



**ABAG PLAN CORPORATION
Board of Directors Annual Meeting
Planning Meeting
Wednesday October 22, 2008**

**Coyote Point Yacht Club
San Mateo, CA 94401
Millbrae, CA 94030**

Presiding

Emma Karlen, Chair

Jurisdiction

Milpitas

Committee Members Present

Bronda Silva
Richard Ramirez
Jesus Nava
Jill Lopez
Brian Dossey
Sandy Abe
Julie Carter
Alvin James
Kristi Chappelle
LeeAnn McPhillips
Hector Lwin
Kathy Leroux
Nick Pegueros
Orry Korb
Jack Dilles
John Becker
Cecilia Quick
Jim O'Leary
Jeff Maltbie
Shawn Mason
Michael Taylor
Jim Steele
Herb Lester
Jean Savaree

American Canyon
American Canyon
Burlingame
Campbell
Colma
Cupertino
Dublin
East Palo Alto
Foster City
Gilroy
Half Moon Bay
Hillsborough
Los Altos Hills
Los Gatos
Morgan Hill
Newark
Pacifica
San Bruno
San Carlos
San Mateo
Saratoga
So. San Francisco
Suisun
Woodside

Committee Members Not Present

Jerry Gruber
Heather McLaughlin
Patrick Alvarez
Angela Howard

Atherton
Benicia
Los Altos
Portola Valley

Gary Broad
Jeff Killian
Heidi Bigall

Ross
Millbrae
Tiburon

Representative

Peter Urhausen

Pacifica, Legal Counsel

Staff Present – ABAG PLAN Corporation

Henry Gardener, President
Marcus Beverly, Risk Manager & Secretary
Ken Moy, Legal Counsel
Angela Salsbury, Claims Manager
Gertruda Luermann, Analyst
Carol Taylor, Recording Secretary

1. Call to Order:

Emma Karlen called meeting to order at 9:30 a.m. Quorum was present.

2. Public Comments:

None

3. Approval of Minutes for Board of Directors Meeting June 11, 2008

Minutes of June 11, 2008 approved as submitted.

/M/Julie Carter/S/Jim O’Leary/C/unanimously approved

4. Overview of Recent Activity

Emma Karlen presented an overview of recent Board and Executive Committee activities related to the continuing review of the PLAN’s strategic objectives and how they shaped the day’s agenda.

5. Loss & Net Asset Allocation

Marcus Beverly, Risk Manager, presented options for determining the allocation of pooled losses and any remaining net assets or liabilities of the PLAN upon termination. The presentation was a summary of the results of extensive analysis prepared by the PLAN’s actuary and presented to the Executive Committee. The Committee narrowed the focus to three of the options presented and made a recommendation for one of them.

The three options are based on allocating losses pro-rata by premium (loss funding) by member for each year. A member paying 5% of the total premium in a given year is allocated 5% of the total losses for that year. Option 7 presented uses this approach with no modifications.

The other two options presented modify this formula by allocating the losses differently until a certain threshold is reached, then allocating the remaining losses pro-rata by premium. Option 3 presented allocates a member’s loss 50%-50% between the member and the rest of the members until the loss(es) reach twice the premium paid that year. This prevents a member from having a “negative” year greater than the amount of their premium, unless paid losses for the PLAN as a whole are greater than twice the premium paid, and is referred to as -100% Premium Cap.

Option 5 presented allocates a portion of each loss up to a loss cap of \$250,000, less the deductible and multiplied by the member’s Credibility Factor (CF). The CF is a percentage based on the relative payroll size of each member, calculated each year by the PLAN’s actuary for determining premium. The largest members have a 90% CF and the smallest 10%. The

presentation included a chart illustrating how the formula works for each member, with several members used as an example of how the loss cap works.

After discussion and review Board Members approved Option 5, \$250K Credibility Weighted Loss Cap, for allocation of pooled losses and the remaining net assets or liabilities of the PLAN upon termination. /M/Emma Karlen/S/Orry Korb/C/unanimously approved.

6. Exposure for Regulatory Inverse Tail Claims

Ken Moy presented the results of a member survey regarding land use decisions and the PLAN's exposure to Inverse Tail Claims. Eighteen members responded, representing 68% of the total premium, with a total of 15 pending or expected claims reported. Members reported 14 enactments affecting the use of land since 2000, including ballot measures, inclusionary zoning, TOD zoning, and adult business regulations.

Moy discussed the exposure represented by the results and provided an estimate of the missing data based on the size of the members who have yet to respond. Members discussed the results briefly and were able to confirm if their jurisdiction responded.

7. Strategies for Reducing and Funding Inverse Tail Claim Exposure

Marcus Beverly provided an overview of various options for managing the PLAN's exposure to regulatory inverse tail claims. All involve a retroactive contract revision to modify the coverage language and/or restrict the funding available for inverse-related claims. The strategies depend on the perceived risk of the exposure and vary in difficulty and effectiveness. Amending the Bylaws is less difficult but also potentially less effective than amending the Risk Coverage Agreement. The presentation included a chart outlining the options in relation to their difficulty, exposure, and effectiveness.

The suggested options for revising the coverage or governing language included:

- Claims Made approach – limit coverage to those claims first made within a certain time period, such as in the last five years.
- Warranty approach – limit coverage to claims disclosed in survey of potential claims
- Retroactively apply the 2008 MOC inverse exclusion language
- Members agree not to file regulatory inverse claims or use litigation as precedent

The suggested options for financing included:

- Sub-limit of \$1 million or less
- Optional coverage with separate pool of funding and participation
- Special loss allocation – 50-50%, no cap?
- No loss sharing – loan/banking plan only
- Loss Portfolio Transfer (LPT) to insurer

Members were asked to consider the options and encouraged to think of other options while taking a break for lunch.

Break – Lunch

8. Next Steps

Members discussed the options in four groups of four to five members each for about thirty minutes, occasionally asking questions of staff for feedback. Each table's representative reported out to the group regarding their discussions and their conclusions.

Roundtable Feedback

Alvin James

Difficult to define conclusions from tail survey
Strong feelings re original intent
Sublimit of \$1 million lifetime

John Becker

Retro date for claims @ three years
Warranty approach has flaws (reporting)

Shawn Mason

Do nothing to reduce tail. Too hard – unanimity is a major obstacle
Funding options? Concluded that efforts would not be cost effective

Jim Steele

All members complete survey by 12/31/08, restrict coverage to survey
\$1 million cap per member

Members then discussed the differing opinions as a group, with the pros and cons of taking some action v. doing nothing debated. Members agreed the survey results needed to be completed and analyzed.

After discussion and debate, a motion was made /M/Karlen/S/Dilles/ to:

- Reaffirm the intent of the members to exclude regulatory inverse claims
- Place a lifetime cap of \$1 million per member for any regulatory inverse tail claims above the applicable deductible.
- Use the 2008 MOC inverse exclusion language to determine whether or not the regulatory inverse limit applies.

Members discussed the motion at length, including how the cap would apply and whether or not to give the Board the authority to make that determination. Some members expressed concern that the cap was too high. A motion was made to amend the motion on the floor to reduce the lifetime cap from \$1 million to \$250,000. /M/James/S/Maltbie

Further discussion ensued on the new motion, with members expressing concern over the amount and the political reality of getting councils to pass without some kind of financial incentive. Staff clarified the exposure is to defense costs only, since damages based on inverse are not covered.

A vote on the amended motion was taken, with 5 yes votes and 16 opposed. Motion is not approved and further discussion takes place on the original motion. Members clarify the deductible would still apply and unless further action is taken the losses would be allocated among members in the same manner as other claims.

A motion to amend was made to remove the original intent language /M/Taylor/S/James, but after further discussion and clarification regarding how the proposed language would be structured the motion was withdrawn.

After discussion, a vote was taken with 12 votes for and 9 opposed, the motion is approved.

Given the nature of the discussion and the close vote, discussion continued to determine the sticking points for those who voted no.

Maltbie stated the size of limit was the issue. He voted for the \$250,000 cap and expressed a desire to determine how many members would vote for the amendment without the cap. He is concerned about negotiating against a few members and that the trust among the members needs to be restored for the pool to be effective.

Korb stated nothing had changed his opinion that it is unlikely to get the proposed changes passed by the councils. He is concerned about discussion of members leaving or the pool breaking up when the risk is likely not that great but still largely unknown. He would like to see the surveys completed and further analysis before determining whether or not action is necessary.

Others expressed similar concerns regarding the size of the cap, fully understanding and exploring any rights that may be waived, and whether or not it would be better to approach councils to obtain City Manager authority to make such business decisions before coming to some agreement. Gardner stated both sides must compromise to close the door on the past, limit the exposure, and move forward, and he stated if the Board can't agree it would be difficult for the councils to agree.

After further discussion, staff agreed to work with members to get the surveys completed and analyzed and bring to the Executive Committee the basic structure needed to carry out the approved motion. In the meantime, staff will continue to work with members to get them informed and engaged in the process and develop additional strategies for moving forward.

9. Strategic Planning Discussion

Item 9 was tabled for future discussion and action.

10. Other Business:

None

11. Adjournment:

Karlen adjourned the meeting at 3:25 p.m.

Respectfully Submitted,



Marcus Beverly
Risk Manager and Secretary