

TRANSPLAN Committee Meeting

*****Special Meeting*****

Tuesday, March 19, 2013 – 5:00 PM

Tri Delta Transit Board Room, 801 Wilbur Avenue, Antioch 94509

We will provide reasonable accommodations for persons with disabilities to participate in TRANSPLAN meetings if they contact staff at least 48 hours before the meeting. Please contact Jamar Stamps at 925-674-7832 or jamar.stamps@dcd.cccounty.us

AGENDA

Items may be taken out of order based on the business of the day and preferences of the Committee.

- 1. OPEN** the meeting.
- 2. ACCEPT** public comment on items not listed on agenda.
- 3. ADOPT** Minutes from 3/8/13 TRANSPLAN Special Meeting ♦ PAGE 2

Action/Discussion Items (see attachments where noted [♦])

4. Continued Public Workshop to Discuss East County Fee Arrangements: *The Measure J Growth Management Program (GMP), approved by the voters of Contra Costa in 2004, requires that TRANSPLAN, and the other regions, develop a regional development mitigation program that establishes fees, exactions, assessments, or other mitigation measures to fund regional transportation improvements to mitigate the impact of planned development. This workshop will involve a discussion of the current status of the East County mitigation program, and will provide an opportunity for TRANSPLAN to consider options to fulfill the regional development mitigation program requirements including retaining the existing arrangements and considering potential alternative approaches to establishing a mutually agreeable program that complies with the Measure J GMP requirements.*

5. ADJOURN to next meeting on Thursday, April 11, 2013 at 6:30 p.m. or other day/time as deemed appropriate by the Committee.

Wade Harper
Antioch
City Council

Robert Taylor
Brentwood
City Council

Mary N. Piepho
Contra Costa County
Board of Supervisors

Kevin Romick
Oakley
City Council

Salvatore Evola
Pittsburg
City Council

Gil Azevedo
Antioch
Planning Commission

Joseph Weber
Brentwood
Planning Commission

Vacant
Representing the
Contra Costa County
Board of Supervisors

Duane Steele
Contra Costa
Planning Commission

Doug Hardcastle
Oakley
Planning Commission

Larry Wirick
Pittsburg
Planning Commission

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TRANSPLAN COMMITTEE
Antioch - Brentwood - Pittsburg - Oakley and Contra Costa County

MINUTES

March 8, 2013

The special meeting of the TRANSPLAN Committee was called to order in the Tri Delta Transit Board Room, 801 Wilbur Avenue, Antioch, California by Chair Kevin Romick at 3:00 P.M.

ROLL CALL

PRESENT: Nancy Parent, Alternate for Salvatore (Sal) Evola (Pittsburg), Wade Harper (Antioch), Mary N. Piepho* (Contra Costa County Board of Supervisors), Duane Steele (Contra Costa County Planning Commission), Robert (Bob) Taylor (Brentwood), Larry Wirick (Pittsburg), and Chair Kevin Romick (Oakley)

* Arrived after Roll Call

ABSENT: Gil Azevedo (Antioch), Doug Hardcastle (Oakley), and Joe Weber (Brentwood)

STAFF: Jamar Stamps, TRANSPLAN Staff
David Schmidt, Legal Counsel

PUBLIC COMMENT FOR ITEMS NOT LISTED ON THE AGENDA

There were no comments from the public.

PUBLIC WORKSHOP TO DISCUSS EAST COUNTY FEE ARRANGEMENTS

The Measure J Growth Management Program (GMP), approved by the voters of Contra Costa in 2004, required that TRANSPLAN, and the other regions, develop a regional development mitigation program that establishes fees, exactions, assessments, or other mitigation measures to fund regional transportation improvements to mitigate the impact of planned development. The workshop had been scheduled to allow a discussion of the current status of the East County mitigation program and provide an opportunity for TRANSPLAN to consider options to fulfill the regional development mitigation program requirements including retaining the existing arrangements and considering potential alternative approaches to establishing a mutually agreeable program that complies with the Measure J GMP requirements.

Chair Romick advised that with the workshop format, no votes would be taken at this time. There would be direction to TRANSPLAN staff after the discussion.

Jamar Stamps, TRANSPLAN staff, advised that the Contra Costa Transportation Authority (CCTA) had taken the lead on the discussion. He introduced Don Tatzin and Julie Pierce of the CCTA Board of Directors, along with Martin Engelmann, Deputy Executive Director of the CCTA, who were present to lead the workshop.

Don Tatzin thanked the TRANSPLAN Committee for the time and noted that the CCTA Board shared a goal to have all jurisdictions work cooperatively for East County residents and create a favorable view for the public in terms of transportation countywide, particularly given the need to approve additional projects and programs for the County. He distributed the document *Draft Principles of Agreement Among Antioch, Brentwood, Oakley, Pittsburg and Contra Costa County Regarding Regional Transportation Fees* dated March 8, 2013 (attached to these minutes), and advised there would be follow up with the elected officials and jurisdictions. He explained that the comments received in response to the Draft Principles had been helpful but not always consistent.

Mary Piepho arrived at 3:04 P.M.

Mr. Tatzin described the approach taken to share the comments received on the Draft Principles and the recommendations from the CCTA Board in response to those comments to start the discussion to create an overall approach that could be supported by all jurisdictions, to create a solution for a partnership with East County jurisdictions, and to proceed consistent with the policy and approaches championed by the CCTA. He suggested that the combined recommendations could form a workable agreement and distributed a copy of the comments to each of the Draft Principles (attached to these minutes), and suggested a section-by-section review.

Mary Piepho expressed discomfort discussing the documents which had been submitted to the TRANSPLAN Committee without staff input and internal study.

Bob Taylor verified with Mr. Tatzin that the information just presented had just been finalized and staff had not been provided with the information.

Mr. Tatzin presented the first principle; Section 1, *The project priorities for the use of regional fees shall be in the following order: Completion of SR4 East widening and bypass; completion of eBART to Hillcrest Avenue Station; construction of the Railroad Avenue eBART station, study of eBART extension east of Hillcrest, and James Donlon Extension (JDE); other projects included in the most recent ECCRFFA [East Contra Costa Regional Fee and Financing Authority] nexus study; and while a change in project scope may occur, the regional fee funding caps outlined in Section 2 shall not change.*

Mr. Tatzin noted that what they had heard was that the original principles would be acceptable.

Julie Pierce added it was their understanding that up until a certain point there appeared to be broad acceptance of the original principles even though they were not signed by everyone.

Mr. Tatzin opened the review of Section 2, *Limits shall be placed on regional fee funding provided for the above [projects identified as priorities] projects*, and identified the ten points under that section. He suggested that item a. under Proposed Clarifications and Modifications in the comments document *Clarify that \$107.7 million limit does not include eBART*, could be removed and noted that the \$1.2 million in item g. under that column was the City of Pittsburg's 20 percent share.

With the modifications to Section 2, as shown and as recommended for removal, Mr. Tatzin suggested that the draft principles would be acceptable, allowing equal treatment for unspent funds, where the James Donlon Extension would be reviewed by ECCRFFA, and allow the CCTA to participate in resolving any disputes that should arise. As to how the unspent funds would be allocated, he recommended going to the next project on the priority list to that project's expendable cap, to commit to the funding limits for three projects with any unspent funds, and to reprogram what was left over after that.

When asked, Mr. Tatzin did not recommend that ex-officio status exist for the City of Pittsburg in consideration that all members were equal and projects were equal, although with different priorities. He noted a reference in subsection 2.5 of the Draft Principles where *Unspent funds not used upon project completion [or abandonment] shall be released to the regional agency's general fund* had been added since abandonment could occur over time.

With respect to Section 3, *Sources of regional fees for the Railroad Avenue eBART station, extension study, and JDE*, Mr. Tatzin referred to the proposed clarifications and modifications, one of which was a change of date at which 50 percent of Pittsburg funds would go to ECCRFFA, from September 19, 2015 to September 7, 2015. It was recommended that the date of September 19, 2015 be retained consistent with the Draft Settlement Agreement.

Mr. Tatzin referred to the issue and prior discussions of \$7.8 to \$8 million the City of Pittsburg had spent and recommended a quick review of the regional fee using the nexus study, to include TRANSPLAN, ECCRFFA, the consultant, and CCTA staff to consider the likelihood of an issue.

Nancy Parent commented that at the time the principles had been discussed staff had been present and members had an opportunity to go over the principles with staff.

For Section 4, *Allowance for restricted funds*, Mr. Tatzin noted the conflicting requests received and highlighted the comments received. The recommendation was to allow for restricted funds, that the jurisdiction requesting a restricted fund shall appoint a mutually agreeable fiscal agent/trustee, and that the next steps would be to develop details regarding how a restricted fund would work and who the fiscal agent/trustee would be.

Mr. Tatzin referred to Section 5, *Participation in regional fee agency, e.g., ECCRFFA or another agency acceptable to all participants*, with the recommendation that the fiscal agency be ECCRFFA, that there be one period of ex-officio membership allowed, although any ex-officio member that did not join ECCRFFA by January 1, 2020 shall not be able to join thereafter.

Ms. Pierce commented that any jurisdiction paying into the project list would want to participate, and with respect to transportation planning as a whole there needed to be some harmony with everyone on an equal status. As such, she suggested it was a reasonable compromise in that ex-officio status would not serve anyone's interests.

Nancy Parent recommended deferring that principle as the last item to be discussed.

As to Section 6, *Fee levels*, Mr. Tatzin referred to the fee level for ECCRFFA, and noted the recommendation to delete two of the subsections (6.1 and 6.2) related to the establishment of fees as unnecessary and potentially confusing. Given the comments received, he recommended a modification to subsection 6.3 related to all participating jurisdictions submitting at least the full fee applicable at the time the fee would be levied, allowing Pittsburg the ability to use \$7.86 million for credit, to be limited to the period of fee shortfalls during the period from September 7, 2010 through approval of the agreement, with the City of Pittsburg to submit proposed credits for subsequent review.

Mr. Tatzin described the comments under Section 7, *Liability*, where the parties included the five jurisdictions, and where subsection 7.2 was recommended to be deleted with a new section added where all five jurisdictions would have proportionate liability for any legal claims against ECCRFFA funds, including costs of defense; with proportionate to be defined but could be a share of fees generated during a specified period. The adoption of the new suggestions was recommended.

Mary Piepho referred to the historic Joint Exercise of Powers Agreement (JEPA) and asked about the liability standard at that time. It was her understanding that the JEPA held the liability of the members although Mr. Tatzin explained that while it may have been the intent of the agreements to have the JEPA hold the liability there was nothing in the JEPA to have that done. Any judgment against the JEPA would come out of the fees.

Mr. Tatzin recommended some proportionate way to allocate the liability.

Ms. Pierce agreed, with everyone liable to share equally regardless of where the funds were held.

To further clarify, Legal Counsel David Schmidt advised that subsection 7.2 could be redrafted with respect to proportionate liability. He added that the original proposal was that the debts and liabilities of ECCRFFA be solely ECCRFFA's and not some other agency.

With respect to Section 8, *Implementation of JDE and project review*, Mr. Tatzin referred to the need to describe how the Railroad Avenue eBART station, study of eBART extension east of Hillcrest, and JDE would be implemented, with the comment that ECCRFFA create a process similar to the CCTA's peer review process. The principles in that section were recommended for approval, as amended.

Mr. Tatzin explained that the principles under Section 9, *Grant funding*, stated that all participants shall work cooperatively to maximize grant funding for the projects listed in Section 1, and that as grant funding is awarded to a specific project and reduces the need for regional fee funding, the regional fee funding shall be shifted to the next project in priority order. Comments received suggested that the section be removed. The recommendation was that the draft principles in Section 9 be retained in the spirit of cooperation without allowing one project to compete against another for grant funding.

Nancy Parent suggested that to truly work together the idea of getting as much grant money as possible for all of the projects working cooperatively would be in everyone's best interest to get all the projects done at the earliest possible time.

Bob Taylor clarified that the discussion related to grants only for the projects on the project list.

Mr. Tatzin noted, for instance, that the OneBay Area grant applications went out today which would fall outside the current discussion, and which could be noted in the Draft Principles.

Mr. Tatzin read the comments under Item 10, *Role of CCTA*, and recommended if the TRANSPLAN Committee agreed, that section would not be needed and could be removed.

Bob Taylor verified that either the CCTA or the County could act as the fiscal agent.

Mary Piepho suggested that Section 10 only existed if there was a wish to have the CCTA be a party to the agreement in a real way.

Nancy Parent noted that the CCTA had volunteered to be a “mediator,” and if there was a disagreement could help, or mediate. As such, she suggested it was worth retaining Section 10 given that possibility for the comfort of all parties.

Mary Piepho did not understand there ever to be a conflict with the fiscal agency although she could understand the need for a mediator or other role. She noted that the priority list had been defined by the body, which was the concern of the City of Pittsburg, and which had nothing to do with the fiscal agency. She did not believe that the fiscal agency had a role in the discussion.

Nancy Parent suggested that Section 10 did not have to deal only with fiscal agencies.

Wade Harper asked if the role of the CCTA as a mediator had been defined, to which Mr. Tatzin noted that if there was a peer review process or a disagreement the CCTA could serve as an advisor, which would only be done as requested.

Mr. Tatzin explained that no comments had been received for Section 11, *Terms of agreement will be from signing through December 31, 2030*. For Item 12, *Approvals*, he advised that the agreement would have to be approved by all the elected bodies of the jurisdictions and the CCTA if the CCTA was to be a party to the agreement.

Reporting that two new sections had been proposed, Mr. Tatzin referred to Section 13, *Add enforcement mechanisms* for non-compliance, and Section 14, *Fee Minimums* so that no jurisdiction inadvertently subsidized projects in another jurisdiction through higher fees.

In summary, Mr. Tatzin stated that the agreement retained the project list and the funding, allowed restricted funds, placed all East County jurisdictions into ECCRFFA which was in the prior agreement, and recommended the development of a project review process similar to the CCTA's in which the CCTA could be called upon to participate at the TRANSPLAN Committee's request.

As to the next steps, Mr. Tatzin asked the TRANSPLAN Committee to agree to the recommendations, with changes as appropriate, and direct staff to prepare something that TRANSPLAN could take action to support.

Mary Piepho characterized that recommendation as aggressive and recommended receipt of the Draft Principles and agendaizing them for the next week to allow a more complete discussion. She was unsure there was anything in the proposal that had not been considered previously and described herself as being extremely cautious.

Bob Taylor agreed, reiterated that this was the first time TRANSPLAN had been provided the proposal, and suggested one of the major concerns was that the recommendation was that the City of Pittsburg would not be ex-officio but be a participating member of the Board.

Ms. Pierce suggested that the desire was that the policy makers take the recommendation under serious advisement with an attitude of making it work with a positive attitude, which she suggested was necessary to rebuild trust that had been damaged over time. If the proposal could help to rebuild relationships, she suggested it would be beneficial to TRANSPLAN, the City of Pittsburg, and the County as a whole, particularly given the possibility of an extension of the measure in a few years. While everyone did not get what they wanted, she commented that the principles offered serious consideration to put the pieces together.

Chair Romick commented that he could work with much of what had been presented to TRANSPLAN, and work with staff and discuss the Draft Principles with the larger group. He suggested that what had been presented was a step in the right direction.

Wade Harper agreed and wanted to review the principles and discuss them in greater detail at the next meeting.

Mr. Tatzin stated that he and Julie Pierce along with CCTA staff were prepared to assist staff in that process.

Mary Piepho recognized that the CCTA was working for the benefit of all, but referred to the countless hours that had been spent on the issue; time, effort, emotion, and passion to come to some agreement on behalf of their leadership, the cities, and the jurisdictions. She recognized their efforts and noted that over all that time no agreement had been reached.

Both Don Tatzin and Julie Pierce recognized that work and explained that the original draft of the agreement had been used as the basis to come to some agreement.

PUBLIC COMMENTS OPENED

Assemblymember Jim Frazier noted that he now represented a portion of the Bay Area not represented by a transportation measure and it was extremely difficult to secure funding for transportation projects in that case. He stated that Contra Costa County was fortunate to have the billions in funding that had been established by Measure C and Measure J, and that as a unit TRANSPLAN, ECCRFFA, and the State Route 4 Bypass Authority had been able to generate millions in funding to benefit East County transportation.

PUBLIC COMMENTS CLOSED

Nancy Parent noted that although she was Sal Evola's alternate, she encouraged the TRANSPLAN Committee to move as quickly as possible given that City of Pittsburg staff was very well versed on the issue and ready to proceed. She expressed her appreciation for the work that had been done, characterized the Draft Principles as excellent, that recommendations had been considered and dealt with fairly, was concerned with the ex-officio status, but suggested without huge changes in the draft it would be possible to resolve the issues.

City Manager Joe Sbranti, Pittsburg, referred to the comments with respect to the \$7.8 to \$8 million the City of Pittsburg had spent and a quick review of the regional fee using the nexus study. He asked for the opportunity to meet with the appropriate technical staff to move that forward.

Mary Piepho had no problem directing staff and members of the Board to go back to their municipalities to let staff know of the desire for staff to work on that issue.

Given that several members of TRANSPLAN would not be present at the next scheduled meeting on March 14, the Committee decided to meet at a special meeting on March 19 at 4:00 P.M., with direction to staff to look over the proposal and include the comments received this date.

ADJOURNMENT

On motion by Bob Taylor, seconded by Mary Piepho and carried unanimously to adjourn the special TRANSPLAN Committee meeting at 4:12 P.M. to a special meeting on March 19, 2013 at 4:00 P.M.

Respectfully submitted,

Anita L. Tucci-Smith
Minutes Clerk

Handouts (attached):

- *Draft Principles of Agreement Among Antioch, Brentwood, Oakley, Pittsburg and Contra Costa County Regarding Regional Transportation Fees Dated March 8, 2013*
- *Comments to the Draft Principles of Agreement Among Antioch, Brentwood, Oakley, Pittsburg and Contra Costa County Regarding Regional Transportation Fees*