



Association of Bay Area Governments

SUMMARY MINUTES

BOARD OF DIRECTORS – 18th Annual Meeting

May 19, 2004 - 12:30 p.m.

The Westin Hotel Aspen Room

1 Old Bayshore Highway

Millbrae, CA 94030

PRESIDING:	Jack Dilles, Chair	Morgan Hill
MEMBERS PRESENT:	Jim Steele	So. San Francisco
	Pamela Thompson	San Bruno
	Joni Patillo	Dublin
	Maureen Cassingham	Los Altos Hills
	Cathleen Boyer	Saratoga
	Rob Sousa	Benicia
	Debra Ryan	Half Moon Bay
	Larry Anderson	Burlingame
	Alex McIntyre	Tiburon
	Angela Howard	Portola Valley
	Greg Sam	Atherton
	Alicia Espinoza	Millbrae
	Liz Wessman-McGee	American Canyon
	J. Logan	Los Altos
	Cecilia Quick	Pacifica
	Sandy Salerno	East Palo Alto
	Gretchen Conner	Campbell
	Jesse Takahashi	Campbell
	Martha Debry	Hillsborough
	Ronda Rivera	Suisun City
	Ed San Diego	Belvedere
	Leslie Carpentiers	Belvedere
	Emma Karlen	Milpitas
	Barbara Lathrop	Newark
	Kristi Chappelle	Foster City

MEMBERS ABSENT: Orry Korb Los Gatos
 Diane McGrath Colma
 Sandy Abe Cupertino
 LeeAnn McPhillips Gilroy
 Gary Broad Ross
 Jeff Maltbie San Carlos

ALSO PRESENT: Shawn Mason San Mateo

STAFF PRESENT: Eugene Leong, President
 Henry Gardner, ABAG Deputy Executive Director
 Marcus Beverly, Risk Manager
 Joseph Chan, Chief Financial Officer
 Kenneth Moy, Legal Counsel
 Angela Salisbury, Claims Manager
 Carol Johnson, Secretary

CONSULTANTS: Dennis Mulqueeney – Driver Alliant Insurance Services
 Seth Cole – Driver Alliant Insurance Services
 Mike Harrington – Bickmore Risk Services
 Cathie Bigger-Smith – Bickmore Risk Services

1. Call To Order: Chairman Jack Dilles called the meeting to order at 12:40 p.m. A quorum of 24 members was present.

Welcome: Opening remarks were made by Jack Dilles, Chair. Recognition and appreciation for a job well done by Marcus Beverly, ABAG Plan Staff and Board Members.

Introductions: Board members, ABAG Plan staff and consultants gave personal introductions.

2. Public Comments: None

3. Approval of Minutes: October 8, 2003 Board of Directors' meeting minutes approved as presented. /M/Dilles/S/Salerno/C/ unanimously approved.

4. Business Meeting:

A. Election of Officers FY 2004-2005: The Executive Committee nominated Orry Korb of Los Gatos as ABAG Plan Corporation Chair and Jim Steele of So. San Francisco as Vice Chair for fiscal year 2004-2005. The Board agreed to approve their nominations. /M/Conner/S/Sousa/C/ unanimously approved.

B. Committee Appointments: one vacancy on both the Claims and Actuary Committees need to be filled. Heather McLaughlin of Benicia volunteered prior to the meeting for the Claims Committee appointment, and Jack Dilles of Morgan Hill volunteered for the Actuary Committee. Staff also pointed out there are several members who need to appoint alternates for their Board of Directors positions.

C. Meeting Schedule FY 2004-2005: the Board reviewed and approved the proposed meeting schedule and list of committee members. Approved as presented /M/Quick/S/Ryan/C/.

Marcus Beverly informed the Board that the up-coming planning meeting in October will be a day and a half session with an outside facilitator. The meeting place will most likely be in the City of Pacifica. The exact location is still being researched. Focus will be on long-term funding of the PLAN.

5. The Year in Review: Eugene Leong presented his annual report on the past year's goals and accomplishments. There have been ups and downs and growth periods in the municipal pool to achieve the present membership of 31, and we are hoping to add a 32nd member as of July 1. Given there are 101 cities and towns in the Bay Area the PLAN represents almost 1/3 of them and is the largest public municipal liability pool in Northern California. He reflected upon past presentations to provide an overview of some of the PLAN's challenges and accomplishments.

Attorney fees to defend claims were a previous focus and he suggested that performing legal audits as in times past will help to lower the cost of legal fees. Because of our long emphasis on police training police claims have declined. Increase in water and sewer claims as in the past continue to be a problem. In the way of technology, a new claims management has been implemented and improved the ability to exchange information between jurisdictions. Budget constraints and deferred maintenance are still a threat and continue to impact the number of claims. Board members should continue to put emphasis on and work through the potential threats to the pool.

6. Actuary Committee Report:

A. Actuarial Review of the Self Insured Liability Program FY 2004-2005

Michael Harrington of Bickmore Risk Services presented his firm's report, including a calculation of the PLAN's outstanding liabilities as of 06/30/2004 and member deposits for funding expected losses for FY 2004/05. Estimated cost of claims and expenses incurred during the 2004-05 program years are projected to be \$4,210,000, including ALAE and a discount rate of 4% for anticipated investment income. Estimated liability for outstanding claims is projected to be \$13,433,000 as of June 30, 2004.

Funding recommendations for FY 2004/05 with a \$10 million per occurrence limit, assuming \$5 million, \$7 million and \$10 million PLAN retentions, were presented. Excess insurance is estimated to cost \$450,000 for a \$5 million retention and \$340,000 for a \$7 million retention. Administrative funding is estimated at \$2,000,000. Total funding for a \$5million retention is \$6,660,000.

B. Renewal Options for Liability and Property Programs:

Dennis Mulqueoney, Vice President, Driver Alliant Insurance Services presented his firm's activities and results in marketing the PLAN's excess liability and property coverage for FY 2004/05.

Property Renewal Comparison:

Mulqueoney presented a property renewal comparison for this year and next showing that the PLAN's Total Insurable Value (TIV) increased slightly, 0.20%, resulting in a slight increase in overall premium. However, the rate per \$100 TIV is expected to be at or slightly below our current rate of \$0.056. Focus for next year will be in continuing member property appraisals for buildings over \$5 million.

Excess Liability:

Mulqueeny discussed the options for renewal of the excess liability coverage. Our current coverage is with an AIG insurer, with limits of \$5 million excess a \$5 million PLAN Self Insured Retention (SIR), for \$425,000. Of the eight markets considered, only AIG and Markel were willing to provide a quote, and only AIG had quoted by the time of the meeting. The quote for renewal of our existing coverage is \$450,700, a 5.8% increase.

Dennis also presented two options from AIG. Option 1 = \$10MM limit excess a \$5MM SIR, a total limit of \$15MM, for \$657,000. Option 2 = \$10MM excess of a \$10MM SIR, a total limit of \$20MM, for \$427,500. Quotes are subject to receipt and satisfactory review of applications. Two member cities at present have not submitted renewal applications.

Mulqueeny recommends over the long term that ABAG provide increased limits per member. He presented a list of other pools and municipalities in the state and the limits they provide. Most were above the \$10MM limit currently provided PLAN members. He also presented a list of top public entity verdicts in 2003, jury verdict trends, and other cases known to AIG and ABAG.

C. Funding Options and Recommendations:

Marcus Beverly presented a staff report outlining the Liability and Property Program funding options and committee recommendations, including how the options compare to the benchmarks and goals of the PLAN Funding Policy. He presented charts showing liability fund balances as of 6/30/03 and projected as of 6/30/04.

Fund balances as of 6/30/03 were better than predicted in last year's Bickmore Study, primarily due to less than expected payments of claims, resulting in higher than expected total assets.

Another chart presented comparisons of this fiscal year and projections for next year, showing changes in the balances and benchmark ratios. Total assets increased 12.5%, total liabilities increased 19.5%, and net assets or Total Fund balance increased 10.5%. The SIR Fund increased 13.2%, from \$19.5MM to over \$22MM. As a result, the Total and SIR Fund ratios also increased 10.5% and 13.2%, respectively.

Beverly stated that with current funding levels and recommended benchmarks the PLAN could raise its SIR to \$10MM. However, his recommendation was to maintain the current \$5MM SIR for at least one more year. This is based on the fact we are still absorbing the impact of a change in actuaries and because the last two years have so far been worse than expected. Staff believes another year will help us decide how much to leverage the fund balances, and the Board is expected to review our long-term funding strategy at the next strategic planning meeting. In addition, the increase of 5.8% in the existing coverage is acceptable in this market.

The Board was requested to approve funding of both programs for FY 2004/2005 and the revisions to the Funding Policy as presented in the staff report. Beverly also asked the Board to approve the actuary report and funding for the property pool at the same rate as this year.

Motion made to approve funding for FY 2004/05 with a \$5 million SIR and \$5 million excess insurance policy, as presented in the actuary report, and to maintain funds in excess of the 90% confidence level in the SIR Fund, as recommended by the Actuary and Executive Committees. Anderson also included direction that for FY 05-06 the Board should consider alternate levels of funding, such as self-insuring another layer above the excess insurance to obtain a higher per occurrence limit. /M/Anderson/S/Conner/C/ unanimously approved.

Board approved Actuary Report as presented: /M/McIntyre/S/Debry/C/ unanimously approved.

Committee approved the revised Funding Policy as presented: /M/Ryan/S/Karlen/C/ unanimously approved.

Board requested to maintain property premium rate same as current for next year: Approved by consensus.

Break

7. Risk Management Committee Report

C. San Mateo Application for Membership

Beverly next presented item 7.C. on the agenda, City of San Mateo Application for Membership, while at least a 2/3 majority of the Board was present to vote and while Mr. Mason was able to attend.

Beverly presented the staff report for the Board and discussed activities to date in working with San Mateo to consider membership. While the city would be the largest PLAN member they do not present any exposures not already shared by various pool members. The city enjoys a relatively favorable loss history and has in place a number of programs to manage its claims. Staff wants to review open sewer claims and practices and complete an underwriting review by an outside consultant as a condition of accepting them as a member.

Board members questioned Mr. Mason about various aspects of the City's operations, including current use of contract defense counsel. Larry Anderson pointed out need to assign defense of claims to counsel based on established procedures and approved list. Staff and San Mateo agree will need to have current counsel reviewed and approved by Claims Committee and new cases reviewed by Claims Manager for assignment.

Board motion to accept San Mateo membership contingent on completion of underwriting assessment and review of open claims, per staff recommendation. /M/Salerno/S/Patillo/C/ approved via roll call vote.

A. Risk Management Assessments

Cathie Bigger-Smith made a presentation outlining progress so far in completing member assessments, preliminary findings, potential loss exposures, and best practices. The findings include a need for more awareness of and accountability for risk management issues, to avoid "invisible" cost drivers and over-reliance on risk financing and governmental immunity as the primary means of control. She also highlighted need for more control over outsourced functions, to ensure contractors are following safety procedures, and training of staff in how to respond to claims when they occur.

Among the measures that are working and best practices discovered thus far, she has found police car cameras and sewer loss prevention ordinances have been effective. Other good practices include driver selection, monitoring and training programs; proactive tree, sidewalk and park inspection and maintenance programs; use of community service volunteers or field staff to identify and report potential hazards; and safety committees broadening scope to include more general risk management topics.

B. Risk Management Program Funding

Marcus Beverly presented the staff report outlining the various risk management programs and recommended funding levels for 04-05. Changes to current programs include increasing the grant amounts for risk

management training to \$1,000 and for police equipment to \$10,000. The equipment grant would also be expanded to allow for purchase of tasers as well as video cameras.

Staff also recommended the creation of a general risk management fund to allow for flexibility in funding programs as they are proposed throughout the year. Currently staff would like to proceed with a pilot program for repairing sidewalks with a new method of slicing the concrete.

Committee approved funding of the various programs FY 2004-2005 as presented.
/M/Steele/S/San Diego/C/ unanimously approved.

8. Governing Document Revisions

Bylaws – Committees:

Staff presented recommended changes to the Committees section of the PLAN Bylaws, as outlined in the staff report. The Risk Management and Finance Committees are being added to the Bylaws, while the description of the roles of the remaining committees have been updated to reflect current practices.

Board approved recommended changes in Bylaws as presented.
/M/San Diego/S/Conner/C/Unanimously Approved

Memorandum of Coverage:

Staff presented a memo outlining proposed changes to the Memorandum of Coverage. The most significant coverage change is the addition of coverage for Employee Benefit Plan Administration Liability, with a \$250,000 limit. Other changes include condensing the format to one set of insuring agreements and one set of exclusions, clarifying the extent of the duty to defend, requiring a dispute resolution procedure, and providing coverage for certain financial investment activities.

A discussion followed among the Board members, staff and Legal Counsel regarding various issues outlined in the memo and the MOC revisions. Cecilia Quick provided feedback regarding a legal analysis she requested of the proposed changes. Of specific concern was the breadth of the inverse exclusion and the exclusion of attorney fees in the definition of "damages". Pamela Thompson also indicated her concern over these issues.

Ken Moy outlined his views on the interpretation of the inverse exclusion and the rationale for keeping the language broad. Beverly stated he provided sample exclusions with an exception for property damage arising from negligence, including the exclusion in the PLAN excess insurance policy, for consideration, but the committee did not recommend a change. He provided an example of how the exclusion is interpreted in a current claim, in which it is alleged a member's leaky sewer line contributed to a landslide. The PLAN has defended the suit and property damage arising from failing to properly maintain the line would be covered. Claims arising from inverse, nuisance and trespass would not, including plaintiff attorney fees available under inverse theories.

The inverse exclusion and the lack of coverage for attorney fees awarded as damages work together to limit coverage for these claims. In addition, civil rights violations and other types of claims can also generate the potential for plaintiff attorney fees to be awarded. This is an issue in those claims, and although most of the time the claim is settled without an award of fees, there have been claims in which the member contributed a portion of the settlement attributable to attorney fees.

Since neither of these provisions were changed from the current version of the MOC, but further discussion of these and other issues would be beneficial, Sandy Salerno made a motion to approve the revised MOC as presented conditioned upon the Coverage Review Committee continuing to meet and discuss proposed changes to the MOC, including those issues outlined in the legal review. Pamela Thompson was invited to participate in the committee, consisting of several Board members who are City Attorneys.

Committee approved recommended Changes in Memorandum of Coverage as presented, with further review of issues presented at the meeting. /M/Salerno/S/Steele/C/ unanimously approved.

9. Financial Summary Report

A. Investment Performance Report

Joseph Chan presented the PLAN's investment performance report for the past year for Board approval. In addition the Board was asked to approve a minor change in the Investment Policy.

Approved as presented: /M/San Diego/S/Salerno/C/ unanimously approved.

B. Audited Financial Statements as of June 30, 2003 for board approval:

Chan next presented the audited financials and confirmed the PLAN received an unqualified opinion from the auditors. Total assets as of June 30, 2003 were \$41,602,323, with \$39,210,711 in the Liability Program.

Salerno requested a copy of the management letter that accompanied the audit and Chan stated he would provide it after the meeting. Audited financials approved as presented: /M/Conner/S/Patillo/C/

C. Investment Policy Revisions

Chan presented this as part of the Investment Performance Report and revisions were approved along with motion to approve that report. The only change was removing Corporate Notes from the 30% limit applicable to callables and placing them in the category with Commercial Paper, which carries a 10% portfolio limit.

10. Claim Committee Report

Beverly presented a staff report concerning the Claim Committee's activities for the year, including the results of our most recent claims audit and reports showing claims by cause, frequency and severity. He pointed out the last two Program Years are currently worse than average, with total incurred for both 01-02 & 02-03 over \$5 million. However, so far in 03-04, sewer claims are on average 50% less than 02-03, and staff believes we will be able to maintain a lower average cost with the implementation of new procedures and vendors.

Beverly also presented a staff report and revised Claim Policy, to include a newly revised section 3.3 entitled Coverage Determination. That portion of the policy was not approved at the last Board meeting, pending further revision to make the appeals process more clear, add a 90-day time limit to appeal, and include a process for binding arbitration to resolve coverage or payment disputes.

Board approved as presented: /M/San Diego/S/Salerno/C/

11. Administrative Budget FY 2004-2005

Beverly next presented the projected administrative expenses for next year, a total of \$1,999,613. The total funding will be \$2 million, as presented in the actuary report. This represents a 7% increase in expenses, with 5% attributed to personnel costs and the remaining increase primarily due to increased outside legal and other consulting expenses.

In addition, staff requested approval to fund replacement of one company vehicle and cost of litigation management audit from the liability fund, if needed. If San Mateo joins the administrative funding they provide may be used for the audit, in addition to providing resources as needed to integrate them into the pool. Our staffing plan will be reviewed based on their entering the pool.

Salerno objected to approving an increase in the administrative budget, given the current budget difficulties encountered by a number of our members.

Board approved the budget as presented: /M/Anderson/S/San Diego/ approved, with Sandy Salerno voting no due to the increase.

12. Other Business: None presented.

13. Adjournment: Dilles adjourned the meeting at 4:15. p.m.

Respectfully Submitted,



Marcus Beverly
Risk Manager & Secretary

/cj