

**Summary Minutes
Draft**

**Board of Directors Special Meeting
Auditorium
101 8th Street
Oakland, CA 94607-4756
February 2, 2010
9:00 a.m. – 12:00 p.m.**

Teleconference Locations

City of Gilroy
Lee Ann McPhillips
Human Resources Dept. Offices
7351 Rosanna Street
Gilroy, CA 95020

City of Milpitas
Emma Karlen
City Hall
455 East Calaveras Blvd.
Milpitas, CA 95035

City of Newark
Gary Galliano
37101 Newark Boulevard
Newark, CA 94560

Town of Hillsborough
Kathy Leroux (of Hillsborough)
Gus Guinan (of Burlingame)
Michael Dolder (of Half Moon Bay)
Town Hall
1600 Floribunda Ave
Hillsborough, CA 94010

Presiding:

Laura Allen, Chair

Jurisdiction

Colma

Board Members Present (in addition to members at teleconference locations above)

Bronda Silva
Connie Jackson
Gary Broad
Michael Martello
Heather McLaughlin
J. Logan
Jeff Maltbie
Jesse Takahashi
Julie Carter
Jim Steele
Kathy Mount
LaRae Brown
Kristi Chappelle
Rebecca Burnside

American Canyon
San Bruno
Ross
Los Gatos
Benicia
Los Altos
San Carlos
Campbell
Dublin
South San Francisco (outgoing)
South San Francisco (incoming)
Millbrae
Foster City (outgoing)
Foster City (incoming)

Board Members Present (Cont.)

Alvin James	East Palo Alto
Mark Joseph	Suisun City
Michael Taylor	Saratoga
Shawn Mason	San Mateo
Susan George	Woodside
Kevin Bryant	Woodside (alternate)
Danny Wan	Morgan Hill
Carl Cahill	Los Altos Hills

Staff

Henry Gardner	ABAG PLAN President
Bob Lanzone	PLAN General Counsel
Kenneth Moy	ABAG General Counsel
Darrell Dearborn	ABAG PLAN Interim Risk Manager

1. Call to Order & Introductions

The meeting was called to order at 9:07 a.m. by Chair, Laura Allen. Ms. Allen recognized Kristie Chappelle of Foster City and Jim Steele of South San Francisco for their service on the Board as their current terms ended at this meeting, and introduced Rebecca Burnside and Kathy Mount, newly appointed Board Members from Foster City and South San Francisco, respectively.

2. Public Comments

None were received

3. Approval of Minutes for Board Meetings of August 17, 2009, November 4, 2009 and November 5, 2009

Motion was made (H McLaughlin) and seconded (S George) to adopt all minutes. Heather McLaughlin noted a correction to the date on the minutes of November 4, 2009 (from 2008 to 2009).

4. Inverse Tail Claims Policy

Kenneth Moy presented his report on the proposed policy to cover inverse claims arising from conditions preceding July 1, 2008. Mr. Moy reviewed the facilitated workshop which was held on November 4, 2009 at which the Board developed the policy contained in the resolution now before the Board (copy attached). The policy includes a requirement that a member sign a waiver agreeing to the conditions regarding PLAN's acceptance of member's first ITC claim tendered to PLAN. Mr. Moy clarified that a person must be designated to sign such waiver on behalf of the Board.

Motion made (B Silva) and seconded (S George) to adopt the resolution establishing the Inverse Tail Claim Policy as described.

Members Voting Aye

American Canyon—Bronnda Silva
San Bruno—Connie Jackson
Milpitas—Emma Karlen
Ross—Gary Broad
Newark—Gary Galliano
Los Altos—J.Logan
Benicia—Heather McLaughlin
Campbell—Jesse Takahashi
Dublin—Julie Carter
Hillsborough—Kathy Leroux
So San Francisco—J Steele
Millbrae—LaRae Brown
Colma—Laura Allen
Suisun City—Mark Joseph
Half Moon Bay—Michael Dolder
Burlingame--Clark “Gus” Guinan
Foster City--Chappelle

Members Voting No

Los Gatos--Michael Martello
San Carlos--Jeff Maltbie
Gilroy--LeeAnn McPhillips
Saratoga—Michael Taylor
San Mateo—Shawn Mason
Woodside—Susan George

Motion made (L Allen) and seconded (J Steele) that the Chair be authorized to sign the waiver on behalf of the Board. Motion passed.

5. PLAN Governance Structure

Laura Allen introduced the governance issue and reviewed the meetings and proposals by the governance sub-committee and Henry Gardner. She expressed her disappointment that agreement had not been reached and asked Mr. Gardner to explain why he had changed his mind. Mr. Gardner said it was because the sub-committee’s proposal now differed from that discussed in the December meeting in two ways: 1) The scope of responsibilities of the new PLAN executive director were now widened to comprise 20-30% of an FTE position to, in part, “oversee” ABAG functions, and 2) ABAG was viewed as a third party administrator to PLAN. ABAG has no interest in serving in that capacity. He explained the history of PLAN as a response to problems member cities had in purchasing insurances in the 1980’s, and ABAG’s willingness to assist cities to overcome those problems through the formation of a public corporation to purchase insurances and provide claims services.

As an alternative to the sub-committee proposal, Mr. Gardner explained his proposal to strengthen the role of PLAN committees in reviewing the annual budget and in the recruitment and selection of the permanent risk manager. Ms Allen asked if Mr. Gardner would accept the sub-committee’s recommendation if there were no RFP for claims services included. Mr. Gardner said yes, but not if the former risk manager is hired in the

PLAN executive director position. The ABAG Executive Director must remain the final authority over hiring and terminating the ABAG PLAN Risk Manager, Mr. Gardner said.

Mr. Steele asked if ABAG will reduce PLAN Oracle costs by \$20,000 to \$30,000 annually as Mr. Pike said could be done. Mr. Gardner said yes, he would include that reduction in the 2010-11 budget.

Mr. Broad said he believed members might be able to buy insurance outside PLAN and asked why ABAG is necessary now. Mr. Gardner replied that ABAG has provided a government solution that understands members' needs.

In response to a question from Ms Allen, Mr. Gardner said he would accept the proposal of the sub-committee dated December 15, 2009, but 1) the ABAG Risk Manager position would need to remain whole, and 2) the former Risk Manager would not oversee ABAG PLAN.

Much discussion ensued regarding an RFP process for claims services, cost allocations by ABAG to PLAN, and the degree to which the ABAG PLAN relationship should be changed. Mr. Mason believed the RFP process was unrelated to the departure of the former Risk Manger and that it was an appropriate step to take. Mr. Gardner said ABAG would not respond to an RFP. Mr. Joseph, Ms George, Mr. James and Ms Chappelle each expressed the view that PLAN was functioning well and did not need to be substantially changed.

Motion by Ms. George, seconded by Ms. Jackson, to accept Henry Gardner's proposal and reevaluate the relationship after one year.

Discussion

Mr. Mason felt the cost allocation plan needs independent review by a third party. Mr. Steele said the Finance Committee members who reviewed the plan in December found the model to be reasonable and found no evidence that PLAN was overcharged, but they did not look at the charges in detail. Mr. Takahashi agreed and felt further review was unnecessary, and said that an RFP for claim services could be conducted at any time and that ABAG did not have to propose.

Mr. Joseph said the fundamental issue is whether PLAN will be autonomous apart from ABAG or partnered with ABAG as it is currently. Real issues were personnel and Board probably did not know the specifics. He did not see the need for a part-time executive director for PLAN.

Mr. James and Ms Chappelle said they believed the Finance Committee could look more closely at the cost allocation expenses and that a new position reporting to the Board would not be needed to do that. Mr. Martello said the Board was a separate corporation

and needed a 'direct report' to it. Mr. Mason and Ms Silva agreed. Mr. Mason said no other pool operates in a relationship like PLAN has with ABAG.

Mr. Martello offered a substitute motion, seconded by Mr. Mason, to approve recommendation #1 of the sub-committee to establish the new executive director for PLAN, and to have the Executive Committee report back in six months with a job description for this position. Discussion on whether this was an amendment to the main motion or a substitute motion. Mr. Lanzone clarified that it was a substitute motion that would also include the main motion.

Roll call vote on the substitute motion:

Members Voting Aye

American Canyon--Silva
Los Gatos--Martello
Benicia--McLaughlin
Los Altos—Logan
San Carlos—Maltbie
Dublin--Carter
Colma--Allen
Half Moon Bay--Dolder
San Mateo--Mason
Burlingame--Guinan

Members Voting No

East Palo Alto—James
Morgan Hill--Wan
San Bruno—Jackson
Campbell—Takahashi
Hillsborough—Leroux
So. San Francisco—Steele
Newark—Galliano
Ross—Broad
Millbrae—Brown
Gilroy—McPhillips
Suisun City--Joseph
Foster City--Chappelle
Woodside—George

Roll call vote on the main motion:

Members Voting Aye

East Palo Alto—James
Woodside—George
San Bruno—Jackson
Morgan Hill—Wan
Ross—Broad
Los Altos—Logan
Newark—Galliano
Dublin—Carter
Hillsborough—Leroux
So. San Francisco—Steele
Millbrae—Brown
Suisun City—Joseph
Foster City—Chappelle
Campbell—Takahashi
Los Altos Hills—Cahill

Members Voting No

American Canyon—Silva
Los Gatos—Martello
Benicia—McLaughlin
San Carlos--Maltbie
Colma--Allen
Gilroy--McPhillips
Half Moon Bay—Dolder
San Mateo--Mason
Burlingame--Guinan

Danny Wan asked that the Marcus Beverley contract be placed on the agenda for the next meeting.

6. Letter from Rose Jacobs Gibson, ABAG President re: Complaint Investigation

Received and filed

7. Consideration of Further Investigation into ABAG Cost Allocation

Mr. Mason said that allegations by Marcus Beverley that PLAN was overcharged by ABAG were not investigated and he believed they needed to be. Mr. Steele said that the documents provided to the sub-committee by Mr. Beverley were taken into account in their review. Mr. Maltbie said he doesn't think PLAN has been overcharged but the overhead rate in the ABAG model plus the direct charges to PLAN seem extremely high, and an independent firm should review the charges closely on behalf of PLAN.

Mr. Broad agreed that a firm should be hired, but not to question alleged overcharging, only to identify and document the fairness of existing charges. Mr. Gardner agreed and urged an independent review to put the issue to rest. Mr. James agreed. Mr. Martello said the firm should be selected by the Board. The study should also look at other pools and see what overhead rates are used in those.

Mr. Mason said he wants the firm to look back at past charges and consider Mr. Beverley's allegations that some positions that PLAN pays for did nothing for PLAN. Mr. Joseph said he did not want an investigation into past charges. Mr. Broad and Mr. Takahashi agreed that the review should establish whether ABAG cost allocations are reasonable going forward and provide a basis to establish a policy for includable costs in the future.

Mr. Mason made a motion, seconded by Mr. Martello, that a consultant be retained to perform a review of charges over the past three fiscal years. He clarified the motion to include use of an RFP process and to allow the Executive Committee to negotiate the final price.

Mr. Wan said he was not aware of the information that justified a review of prior years' charges and questioned the motive of the former employee who made allegations of inappropriate charges. Mr. Steele said he heard Mr. Beverley say that he (Beverley) did not understand how a person could be charged both directly and indirectly, but did not hear him say that people charged their time to PLAN who did no work. Mr. Takahashi said he believes the Finance sub-committee looked at the reasonableness of the cost allocation plan, but that it did not look at the work actually performed by individual employees. Mr. Joseph expressed the concern that the consultant cost may exceed the savings that would be realized and urged that a low cap be placed on the cost of the contract or that it not be approved at all.

Mr. Broad said that it should look back only at the 2009-10 budget to save money and provide results that can be used in the 2010-11 budget. Mr. Takahashi said he thought the consultant should review the current cost allocation model and that shouldn't be very expensive. He said money spent to look back might be necessary to finally put the issue to rest. Ms. Burnside observed that costs of reviewing costs over prior three years could be very expensive.

Ms. Allen asked Mr. Lanzone to comment on Board liability in this matter. Mr. Lanzone said that the main issue is the Board's comfort level with ABAG. The Board does not have liability if it does not do an investigation of past costs.

Mr. Wan offered a substitute motion, seconded by Mr. James that the Board should hire a consultant to look at whether the cost allocation model is reasonable going forward and to identify whether any current charges are unreasonable. The Executive Committee can negotiate the cost of the contract. Mr. Maltbie expressed his concern that the consultant not be expected to say what charges are reasonable, that he wants to know what the best deal would be for these services. Mr. Takahashi said that would require an RFP for administrative services. He said the main issue at hand is whether costs charged now are reasonable. Mr. Martello said that he believed the costs charged PLAN are too high. He invited Mr. Wan to amend his motion to include an RFP process and require the study to look at '07, '08 and '09 charges in rendering a judgment about the reasonableness of charges.

Following discussion, Mr. Wan amended the motion to provide that the consultant should review current direct and indirect charges to PLAN and report his findings to the Board, including recommendations for changes, if warranted, based on professional standards. This review can also include comparative information about such charges paid by similar organizations. Mr. James agreed with the amended motion. Mr. Wan clarifies the amended motion to say that the Board has adequately investigated the allegations by Mr. Beverley and that the study proposed in this motion would not investigate those allegations further.

Roll call vote on the amended motion:

Members Voting Aye

East Palo Alto—James
Burlingame--Guinan
Morgan Hill—Wan
Ross—Broad
Newark—Galliano
Los Altos—Logan
San Carlos—Maltbie
Campbell—Takahashi

Members Voting No

American Canyon—Silva
Los Gatos--Martello
Benicia--McLaughlin
Millbrae—Brown
San Mateo—Mason

Members Voting Aye (Cont.)

Dublin—Carter

Hillsborough—Leroux

So. San Francisco—Steele

Colma—Allen

Gilroy—McPhillips

Suisun City—Joseph

Half Moon Bay—Dolder

Foster City—Chappelle

Woodside—George

8. Other Business

Mr. Dolder noted that the dates on the November 4th and 5th. Minutes should be 2009, not 2008. No other business came before the Board.

9. Adjournment

The meeting was adjourned at 12:15 p.m.