The Alameda-Contra Costa Transit District Board of Directors held a special meeting on Wednesday, July 29, 2009.

The meeting was called to order at 5:13 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 5:13 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 adjourned at 5:45 p.m.

At 6:05 p.m., the Board convened the Regular Board of Directors meeting. All Board members were present.

Presentation:
Consider the adoption of Resolution No. 09-039 honoring Richard Kassis on the occasion of his retirement from AC Transit.

MOTION: WALLACE/ORTIZ to adopt Resolution No. 09-039 as presented (7-0-0-0).

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

General Counsel Ken Scheidig and President Fernandez presented Mr. Kassis with a resolution of appreciation for his years of service to the District and congratulated him on
his retirement. Mr. Kassis reflected on his career with the District and thanked and commended all of the staff he had worked with over the years.

Public Comment
Jane Kramer, Oakland resident, commented that the District needed to provide superb local transportation, which could not be done by guessing what the ridership wants. She suggested that the District look into hiring someone to provide an analysis of the ridership’s needs.

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: PEEPLES/WALLACE to approve the consent calendar as presented with the exception of Item No. 4b, which was pulled by Director Harper (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

1. Operations Committee (July 8, 2009 Meeting) Recommendations:
   Receive

   Approve
   c. Submission of a plan to the Metropolitan Transportation Commission (MTC) regarding transition of current AC Transit fare media to Translink, subject to further discussion (GM Memo No. 09-180).

2. Accessibility Advisory Committee (AAC)
   Consider receiving AAC minutes of June 9, 2009 (GM Memo No. 09-188).

3. Consider adoption of Resolution No. 09-045 establishing the Appropriations Limit for FY 2009-10 at $358,199,986 (GM Memo No. 09-189).

4. Board Matters
   a. Consider approving Board of Directors minutes of July 8, 2009.
   b. Consider authorizing members of the Board of Directors to attend the American Public Transportation Association’s Annual Meeting in Orlando, Florida on October 4-7, 2009 (DS Memo No. 09-201).
Item 4b was pulled by Director Harper to suggest that the Board consider setting a maximum number of attendees for the conference.

Discussion ensued regarding the value of the conference with several directors advising that they were not planning to attend. Vice President Peeples pointed out that the Board had already reduced its travel budget, noting that the knowledge gained from conferences was often more valuable than the cost of the travel.

**MOTION: HARPER/ORTIZ** to authorize travel to the APTA Annual Meeting for one director subject to the Board President’s approval of the director’s attendance (7-0-0-0).

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

**Regular Calendar**

5. Consider approving the Policy Steering Committee (PSC) and staff recommendation of the “all-in-one” Operating Plan to be studied in the Final Environmental Impact Statement/Report (FEIS/EIR) for the East Bay Bus Rapid Transit Project (BRT) (GM Memo No. 09-193).

BRT Project Manager Jim Cunradi presented the staff report.

Vice President Peeples inquired if staff was able to compare stops to the location of senior centers. Mr. Cunradi reported that stations were located wherever there was a 1R stop and also near senior centers, centers of employment, medical facilities and schools.

Director Harper requested that the issue of creating a citizens advisory committee be discussed at the next Policy Steering Committee meeting.

**Public Comment**

- Rebecca Saltzman, Oakland resident, commented in support of the all-in-one solution. She further noted that the headway time would be reduced to five minutes.
- Joyce Roy commented on her feeling that the Policy Steering Committee was having secret meetings and reported that the Van Ness and Geary BRT projects in San Francisco both have citizen’s advisory committees to provide input into the projects. She further noted that Telegraph did not have enough ridership to warrant a rapid bus let alone BRT.

**MOTION: ORTIZ/WALLACE** to approve the “all-in-one” Operating Plan to be studied in the Final Environmental Impact Statement/Report (FEIS/EIR) for the East Bay Bus Rapid Transit Project (BRT) (6-0-1-0).
Ayes: Directors Ortiz, Wallace, Harper, Davis, Young, President Fernandez – 6
Noes: None – 0
Abstain: Vice President Peeples – 1
Absent: None – 0

6. Consider review and analysis of trade off discussions and voting conducted during the 2009 Service Adjustments workshops (GM Memo No. 09-187).

Service and Operations Planning Manager Cory LaVigne presented the staff report.

Puja Sarna, Transportation Planner, outlined rider preferences regarding the following:
- Frequency during commute hours;
- Potential consideration for changes to the reserve policy;
- Clock face headways;
- Whether trunk routes should operate at the current higher frequency or if all service types should operate at a reduced frequency;
- Service on major corridors that served most riders versus service designed to provide more coverage into neighborhoods;
- If passengers preferred to have the same level of service on both Saturday and Sunday, or if passengers preferred to have a higher level of service on Saturday and a lower level of service on Sunday; and
- Span of service.

Discussion ensued regarding the increased use of transfers with respect to the proposed service reductions, clock face headways and weekend service.

President Fernandez requested to see a breakdown of the e-news group survey information and what lines those individuals are riding.

**MOTION: WALLACE/DAVIS** to receive the report as presented 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

7. Consider receiving on-time performance report (GM Memo No. 09-190).

Transportation Planning Manager Bill Coffel and Schedule Data Administrator Karthic Swamy presented the staff report and provided an overview of the web-based application used to present on-time performance information obtained through the SatCom system.
Discussion ensued regarding the potential to make the information available to the public by posting it on the District’s website. The General Manager indicated that after the data had been cleansed, validated and put into a usable format for the public, it could be placed on the website. There appeared to be a consensus by the Board to make this information available via the website as soon as it was feasible.

**MOTION: ORTIZ/PEEPLES** to receive the on-time performance report (7-0-0-0).

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

8. Consider receiving report on the AC Transit Bicycle Parking Plan Study and approve the addition of bicycle parking projects to the District’s capital grants funding program (GM Memo No. 09-159a) [Planning Committee recommendation of June 24, 2009 to add bicycle parking projects to the capital grants funding program.]

Senior Transportation Planner Nathan Landau presented the staff report.

There was no discussion of the item.

**MOTION: PEEPLES/HARPER** to approve the addition of bicycle parking projects to the District’s capital grants funding program and authorize letters of support for cities that are applying for grants (7-0-0-0).

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

9. Consider approving the Disadvantaged Business Enterprise (DBE) overall annual goal for FY 2009-10 (GM Memo No. 09-175) [Request to forward to the Board of Directors the same day for action pursuant to Board Policy 100, section 5.5.4.]

**MOTION: PEEPLES/DAVIS** that the item meets the criteria for same day action by the Board of Directors (7-0-0-0).

Ayes: Vice President Peeples, Directors Davis, Wallace, Harper, Ortiz, Young, President Fernandez – 7
Noes: None – 0
Abstain: None – 0
Absent: None – 0
The General Counsel presented the staff report.

Director Ortiz inquired why, in 2002 to 2004, the goal had been significantly higher. Assistant General Counsel Carol Babington advised that in 2005, after the Western States decision, the District could no longer use race conscious measures (contract specific goals) and became race neutral, which lowered the goals. She added that to better answer the question, the projects from those years would need to be analyzed to see if the projects at that time were more conducive to Disadvantaged Business Enterprises.

Director Ortiz requested an analysis of the years with higher goals to determine why they were so high versus the goals in more recent years.

**MOTION: WALLACE/HARPER** to approve the Disadvantaged Business Enterprise (DBE) overall annual goal for FY 2009-10 (7-0-0-0).

Ayes: Directors Wallace, Harper, Ortiz, Davis, Young, Vice President Peeples, President Fernandez – 7

Noes: None – 0

Abstain: None – 0

Absent: None – 0

10. Consider receiving report for review and comment on the proposed scope of work for a consultant to review and make recommendations regarding Board Policies 351 (Small Local Business Program), 350 (Procurement) and 326 (Disadvantaged Business Enterprise Program) (GC Memo No. 09-194).

The General Counsel presented the staff report.

Director Davis inquired about the cost to administer the program. The General Counsel responded that the policies would first need to be revised in order to determine what it would take to administer the new program.

Director Ortiz sought to clarify prior direction given by the Board to hire a consultant to review the small local business and DBE programs, and to determine whether or not a disparity study was needed based on that review. The General Counsel referred to the minutes from the prior meeting which outlined the Board’s action to undertake and seek funding for a disparity study and to hire a consultant to review Policies 350, 351, and 326. The General Manager noted that while he suggested that a disparity study be done at the last meeting, he now felt that it was more appropriate to wait until after the policies had been reviewed.

**MOTION: WALLACE/ORTIZ** to receive the report on the proposed scope of work for a consultant to review and make recommendations regarding Board Policies 351 (Small Local Business Program), 350 (Procurement) and 326 (Disadvantaged Business Enterprise Program) (7-0-0-0).
11. Consider receiving report for review and comment on the proposed scope of work for a disparity study (GC Memo No. 09-200).

The General Counsel presented the staff report.

Vice President Peeples cautioned that a disparity study could take a year to complete and must be timed to coordinate with the construction of the BRT Project (if approved).

Director Davis wanted to make clear that the issues involved in this matter were funding for a disparity study, timing with BRT, and the development of a strong small local business/DBE program that would make the issue of a disparity study mute.

Director Harper noted that he would oppose a disparity study due to the New Haven case and the Supreme Court’s decision that there is no rationale for a public agency to intentionally discriminate on the basis of race.

**MOTION: ORTIZ/WALLACE** to table the item until such time the consultant (referenced in GC Memo No. 09-194) has provided a complete analysis of the policies and funding has been identified to pay for the study (7-0-0-0).

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

12. Consider adoption of **Resolution No. 09-043** authorizing the General Manager to submit an application to the Metropolitan Transportation Commission (MTC) for the New Freedom Program (GM Memo No. 09-185a) [Request to forward to the Board of Directors the same day for action pursuant to Board Policy 100, section 5.5.4.]

[A revised memo was presented in the red folders for the Board’s consideration and by reference hereto is made part of these minutes.]

There was no discussion of the item.

**MOTION: PEEPLES/DAVIS** that the item meets the criteria for same day action by the Board of Directors (7-0-0-0).
Vice President Peeples commented that text signage is on every modern bus system and that it is an extremely helpful feature for riders.

Director Harper commented that the Accessibility Advisory Committee should have been provided with ample time to review the proposal prior to presenting the item to the Board.

**MOTION: WALLACE/ORTIZ** to adopt **Resolution No. 09-043** authorizing the General Manager to submit an application to the Metropolitan Transportation Commission (MTC) for the New Freedom Program (7-0-0-0).

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

13. Consider adoption of **Resolution No. 09-047** authorizing the General Manager to file and execute applications and funding agreements with the California Transportation Commission for allocations of FY 2008-09 and FY2009-10 Proposition 1B State Local Partnership Program (SLPP) Account funds (GM Memo No. 09-197) [Request to forward to the Board of Directors the same day for action pursuant to Board Policy 100, section 5.5.4.].

There was no discussion of the item.

**MOTION: PEEPLES/DAVIS** that the item meets the criteria for same day action by the Board of Directors (7-0-0-0).

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

Director Harper inquired as to what the District was matching the SLPP funds with. The General Manager responded that matching funds would come from Prop 1B and preventive maintenance funds. Deputy General Manager Jim Gleich reported that this was not jeopardizing money for operations.

[While the resolution was adopted by the Board of Directors, the Board requested that]
an a-memo be provided at the next meeting with information to address the question concerning the matching funds.]

**MOTION: PEEPLES/ORTIZ** to adopt [Resolution No. 09-047] authorizing the General Manager to file and execute applications and funding agreements with the California Transportation Commission for allocations of FY 2008-09 and FY2009-10 Proposition 1B State Local Partnership Program Account funds (6-1-0-0).

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

14. Consider approving the fourteenth amendment to the General Counsel's employment agreement (BRD Memo No. 09-135).

There was no discussion of the item. Directors commented on the timing and justification for the amendment as well as the General Counsel's performance.

**Public Comment:**
Joyce Roy commented on the timing of the contract amendment given a fare increase and service cuts.

**MOTION: PEEPLES/WALLACE** to approve the fourteenth amendment to the General Counsel's employment agreement (5-2-0-0).

Ayes:      Vice President Peeples, Directors Wallace, Harper, Davis, President Fernandez – 5  
Noes:      Directors Ortiz, Young – 2  
Abstain:   None – 0  
Absent:    None – 0

15. Discussion regarding the Board meeting schedule for the months of August and September, October (verbal).

**Consensus** to schedule meetings as follows for the months of August, September and October as follows:

- August 19, 2009 – Committee meetings if necessary;
- August 26, 2009 – Board Budget Workshop (scheduled for 1:00 p.m.); Board of Directors meeting if necessary;
- September 9, 2009 – the Operations Committee, External Affairs Committee and Board of Directors to meet;
- September 23, 2009 – Public hearing regarding service reductions in Special District 1 only (2 and 5 p.m.)
September 30, 2009 – Meetings in Fremont. The Finance and Audit Committee, Planning Committee, and Board of Directors to meet; Public hearing regarding service reductions – 6:00 p.m.
October 14, 2009 – Retirement Board interviews (7-0-0-0).

16. 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.)

**AB 744 (Torrico) - Transportation: toll lanes: Express Lane Network:**

Director Ortiz reported that she had been contacted by the Sierra Club regarding the District’s position on AB 744 (Torrico) and it had been requested that the District take a watch position on the bill.

Vice President Peeples noted his opposition to the bill and distributed information on the committee analysis of the bill now in the senate (Exhibit A to the minutes). He reported that bonding capacity would be taken away from the bridges and used to build highways that serve urban sprawl, noting that there is no money for I-80 and that the first $2 billion would be used for the BART to San Jose Project. He further reported that the District had erroneously been listed as supporting the bill.

**MOTION: PEEPLES/HARPER** to approve an **OPPOSE** position on AB 744 (Torrico).

Discussion continued. Director Davis expressed concern with the notion that the District’s lobbyist had not provided a detailed analysis of the bill. Deputy General Manager Jim Gleich suggested that the matter be tabled until a detailed analysis could be provided by Suter, Wallauch, Corbett and Associates. He further advised that the District’s current position on the bill was “support if amended”.

**SUBSTITUTE MOTION: ORTIZ/DAVIS** to table action on SB 744 (Torrico) until an analysis of the bill can be provided (7-0-0-0).

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

**AB 798 (Nava): California Transportation Financing Authority: toll facilities:**

Mr. Gleich reported that the bill originally had not included bus projects; however, it was amended to include them.
MOTION: ORTIZ/PEEPLES to approve a change in position on AB 798 (Nava): California Transportation Financing Authority: toll facilities, to a SUPPORT position (6-0-0-1).

Ayes: Director Ortiz, Vice President Peeples, Directors Harper, Davis, Young, President Fernandez – 6
Noes: None – 0
Abstain: None – 0
Absent: Directors Wallace (out of seat) – 1

AB 1072 (Eng): Public Transportation Modernization, Improvement, and Service Enhancement Account:

Mr. Gleich reported that the bill was transit friendly in that it allows flexibility with I-bond money.

MOTION: HARPER/ORTIZ to recommend a change in position on AB 1072 (Eng): Public Transportation Modernization, Improvement, and Service Enhancement Account, to a SUPPORT position (6-0-0-1).

Ayes: Directors Harper, Ortiz, Wallace, Davis, Young, Vice President Peeples, President Fernandez – 6
Noes: None – 0
Abstain: None – 0
Absent: Director Wallace (out of seat) – 1

SB 535 (Yee): High-occupancy vehicle lanes:

Mr. Gleich reported that the bill establishes utilization of HOV lanes following the sunset of the allowance for hybrid vehicles. It would allow these lanes to be utilized by partial zero emission vehicles that reach 65 miles per gallon. Director Ortiz reported that the bill was aimed at Tesla vehicles.

MOTION: DAVIS/HARPER to recommend a change in position on SB 535 (Yee): High-occupancy vehicle lanes, to a WATCH position (3).

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

17. Report on actions(s) taken during Closed Session [Will be reported after the conclusion of Closed Session.]
The General Counsel reported out on the following actions taken during closed session:

**MOTION: PEEPLES/WALLACE** to approve settlement in the amount of $36,000 in the matter of *Chandra Datt v AC Transit*, Alameda County Superior Court Case No. HG08-410623 (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

**MOTION: PEEPLES/WALLACE** to approve settlement in the amount of $75,000 in the matter of *Julien Cheng v AC Transit*, San Mateo County Superior Court Case No. CIV 479418 (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

**Board/Staff Comments (Government Code Section 54954.2)**

**Agenda Planning**

**Referred to External Affairs**
Director Harper requested to receive a report on the costs associated with webcasting Board meetings (Also requested by Vice President Peeples).

**Referred to Planning**
Director Harper requested a report on the District’s policy concerning time connections between buses and what the capability and attitude is to recognize these connections.

**Referred to Operations Committee**
President Fernandez requested regular reports regarding on-time performance and the availability of the information on the District’s website.

**CLOSED SESSION:**

- **Conference with Legal Counsel – Potential Litigation:**
  (Government Code Section 54956.9 Subdivision (b)) (One Case)

- **Conference with Legal Counsel – Existing Litigation:**
  (Government Code Section 54956.9 Subdivision (a))
- *Datt v AC Transit*, Alameda County Superior Court Case No. HG08-410623
- *Cheng v AC Transit*, San Mateo County Superior Court Case No. CIV 479418

**Conference with Real Property Negotiator:**
(Government Code Section 54956.8)

Property: 901-1001 66th Avenue, Oakland, CA  
Negotiator (City of Oakland): Frank Fanelli  
Negotiator (Property Owner): Negotiator (AC Transit): Rick Fernandez, General Manager  
Kenneth C. Scheidig, General Counsel  
Under Negotiation: Instructions to negotiator regarding pricing and terms of payment.

**Conference with Labor:**  
(Government Code Section 54957.6)  
Agency Negotiator: General Manager  
Employee Organization: Paratransit, Local 192, ATU Local 192, AFSCME, Local 3916; IBEW, Local 1245 Unrepresented Employees

**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 8:55 p.m. The next meeting of the Board of Directors is scheduled for Wednesday, August 26, 2009.

Respectfully submitted,

Linda A. Nemeroff  
District Secretary