



City of Ceres • City of Hughson • City of Modesto • City of Newman • City of Oakdale • City of Patterson
City of Riverbank • City of Turlock • City of Waterford • County of Stanislaus

**EXECUTIVE COMMITTEE MEETING
STANCOG BOARD ROOM
1111 I STREET, SUITE 308
MODESTO, CA
SEPTEMBER 28, 2011 (WEDNESDAY)
3:00 PM**

Board Agendas and Minutes: Policy Board agendas, minutes and copies of items to be considered by the StanCOG Policy Board are available at least 72 hours prior to the meeting at the StanCOG offices located at 1111 "I" Street, Suite 308, Modesto, CA during normal business hours. The documents are also available on StanCOG's website at www.stancong.org/policy-board.shtm.

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Public Comment Period: Matters under the jurisdiction of the Policy Board, and not on the posted agenda, may be addressed by the general public at the beginning of the regular agenda and any off-agenda matters before the Policy Board for consideration. However, California law prohibits the Policy Board from taking action on any matter which is not on the posted agenda unless it is determined to be an emergency by the Policy Board. Any member of the public wishing to address the Policy Board during the "Public Comment" period will be limited to 5 minutes unless the Chair of the Board grants a longer period of time. At a Special Meeting, members of the public may address the Board on any item on the Agenda at the time the item is considered by the Board.

Public Participation on a Matter on the Agenda: Please step to the podium at the time the agenda item is announced by the Chairperson. In order to ensure that interested parties have an opportunity to speak, any person addressing the Policy Board will be limited to a maximum of 5 minutes unless the Chair of the Board grants a longer period of time.

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AGENDA

1. CALL TO ORDER

2. ROLL CALL

3. PUBLIC COMMENTS

The public may comment on each item on the agenda as it arises.

4. CONSENT CALENDAR

A. Approval of Executive Committee Meeting Minutes of 8-17-11

B. Approval of Executive Committee Meeting Minutes of 8-29-11

5. DISCUSSION/ACTION ITEMS

A. Review, Discuss and Possible Action Regarding Local Transportation Fund (LTF) Apportionment 2011/12; Supplemental Funds 2010/11; and Protocols for Future Administration of Transportation Development Act (TDA) Funds

6. EXECUTIVE DIRECTOR'S REPORT

7. ADJOURNMENT

Next Regularly Scheduled Executive Committee Meeting:

October 19, 2011 (Wednesday) @ 5:00 pm

StanCOG Board Room

1111 I Street, Suite 308

Modesto, CA 95354



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**EXECUTIVE COMMITTEE MEETING
StanCOG Board Room
1111 I Street, Suite 308
Modesto, CA**

**Minutes of August 17, 2011 (Wednesday)
5:00 pm**

PRESENT: Chair Bill O'Brien, Vito Chiesa (Stanislaus County); Charles Goeken (City of Waterford)

ALSO PRESENT: Rod Attebery (Neumiller and Beardslee); Vince Canales, Vince Harris, Cindy Malekos (StanCOG)

1. CALL TO ORDER

Chair Bill O'Brien called the meeting to order at 5:00 pm.

2. ROLL CALL

3. PUBLIC COMMENTS-None

4. CONSENT CALENDAR

A. Motion to Approve Executive Committee Meeting Minutes of 6-15-11

***By Motion (Member Charles Goeken/Member Vito Chiesa)**, and unanimous vote, the Executive Committee approved the Executive Committee Meeting Minutes of 6-15-11.

5. DISCUSSION/ACTION ITEMS

A. Discussion – Update on Transit Performance Measures in the Stanislaus Region

Vince Harris provided an update on the transit meetings that had taken place with the five transit operators over the past few months. The intent of these meetings was to gather information and to provide an assessment report to the Policy Board regarding the status of transit in the region currently and potentially in the future. He also highlighted some of the transit legal issues that had been brought up over the past few months involving performance criteria and Transportation Development Act (TDA) issues.

5. EXECUTIVE DIRECTOR'S REPORT-None

6. ADJOURNMENT

The Executive Meeting was adjourned by Chair Bill O'Brien at 5:50 pm.

Next Regularly Scheduled Executive Committee Meeting:

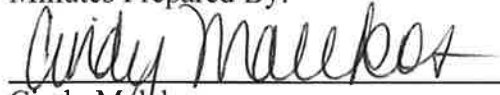
September 21, 2011 (Wednesday) @ 3:30 pm

StanCOG Board Room

1111 I Street, Suite 308

Modesto, CA 95354

Minutes Prepared By:



Cindy Malekos

Personnel & Administration Manager/Public Information Officer



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**EXECUTIVE COMMITTEE MEETING
StanCOG Board Room
1111 I Street, Suite 308
Modesto, CA**

**Minutes of August 29, 2011 (Monday)
3:30 pm**

PRESENT: Chair Bill O'Brien (Stanislaus County); Vice-Chair Charles Goeken (City of Waterford); Virginia Madueno (City of Riverbank); Vito Chiesa (Stanislaus County)

ALSO PRESENT: Rod Attebery (Neumiller and Beardslee); Vince Harris, Vince Canales, Cindy Malekos, Rosa Park, Carlos Yamzon (StanCOG); Roy Wasden (City of Turlock)

1. CALL TO ORDER

Chair Bill O'Brien called the meeting to order at 3:30 pm.

2. ROLL CALL

3. PUBLIC COMMENTS-None

4. DISCUSSION/ACTION ITEMS

A. Discussion – Update on Transit Performance Measures in the Stanislaus Region

Vince Harris referred to the staff report on transit performance measures and the attachment to it, a letter from the City of Modesto regarding concerns to the supplemental apportionment process for the Local Transportation Fund. He wanted the Executive Committee to preview the issues involved before taking them to the full Policy Board. A draft legal opinion on the concerns was discussed. Member Vito Chiesa and Chair Bill O'Brien had questions/concerns about farebox recovery, and the level of scrutinizing that takes place in the review of transit claims to ensure the most efficient service/use of funds. Member Madueno said the current performance measure was the farebox recovery ratio and questioned whether this was the best measure of adequate level of service for communities. She and Member Charles Goeken asked about the Auditor/Controller's estimate regarding transit funds. Vince Harris and Rod Attebery provided answers, and said that a staff report would be taken to the next Policy Board meeting to clarify the issue. Member Virginia Madueno asked why a regional public transit plan was not being developed. Vince Harris said that all these issues were part of

the transit assessment that was being done. Member Vito Chiesa requested to know how much the Transit Operators had submitted in claims for the last 10 years. Roy Wasden, City Manager, City of Turlock, expressed concern with the description of this item on the agenda. He also said that he and the City of Turlock attorney did not agree with some of the opinions that were provided. There was concurrence that the discussion regarding the supplemental apportionment with relation to transit performance measures, continue to the full Policy Board but that it first be vetted through the committees for their input.

5. EXECUTIVE DIRECTOR'S REPORT

Vince Harris stated that the regularly-scheduled September Policy Board meeting needed to be changed due to most of the members being unavailable to attend that day. September 28th at 4 pm was determined to be the best date to hold the next Policy Board meeting.

6. ADJOURNMENT

The Executive Meeting was adjourned by Chair Bill O'Brien at 4:45 pm.

Next Regularly Scheduled Executive Committee Meeting:

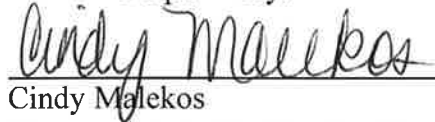
September 21, 2011 (Wednesday) @ 3:30 pm

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TO: Policy Board

THROUGH: Vince Harris, Executive Director 

FROM: Rod A. Attebery
General Counsel StanCOG

DATE: September 16, 2011

SUBJECT: Review, discuss and possible action regarding LTF Apportionment 2011/2012; Supplemental Funds 2010/2011; and Protocols for Future Administration of TDA Funds.

Overview

Over the past several months, much discussion and debate has occurred regarding implementation and administration of the Local Transportation Fund (LTF) component of the Transportation Development Act (TDA). To address any outstanding questions, get any further direction from the Board, as well as discuss a protocol for future administration this Staff Report:

- Sets forth the current status of the LTF funds for FY 2011/2012,
- Outlines Possible Discretionary Action Options by StanCOG,
- Discusses the Administration of Supplemental Funds Received in FY 2010/2011,
- Identifies Areas for the Board to Consider for Future Administration Protocols.

Current Status

In February 2011, based on the first estimate provided by the Auditor-Controller, the Policy Board adopted \$14.3 million in LTF to be apportioned and allocated. Although updated and revised estimates have been received from the Auditor-Controller, if the Policy Board takes no further action, the \$14.3 million dollars will remain in place for allocation.

If there is no further action and additional LTF funds become available at the end of the FY 2011/2012, those funds will be classified as supplemental funds and may be allocated as “other” funds in accordance with the adopted Transit Cost Sharing Procedures. (Please see the discussion below on Supplemental Allocations.)

Possible Discretionary Actions

Action A

- The Policy Board **may** issue a revised determination of apportionments based on the updated and revised Auditor-Controller estimate of \$15.0 million.

NOTE: If the Policy Board chooses to issue a revised determination of apportionments, the Policy Board will proceed to Action B, below. If the Policy Board chooses not to apportion the revised estimate of \$15.0, there is no further action to be taken.

Action B

- If the Policy Board chooses to exercise its discretion and issues a revised determination of apportionments based on the revised Auditor Controller estimate of \$15.0 million, the Policy Board has TWO additional options:
 1. Apportion and allocate \$15.0 million; or
 2. Apportion the revised estimate of \$15.0 million and allocate something less than \$15.0 million.

NOTE: If the Policy Board allocates LESS than the apportionment the Board will need to precede Action C, below. If the Board apports and allocates \$15 million there is no further action necessary under Action C.

Action C

- If the Board adopts a revised determination of apportionments AND allocates less than \$15.0 million then there are TWO options on how to allocate the difference. (Example: Revise apportionment to \$15 million and allocate \$14.3 million leaving \$700,000.)
 1. Treat the \$700,000 as an “unallocated apportionment” that will be set aside and reserved for transit claims.
 2. Treat the \$700,000 as “other” funds in accordance with the Transit Cost Sharing Procedures.

NOTE: “Revised Estimates” and “Unallocated Apportionments” are not currently terms included within the Transit Cost Sharing Procedures.

Analysis of Possible Discretionary Actions

Action A and B - Revised Apportionment

Legal counsel was initially of the opinion that the revised Auditor-Controller estimate of \$15.0 million had to be used as the basis of the apportionment. Upon further review of the relevant Code of Regulations provisions that implement the Transportation Development Act statute, legal counsel is of the opinion that the most defensible read of the statute is that the Policy Board has the discretion to issue a revised apportionment based on the updated and revised Auditor-Controller estimate of \$15.0 million. Code of Regulations Section 6555.5 provides:

6555.5 Revised Determination of Apportionments

The transportation-planning agency may, at any time before the close of the fiscal year, issue a revised determination of apportionments based on a revised or updated estimate furnished by the county auditor pursuant to Section 6620. The transportation-planning agency may, at any time, request a revised or updated estimate from the county auditor.

Any revenues to the fund for the fiscal year in excess of all moneys allocated, reserved, or retained in the fund as unallocated apportionments pursuant to Section 6655.1 shall be carried over and be available for apportionment and allocation in the following fiscal year.

The transportation-planning agency may, at any time before the conveyance of initial allocation instructions pursuant to Section 6659, issue a revised determination of apportionments based on a revised determination of populations.

Action C - Unallocated or Other Funds

There are two equally plausible interpretations of how to treat the \$700,000 if the Policy Board were to adopt a revised determination of apportionment based on the \$15 million estimate and only allocate \$14.3 million.

1. One interpretation is that the \$700,000 is an “unallocated apportionment” that will be set aside and reserved for transit claims.
2. The other possible interpretation is that the \$700,000 is characterized as “other” funds in accordance with the Transit Cost Sharing Procedures and is available for claims such as streets and roads, non-motorized and transit.

Justification for Treating the \$700,000 as an Unallocated Apportionment

The adopted Transit Cost Sharing Procedures do not include the terms “revised estimate” or “unallocated apportionments”. Additionally there is no analysis to rely on as to the intent of the Procedures with respect to these terms. The regulations, however, do provide language with respect to this type of allocation

Code of Regulations Section 6655.1 provides:

6655.1 Unallocated Apportionments Retained in Fund

The transportation-planning agency may allocate to claimants in an area an amount less than the apportionment of the area. However, the amount of the apportionment, which is not allocated, shall be retained in the local transportation fund for later allocation only to claimants in the same area on such terms and conditions as the transportation-planning agency may determine.

In a county with a population of 500,000 or more but excluding counties with more than 4,500 miles of maintained county roads:

(1) An unallocated apportionment for the area of a single operator shall be retained in the fund for later allocation only to the same operator or to a succeeding operator in the same area on such terms and conditions as the transportation-planning agency may determine.

(2) An unallocated apportionment for the overlapping area of two or more operators shall be retained in the fund for later allocation only to the same operators or to succeeding operators in the same area in such division among the operators and on such terms and conditions as the transportation planning agency may determine, except that the Southern California Rapid Transit District shall be allocated no more than 85 percent of the apportionment of its area.

Justification for Treating the \$700,000 as “Other Funds”

Step 1 of the Transit Cost Sharing Procedures is titled “*Initial LTF and STA Apportionment*” and provides that Step 1 calculates the maximum transit shares and “is an absolute limit to the transit funds that may be received off the top by a given city or the county.” A defensible interpretation would be that this supports a conclusion that the \$700,000 should be treated as allocated for “other” purposes, as is the intent and focus of the Transit Cost Sharing Procedures.

Step 3 of the Transit Cost Sharing Procedures is titled “Determine the Distribution of the LTF “Other” Funds (Transit Cost Sharing Formula)” and provides in part that:

Once the amount of LTF for transit is known, the transit cost sharing formula is run to determine how the remaining funds will be divided by jurisdiction. . . Following SAAG Policy Board approval of this Step 3, claims for “other” purposes may be prepared and submitted to SAAG for review and approval.

Supplemental Apportionment

There are \$2.8 million dollars that were received for FY 2010/2011 above the amount that was apportioned and allocated in 2010/2011. These funds must be considered “supplemental funds”. As such, these funds are available to be allocated under Section 7 of the adopted Transit Cost Sharing Procedures.

The treatment of supplemental allocations in Section 7, however, is inconsistent with the provisions of the TDA as the Transit Cost Sharing Procedures limits claims to only those for roads and streets.

Treatment of Supplemental Apportionments

Section 7- Transit Cost Sharing Procedures.

Supplemental LTF apportionments occur when more funds are available than originally anticipated for the fiscal year. Typically, supplemental LTF apportionments are processed in August or September. These increase the level of funds previously apportioned for the fiscal year just ending, but the amount of surplus which was actually collected for that year.

Supplemental LTF apportionments shall be addressed in a manner similar to the initial apportionment estimates. Specifically StanCOG will deduct for transportation planning and programming purposes, the same percent that was deducted for the initial LTF apportionment. Then, the transit cost sharing formula (see Step 3 from Section 5) will be rerun using the total revised apportionment (initial apportionment

plus the supplemental apportionment) to provide a revised breakdown of LTF road and street funds by jurisdiction.

The functions of StanCOG with respect to LTF are provided by Public Utilities Code Section 99233.11, which pertains specifically to allocations of StanCOG, provides:

Apportionments and allocations from those funds made by association to the county and the cities in the county also shall be in accordance with the cost-sharing criteria approved by the association.

Under the TDA, allocation of LTF is a three-step process: apportionment, allocation, and payment.

“Apportionment” is the proportion of the total annual revenue anticipated to be received to the population of the area to the total population of the county.

“Allocation” is the claim approval by the transportation planning agency designating funds for a specific claimant for a specific purpose.

Reading the language of Section 99233.11 and the definitions of “apportionment” and “allocation”, StanCOG has the authority to set procedures for apportionment and allocation but not to determine what types of claims can be submitted. By stating in the Transit Cost Sharing Procedures that supplemental apportionments shall be allocated for roads and streets, StanCOG is limiting the types of claims that can be submitted.

As this is not consistent with the statute it must be read that the Transit Cost Sharing Procedures require that supplemental apportionments shall be allocated for “other” funds. “Other” as defined in the Transit Cost Sharing Procedures can be used for any eligible TDA purpose, including streets and roads, at the discretion of the local government in question.

Possible Future Actions

As identified above the treatment of supplemental allocations in Section 7 is inconsistent with the provisions of the TDA as the Transit Cost Sharing Procedures limits claims to only those for roads and streets. In addition, the adopted Transit Cost Sharing Procedures do not contemplate receipt of an updated and revised estimate from the Auditor –Controller nor do they contemplate unallocated apportionments.

Future Action Recommendation #1:

Amend Section 7 of the Transit Cost Sharing Procedures to remove the limitation of claims as to supplemental funds.

The recommended revision is as follows:

7. Treatment of Supplemental Apportionments

Supplemental LTF apportionments occur when more funds are available than originally anticipated for the fiscal year. Typically, supplemental LTF apportionments are processed in August or September. These increase the level of funds previously apportioned for the fiscal year just ending, but the amount of surplus which was actually collected for that year.

Supplemental LTF apportionments shall be addressed in a manner similar to the initial apportionment estimates. Specifically StanCOG will deduct for transportation planning and programming purposes, the same percent that was deducted for the initial LTF apportionment. Then, the transit cost sharing formula (see Step 3 from Section 5) will be rerun using the total revised apportionment (initial apportionment plus the supplemental apportionment) to provide a revised breakdown of LTF ~~road and street~~ “other” funds by jurisdiction.

For treatment of supplemental STA apportionments, see Section 9 of this report.

Future Action Recommendation #2:

As the current Transit Cost Sharing Procedures do not contemplate a revised estimate or unallocated apportionments, a protocol should be established on requesting an updated and revised estimate from the Auditor-Controller. The recommendation is to amend the Transit Cost Sharing Procedures consistent with the TDA protocol developed by the Management & Finance Committee subcommittee.

Additionally, if an updated and revised estimate is requested, a protocol should be developed as to treatment of that revised estimate. To avoid the dual interpretation of the revised funds as either “unallocated apportionments” or “other funds” a protocol should establish how StanCOG will treat these funds.

NOTE: At the last Management and Finance Committee, a subcommittee was created to develop a protocol to be used by staff in administering the LTF component of the TDA. The committee consists of the representatives from the Cities of Modesto, Turlock, and Waterford.

Advisory Committee Action

This revised staff report was prepared after discussions at the Management and Finance Committee. The Management and Finance Committee discussed the issue; however, staff had indicated that StanCOG counsel and counsel for several jurisdictions would be having further discussions. As a result of those discussions Staff and legal counsel have prepared this staff report.

The Management and Finance Committee did vote on the a recommendation by staff which only included that the claimants should make claims on the 14.3 million and no recommendation on the \$15.0 million as discussed above. The vote was calculated as follows:

Allocate 14.3 Million to Claimants	YES	NO	Absent
Ceres	X		
County	X		
Hughson			X
Modesto		X	
Newman	X		
Oakdale	X		
Patterson	X		
Riverbank	X		
Turlock	X		
Waterford		X	
Totals	7	2	1

NOTE: THE VOTE ABOVE WAS NOT BASED ON THE OPTIONS PRESENTED IN THIS STAFF REPORT.