

DRAFT MINUTES
Board of Directors Meeting
Alameda-Contra Costa Transit District
2nd Floor Board Room
1600 Franklin Street
Oakland, CA 94612

Wednesday, October 14, 2009
6:00 p.m.

Board of Directors:	Ryan "Rocky" Fernandez, President (Director Ward IV)
H. E. Christian Peeples, Vice President (Director at Large)	Elsa Ortiz, Director Ward III
Joe Wallace, Director Ward I	Jeff Davis, Director Ward V
Greg Harper, Director Ward II	Joel B. Young, Director at Large

The Alameda-Contra Costa Transit District Board of Directors held a regular meeting on Wednesday, October 14, 2009.

The meeting was called to order at 4:06 p.m. with President Fernandez presiding.

Roll Call

Upon call of the roll, the following Board members responded with their names: Directors Wallace, Harper, Ortiz, Davis, Young, Vice President Peeples, President Fernandez.

Directors Absent: None.

At 4:07 p.m., the General Counsel announced that the Board would convene in Closed Session to discuss the items listed on the Closed Session Agenda. Closed Session recessed at 5:51 p.m.

At 6:08 p.m., the Board convened the regular meeting. All Board members were present.

Public Comment

- Jane Kramer commented on the recent meetings held in Fremont noting that it was inconvenient for the public to travel to Fremont. She reiterated her prior request for audio and video streaming of the meetings via the web.
- George Oram, Berkeley resident, commented about empty buses on the 1R and suggested that the Board eliminate of the 1R on Telegraph.

Consent Calendar

Items listed under the Consent Calendar are considered to be routine and may be enacted by one motion/one vote. If discussion is desired, an item may be removed from the Consent Calendar and will be considered individually.

MOTION: WALLACE/DAVIS to approve the consent calendar as presented. Director Harper commented on Item No. 2b, noting that the report was well done (7-0-0-0).

Ayes: Directors Wallace, Davis, Harper, Ortiz, Young, Vice President Peeples,
President Fernandez – 7
Noes: None – 0
Abstain: None – 0
Absent: None – 0

**1. Finance and Audit Committee (September 30, 2009 Meeting) Recommendations:
Receive**

- a. Finance and Audit Committee minutes of September 9, 2009.
- b. Monthly report on the budget and ten-year projections (GM Memo No. 09-211).
- c. Report on non-traditional ways to increase advertising revenue (Requested by Director Davis – 3/11/09) (GM Memo No. 09-157).

Approve

- d. Adoption of **Resolution No. 09-050** authorizing the General Manager to submit and execute all agreements/documentation for an allocation of Regional Measure 2 (RM2) funding for the Richmond Parkway Transit Center-Phase II-Design and Engineering (GM Memo No. 09-229).

2. Planning Committee (September 30, 2009 Meeting) Recommendations:

Receive

- a. Planning Committee minutes of June 24, 2009.
- b. Report on the effective use of Transit Signal Priority (TSP) in Rapid corridors (Requested by Committee – 6/24/09) (GM Memo No. 09-226).
- c. Report on AC Transit's possible participation in Environmental Management Systems (EMS) Training and Assistance Program Class and ISO 14401 Certification (Requested by Vice President Peeples – 9/24/08) (GM Memo No. 09-191).

3. Board Matters

- a. Consider approving Board of Directors minutes of September 25, 2009.
- b. Consider approving Board of Directors minutes of September 30, 2009 (without attachment).
- c. Consider approving Board of Directors minutes of October 2, 2009.
- d. Consider approving Board of Directors minutes of October 6, 2009.
- e. Consider adoption of **Resolution No. 09-052** expressing appreciation to Richard Winnie for dedicated service to the AC Transit Retirement Board.
- f. Consider authorizing members of the Board of Directors to attend the Transportation Research Board's 89th Annual Meeting, January 10-14, 2010, in Washington, DC (DS Memo No. 09-238).

Regular Calendar

4. Consider receiving update on discussions with the Metropolitan Transportation Commission (MTC) regarding the BRT funding shift, provide direction to staff on further actions, and take appropriate actions regarding the establishment of the funding task force and related matters. (verbal)

President Fernandez introduced the item and reported that the meeting with MTC officials was positive and constructive.

General Manager Rick Fernandez advised the Board that MTC was receptive to the bifurcation of Congestion Mitigation and Air Quality (CMAQ) funds and Regional Measure 2 (RM2) funds. He further outlined 3 potential funding options, including 1) CMAQ only; 2) RM2 Trigger Point; or 3) to pursue both CMAQ and RM2 at once.

He then presented a handout regarding the proposed conditions for the funding shift, including:

1. Agency financial review;
2. East Bay Operations Analysis and Implementation; and
3. Eligibility for fund sources.

General Manager Fernandez noted that MTC Commissioners Haggerty and Bates were supportive of the proposal based on the conditions proposed by MTC.

Director Davis praised staff and commented that the proposed conditions appeared reasonable albeit non-negotiable. He also elaborated on the need for all transit providers to be fiscally sustainable.

Vice President Peeples noted his concerns with the condition that the District “must agree to subsequent implementation of the findings” as regards Condition #2 - East Bay Operations Analysis and Implementation. He further added he would not agree to this condition in advance because MTC had not been an honest broker for AC Transit in the past.

Director Wallace agreed with Vice President Peeples’ comments.

Director Ortiz inquired how long it would take to meet the proposed conditions and what the impact would be on the service adjustments. The General Manager advised that conditions 1 (financial review) and 3 (eligibility for fund sources) could be done by December 14th. Director Ortiz further inquired if a Memorandum of Understanding (MOU) would be necessary for this transaction. The General Manager indicated that there wouldn’t be a MOU per se; however, he was expecting a letter from MTC outlining the process and timeline.

Director Harper commented that the District had to act very responsibly in how service would be adjusted based on the receipt of CMAQ funds, noting that it was not fair to the service adjustment process to keep the new lines at the expense of sacrificing ridership on other lines.

With respect to the proposed conditions, Director Davis commented that while they were developed using strong language, they were only a summary. He further added that meeting attendees agreed that the preservation of lifeline service was of the utmost importance.

Vice President Peeples commented on the need for a funding taskforce with a limited duration. He suggested that the Board discuss the structure of the taskforce at this meeting or the next.

Public Comment:

- Joel Ramos, TransForm, commented that he was glad to hear that MTC was flexible as regards the CMAQ and RM2 funds. He requested that the Board stave off using the RM2 money in order to preserve the BRT Project. He further clarified that the taskforce needed a duration of 12-18 months in order to be effective.
- Michael Katz, Berkelyans for Better Transportation Options, presented an outline of the Rapid Bus Plus alternative and volunteered to participate on the taskforce. He added that he supported the Buy America resolution. He asked that the resolution not exclude Orion buses which are manufactured partly in New York and Ontario, Canada. (submitted letter)

MOTION: PEEPLES/YOUNG to receive the report. Staff to provide a report regarding recommendations for the funding taskforce at the next Board meeting (7-0-0-0).

Ayes: Vice President Peeples, Directors Young, Wallace, Harper, Ortiz, Davis,
President Fernandez – 7
Noes: None – 0
Abstain: None – 0
Absent: None – 0

5. Consider receiving report concerning postponing the implementation of the 2009 Service Adjustments Plan (SAP) (GM Memo No. 09-217b).

Service and Operations Planning Manager Cory LaVigne addressed questions from the Board concerning the restoration of 140,000 hours of platform service.

Vice President Peeples suggested that a workshop be held to walk the Board and the interested public through the service restoration plan.

Public Comment

Ms. Fowles presented financial information from Robert Gammon's articles in the East Bay Express and suggested ways for the District to raise money, including a six month pilot program to lower the monthly bus pass and Transbay fares. She further requested the establishment of a rider advisory committee and that the District conduct business with Gillig. (Submitted handout).

MOTION: PEEPLES/WALLACE to continue the item to the October 28, 2009 Board meeting (7-0-0-0).

Ayes: Vice President Peeples, Directors Wallace, Harper, Ortiz, Davis, Young,
President Fernandez – 7
Noes: None – 0
Abstain: None – 0
Absent: None – 0

6. Consider adoption of **Resolution No. 09-051** regarding a policy to buy American (BRD Memo No. 09-233a) [Finance Committee recommendation of September 30, 2009, to amend Section 1 of the resolution.]

Vice President Peeples commented at length on the reasons why he could not support the resolution and distributed a copy of TCRP Report 49 and an article about a bus made in China that would qualify under Buy America by meeting the minimum content requirements. He added that he felt the resolution was disrespectful to Van Hool, noting how the company had designed buses specifically to the District's specifications. He further offered his support for a Buy Union proposal and urged the Board not to buy buses from companies whose business advantage came from the mistreatment of their workers. He asked that the Board to continue to think about riders and the quality of the District's buses.

Director Ortiz commented on the letter of support received from the Central Alameda Labor Council.

President Fernandez commented on the District's relationship with Van Hool noting that the company had addressed the concerns raised by the public. He added that since the District spends the public's money, it was only appropriate that it be spent locally, which was a benefit to unionized American workers. He concluded with the hope that local companies would be as accommodating as Van Hool had been in making some of the changes requested by riders.

Director Wallace suggested that the policy be "Hire America".

Director Davis commented on his lukewarm support for the resolution, noting that the economic crisis was a global concern that was not isolated to the United States. He further advised that he was more concerned about maintaining the integrity of the procurement process over any individual contract. He added that he will support the resolution with the concerns noted above and wait and see the affects of this resolution on the procurement policy.

Director Harper noted his concern with the idea that first priority be given to goods made in California and the potential ramifications should a firm from outside of California have the winning bid.

The General Counsel to prepare the appropriate amendments to Board Policy 350.

MOTION: WALLACE/YOUNG to adopt **Resolution No. 09-051** regarding a policy to buy American (6-1-0-0).

Ayes: Directors Wallace, Young, Harper, Ortiz, Davis, President Fernandez – 6
Noes: Vice President Peeples – 1
Abstain: None – 0
Absent: None – 0

7. Consider adoption of **Resolution No. 09-055** confirming the approval of a collective bargaining agreement with Amalgamated Transit Union, Local 192 (Paratransit) (GM Memo No. 09-241).

There was no discussion of the item.

MOTION: WALLACE/PEEPLS to adopt **Resolution No. 09-055** confirming the approval of a collective bargaining agreement with Amalgamated Transit Union, Local 192 (Paratransit) (4-3-0-0).

Ayes: Director Wallace, Vice President Peoples, Directors Harper, Davis - 4
Noes: Directors Ortiz, Young, and Fernandez – 3
Abstain: None – 0
Absent: None – 0

8. Discussion regarding the meeting schedule for the months of November and December (verbal).

Consensus to adjust the meeting schedule for the months of November and December as follows:

- Leave Wednesday, November 4, 2009 open for a Board meeting;
- All standing Committees and the Board of Directors to meet on Wednesday, November 18, 2009;
- All standing Committees to meet on Wednesday, December 9, 2009;
- Board of Directors to meet on Wednesday, December 9, 2009 (7-0-0-0).

9. Consider verbal reports from the Chair of the External Affairs Committee on legislative matters (Note: Pursuant to Policy No. 100, the Board may take action on legislative matters requiring immediate action.)

There were no items requiring action.

10. Report on actions(s) taken during Closed Session [Will be reported after the conclusion of Closed Session.]

MOTION: PEEPLES/ORTIZ to approve settlement in the amount of \$50,000 in the matter of Benton vs. AC Transit (5-1-1-0).

Ayes: Vice President Peoples, Directors Ortiz, Davis, Young, President Fernandez – 5
Noes: Director Harper – 1
Abstain: Director Wallace – 1
Absent: None – 0

Board/Staff Comments (Government Code Section 54954.2)

Agenda Planning

Referred to Closed Session

Director Wallace requested a discussion regarding security at bus stops/shelters.

At 7:36 p.m., President Fernandez announced that the Board would reconvene in Closed Session regarding Public Employee Performance Evaluation/Labor Negotiations-Board Officers.

CLOSED SESSION:

Conference with Legal Counsel – Existing Litigation:

(Government Code Section 54956.9 Subdivision (a))

Benton v. AC Transit, Case No. CV08-1073 JCS

Quarterly Litigation Report

AC Transit, et al. v. Calif. Dept. of Transportation, ACSC No. 801522-0 (Fallon St.);
Harbor v. AC Transit, U.S. Dist. Ct. (No.Cal.Dist.), No. C05-5211 MMC;
Pacheco v. AC Transit, U.S. Dist. Ct. (No.Cal.Dist.), No. C07-4415 MMC;
Benton v. AC Transit, U.S. Dist. Ct. (No.Cal.Dist.), No. CV08-1073 JCS;
ATU Local 192 v. AC Transit, ACSC No. RG06-262943 (Fallon St.);
Gilmer, et al. v. AC Transit, U.S. Dist. Ct. (No.Cal.Dist.), No. C08-05186 CW;
Motor Coach Industries, Inc. v. AC Transit, ACSC No. RG07-326173 (Fallon St.); and
Claim of Yip, Claim No. 08-3282.

In addition, there is an annual report to the State Water Resources Control Board concerning storm water discharge violations for Divisions 2, 4 and 6.

Labor Negotiations – Board Officers: (Government Code Section 54957.6)

Committee Negotiators: Director Davis, Chair
Director Wallace
Director Young

Public Employee Performance Evaluation: (Government Code Section 54957)

Title: General Manager
Title: General Counsel
Title: District Secretary

Adjournment

There being no further business to come before the Board of Directors, the meeting was adjourned at 7:45 p.m. The next meeting of the Board of Directors is scheduled for Wednesday, October 28, 2009.

Respectfully submitted,

Linda A. Nemeroff
District Secretary