

Draft



**Executive Committee
Special Meeting
Summary of Minutes**

**January 15, 2009
ABAG PLAN Corporation
101 Eighth Street, Oakland, CA
Conference Room B**

Presiding

Emma Karlen

Jurisdiction

Milpitas

Committee Members Present

Julie Carter

Jim Steele

Laura Allen

Shawn Mason

Cecilia Quick

Dublin

So. San Francisco

Colma

San Mateo

Pacifica

Committee Members Not Present

Herb Lester

Jeff Killian

Suisun

Millbrae

Consultant(s)

Peter Urhausen – Attorney

Pacifica

Staff Present – ABAG PLAN Corporation

Marcus Beverly, ABAG PLAN Risk Manager

Gertruda Luermann, PLAN Risk Management Analyst

Carol Taylor, PLAN Secretary

1. CALL TO ORDER:

Emma Karlen called meeting to order at 10:00 a.m.

2. PUBLIC COMMENTS:

There were no public comments.

3. APPROVAL OF MINUTES: SPECIAL MEETING SEPTEMBER 10, 2008:

Minutes of Special Meeting on September 10, 2008, approved as presented.

/M/Steele/S/Allen//C/Unanimously approved.

4. LAND USE SURVEY UPDATE

Marcus Beverly and Ken Moy presented a summary of the responses and analysis of the potential for inverse tail claims. All but three members have responded, representing 95% of total the exposure by premium. Moy estimated of the 30 reported claims or expected claims approximately 50% have some potential, and of the 300 current applications and actions reported approximately 10% have some potential.

The results reflect the exposure to regulatory inverse claims varies but currently is greatest among 6-8 members. The factors differ for each member but include coastal restrictions, limited growth ordinances, zoning restrictions, and amount of developable land. In spite of the disputes that can arise from these issues members have found ways to reach compromise in most cases.

Estimating the financial exposure to the PLAN from those disputes that ultimately become lawsuits is difficult to determine. Legal expenses from single family home disputes have generated as much as \$300,000 to \$400,000 in legal fees, while those from larger developments have generated as much as \$3 to \$4 million.

Beverly reported a new pending land use controversy from the City of Half Moon Bay. Land use claims tendered to PLAN by other members include Pacifica, Morgan Hill, East Palo Alto and Benicia. One of the pending claims has been denied and recently disputed.

While the PLAN does not cover the regulatory inverse exposure, Beverly emphasized it is in the members' best interest to promote and support best practices to avoid or minimize liability from land use decisions, in the same way PLAN does not cover but supports risk management for employment practices liability. Committee members agreed and suggested training resources for planning commissioners and council members through the League of CA Cities. Staff will send announcement reminding members of these resources and availability of grant funds to attend. Staff is also still working with member contacts to present training for PLAN members on this topic.

No action or further direction provided at this time.

5. PROPOSED PROGRAM CHANGES:

Marcus Beverly presented the Board's proposed changes to the Liability Program to limit the exposure to inverse tail claims. A draft memo from the Board to Members outlining the proposed changes was also provided. The committee was asked to review the recommendation and provide direction for presentation to the members' governing bodies for approval.

Committee members discussed the proposed changes and the barriers to implementation, including the complicated nature of the issues and the difficulty of getting all the member city managers together to agree on a solution they could recommend to their councils. Given the Board's split vote for the proposal and the nine members who weren't represented at the meeting, the members expressed concern that moving forward with the proposal would be an exercise in futility.

This concern was supported by the fact that the Committee members themselves could not reach a consensus on a proposal. However, members recognized the need to take some steps before the next Board meeting and discussed among themselves what they felt they could support at this time. Members discussed the pros and cons of various member positions, ranging from doing nothing to dissolving the pool if nothing is done. Members recognized that leaving or dissolving would not eliminate member exposure to tail claims but expressed confidence that the exposure has been eliminated going forward.

The members ultimately decided the best solution may be an interest based facilitation conducted by an outside expert who can lead members in a discussion of their interests, rank them, and help the members achieve consensus on what to do. If a member feels it is in their best interest to leave the pool if the Board's current proposal is not enacted, they can explain why and members can have a chance to decide what can or should be done to reach a consensus.

The Committee made the following recommendation for the Board. The Executive Committee took up the recommended Board action and discussed how best to implement it. Recognizing their was lack of consensus among the Committee members regarding the proposal, and the fact not all members were present to vote on it, the Committee recommends the Board reconsider its recommendation and members participate in an interest-based facilitation at the October meeting, with an open invitation to all member city managers to participate in the discussion. /M/Mason/S/Quick/C/unanimously approved.

6. PLANNING AND OBJECTIVES FOR 2009

Marcus Beverly provided an overview of plans and goals for 2009, including changes to the claims staff, procedures, and software conversion. Included was a discussion of proposed changes to the Memorandum of Coverage to include plaintiff attorney fees in the definition of covered damages.



7. OTHER BUSINESS:

The next meeting date was changed to May 14, 2009.

8. ADJOURNMENT:

Meeting was adjourned at 12:20 p.m. by Emma Karlen.

Respectfully Submitted,

Marcus Beverly
Risk Manager & Secretary
ABAG PLAN Corporation

/cj