway had not yet arrived.*)

Commissioner Arnerich arrived at 6:07 p.m.

2.0 CONSENT CALENDAR: Consent Items recommended by the following committees:

ACTION: Commissioner Durant moved to approve the Consent Calendar, seconded by *Alternate Hudson*. The motion passed unanimously, 9-0. (*Commissioners Abelson and Calloway had not yet arrived.*)

DISCUSSION: Alternate Hudson said that he wished to comment on Agenda Items 2.A.11 and 2.B.3.

With respect to Agenda Item 2.A.11, *Alternate Hudson* stated that he would like to have seen additional funding provided for the Request for Qualifications for a communications consultant.

With respect to Agenda Item 2.B.3, *Alternate Hudson* questioned whether this item had been reviewed given that the Planning Committee did not meet in February. *Commissioner Durant* clarified that Agenda Item 2.B.3 had been reviewed by the Planning Committee as part of the Authority Agenda Packet.

2.A Administration & Projects Committee:

2.A.1 Monthly Project Status Report.

2.A.2 Monthly Accounts Payable Invoice Report for November 2010. This report also includes a summary of payroll and benefits costs by organizational unit.

2.A.3 Monthly Cash and Investment Report for November 2010. The Authority's Investment Policy requires this report.

2.A.4 Listing of Construction Change Orders (CCOs) greater than \$25k for contracts less than \$15M, and greater than \$50k for contracts larger than \$15M. Authority policy requires that this list be submitted to the APC for information.

2.A.5 Quarterly Project Funding Plans – Major State Highway Projects. The quarterly report on the status of ongoing consultant project-related contracts as well as on key project funding issues is attached.

2.A.6 State Route 4 Widening – Bailey Road to Railroad Avenue – Amendment No. 12 to Consulting Services Agreement No. 107 with URS Corporation. (Project 1403) Staff seeks authorization to augment Agreement No. 107 by \$22,725 for additional Right-of-Way services to complete the transfer of the project property to Caltrans consistent with Cooperative Agreement No. 90.14.03 between the Authority and Caltrans. Amendment No. 12 to the Agreement also transfers all rights and obligations under the Agreement from Washington Division of URS Corporation to URS Corporation.

2.A.7 State Route 4 Widening Project – Somersville Road to SR160 – Segment 2. (Project 1407/3001)

2.A.7.1 Cooperative Agreement with the California Department of Transportation (Caltrans) and the Bay Area Rapid Transit District (BART) to jointly manage and fund the Contra Loma Blvd. Interchange/G Street Overcrossing (Segment 2) construction project. Staff requests authorization for the Chair to execute Cooperative Agreement No. 90.14.22 with Caltrans and the Bay Area Rapid Transit District to jointly manage and fund the Somersville Road Interchange construction project.

2.A.7.2 Authorization for AB1171/RM1 Bridge Toll Fund Allocation Request. Staff seeks authorization to submit an allocation request to MTC for \$19 million for construction of eBART facilities. **Resolution 11-01-P.**

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- 2.A.8 State Route 4 Widening – Somersville Road to SR 160 – Segment 1 (Project 1407/3001) – Utility Agreement with PG&E.** Staff seeks authorization to execute Agreement No. 309 with PG&E for \$93,058 to relocate their electrical distribution facilities in conflict with Segment 1 of the widening project.
- 2.A.9 Amendment to Agreement No. 300 with W. Bradley Electric.** Additional network cabling was required for the Authority's information technology project. The approved change order of \$1,496.80 increased the agreement value to \$111,303.70. The project is completed.
- 2.A.10 Authorization to Issue Request for Qualifications (RFQ No. 11-4) for Salary and Benefit Survey.** The Authority's policy is to conduct a study every three years to help ensure that compensation terms for Authority staff remain within market both geographically and consistent with similar classifications at other public agencies. The study will examine job specifications, compensation levels, gather comparable data and provide recommendations for consideration. The first step in this process is to issue an RFQ to obtain the services of a human resources consultant.
- 2.A.11 Authorization to Issue Request for Qualifications (RFQ No. 11-5) for a Communication Consultant.** In recent months, several Authority members have expressed interest in raising the agency's public profile, the objectives being to keep stakeholders informed of Authority activities and accomplishments and to reinforce the Authority's image as a contributory member of the community. In response, staff requests approval to solicit qualifications from interested firms to assist the Authority with developing a comprehensive plan for communications towards accomplishing these objectives.
- 2.A.13 State Route 4 (e) Widening Project – Somersville Road to Route 160 (Project 1407/3001) – Amendment No. 5 to Contract No. 204 with TY Lin International for Final Design (PS&E) Services.** Staff seeks authorization to amend Contract No. 204 to increase the not-to-exceed amount by \$2,782,941 to \$14,240,941 and to extend the term through December 31, 2012.
- 2.A.15 Authorization to Issue Request for Qualifications (RFQ No. 11-6) for Legal Services.** The APC requested consideration for issuing a RFQ for Authority legal services. The purpose of the RFQ would be to obtain qualifications from law firms to provide general counsel support to the Authority Board, Committees and staff. Staff is seeking APC direction on this matter.
- 2.A.16 Requests for Qualifications (RFQs) Update.** The Authority previously approved issuance of two separate Requests for Qualifications (RFQ) for specified project development activities. Statements of Qualifications have been received and interviews conducted.

2.A.16.1 Consultant Eligibility List for Preparation of Plans, Specifications and Estimates (RFQ 10-13). Staff recommends approval of the eligibility list and further recommends authorization to begin negotiations on scope and fee for the I-80/San Pablo Dam Road (Project 7002) and I-680 Auxiliary Lane - Segment 2 (Project 1106S2), and following satisfactory conclusion of those negotiations, to issue Notices to Proceed for amounts not-to-exceed \$50,000 each.

2.A.16.2 Consultant Eligibility List for Preparations of Project Status Reports, Environmental Documents and Project Reports (RFQ 10-14). Staff recommends approval of the eligibility list and further recommends authorization to begin negotiations on scope and fee for the I-680 SB HOV Gap Closure (Project 8001), I-680 Norris Canyon Bus/HOV Ramps (Project 8003) and SR242/Clayton Road Ramps (Project 6002), and following satisfactory conclusion of those negotiations, to issue Notices to Proceed for amounts not-to-exceed \$50,000 each.

APC Agenda Addendum 1

NEW ITEM: Resolution No. 11-03-A. Rejection of Claims; Barbara Hause and Stephen Hause. Staff recommends rejection of claims filed by or on behalf of Barbara Hause and Stephen Hause. The claims relate to injuries allegedly sustained by Barbara Hause in a bicycle accident that occurred on June 20, 2010 on Stone Valley Road at or about the intersection with Austin Lane near Alamo in unincorporated Contra Costa County, and a related claim of loss of consortium by Stephen Hause. The location of the alleged incident was not owned, controlled or operated by the Authority and the Authority had no responsibility or obligation with respect to the design, construction, maintenance, repair or inspection of the subject road or surrounding or adjacent property. The claim amounts total \$9,500,000 as of the date of presentation. Based on information contained therein, the claims were timely filed with the Authority on December 17, 2010.

2.B Planning Committee:

2.B.1 Approval of the City of Lafayette's Calendar Year (CY) 2008 & 2009 Growth Management Program (GMP) Compliance Checklist. The City of Lafayette has submitted its CY 2008 & 2009 GMP Checklist. An allocation of \$337,150 in 18% Local Street Maintenance and Improvement funds will be paid out for FY 09-10 subject to the Authority making a findings of compliance with the Measure C/J GMP.

2.B.2 Approval of FY 2010-11 Measure J Allocation for the Central County Additional Transportation Services For Seniors and People with Disabilities Program (Sub-Regional Program 20a). The Measure J Expenditure Plan establishes the Central County Additional Transportation Services for Seniors and People with Disabilities program (Program 20a) at 0.5 percent of sales tax revenues. As a sub-regional program the funds are programmed by TRANSPAC. At its

December 9, 2010 meeting TRANSPAC took action on programming a portion of available funds to the City of Walnut Creek for operation of its senior volunteer bus program and to the City of Pleasant Hill for replacement of its senior bus vehicle. Resolution 11-02-G

- 2.B.3 Authorization to Release RFP 11-3 for Ongoing Planning Consultant Services.**
To support the Authority's Growth and Congestion Management Program functions, the Authority budgets for and retains ongoing planning consultant services. Acting as an extension of Authority staff, the planning services consultant helps Authority staff manage significant fluctuations in work load without having to add in-house staff. The present consultant team consists of Dyett & Bhatia (D & B), DKS Associates, and MIG Communications. To encourage partnership with the consultant community, and to maintain eligibility for Federal funding reimbursement, the Authority, from time-to-time, needs to undertake the competitive selection process. D & B's long-standing role as prime consultant does not preclude it from successfully participating in the competitive selection process.

2.B.4 SB 375 Implementation Update.

End of Consent Calendar

3.0 MAJOR DISCUSSION ITEMS: *None*

4.0 REGULAR AGENDA ITEMS:

Commissioner Calloway arrived at 6:19 p.m.

Commissioner Abelson arrived at 6:20 p.m.

4.A Administration & Projects Committee:

4.A.12 Legislation. Mark Watts, the Authority's Sacramento advocate, will present a report to the Authority on matters related to the California State Budget, particularly as they impact transportation, including:

- Provisions of Governor Jerry Brown's budget;
- Proposals for resolution of issues pertaining to the state gas tax swap that occurred in March 2010 and the potential impacts of Propositions 22 and 26, which passed in November 2010.

The Authority may take action on this subject or on any other matter related to the Authority's legislative objectives.

ACTION: *Commissioner Durant* moved to proceed with a letter of support for the provisions in the Governor's Budget as currently written pertaining to

*Authority Board Meeting MINUTES**January 19, 2011**Page 6 of 11*

transportation funding and directed staff to monitor any changes going forward, seconded by *Commissioner Glover*. The motion passed unanimously, 11-0.

DISCUSSION: Arielle Bourgart, Director of Government and Community Relations, stated that in January the APC had been provided an update on the development of the new State Budget, particularly as related to transportation, by the Authority's legislative advocate, Mark Watts, from Smith, Watts, and Martinez LLC.

Ms. Bourgart introduced Mr. Watts, who gave a brief PowerPoint presentation concerning the gas tax swap that was enacted in March of 2010, and the potential negative impacts of Propositions 22 and 26 on the swap provisions. He indicated that a coalition of transportation interests throughout the State, including the Self Help Counties Coalition, had been formed to determine what action should be taken to mitigate those impacts. Specifically, the coalition is recommending the reinstatement of the 17.3 fuel excise tax increase enacted as part of the swap, to ensure a stable revenue source for transportation, as well as a redirection of truck weight fees to pay for transportation bonding costs to provide relief to the General Fund. He also indicated that Governor Brown's proposed budget includes these provisions.

Commissioner Pierce asked if, presuming the excise tax is reenacted, there would be any statutory protection for these funds against raids by the State. Mr. Watts responded that, if reenacted, the excise tax funds would be protected by the provisions of Proposition 22.

Arielle Bourgart stated that she had attended the January 18th Self Help Counties Coalition meeting at which the Executive Director of the California Transit Association (CTA) made a presentation encouraging support by transportation for the Governor's proposed Budget, as it pertains to transportation.

Ms. Bourgart also recalled that in December 2010, the Authority directed staff to work with legislators and other interested parties to ensure the protection of funding for transportation from either the excise tax created by the tax swap or pre-swap Proposition 42 sales tax. Ms. Bourgart said that staff recommended support in concept for the coalition's proposal and for what the Governor had incorporated into the Budget.

Ms. Bourgart introduced a separate issue as part of the legislative report. At a recent meeting of the Self-Help Counties Coalition, staff was made aware of a recent court ruling that could potentially pose problems for transportation agencies trying to deliver projects. A neighborhood association in Sunnyvale

had sued the City, challenging the basis on which the impacts of a particular road extension had been projected in the project EIR. She explained that the city had used as a baseline for its projections future road conditions assuming the project *was not* done, and compared the result to future conditions if the project *was* done in order to determine the project's level of impact.

Ms. Bourgart said that according to Authority legal counsel, although the practice was well established, the California Court of Appeals ruled that the City was in error in using projected conditions and not existing conditions as the baseline, interpreting CEQA requirements to mean that agencies have no discretion in terms of what baseline they use.

Ms. Bourgart said that if the decision applied universally, it could call into question the environmental analysis of a number of pending and approved transportation projects in which the same approach was used. The Self Help Counties Coalition had asked for the support of its member agencies in requesting the California Supreme Court "depublish" its decision, so it could not be cited as a precedent case in future litigation.

Stan Taylor, Authority Counsel, stated that although Nossaman, LLP did not represent the City of Sunnyvale, it had a parallel case in southern California and using a future baseline for purpose of analysis for cumulative impacts had long been recognized by the courts and agencies that adopt EIRs as accepted methodology. Mr. Taylor stated the City of Sunnyvale Court of Appeal decision requiring impacts be evaluated against a baseline consisting of current conditions could have a negative impact on hundreds of projects in the State. He said that Nossaman and the Self-Help Counties Coalition recommended seeking depublication of the decision as a strategy for addressing a decision that they felt was wrong and would likely be appealed to the Supreme Court.

Mr. Taylor said that if the Authority wished to take action on the item, which had come up since the Authority agenda was published, and was time-sensitive, requiring a response to the court no later than Friday, the agenda would need to be amended with the item added (as follows) on an urgency basis.

ADDED URGENCY AGENDA ITEM: Discussion of California Court of Appeal Case RE: West Sunnyvale Neighborhood Association V. City of Sunnyvale.

ACTION: Commissioner Mitchoff moved to add discussion of a California County of Appeal case (west Sunnyvale Neighborhood Association V. City of Sunnyvale) to the agenda as an urgency item, seconded by Commissioner Arnerich. The motion passed unanimously, 11-0.

*Authority Board Meeting MINUTES**January 19, 2011**Page 8 of 11*

ACTION: Commissioner Durant moved that the Authority submit a letter in support of depublication of the court decision absent the option of the parties appealing the decision and its being overturned by the Supreme Court, seconded by *Commissioner Frazier*. The motion passed unanimously, 11-0.

DISCUSSION: Commissioner Pierce asked if depublication of the City of Sunnyvale decision would prevent the Authority's other CEQA documents from being challenged on the same basis. Mr. Taylor responded that depublication of the decision was only a short-term solution, and that corrective legislation or a reversal of the case by the Supreme Court resulting from an appeal could take years.

Commissioner Durant asked Authority counsel for more information on unique characteristics of the subject case and why the Authority should consider taking action to support the idea of de-publication or reversal of the decision by the Supreme Court. Mr. Taylor responded that the CEQA process was not unusual, and that the court had focused on the CMA's practice of using a future base year for regional plan analyses, which unfortunately was not a good argument. A brief discussion about the background of the case, pros and cons of requesting depublication, and the likelihood of the Supreme Court overturning the decision followed.

4.A.14 Update on the Authority's \$200 Million 2009 Interest Rate Swap. Staff will provide the APC (Authority) with an update on the status of the Authority's interest rate swap and discuss potential direction. The value of the swap has increased in recent weeks in conjunction with the rise in longer term interest rates in the financial markets.

ACTION: Commissioner Arnerich moved to direct staff to provide monthly analyses to the APC on the status of the swap, withdraw the \$17 million swap termination cost threshold, and schedule a special meeting to discuss the swap and options available to the Authority if the \$17 million target is met, seconded by *Alternate Hudson*. The motion passed unanimously, 11-0.

DISCUSSION: Randall Carlton, Chief Financial Officer, introduced Peter Shellenberger, Public Financial Management, Inc. (PFM), the Authority's investment advisor. Mr. Carlton and Mr. Shellenberger gave a PowerPoint presentation, which included an update on the market and interest rate swap, and swap restructuring considerations.

Mr. Carlton provided background on the 2005 interest rate swap, and explained that the swap provided protection against increasing interest rates and certainty in borrowing costs, which had been incorporated into the Strategic Plan. He also discussed the impacts of restructuring the swap on the Authority's projects.

Commissioners Arnerich and Durant asked for more information on the interest rate scenarios. Mr. Shellenberger and Mr. Carlton explained that as interest rates rise, which is the current trend, the cost of terminating the swap will improve from the Authority's perspective. That same higher interest rate environment, however, would result in higher borrowing costs if the Authority were to issue conventional long term fixed rate bonds.

Randy Iwasaki added that the Authority was required to post collateral at an earlier date, when the negative value exceeded \$40 million. Mr. Carlton said that with the swap termination value improving, collateral was no longer required and the security had since been returned to the Authority's portfolio.

Chair Taylor stated that the APC had a lengthy discussion about the \$40 million (present value) impact on Authority projects which would result from terminating the swap and issuing fixed rate bonds.

Following the discussion, Mr. Carlton said that staff recommended convening a special APC meeting to more thoroughly explore options available to the Authority when the swap termination target of \$17 million is reached.

4.A Planning Committee None

5.0 CORRESPONDENCE AND COMMUNICATIONS:

5.1 Contra Costa Times Article Posted 12/28/10 by Denis Cuff – *Tooth-jarring Section of I-680 Up for an Overhaul*

6.0 ASSOCIATED COMMITTEE REPORTS:

6.1 Central County (TRANSPAC): Report of December 9, 2010

6.2 East County (TRANSPLAN): Report of December 9, 2010

6.3 Southwest County (SWAT): *Report of January 10, 2011 was distributed as a meeting handout.*

6.4 West County (WCCTAC): Next Meeting January 28, 2011)

6.5 Conference of Mayors (COM):

6.6 Contra Costa County (COUNTY):

6.7 CCTA Citizen Advisory Committee (CAC):

7.0 COMMISSIONER AND STAFF COMMENTS:

7.1 Chair's Comments and Reports

Chair Taylor welcomed *Commissioner Mitchoff* to the Authority.

7.2 Commissioners' Comments and Reports

Alternate Hudson mentioned the bike share program that communities along the Peninsula had garnered funds for through MTC's Climate Initiatives Grant Program, and suggested that the program could have potential between Pleasant Hill and Pleasanton and would be an advantage for small businesses in meeting greenhouse gas emission targets. Mr. Iwasaki noted that the Authority had not applied for the program, but that it would be included in the next cycle.

Commissioner Arnerich stated that the Town of Danville had received certification of its Housing Element from the California Department of Housing and Community Development (HCD), its second in the process which took nearly two years. He also noted that Danville was one of the few Contra Costa jurisdictions that did not have a PDA, without which future transportation funding (as part of the statewide Sustainable Communities Strategy) could be jeopardized.

Commissioner Pierce commented that a Pavement Condition Index (PCI) was being considered as a potential standard with a minimum threshold of .75 for all local streets. She also noted that ABAG would be reviewing all of the thresholds at its meeting of February 17th. *Commissioner Pierce* also mentioned her appointment to ABAG's Housing Methodology Committee, and said that any feedback regarding housing requirements and needs would be appreciated.

Commissioner Durant flagged the City of Lafayette Calendar Year 2008 and 2009 Growth Management Program Checklist schedule of progress toward meeting regional housing needs (related to Agenda Item 2.B.1), which was distributed as a meeting handout. He stated that in the future such items should be flagged for the Authority before a vote is taken.

Martin Engelmann, Deputy Executive Director for Planning, said that the City of Lafayette's housing information had been requested by the Citizens Advisory Committee and therefore was distributed to the Authority as a handout. Mr. Engelmann noted that the Measure J Growth Management Program required only that the jurisdictions *report* on units approved, constructed, or occupied by income group.

Commissioner Mitchoff thanked Authority staff for the briefing provided on the swap to her and her Chief of Staff, Cliff Glickman. She said that she was very happy to join the Authority.

Commissioner Calloway said that she also was very happy to have recently joined the Authority and that she also appreciated a recent briefing on the swap.

7.3 Executive Staff Comments

Randy Iwasaki reviewed the January 19, 2011 Executive Director's Report. He noted that he would be attending future Regional Transportation Planning Committee Meetings on a quarterly basis in the future. Mr. Iwasaki commented that it was still a "buyers market", and that moving projects forward as quickly as possible would be advantageous.

8.0 **CALENDAR:** February/March/April 2011

9.0 **CLOSED SESSION:** The Authority will hold a closed session regarding public employee appointment, employment, performance evaluation or dismissal pursuant to Government Code Section 54957. Title: Executive Director

10. **RECONVENE IN OPEN SESSION**

The meeting was reconvened in open session. There was no action to report, with the matter discussed in closed session under review by legal counsel.

11.0 **ADJOURNMENT** to Wednesday, February 16, 2011, at 6:00 p.m.

The meeting was adjourned at 8:34 p.m. to February 16, 2011, at 6:00 p.m.