



ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

MINUTES

Board of Directors - Regular Meeting

VIRTUAL MEETING

The members of the Board will participate from remote locations.
See page 2 of the agenda for public participation instructions.

Wednesday, May 27, 2020 at 5:00 PM

Closed Session: 4:15 PM (Items 8A-8D)

MEMBERS OF THE BOARD OF DIRECTORS

JOE WALLACE, PRESIDENT (WARD 1)

ELSA ORTIZ, VICE PRESIDENT (WARD 3)

GREG HARPER (WARD 2)

MARK WILLIAMS (WARD 4)

DIANE SHAW (WARD 5)

H. E. CHRISTIAN PEEPLES (AT-LARGE)

JOEL YOUNG (AT-LARGE)

BOARD OFFICERS

MICHAEL A. HURSH, GENERAL MANAGER

JILL A. SPRAGUE, GENERAL COUNSEL

LINDA A. NEMEROFF, DISTRICT SECRETARY

1. CALL TO ORDER

The Alameda-Contra Costa Transit District Board of Directors held a regular virtual meeting on Wednesday, May 27, 2020.

Members of the Board participated via video conference from off-site locations in accordance with the statewide shelter in place order issued on March 16, 2020, and extended through May 31, 2020.

At 4:20 p.m., the Board of Directors convened in Closed Session to discuss Items 8.A. - 8.D. as listed on the agenda. All Board members were present. Closed Session concluded at 4:45 p.m.

President Wallace called the Board of Directors meeting to order at 5:01 p.m.

2. ROLL CALL

Present: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

3. PRESENTATION

- 3.A.** Consider receiving a presentation on the Valley Link project and provide direction to the District's representative on the Alameda County Transportation Commission (ACTC) regarding the vote to set a 45-day comment period on a request for an amendment to Measure BB, which would replace BART with Valley Link as the recipient of \$400 million in funds. [20-123](#)

Vice President Ortiz introduced the item, saying that the item before the Alameda County Transportation Commission (ACTC) was controversial and warranted discussion and direction from the full Board on how to vote on the matter before the ACTC to permit a 45 day comment period concerning various actions related to the Valley Link Project. She then turned the presentation over to Tess Lengyel, Executive Director of the Alameda County Transportation Commission, and Michael Tree, Executive Director of the Tri Valley San Joaquin Valley Regional Rail Authority (TVSJVRRA).

Ms. Lengyel opened the presentation by recapping past efforts to extend BART to Livermore and talked about the creation of the TVSJRRRA. She further introduced Mr. Tree who gave an overview of the Valley Link project and efforts to reduce commuter traffic/congestion coming from the San Joaquin Valley on Interstate 580. He discussed the creation of the TVSJVRRA and provided more specifics on their request to reallocate \$400 million of Measure BB funds to the Valley Link Project. Ms. Lengyel concluded the presentation with an overview of the process to amend the Measure BB Transportation Expenditure Plan to include the project in the plan.

Members of the Board inquired about various aspects of the project, including the alignment; duplication of service with ACE; the availability of origin/destination data; use of rail to transport freight instead of people; project funding and the funding plan,

and whether the funding for the project would impact any monies that AC Transit might receive.

Director Harper commented that he was skeptical of yet another iteration of a rail project for the Tri-Valley without taking a fresh look at transit in the area.

Director Shaw commented that while she supports finding ways to get people out of their cars, it was important to address the concerns that have been raised thus far (and throughout the comment period) before a decision is made in September.

Public Comment:

Pat Pirus spoke about the letter submitted by the Sierra Club requesting that the direction given to Vice President/Commissioner Ortiz be to table further consideration of the Valley Link Project until all the questions raised thus far have received a response. She further commented that there has not been support for Measure BB by voters in the Tri-Valley, nor has an environmental document been produced that could inform comments/decisions about the project.

MOTION: PEEPLES/HARPER to direct Vice President Ortiz to vote to delay the opening of the 45 day comment period until the questions that have already been asked get responded to so people can formulate better questions during the comment period. The motion failed by the following vote:

Ayes: Peeples, Harper, Wallace

Nays: Williams, Shaw, Ortiz

Abstain: Young

MOTION: WILLIAMS/WALLACE to direct Vice President Ortiz to vote to support the opening of the 45 day comment period. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Shaw, Williams, Young

Nays: Harper, Peeples

4. PUBLIC COMMENT

There was no public comment offered.

5. MODIFICATIONS TO THE AGENDA

There were no modifications to the agenda.

6. CONSENT CALENDAR

MOTION: SHAW/YOUNG to receive, approve or adopt the items on the Consent Calendar as indicated below.

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

6.A. Consider approving Board of Directors minutes of May 13, 2020.

[20-036](#)

MOTION: SHAW/YOUNG to approve the Board of Directors minutes of May 13, 2020.
The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 6.B.** Consider receiving Retirement Board Minutes of April 16, 2020. [20-214](#)

MOTION: SHAW/YOUNG to receive the Retirement Board Minutes of April 16, 2020.
The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 6.C.** Consider receiving the FY 2019-20 Third Quarter Employee and Non-employee Out-of-State Travel Report. [20-199](#)

MOTION: SHAW/YOUNG to receive the FY 2019-20 Third Quarter Employee and Non-employee Out-of-State Travel Report. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 6.D.** Consider receiving the Monthly report on Investments for March, 2020. [20-198](#)

MOTION: SHAW/YOUNG to receive the Monthly report on Investments for March, 2020. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 6.E.** Consider receiving the Quarterly Report on the Status of Active Contracts and Spending Amounts over \$250,000. [20-210](#)

MOTION: SHAW/YOUNG to receive the Quarterly Report on the Status of Active Contracts and Spending Amounts over \$250,000. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 6.F.** Consider receiving the FY 2019-20 Third Quarter Surplus and Obsolete Materials Report. [20-211](#)

MOTION: SHAW/YOUNG to receive the FY 2019-20 Third Quarter Surplus and Obsolete Materials Report. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 6.G.** Consider authorizing the General Manager or his designee, to file and execute applications and funding agreements with the Alameda County Transportation Commission (ACTC) for application of the FY 2020-21 Transportation Fund for Clean Air Program (TFCA) funds for the Mission Boulevard Corridor Transit Signal Priority (TSP) Project. [20-189](#)

MOTION: SHAW/YOUNG to authorize the General Manager or his designee, to file and execute applications and funding agreements with the Alameda County Transportation Commission (ACTC) for application of the FY 2020-21 Transportation Fund for Clean Air

Program (TFCA) funds for the Mission Boulevard Corridor Transit Signal Priority (TSP) Project. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 6.H.** Consider receiving the Disadvantaged Business Enterprise (DBE) Semi-Annual Payment Report for the Period of October 1, 2019 through March 31, 2020. [20-195](#)

MOTION: SHAW/YOUNG to receive the Disadvantaged Business Enterprise (DBE) Semi-Annual Payment Report for the Period of October 1, 2019 through March 31, 2020. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 6.I.** Consider receiving the monthly construction progress and operational readiness report on the East Bay Bus Rapid Transit (BRT) project. [20-194](#)

MOTION: SHAW/YOUNG to receive the monthly construction progress and operational readiness report on the East Bay Bus Rapid Transit (BRT) project. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 6.J.** Consider authorizing the release of a Request For Proposals (RFP) for Workers' Compensation Third Party Administrator (TPA) Services, Managed Care Program, Claims Reporting/Intake System and Occupational Safety and Health Administration (OSHA) reporting services. [20-207](#)

MOTION: SHAW/YOUNG to authorize the release of a Request For Proposals (RFP) for Workers' Compensation Third Party Administrator (TPA) Services, Managed Care Program, Claims Reporting/Intake System and Occupational Safety and Health Administration (OSHA) reporting services. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

7. REGULAR CALENDAR

Operations Items - Chair Young

- 7.A.** Consider receiving an update on the District's actions to date in response to the Coronavirus Pandemic (COVID-19.) [20-186](#)

Executive Director of External Affairs, Marketing & Communications Beverly Greene presented the staff report.

President Wallace asked if all AC Transit bus operators received face masks with the AC Transit logo on it. Ms. Greene advised that while all operators receive face masks, she was unsure of how many had received the particular mask mentioned by President Wallace.

Director Shaw asked if AC Transit staff was aware of any funding sources that would be reduced as a result of the pandemic. Director of Management and Budget Chris Andrichak advised that State Transit Assistance would be reduced as would bridge toll revenue and sales taxes; however, staff did not have specific figures yet.

Director Harper asked if staff's budget estimates would hold up until the end of June. Mr. Andrichak advised that the estimates were just that and staff hoped any reductions would not get any worse. General Manager Michael Hursh advised that staff was preparing an optimistic and a pessimistic financial outlook that would be presented to the Board at the workshop the following week.

MOTION: ORTIZ/WILLIAMS to receive an update on the District's actions to date in response to the Coronavirus Pandemic (COVID-19.) The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

7.B. Presentation on the SMART Staffing Plan. [20-216](#)

Executive Director of Human Resources Nathaniel Kramer gave the presentation.

Members of the Board inquired about social distancing in the Operations Control Center (OCC), telecommuting productivity, and a long-term telecommuting policy. Mr. Kramer advised that there is adequate spacing the OCC as well as a need for a safe process to bring people back to the office. He suggested that the District's telecommuting policy be explored more thoroughly in the future.

President Wallace commented that he is seeing an uptick in riders on public transit.

MOTION: ORTIZ/WILLIAMS to receive presentation on the SMART Staffing Plan. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

7.C. Consider receiving the Quarterly Operations Performance Report for AC Transit Fixed Route Services during the Third Quarter of Fiscal Year 2020. [20-173](#)

Director of Transportation Derik Calhoun presented the staff report.

Director Harper pointed out that contrary to the staff report, the District actually operated reduced service for the bulk of the quarter. He also pointed out that the service operated percentage was also reflective of the full amount service that should have been provided.

MOTION: SHAW WILLIAMS to receive the Quarterly Operations Performance Report for AC Transit Fixed Route Services during the Third Quarter of Fiscal Year 2020. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 7.D.** Consider authorizing the General Manager to execute three-year single source contracts with two (2) one (1) year options with Messer LLC, one for hydrogen supply and the other for maintenance services associated with the District-operated hydrogen fuel station. [20-212](#)

Director of Maintenance Cecil Blandon presented the staff report.

Vice President Ortiz complained that the limitations of the hydrogen industry only encourage sole source contracts.

Director Peeples argued that it was unfair to say that the hydrogen industry had not expanded and believed there were new hydrogen facilities that could supply the fuel. He requested that the contracts come back to the Board in three years so we can survey the market again.

Director Harper also complained about the fact that Messer's upgrade of the District's facilities locked the District into buying hydrogen from them because they upgraded the equipment.

MOTION: PEEPLES/SHAW to authorize the General Manager to execute three-year single source contracts with two (2) one (1) year options with Messer LLC, one for hydrogen supply and the other for maintenance services associated with the District-operated hydrogen fuel station. The motion carried by the following vote:

Ayes: Wallace, Shaw, Williams, Peeples, Young

Nayes: Ortiz, Harper

External Affairs Items - Chair Ortiz

- 7.E.** Consider approving the monthly legislative report. [20-196](#)

Director of External Affairs and Community Relations Claudia Burgos presented the staff report.

MOTION: Peeples/Williams to receive the monthly legislative report. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 7.F.** Consider approving revisions to Board Policy 145, Elections: Political and Campaign Activities. [20-208](#)

General Counsel Jill Sprague presented the staff report and provided clarification with applicability of lobbying activities.

MOTION: HARPER/WILLIAMS to approve revisions to Board Policy 145, Elections:

Political and Campaign Activities. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

Planning Items - Chair Shaw

- 7.G.** Consider authorizing the General Manager to approve change orders and amend the O.C. Jones and Sons, Inc. contract as-needed up to 30% of the Board-approved contract value for the East Bay Bus Rapid Transit (BRT) Project Infrastructure and Station Platforms. [15-210d](#)

Director of East Bay Bus Rapid Transit David Wilkins presented the staff report.

Director Peeples asked for clarification in regard to the 30% increase and whether this meant a 30% increase in the total costs of contract or if it meant there was 30% of unspent contract value. Mr. Wilkins confirmed that this was a 30% increase of the original \$108 million contract value.

Director Harper commented that he had voted against the original request to increase the General Manager's contract authority to 18%, saying that the Board met every two weeks and there was nothing to prevent the General Manager from coming to the Board to explain why he did or didn't approve a particular contract change. Director Harper wanted to further understand how the dramatic increase in the cost had been arrived at, costing the District money than it had the ability to pay. He felt that it was the Board's responsibility to understand how decisions were being arrived at, saying that the Board needed this education and disagreed with the way staff was presenting information. He added that he would not support the staff's recommendation.

Vice President Ortiz inquired about work that was performed by O.C. Jones that should be paid for by other agencies. Mr. Wilkins advised that there were occasions during the project where AC Transit was asked by, for example, the East Bay Municipal Utility District, to perform a utility relocation. AC Transit would complete the work on their behalf, keeping a log of the work performed and the cost, and would submit and invoice for payment to EBMUD for the cost. Vice President Ortiz asked if these costs were included in the 30% increase of the contract to which Mr. Wilkins responded that they were. General Manager Michael Hursh advised that these construction activities would be part of a third-party claims process where the District hopes to recover much of the cost.

Vice President Ortiz asked about the line of credit initiated by the District and how much of it had been spent. Mr. Hursh advised that all or most of the line of credit would need to be accessed to complete the project. Due to the cost, he urged the Board not to do another project like this again.

Director Peeples explained that due to the money involved and limited information provided, he could not support the staff recommendation, but he also did not want delay payments to the contractor. Vice President Ortiz shared Director Peeples'

concerns. Mr. Pochiraju advised that all costs were being tracked and that some of the work has already been done and the project is progressing.

Director Harper commented that paying through on the contract is not the problem, it is the change orders that are at issue.

MOTION: PEEPLES/WALLACE to authorize the General Manager to pay for whatever work has already been done or will be done by the next Board meeting and direct staff bring back a more extensive report to the Board at the next meeting. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 7.H.** Consider receiving a report on the status of the District's contract with Clear Channel Outdoor (CCO) to install and maintain transit shelters throughout the AC Transit service area. [18-211b](#)

Transportation Planner Carissa Lee presented the staff report.

Vice President Ortiz commented on the many complaints she received about the condition of the shelters and asked if there was a stipulation in the contract that binds Clear Channel to maintain the shelters up to an acceptable standard. Director of Service Development and Planning Robert del Rosario advised that Clear Channel is asking for an extension of the current agreement until end of year 2020 and that more stringent maintenance requirements could be negotiated with the new contract in 2021. He further advised that, in addition to the extension, Clear Channel is proposing an amendment to pay the District \$30,000 instead of the usual annual amount of \$123,000 due to its loss of revenue caused by the Coronavirus pandemic.

Director Peeples commented that through the years the District had lost the negotiating power over the contract with Clear Channel and advised staff to better negotiate in the future. Director Peeples further commented on how shelter maintenance was tracked in the past adding that the only way to hold the contractor accountable is to link the contractor's maintenance log with the District's complaint log, which are currently two separate systems. He believed that by merging the two, complaints about a shelter would tie to the contractors' work on that shelter and would clearly show if the contractor failed to honor the agreement. Mr. del Rosario advised that staff will explore the option to link the two systems.

MOTION: PEEPLES/WILLIAMS to receive a report on the status of the District's contract with Clear Channel Outdoor (CCO) to install and maintain transit shelters throughout the AC Transit service area. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Shaw, Williams, Peeples, Young

Absent: Harper

- 7.I.** Consider the adoption of Resolution 20-028 confirming the approval of a Collective Bargaining Agreement with the Amalgamated Transit Union (ATU), Local 192 through June 30, 2022. [20-215](#)

There was no presentation of the staff report. General Manager recognized the dedicated men and women of ATU Local 192 as well as the efforts of the bargaining teams.

MOTION: PEEPLES/YOUNG to adopt Resolution 20-028 confirming the approval of a Collective Bargaining Agreement with the Amalgamated Transit Union (ATU), Local 192 through June 30, 2022. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Shaw, Williams, Peeples, Young

Absent: Harper

8. CLOSED SESSION/REPORT OUT

The items for consideration are listed below and will be reported on by the General Counsel as necessary at the end of the meeting.

There was nothing to report out of closed session.

8.A. Conference with Legal Counsel – Existing Litigation

(Government Code Section 54956.9 (a))

Galpern v. AC Transit, U.S. District Court, Northern California District, Case 3:20-cv-02572-TSH

8.B. Conference with Legal Counsel – Potential Litigation

(Government Code Section 54956.9(b)) (Two Cases)

8.C. Conference with Labor Negotiators

(Government Code Section 54957.6):

Agency Designated Representative: General Manager Michael Hursh;
Employee Organizations: ATU Local 192, AFSCME Local 3916, IBEW Local 1245,
Unrepresented Employees

8.D. Public Employee Performance Evaluation

(Government Code Section 54957)

Title: General Manager, General Counsel, District Secretary

9. AGENDA PLANNING

- 9.A.** Review of Agenda Planning Pending List. [20-010i](#)

There were no new items added to Agenda Planning.

10. GENERAL MANAGER'S REPORT

- 10.A.** General Manager's Report for May 27, 2020. [20-008i](#)

The report was provided for information only.

11. BOARD/STAFF COMMENTS

(Government Code Section 54954.2)

Members of the Board commented on meetings and events attended since the last Board meeting.

12. ADJOURNMENT

There being no further business to come before the Board, President Wallace adjourned the meeting at 8:02 p.m. in the memory of Jesse de la Cruz, a distinguished AC Transit bus operator who retired in 2019 after 40 years of service and had passed away on May 24, 2020. The next meeting of the Board is scheduled for June 10, 2020 at 5:00 p.m.

Respectfully submitted,

/s/

Linda A. Nemeroff

District Secretary