

**CITIZENS ADVISORY COMMITTEE (CAC)  
SAN MATEO COUNTY TRANSPORTATION AUTHORITY (TA)  
1250 San Carlos Avenue, San Carlos CA 94070  
Bacciocco Auditorium, 2<sup>nd</sup> Floor**

**MINUTES OF OCTOBER 4, 2011**

**MEMBERS PRESENT:** B. Arietta (Chair), J. Bigelow, J. Fox, R. Hedges, R. Hees, E. Lasensky, D. Maez, D. Mensing, L. Shaine, A. Vargas, J. Whittemore, G. Zimmerman

**MEMBERS ABSENT:** J. Londer, L. Simonson

**STAFF PRESENT:** E. Emanuel, A. Hughes, J. Hurley, R. Lake, M. Lee, J. Sherman, S. Tioyao, D. Triolo

Chair Barbara Arietta called the meeting to order at 4:36 p.m. and Larry Shaine led the Pledge of Allegiance.

**APPROVAL OF MINUTES**

A motion (Whittemore/Bigelow) to approve the August 30, 2011 minutes was passed.

**PUBLIC COMMENT**

None

**PRESENTATION ON THE BROWN ACT**

Hanson Bridgett Legal Counsel Julie Sherman and Elan Emanuel made the following points:

- The CAC are public servants and subject to government ethics laws.
- The Brown Act is the government ethics laws that govern open meetings and is a minimum standard for behavior.
- Any legislative body, committee created by board of directors, or created by a committee and CACs are subject to the Brown Act.
- The Brown Act requires that all meetings are open to the public, the agenda is properly noticed at least 72 hours prior to the meeting and there is an opportunity for the general public to comment.
- A meeting is a majority of members of a legislative body meeting at the same place and time to hear, discuss, deliberate or take action.
- A meeting is not contact between member and a non-member or attendance at a conference that is open to the public and the majority of the members do not discuss among themselves business not relating to the conference.
- Closed session items would include pending litigation, evaluating personnel, real estate transactions or labor negotiations. Everything discussed in closed session is confidential.
- Serial meetings are a series of communications, each of which involves less than a majority, such as an email, but when taken together actually results in communication between a majority of the members. The two forms of serial meetings are hub and spoke and daisy chain.
- It is recommended that email, chat rooms and other technology not be used for discussions, but kept for meetings.

- There are penalties for the Brown Act violations, but there is an opportunity to cure. When the violation is not cured there can be potential civil or criminal action and most importantly there is the negative public perception.

Doris Maez asked what constitutes a cure. Ms. Sherman said the notice would have to be publicly noticed and the action taken again.

Ms. Maez asked about discussing an action that was taken after the meeting. Ms. Sherman said it is not okay to discuss outside of the agenda meeting. Mr. Emanuel said that even though an action was done a different action could be done the next time.

Mr. Shaine asked if an email is sent that is totally informative with no comment as to good or bad, is that okay. Ms. Sherman said it use to be okay, but the government code was amended two years ago and this is a gray area as it is a one way push of information and if people reply to all then it becomes a serial discussion. This type of information is best distributed by staff.

Mr. Shaine asked if an ad-hoc committee could meet without agendas or public comment without violating the Brown Act. Ms. Sherman said three requirements of an ad-hoc committee are they must be comprised of less than a quorum of the parent body, need to have a finite charge and report back to the committee or Board within a specific time of less than one year and they must not have a meeting schedule determined by the Board, law or resolution that set-up the committee.

Mr. Shaine said a quorum, according to the CAC's Rules of Procedure, is not percentage of the members, but percentage of authorized members. Ms. Sherman said she will check.

Rich Hedges said he is on standing committees in Sacramento and the county and if there are three members on the committee two can not discuss business. Ms. Sherman said that is correct.

Daniel Mensing said when describing a daisy chain the number eight was referred to as the magic number. Mr. Emanuel said he picked eight because the CAC is a 15 member body and eight constitutes a majority.

Mr. Mensing said sometimes an email is sent out for informational purposes only and everyone replies back "thanks." Is that a violation? Ms. Sherman said no.

Randy Hees said when people attend meetings at this building they are required to sign in and he thought that as long as a person informs the guard they are attending a meeting they don't have to give their name. He said occasionally the CAC receives announcements for meetings for other groups and the CAC has been informed to send them to the Assistant District Secretary to disseminate. Mr. Emanuel said that would be the safest approach.

Mr. Hees asked if anyone ever used a Yahoo group where any member of the public could sign-in and see what was said and would that fulfill the Brown Act rule. Ms. Sherman said this would definitely violate the Brown Act because nothing is being noticed, not accessible to everyone if they don't have a computer.

Elizabeth Lasensky asked if people using laptops or smart phones at a meeting could potentially be a Brown Act violation. Ms. Sherman said it depends what people are doing on them. If they are being used to communicate with other members of the body while the meeting is going on it is an issue, but if using them to take notes it is not a violation.

Chair Arietta said earlier this year there was an election for a mayor and the person had to step down because they were involved in a serial phone call. Ms. Sherman said the person wasn't aware of a having a serial communication was violating the Brown Act. This is a case of public perception and there could have been criminal charges filed, but if the scandal is bad it's easier to step down.

Chair Arietta asked if there are ad hoc committees that don't follow the Brown Act. Ms. Sherman said yes, if it is less than a quorum of the full committee and it meets the three criteria mentioned earlier.

Mr. Emanuel said teleconferencing can be used during any meeting, but at least a majority of the members must participate from a location within the local agency's jurisdictions.

Jim Whittemore said he goes through the financial statements each month and tends to have a lot of questions that most people don't care about so can he ask the questions ahead of time in writing to staff without violating the Brown Act. Ms. Sherman said he can send the questions to staff and they can distribute the answers ahead of the meeting since these are items that are on the agenda.

Chair Arietta said things can be done as a group as long as there is no discussion about items that may come up for a vote. Mr. Emanuel said yes that is correct.

Ms. Sherman said a minority of the group could take a field trip and it wouldn't have to be open to the public, but if a majority of the members go it must be announced and be open to the public to attend.

Chair Arietta asked how this would be noticed. Ms. Sherman said the same way the meetings are noticed.

Mr. Whittemore asked what the implication is if he writes a letter to the editor on a transportation issue that this committee is or has looked at in the past. Ms. Sherman said there is no Brown Act violation because it is not a meeting and not having communication with individual people.

Doris Maez said she recently attended a BART meeting and at the end of the meeting it was announced there would be another meeting immediately following. Someone in attendance stayed and tried to attend the second meeting, but was told to leave because they weren't invited. Mr. Emanuel said without knowing the subject matter it certainly sounds like a closed session meeting at which point they don't have to grant the public access.

Mr. Shaine said he was told that if he teleconference from another location that he must post his room number and the agenda in the required 72 hour timeframe. He said he was a bit

embarrassed to go to the hotel manager and ask them to post this agenda. Is this really required? Mr. Emanuel said yes this is a requirement.

Ms. Lake asked if we have to follow Americans with Disabilities Act (ADA) rules for public meetings and what if the teleconference location is not ADA compliant. Ms. Sherman said the Brown Act is silent on that question and would mean it does not have to be ADA accessible.

### **ITEMS FOR REVIEW – OCTOBER 6, 2011 TA BOARD MEETING**

#### **Authorize Approval of Annex to the 2010 Association of Bay Area Government's (ABAG) Local Hazard Mitigation Plan (Plan) as the Local Hazard Mitigation Plan for the San Mateo County Transportation Authority (TA Item 4c)**

Mr. Whittemore said he doesn't recall discussing this item in the past, but in September 2009 the Metropolitan Transportation Commission (MTC) discussed this at their meeting. He said the actual Plan is to fulfill a legal obligation at the Federal level to have some version of a disaster mitigation plan in place.

Chief of Protective Services and Acting Director of Risk Management Dave Triolo said there is no requirement that he is aware of, but is simply to the TA's advantage to participate. The bottom line is if there is a disaster and the disaster damaged properties held by the TA, the San Mateo County Transit District or the Peninsula Corridor Joint Powers Board, we would want to seek some sort of financial reimbursement or assistance to rebuild those properties. We are not eligible to receive funding under certain programs such as the National Flood Program, but we would be eligible to receive Federal Emergency Management Agency (FEMA) funding, but in order to do that we would have had to make a good faith effort and commitment to make our facilities as safe and secure as reasonably possible. The reason ABAG and MTC are involved is because they are the champions of this and they are committed to a Bay Area community that is as robust and safe as possible with infrastructure.

Mr. Whittemore said this is not just for reimbursement for loss of physical infrastructure, but also for personnel safety. Mr. Triolo said the business side of the Plan can help reduce financial hardship, but the socially responsible aspect is that it encourages us to keep the facilities up to code. The Plan simply says we have some old structures and staff will look at that on an as able basis and try to either remodel or retrofit as funding becomes available to keep with our commitment.

Mr. Whittemore asked when this Plan was written. Mr. Triolo said this is an ABAG plan and the TA is a member. This process has been going on for at least one and a half years. This is not the first time ABAG has put a plan together that FEMA has approved.

Mr. Hees said in the resolution there is reference that the Plan was on the TA website from April 28 to August 17 for public review and he would have hoped that the CAC would have been told this report was up there. Mr. Triolo said it was posted by law for public comment.

April Vargas said on page one of the staff report it says the Plan is required for the TA to be eligible for hazardous mitigation and it was stated it wasn't required. Mr. Triolo said in order to be eligible you must participate.

A motion (Shaine/Hedges) to support the 2010 ABAG Mitigation Plan was approved (Maez no).

**PROGRAM REPORT: ALTERNATIVE CONGESTION RELIEF (TA Item 12b)**

Executive Director of the Peninsula Traffic Congestion Relief Alliance (Alliance)

Christine Maley-Grubl reported:

- The Alliance is the San Mateo County Transportation Demand Management (TDM) agency and works with employers in the county and members of the community to encourage people to participate in carpools, vanpools, bike, walking and public transit.
- Currently the Alliance works with 306 employers, representing over 114,000 employees. This is a 4 percent increase in the number of employers and a 6 percent increase in number of employees over the previous fiscal year.
- The employer based shuttle program has 54 employers who financially participate. This is down 4 percent, but boardings are up 6.9 percent.
- Employer support services include the emergency ride home program, bike racks and lockers and bike safety workshops.
- Participation in the bike racks and lockers program is up 146 percent and the emergency ride home program is up 3 percent.
- The school pool program provides an incentive for parents to pair up to take children to school to eliminate one car. Currently 20 schools participate which is an increase of 40 percent.
- The Alliance conducted a survey to measure awareness of commute alternatives by commuters and their travel mode. A key finding in the survey was that employer assistance makes a significant difference in mode choice.
- Direct marketing to commuters included media campaigns for Earth Day and Bike to Work.
- There has been a 36 percent increase in carpool incentives while vanpool incentives have decreased 63 percent.
- The Try Transit Incentive Program processed 946 tickets. This is down from last year due to reorganizing the program.
- The Alliance is the county-wide coordinator for Bike to Work Day. There was a 2 percent increase in participation this year.

John Fox asked who leases the vans, the employee or employer. Ms. Maley-Grubl said the employer will lease and contribute 25 percent of the cost and the rest is subsidized.

- Public and private industry partners the Alliance works with include the Shuttle Business Practices Study, Countywide Transportation Plan 2035 Working Group, San Mateo County Air Resource Team, Coastside Transportation Committee, San Mateo Transportation Management Association and the 511 Regional Rideshare Technical Advisory Committee.

Mr. Hedges congratulated the Alliance on a good operation. He said he has four shuttles in his neighborhood and sends out a transit newsletter to residents to let them know they can use the shuttles in their area.

George Zimmerman asked if there are any employers in San Mateo County that offer shuttles to San Francisco, and if so, how are they coordinated. Ms. Maley-Grubl said Genentech goes to

neighborhoods in San Francisco and also in the East Bay. The Alliance coordinates with them on their shuttles in San Mateo County. She said Genentech operates shuttles in South San Francisco along with the Alliance and they coordinate so there is no overlapping.

Mr. Zimmerman said there was mention of the Alliance trying to get more employers to cooperate with various programs and is there a correlation between the size of the employer and the extent of their involvement. Ms. Maley-Grubl said there are almost 500 employers in San Mateo County with over 100 employees and that is considered large.

Mr. Fox left at 6:07 p.m.

Mr. Zimmerman asked if Oracle participates in the shuttle program. Ms. Maley-Grubl said yes.

Mr. Shaine said each year during the budget process the City of Menlo Park stands out because they have their own shuttle program. Has anyone tried to introduce them to what the Alliance offers and can do for them. Ms. Maley-Grubl said the Alliance works directly with the staff on their TDM program. Alliance staff goes out to employers and provides program information.

Jim Bigelow asked about transit fares and what the Alliance is doing with C/CAG to increase transit ridership. He said he was the task force chair for the City of Menlo Park who developed the first Transportation System Management ordinance in San Mateo County and the City of Menlo Park takes general fund money and pays a staff person to keep an eye on the employers. Ms. Maley-Grubl said the commuter tax benefit is where an employer can set aside up to \$230 per month, per employee, on a pretax basis for the purchase of a transit ticket or use for a vanpool.

Ms. Maez and Mr. Mensing left at 6:11 p.m.

Mr. Bigelow said that within the next couple of months the recently developed C/CAG model ordinance will go out to each city to adopt that employers with more than 100 employees be required to offer TDM.

Ms. Lasensky asked if there is any chance of getting more respect for pedestrians. She said Facebook moved into the county and has anything been done to bring them on.

Ms. Maley-Grubl said Facebook is implementing all types of programs, including their own shuttle system.

Mr. Whittemore asked if the majority of the shuttles meet efficiency requirements.

Ms. Maley-Grubl said it is close to 80 percent.

#### **ITEMS FOR REVIEW – OCTOBER 6, 2011 TA BOARD MEETING (cont'd)**

##### **Authorize Adoption of the Measure A Short-Range Highway Plan (Plan) (TA Item 12a)**

Acting Director of Caltrain Modernization Program Marian Lee reported:

- The purpose of the Plan is because the Highway Program is oversubscribed; estimated sales tax is \$450 million and the total estimated cost of the program is \$1.8 billion; and a funding strategy is needed to advance the total program.

- The Plan has a 5-10 year outlook with a policy framework to help make investment decisions and develop a Capital Improvement Plan (CIP). The Plan is a living document and will be updated regularly.
- Input was received from the TA Board Strategic Plan Subcommittee, C/CAG Executive Steering and Technical Advisory Committees and the CAC.
- Established policy guidelines were used to create new policy guidelines that were particular to the Highway Program.
- New Measure A money can only fund new Measure A projects.
- New policy guidelines include investing in different types of projects, project technical merit is a key criterion for funding decision, cost effectiveness, geographic equity, ease of implementation, economies of scale achieved from grouping projects, project must remain active to keep allocated funds and use call for projects process to make annual investment decisions and populate the CIP.
- Under the original Measure A the Streets and Highway Program collected \$350 million in sales tax and \$27 million has not been committed.
- The original Measure A is not subject to new Measure A funding guidelines.
- Next steps include identifying inactive projects and funding to be reallocated, develop Call for Projects materials, define process for project evaluation and selection and issue Call for Projects in Winter 2011.

Mr. Shaine said the CAC was very active in the passing of the new Measure A and many things discussed tonight in this presentation the CAC was involved with. He feels there needs to be continued citizen involvement in the next steps and should come from the CAC.

Mr. Bigelow said the CAC went through a matrix of how the projects were going to be scored and one of the key components was 45 points if a project was in a state of readiness and try to break loose the projects that are inactive.

A motion (Bigelow/Hedges) to recommend the Board adopt the New Measure A Short-range Highway Plan was approved.

Mr. Hees asked if a project must remain active does this mean a Key Congested Area (KCA) could go inactive and have its funds pulled during the course even though listed in Measure A. Ms. Lee said the question is if it's active or not is by project and there is a firewall not only between old measure and new measure, but a firewall between KCA Projects and Supplemental Roadway Projects. So if a KCA Project has no activity for five years they get notified and they say yes it's a dead project staff would bring it back to the CAC and the Board so the allocated money could be thrown back into the pot for call for projects.

Mr. Hees asked if KCA money would stay on the KCA side since there are more KCA projects than can be fund. Ms. Lee said if a project were to be removed it would require some other action and staff doesn't have a policy on guidance. If money is pulled out of a KCA project, i.e. \$10 million, that money doesn't necessarily have to go to another KCA project because the funding cap is for the whole life of the measure and there is a cap for the two buckets.

#### **Approval of Minutes of September 1, 2011 (TA Item 4a)**

No comments

**Acceptance of Statement of Revenues and Expenditures for August 2011 (TA Item 4b)**

No comments

A motion (Hedges/Shaine) to support acceptance of the Statement of Revenues and Expenditures for August 2011 was approved.

**Sam Trans Liaison Report – September 1, 2011 and September 14, 2011 (TA Item 8a and 8b)**

No comment

**Authorize Allocation of \$300,000 in New Measure A Local Shuttle Program Category Funds to the City/County Association of Governments in Support of the Countywide Congestion Relief Plan (TA Item 11a)**

A motion (Hees/Zimmerman) to support Board allocation of funds was approved.

Mr. Hees said last month some TSM money was allocated and now doing a different piece, but the same pot and it might be more appropriate to take up these TSM projects all together so we see how we are allocating the big pie. Mr. Hurley explained this is from the shuttle program pot of money and not TSM.

**Update on State and Federal Legislative Program (TA Item 12c)**

Chair Arietta said Government Affairs Manager Seamus Murphy could not attend, but she provided an update. She said AB 348 has been chaptered and signed on September 21; AB 650 was vetoed on September 26; AB 952 was vetoed on October 2; AB 1097 was chaptered; and AB 1164 as chaptered on October 2.

**REPORT OF THE CHAIR – BARBARA ARIETTA**

- Provided an update on SB 791.
- The Calera Parkway Open House and public meeting was held on September 22, 2011. The Pacific City Council voted to ask Caltrans to extend the public commenting period for two more weeks beyond the deadline of October 7.

A Certificate of Appreciation will be sent to Paul Young for his valuable support and contribution as a member of the CAC from 2007-2011.

A motion (Hees/Bigelow) to honor Mr. Young with the certificate was approved.

Mr. Zimmerman left at 7:02 p.m.

No quorum at this point

**REPORT FROM STAFF – JOE HURLEY**

- There was a large attendance at the Calera public meeting on September 22 and received a number of comments. If the CAC receives any comments about this project they need to direct them to Caltrans to be formally considered as part of the environmental process and as of today Caltrans has received 70 comments.



- The comment period was extended to October 22.
- The Belmont bike/pedestrian overcrossing has had some issues with fabrication of the fencing with restricted ability to work over live traffic. A ribbon cutting will be the end of October beginning of November, but will communicate to the CAC if it occurs prior to the next CAC meeting.

Mr. Shaine said when the project first started in Pacifica there was no funding commitment on the part of Pacifica and is that still the case. The city of Pacifica has funded a portion of some of the earlier studies. Mr. Hurley said at this time the TA has made no funding commitment beyond the environmental phase. There is State Transportation Improvement Plan money programmed for this project. The TA's approach is to fund projects on a phase by phase basis. Where the TA is now is that it will fully fund the environmental phase of the project. The next step upon the completion of the environmental phase would be a call for projects. The city of Pacifica can submit the Calera Parkway Project design phase for funding consideration.

### **COMMITTEE COMMENTS**

Mr. Whittemore said the crosswalk needs to be opened soon because there are already graffiti problems. Mr. Hurley said he was aware the structure had been tagged.

April Vargas said according to her count there were 33 speakers at the Calera workshop. She said 23 opposed the project, nine were in favor and one was neutral. There were several recommendations made about other things that needed to be studied.

Ms. Vargas left at 7:10 p.m.

Mr. Shaine said the Call for Projects needs to be cognizant on the whole issue of supplemental funding and the issue related to shovel ready. These can conflict with the normal priorities.

Mr. Hedges said he was appointed to the Personnel Board for the City of San Mateo.

### **Date and Time of Next Meeting**

Tuesday, November 1, 2011 at 4:30 p.m. at 1250 San Carlos Avenue, Bacciocco Auditorium, 2<sup>nd</sup> Floor, San Carlos, CA 94070.

The meeting was adjourned at 7:12 p.m.