

AGENDA
SANTA CRUZ METRO BOARD OF DIRECTORS
REGULAR MEETING OF OCTOBER 14, 2011
8:30 AM



Mission Statement: "To provide a public transportation service that enhances personal mobility and creates a sustainable transportation option in Santa Cruz County through a cost-effective, reliable, accessible, safe, clean and courteous transit service."

**THE BOARD MEETING AGENDA PACKET CAN BE FOUND ONLINE AT
WWW.SCMTD.COM AND IS AVAILABLE FOR INSPECTION AT SANTA CRUZ METRO'S
ADMINISTRATIVE OFFICES LOCATED AT 110 VERNON STREET, SANTA CRUZ, CA**

*Chair Ellen Pirie, County of Santa Cruz
Vice-Chair Lynn Robinson, City of Santa Cruz*

*Director Margarita Alejo, City of Watsonville
Director Hilary Bryant, City of Santa Cruz
Director Dean Bustichi, City of Scotts Valley
Director Daniel Dodge, City of Watsonville
Director Ron Graves, City of Capitola
Director Donald Hagen, County of Santa Cruz
Director Michelle Hinkle, County of Santa Cruz
Director John Leopold, County of Santa Cruz
Director Mark Stone, County of Santa Cruz
Ex-Officio Director Donna Blitzer, UC Santa Cruz*

*Leslie R. White, General Manager / Secretary of the Board
Margaret Gallagher, District Counsel*

**SANTA CRUZ CONFERENCE ROOM
110 VERNON STREET
SANTA CRUZ, CALIFORNIA**

INTERPRETATION SERVICES / SERVICIOS DE TRADUCCIÓN

Spanish language translation is available on an as needed basis. Please make advance arrangements with Tony Tapiz, Administrative Services Coordinator at 831-426-6080. Traducción al español está disponible de forma según sea necesario. Por favor, hacer arreglos por adelantado con Tony Tapiz, Coordinador de Servicios Administrativos al numero 831-426-6080.

AMERICANS WITH DISABILITIES ACT

 *The Santa Cruz Conference Room is located in an accessible facility. Any person who requires an accommodation or an auxiliary aid or service to participate in the meeting, or to access the agenda and the agenda packet, should contact Tony Tapiz, Administrative Services Coordinator, at 831-426-6080 as soon as possible in advance of the Board of Directors meeting. Hearing impaired individuals should call 711 for assistance in contacting Santa Cruz METRO regarding special requirements to participate in the Board meeting. For information regarding this agenda or interpretation services, please call Santa Cruz METRO at 831-426-6080.*

**AGENDA
SANTA CRUZ METRO BOARD OF DIRECTORS
REGULAR MEETING
PAGE 2 OF 5**

October 14, 2011

Santa Cruz Conference Room
110 Vernon Street

8:30 A.M.

NOTE: THE BOARD CHAIR MAY TAKE ITEMS OUT OF ORDER

SECTION I: OPEN SESSION

1.0 ROLL CALL

2.0 ORAL AND WRITTEN COMMUNICATIONS

This time is set aside for Directors and members of the general public to address any item not on the Agenda which is within the subject matter jurisdiction of the Board. No action or discussion shall be taken on any item presented except that any Director may respond to statements made or questions asked, or may ask questions for clarification. All matters of an administrative nature will be referred to staff. All matters relating to Santa Cruz METRO will be noted in the minutes and may be scheduled for discussion at a future meeting or referred to staff for clarification and report. Any Director may place matters brought up under Oral and Written Communications on a future agenda. In accordance with District Resolution 69-2-1, speakers appearing at a Board meeting shall be limited to three minutes in his or her presentation, unless the Board Chair, at his or her discretion, permits further remarks to be made. Any person addressing the Board may submit written statements, petitions or other documents to complement his or her presentation. When addressing the Board the individual may, but is not required to, provide his/her name and should address the Board Chair in an audible tone for the record.

- | | |
|---------------------------|-------------------------------|
| a. WANDIS WILCOX | RE: AIR CONDITIONING ON BUSES |
| b. SIERRA CLUB-SANTA CRUZ | RE: SERVICE TO BIG BASIN |
| c. PEDRO VALDEZ | RE: TORT CLAIM |

3.0 LABOR ORGANIZATION COMMUNICATIONS

4.0 ADDITIONAL DOCUMENTATION TO SUPPORT EXISTING AGENDA ITEMS

CONSENT AGENDA

All items appearing on the Consent Agenda are recommended actions which are considered to be routine and will be acted upon as one consensus motion. All items removed will be considered after the consensus motion. The Board Chair will allow public input prior to the approval of the Consent Agenda.

5-1. TORT CLAIMS: REJECT THE CLAIM OF ERNEST HARDY, CLAIM #11-0023

Submitted by: Margaret Gallagher, District Counsel

**AGENDA
SANTA CRUZ METRO BOARD OF DIRECTORS
REGULAR MEETING
PAGE 3 OF 5**

- 5-2. NOTICE OF ACTIONS TAKEN IN CLOSED SESSION REGARDING SETTLEMENT WITH COMMERCE WEST INSURANCE (SUBROGATING FOR VINCE TABULA AND ERIKA GUIDO); THE CASE OF JOSEPH BLAIR V. SANTA CRUZ METRO; THE CASE OF MARIO DE LA GARZA V. SANTA CRUZ METRO; THE CASE OF GOODWILL INDUSTRIES OF MONTEREY AND SAN LUIS OBISPO COUNTIES, ET AL V. SANTA CRUZ METRO; SIDE AGREEMENT WITH UNITED TRANSPORTATION UNION (UTU) LOCAL 23; SIDE AGREEMENT WITH SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU) LOCAL 521**
Submitted by: Margaret Gallagher, District Counsel
- 5-3. ACCEPT AND FILE METRO ADVISORY COMMITTEE AGENDA FOR OCTOBER 2011, ACCEPT AND FILE WITHDRAWAL OF MAC REQUEST TO MOVE LOCATION OF FIRST BOARD MEETING OF THE MONTH**
Submitted by: Tony Tapiz, Administrative Services Coordinator
- 5-4. CONSIDERATION OF ADOPTING A RESOLUTION AUTHORIZING THE GENERAL MANAGER TO REQUEST A LETTER OF NO PREJUDICE (LONP) AND SIGN NECESSARY AGREEMENTS WITH THE CALIFORNIA TRANSPORTATION COMMISSION (CTC) AND CALTRANS IN ORDER TO PROCEED WITH THE PURCHASE OF 11 NEW FIXED-ROUTE CNG-FUELED BUSES WITH STATE AND LOCAL PARTNERSHIP PROGRAM MATCHING FUNDS SECURED, IF NEEDED, PRIOR TO CTC ALLOCATION**
Submitted by: Leslie R. White, General Manager
- 5-5. ACCEPT AND FILE ACCESSIBLE SERVICES REPORT FOR JULY 2011**
Submitted by: John Daugherty, Accessible Services Coordinator
- 5-6. ACCEPT AND FILE METROBASE STATUS REPORT**
Submitted by: Frank Cheng, IT Manager and MetroBase Project Manager
- 5-7. CONSIDERATION OF AWARD OF CONTRACT WITH NATIONWIDE BIRD CONTROL, INC. FOR BIRD ABATEMENT SERVICES**
Submitted by: Robert Cotter, Maintenance Manager
- 5-8. CONSIDERATION OF AWARD OF CONTRACT WITH STATE ELECTRIC GENERATOR FOR REMOVAL OF AN EXISTING ROOF-TOP GENERATOR AND INSTALLATION OF TWO TRANSFER SWITCHES AND A SANTA CRUZ METRO SUPPLIED GENERATOR FOR AN AMOUNT NOT TO EXCEED \$17,412.05**
Submitted by: Robert Cotter, Maintenance Manager
- 5-9. CONSIDERATION OF AWARD OF CONTRACT WITH AIRTEC SERVICE FOR HEATING VENTILATION AND AIR CONDITIONING MAINTENANCE SERVICE**
Submitted by: Robert Cotter, Maintenance Manager
- 5-10. CONSIDERATION OF CONTRACT RENEWAL FOR EMPLOYEE DENTAL INSURANCE WITH DELTA DENTAL THROUGH THE CALIFORNIA STATE ASSOCIATION OF COUNTIES EXCESS INSURANCE AUTHORITY (CSAC-EIA)**
Submitted by: Robyn Slater, Human Resources Manager
- 5-11. CONSIDERATION OF 2012 BOARD OF DIRECTORS MEETING SCHEDULE**
Submitted by: Tony Tapiz, Administrative Services Coordinator

AGENDA
SANTA CRUZ METRO BOARD OF DIRECTORS
REGULAR MEETING
PAGE 4 OF 5

- 5-12. ACCEPT AND FILE STATUS REPORT OF FEDERAL AND STATE LEGISLATION AND CURRENT LEGISLATIVE ISSUES**
Submitted by: Leslie R. White, General Manager
- 5-13. ACCEPT AND FILE STATUS REPORT OF ACTIVE GRANTS AND SUBMITTED GRANT PROPOSALS FOR JULY 2011**
Submitted by: Leslie R. White, General Manager
- 5-14. ACCEPT AND FILE MINUTES REFLECTING VOTING RESULTS FROM APPOINTEES TO THE SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION FOR PREVIOUS MEETINGS**
Submitted by: Tony Tapiz, Administrative Services Coordinator

REGULAR AGENDA

- 6.0 ACCEPT AND FILE REPORT ON THE DEPARTMENT OF COMMERCE RESPONSE TO COMMENTS ON THE U.S. CENSUS BUREAU GEOGRAPHY DIVISION'S PROPOSED URBAN AREA CRITERIA**
Presented by: Leslie R. White, General Manager
- 7.0 CONSIDERATION OF NOMINATIONS OF MEMBERS TO THE SANTA CRUZ CIVIC IMPROVEMENT CORPORATION FOR ONE-YEAR TERMS**
Presented by: Angela Aitken, Acting Assistant General Manager and Finance Manager
- 8.0 CONSIDERATION OF STAFF REPORT REGARDING METRO/SCCRTC MERGER**
Presented by: Ellen Pirie, Chair
- 9.0 CONSIDERATION OF AUTHORIZING THE GENERAL MANAGER TO EXECUTE A LICENSE AND INDEMNITY AGREEMENT WITH THE UNIVERSITY OF CALIFORNIA AT SANTA CRUZ (UCSC) FOR THE USE OF METRO BUS STOPS FOR THE "NIGHT OWL" SERVICE**
Presented by: Leslie R. White, General Manager
- 10.0 CONSIDERATION OF THE DEPARTMENT OF TRANSPORTATION (DOT) FINAL RULE EFFECTIVE OCTOBER 19, 2011 REGARDING AMENDMENTS TO THE AMERICANS WITH DISABILITIES ACT (ADA) REGULATIONS FOR THE TRANSPORTATION OF WHEELCHAIRS ON SANTA CRUZ METRO'S FIXED ROUTE AND PARATRANSIT SERVICES**
Presented by: Leslie R. White, General Manager , Margaret Gallagher, District Counsel
- 11.0 ORAL ANNOUNCEMENT: THE NEXT REGULARLY SCHEDULED BOARD MEETING WILL BE ON FRIDAY, OCTOBER 28, 2011 AT 9:00 A.M. AT THE SANTA CRUZ CITY COUNCIL CHAMBERS LOCATED AT 809 CENTER STREET, SANTA CRUZ**
Presented by: Lynn Robinson, Vice Chair
- 12.0 REVIEW OF ITEMS TO BE DISCUSSED IN CLOSED SESSION**
Presented by: Margaret Gallagher, District Counsel
- 13.0 ORAL AND WRITTEN COMMUNICATIONS REGARDING CLOSED SESSION**

**AGENDA
SANTA CRUZ METRO BOARD OF DIRECTORS
REGULAR MEETING
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SECTION II: CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Pursuant to Government Code Section 54956.9)

Name of Case: Linda Burke v. Santa Cruz Metro
(Before the Workers' Compensation Appeals Board)

2. CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION
(Pursuant to Government Code Section 54957.5)

Number of Potential Cases: One

SECTION III: RECONVENE TO OPEN SESSION

14.0 REPORT OF CLOSED SESSION

15.0 ADJOURNMENT

ADJOURN TO THE NEXT REGULARLY SCHEDULED BOARD MEETING ON FRIDAY,
OCTOBER 28, 2011 AT 9:00 A.M.

Pursuant to Section 54954.2(a)(1) of the Government Code of the State of California, this agenda was posted at least 72 hours in advance of the scheduled meeting at a public place freely accessible to the public 24 hours a day.

The agenda packet and materials related to an item on this Agenda submitted to the Board of Directors after distribution of the agenda packet are available for public inspection in the Santa Cruz METRO Administrative Office (110 Vernon Street, Santa Cruz) during normal business hours. Such documents are also available on the Santa Cruz METRO website at www.scmtd.com subject to staff's ability to post the document before the meeting.

Sept.22,2011

~~Santa Cruz Metro Customer Service
920 Pacific Ave
Santa Cruz, CA 95060~~

METRO Board of Directors
110 Vernon Street
Santa Cruz, CA 95060

RE: COMMENT/Suggestion regarding bus air-conditioning system

My comment is as follows:

As a frequent passenger, I've noticed the frequency of the very chilled air piped into the buses; even on very chilly foggy days. That doesn't make sense in an area in which the temperature rarely exceeds 75 degrees on a warm day. Nor does it make economic or environmental sense as fossil fuel prices rise and global warming is a looming threat to our existence, especially since all we need to do to cool off naturally is to open the windows. I'm assuming that running the bus air-conditioning system requires additional fuel energy.

In any event, that unnatural chilled air is unhealthy and very uncomfortable, requiring the lugging around of additional clothing to cope with. I'd like a response to this comment, thank you.

Also, a post script in regards to your on-line customer service comment service: I tried to email this comment, but without success, the difficulty being that there's no "Submit" or "Send" to press after completing the personal information and comment. So, it seems that the Metro certainly doesn't encourage convenient public relations activity on-line. It's a puzzle to me as to why this is.

Sincerely, Wandis Wilcox
1860 Via Pacifica, Apt. 1201
Aptos, CA 95003-5873
(831) 662-0399

RECEIVED
2011 SEP 26 PM 4 20
SANTA CRUZ METRO
ADMIN DEPARTMENT

RE: The "Submit" problem. Evidently, the code kept coming up wrong even though I typed it in exactly as it appeared. So, there's a problem there in the so-called code system.



SANTA CRUZ COUNTY GROUP
Of The Ventana Chapter
P.O. Box 604, Santa Cruz, CA 95061 • phone (831) 335-4196
www.ventana.sierraclub.org • e-mail: scscrc@cruzio.com

RECEIVED
2011 SEP 26 AM 11:15

September 23, 2011
SANTA CRUZ METRO
ADMIN DEPARTMENT

The Board of Directors
Santa Cruz Metro
110 Vernon Street
Santa Cruz, CA 95060

Re: Big Basin bus service

Dear Chair Pirie and members of the Board:

We are writing to express our thanks for the fine service you have provided over the past many years that enables those wishing to visit Big Basin State Park to do so without having to depend on the private automobile.

The service you have provided, on weekends during the Spring and Summer, both on the #35A route leading from Pacific Avenue to the Big Basin Park Headquarters, and the #40 route returning in the late afternoon from Waddell Beach, has enabled us to lead, at least once per year, a very popular hike that runs for some 13 miles from the Park Headquarters down along the "Sunset" Trail past the Park's three magnificent waterfalls to the mouth of Waddell Creek at Highway 1.

This hike would not be possible without your provision of the bus service. In fact it does not work for those who might think to drive their cars, since to depend on cars (one would need at least two cars) would involve a lengthy and cumbersome car shuttle.

We understand that this service, for both of the above-mentioned bus runs, is to be discontinued after this Summer owing to the anticipated reduction in the funds available for public transit for at least the coming year. We are therefore also writing to express our regret regarding this discontinuance, as well as to express our hope that it be reinstated in the future.

To illustrate why this hike is so popular, we invite you to have a look at a web page that we put together last Summer following a hike that we led on April 25, 2010. It may be viewed at

http://ventana.sierraclub.org/schedule/bigBasinWalk/bigbasin_saunter.html.

As you will see, it was also a celebration of John Muir's birthday, in that many of the participants read quotes from Muir's writings aloud at our lunch stop by the Golden Cascade.

This year, when we led this hike on June 25, nearly 40 people wished to participate. We limited the number to 20 (in part because our lunch site does not conveniently accommodate more than 20), so there were nearly 20 left behind. Therefore we scheduled a "reprise" of the hike on August 28. There were 19 of us, and it was a wonderful event. On the next page is a photo of us (one person missed the photo), taken at Waddell Beach just before we boarded the #40 bus back to Santa Cruz.



Eighteen happy hikers

One of the pleasurable features of this hike is the degree of social interaction that invariably takes place on our bus rides. The #35A bus up to Big Basin is especially educational, since it provides a comprehensive transect of Santa Cruz County. It is a meteorological transect (from foggy coast to sunny interior), a geological transect (from our coastal marine terraces through the rare sand parkland habitat along Mount Hermon Road, and then along the Ben Lomond fault through the San Lorenzo Valley), a biological transect (from the coastal prairie, through the sandhills with many rare species, and ending in the redwood forest), and finally a sociological transect (residents of Santa Cruz are different from those in Scotts Valley, who in turn are different from those in the San Lorenzo Valley). All these transects are dependent on one another, and one of our hike leaders (Peter) has gotten in the habit of giving a little lecture on the bus ride about these remarkable features.

Finally, we would like to acknowledge your bus operators, who on our most recent trips were Mark and Mary. For all of our trips, we were transported gently, efficiently and on time.

Sincerely,

Peter Scott, leader

Celia Scott, co-leader

Kevin Collins, Chair
Santa Cruz County Group,
Sierra Club

cc: Leslie White

Pedro Valdez
1543 Bixby Street
Apt C
Santa Cruz, CA 95060

Dear Sirs-

I greet you with all the respect you deserve. At the same time, I beg you to forgive me. My requests, without fear of offending them, principally go to the lady who has my respect, with all the research in the case, investigator Guizar. Distinguished lawyer Margaret, let me greet you with all my respect.

I've had two accidents. The first time was on Route 17 when it went around Route 68. I do not remember the date of the first time. But that time, I fell on the sidewalk, and said so to Miss Guizar. I did not make any claim.

This time it was on 15 March at the bus station. It is only right that you fairly compensate me. My only lawyer is God, and only he knows my health problem. That is all. I insist please.

GOVERNMENT TORT CLAIM

RECOMMENDED ACTION

TO: Board of Directors

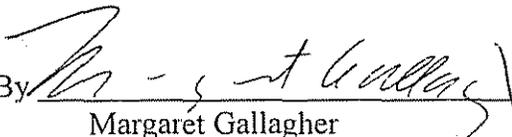
FROM: District Counsel

RE: Claim of: Hardy, Ernest
Date of Incident: 8/12/2011

Received: 9/15/11 Claim #: 11-0023
Occurrence Report No.: SC 08-11-11

In regard to the above-referenced Claim, this is to recommend that the Board of Directors take the following action:

- 1. Reject the claim entirely.
- 2. Deny the application to file a late claim.
- 3. Grant the application to file a late claim.
- 4. Reject the claim as untimely filed.
- 5. Reject the claim as insufficient.
- 6. Allow the claim in full.
- 7. Allow the claim in part, in the amount of \$ _____ and reject the balance.

By 
Margaret Gallagher
DISTRICT COUNSEL

Date: 9.30.11

I, Anthony Tapiz, do hereby attest that the above Claim was duly presented to and the recommendations were approved by the Santa Cruz Metropolitan Transit District's Board of Directors at the meeting of October 14, 2011.

By _____
Anthony Tapiz
RECORDING SECRETARY

Date: _____

MG/lg
Attachment(s)



Santa Cruz Metropolitan Transit District
110 Vernon Street
Santa Cruz, CA 95060

CLAIM FOR DAMAGES

(Pursuant to Section 910 et Seq., Government Code)

Claim # SC 0811-11 11-0028
(To be completed by METRO staff)

Please Print or Type:

The name and post office address of the claimant:

Claimant's Legal First Name: Ernest

Claimant's Legal Last Name: Hardy

Address to which notices are to be sent: _____

Telephone (Home): _____

Telephone (Business/Cell): _____

Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA), a new federal law that became effective January 1, 2009, requires that the Santa Cruz Metropolitan Transit District report specific information about Medicare beneficiaries who have other insurance coverage. This reporting is to assist Centers for Medicare and Medicaid Services and other insurance plans to properly coordinate payment of benefits among plans so that (your) claims are paid promptly and correctly. We are asking you to answer the following questions so that we may comply with this law.

Are you presently, or have you ever been, enrolled in Medicare Part A or B? Yes or No

IF YES, please provide the following information:

Medicare Claim Number: _____

Date of Birth: _____

Social Security Number: _____

Gender: M or F

10/30

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5-1.2



Claimant Name: Ernest Hardy

CLAIM FOR DAMAGES

The date, place and other circumstances of the occurrence or transaction that gave rise to the claim asserted:

Date of Incident/Accident: 8/12/2011

Time of Incident/Accident: 2:45 AM PM

Location of Incident/Accident

Street/City: MT. Hermon Rd. Scotts Valley, CA 95066

A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the at the time of presentation of the claim. Please state the known facts surrounding the loss and use additional paper if needed.

I was at a complete stop in traffic when I was rear-ended by a Ford Explorer XLT (license plate CA exempt 1192233) driven by The. The rear bumper was bent & the rear door latch were damaged, preventing the rear doors from opening.



Claimant Name: Ernest Hardy

CLAIM FOR DAMAGES

The name or names of the METRO employee or employees causing the injury, damage, or loss, if known:

If the claim totals less than \$10,000, the amount claimed as of the date of the presentation of the claim: \$ 782.13

If the amount exceeds \$10,000.00, this claim would be: Less than \$25,000 (Limited Civil Case) More than \$25,000

Claimant:


Signature/Print Name Ernest Hardy Date: 9/10/11

Attorney or Representative:

Signature/Print Name _____ Date: _____

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

NOTICE OF ACTION TAKEN IN CLOSED SESSION MEMORANDUM

DATE: October 14, 2011

TO: Board of Directors

FROM: Margaret Gallagher, District Counsel

SUBJECT: Notification Of Action Taken In Closed Session Regarding The Claim of Commerce West Insurance Company, Subrogating for Vince Tabula and Erika Guido; # 11-0005

On June 24, 2011 in closed session you authorized a settlement in the amount of Ten Thousand Six Hundred Eighty and 69/100 Dollars (\$10,680.69) to Commerce West Insurance Company, Subrogating for Vince Tabula and Erika Guido, to settle the claim referenced above for the collision that occurred on January 28, 2011 in Santa Cruz, California.

The following directors authorized the settlement: Alejo, Bustichi, Dodge, Graves, Hinkle, Leopold, Pirie, Stone, and Robinson. Directors Bryant and Hagen were absent. Pursuant to this direction, a fully executed release was received from Commerce West Insurance Company and a warrant was issued in accordance with this direction.

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

NOTICE OF ACTION TAKEN IN CLOSED SESSION MEMORANDUM

DATE: October 14, 2011

TO: Board of Directors

FROM: Margaret Gallagher, District Counsel

SUBJECT: Notification Of Actions Taken In Closed Session Regarding The Following Matters:

- a) Joseph Blair v. Santa Cruz Metropolitan Transit District; Superior Court Case No. CV 170075
- b) Mario De La Garza v. Santa Cruz Metropolitan Transit District; Superior Court Case No. CV 170254
- c) Goodwill Industries of Monterey and San Luis Obispo Counties, et al v. Santa Cruz METRO, et al; Superior Court Case No. CV 170417

a) Joseph Blair v. Santa Cruz Metropolitan Transit District

On June 24, 2011 in closed session you authorized METRO's District Counsel to reject the settlement offer of Joseph Blair in the sum of \$7,452.00. The following Directors authorized District Counsel to reject the settlement offer: Alejo, Bustichi, Dodge, Graves, Hinkle, Leopold, Pirie, Robinson and Stone. Directors Bryant and Hagen were absent.

b) Mario De La Garza v. Santa Cruz Metropolitan Transit District

On June 24, 2011 in closed session you authorized METRO's District Counsel to retain necessary experts to defend against this action and to proceed to trial. The following Directors supported this action: Alejo, Bustichi, Dodge, Graves, Hinkle, Leopold, Pirie, Robinson and Stone. Directors Bryant and Hagen were absent.

c) Goodwill Industries of Monterey and San Luis Obispo Counties, et al v. Santa Cruz METRO

On May 27, 2011, in closed session you authorized METRO's District Counsel to represent the METRO Bus Operator involved in the case. The following Directors authorized the representation of the Bus Operator: Alejo, Bryant, Bustichi, Dodge, Graves, Hagen, Leopold, Pirie, Robinson and Stone. Director Hinkle was absent.

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

NOTICE OF ACTION TAKEN IN CLOSED SESSION MEMORANDUM

DATE: October 14, 2011

TO: Board of Directors

FROM: Margaret Gallagher, District Counsel

SUBJECT: Notification Of Action Taken In Closed Session Regarding The Following
Matter: Side Agreement with United Transportation Union, Local 23

On June 24, 2011, in closed session you authorized Santa Cruz METRO (METRO) to enter into a Side Agreement with UTU, Local 23 to settle a dispute that arose over METRO's obligations pursuant to Article 19.04 in the METRO/UTU, Local 23 Labor Agreement. METRO and UTU, Local 23 agreed that METRO's contractual obligations pursuant to this article would be fulfilled by METRO being obligated to pay attorney's fees/expert witness fees in the maximum amount of \$35,000 for the criminal defense of a certain bus operator in Santa Cruz County Superior Court Case #M59962 in exchange for retirement from METRO employment.

The following directors authorized the settlement: Alejo, Bustichi, Dodge, Graves, Hinkle, Leopold, Pirie, Robinson and Stone. Director Bryant and Hagen was absent.

Pursuant to this direction, a Side Agreement and Settlement Agreement and Release Agreement was signed by the parties.

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

NOTICE OF ACTION TAKEN IN CLOSED SESSION MEMORANDUM

DATE: October 14, 2011
TO: Board of Directors
FROM: Margaret Gallagher, District Counsel
SUBJECT: Notification of Actions Taken In Closed Session

On April 8, 2011, in closed session you authorized Santa Cruz METRO to enter into a Side Agreement and Settlement and Release Agreement with Service Employees International Union (SEIU), Local 521 and a certain employee to settle all disputes that existed between and among them including but not limited to complaints before the Equal Employment Opportunity Commission/Department of Fair Employment and Housing Commission and numerous disciplinary actions. The terms of the agreement included employment reinstatement for the affected employee through and including September 30, 2011, with medical, vision and dental benefits paid in accordance with the SEIU Memorandum of Understanding and supplemental income. A lump sum payment in the amount of Thirty-Five thousand dollars (\$35,000.00) was made to the employee.

The following directors authorized the settlement: Bryant, Bustichi, Dodge, Graves, Hagen, Hinkle, Leopold, Robinson and Stone. Director Pirie opposed the settlement. Pursuant to this direction, a Side Agreement and Settlement Agreement were executed by the parties and full compliance with the terms of the Agreements has been accomplished.

AGENDA



NAOMI GUNTHER – CHAIR
CRAIG AGLER
ROSEANN MARQUEZ
DENNIS "POPS" PAPADOPULO

DAVE WILLIAMS - VICE CHAIR
BOB GEYER
MARA MURPHY
CHARLOTTE WALKER

PACIFIC STATION CONFERENCE ROOM
920 PACIFIC AVENUE, SANTA CRUZ, CALIFORNIA
6:00 PM – 7:55 PM

THE AGENDA PACKET FOR THE SANTA CRUZ METRO ADVISORY COMMITTEE MEETING CAN BE FOUND ONLINE AT WWW.SCMTD.COM AND IS AVAILABLE FOR INSPECTION AT SANTA CRUZ METRO'S ADMINISTRATIVE OFFICES, 110 VERNON ST., SANTA CRUZ, CA

NOTICE TO PUBLIC

Members of the public may address the Metro Advisory Committee on a topic not on the agenda but within the jurisdiction of MAC by approaching the Committee during consideration of Agenda Item #4 "Oral and Written Communications." Presentations may be limited in time in accordance with the Bylaws of MAC. Members of the public may address the Metro Advisory Committee on a topic on the agenda by approaching the Committee immediately after presentation of the staff report but before the Committee's deliberation on the topic to be addressed. Presentations may be limited in time in accordance with the Bylaws of MAC.

AMERICANS WITH DISABILITIES ACT

 *The Santa Cruz Metropolitan Transit District does not discriminate on the basis of disability. The Pacific Station Conference Room is located in an accessible facility. Any person who requires an accommodation or an auxiliary aid or service to participate in the meeting, or to access the agenda and the agenda packet, should contact [Tony Tapiz, Administrative Services Coordinator](#), at 831-426-6080 as soon as possible in advance of the MAC meeting. Hearing impaired individuals should call 711 for assistance in contacting METRO regarding special requirements to participate in the MAC meeting.*

INTERPRETATION SERVICES / SERVICIOS DE TRADUCCIÓN

Spanish language translation is available on an as needed basis. Please make advance arrangements with [Tony Tapiz, Administrative Services Coordinator](#) at 831-426-6080. Traducción al español está disponible de forma según sea necesario. Por favor, hacer arreglos por adelantado con Tony Tapiz, Coordinador de Servicios Administrativos al numero 831-426-6080.

5-3.1

**AGENDA
METRO ADVISORY COMMITTEE
PAGE 2 OF 3**

OCTOBER 19, 2011

PACIFIC STATION CONFERENCE ROOM
920 PACIFIC AVENUE
SANTA CRUZ

6:00 PM

1. CALL TO ORDER

2. ROLL CALL

3. AGENDA ADDITIONS/DELETIONS

Consideration of Late Additions to the Agenda. The Committee may take action on items not appearing on the posted agenda under any of the following conditions:

- a. Upon a determination by an affirmative vote of the Committee that an emergency exists, as defined in Section 54956.5 of the Government Code.*
- b. Upon a determination by a two-thirds vote of the Committee, or if less than two-thirds of the members are present, a unanimous vote of those members present, there is a need to take immediate action and the need to take action came to the attention of the Committee subsequent to the agenda being posted.*

4. ORAL/WRITTEN COMMUNICATIONS

This time is set aside for members of the general public to address the METRO Advisory Committee on matters of interest to the public either before or during the Committee's consideration of the item, if it is listed on the agenda, or, if it is not listed on the agenda but is within the jurisdiction of the Committee. Each member of the public appearing at a Committee meeting shall be limited to three minutes in his or her presentation, unless the Chair, at his or her discretion, permits further remarks to be made. Any person addressing the Committee may submit written statements, petitions or other documents to complement his or her presentation. Public presentations that have been scheduled prior to the meeting with the Committee Chair shall not be subject to the time limits contained in this section. When addressing the Committee, the individual may, but is not required to, provide his/her name and address in an audible tone for the record.

5. APPROVE MINUTES OF MAC MEETING OF SEPTEMBER 2011

(MOTION TO APPROVE REQUIRED)

Submitted by: METRO Admin Department

6. ACCEPT & FILE RIDERSHIP REPORTS FOR JULY AND AUGUST 2011

(MOTION TO ACCEPT AND FILE REQUIRED)

Submitted by: METRO Planning Department

7. ACCEPT & FILE PARACRUZ OPERATIONS STATUS REPORTS FOR JULY AND AUGUST 2011 *(MOTION TO ACCEPT AND FILE REQUIRED)*

Presented by: METRO ParaCruz

5-3.2

AGENDA
METRO ADVISORY COMMITTEE
PAGE 3 OF 3

8. **ACCEPT AND FILE LEGISLATIVE AND GRANTS REPORT FOR SEPTEMBER 2011**
(MOTION TO ACCEPT AND FILE REQUIRED)
Submitted by: METRO Grants Department
9. **DISCUSSION OF BUS STOPS**
 - a ADOPT-A-BUS STOP PROGRAM
10. **DISCUSSION OF SERVICE REDUCTIONS & CHANGES**
11. **COMMUNICATIONS TO METRO GENERAL MANAGER**
12. **COMMUNICATIONS TO METRO BOARD OF DIRECTORS**
13. **ITEMS FOR NEXT MEETING AGENDA**
14. **ADJOURNMENT**
ADJOURN TO THE NEXT MEETING OF THE METRO ADVISORY COMMITTEE ON WEDNESDAY, NOVEMBER 16, 2011, AT 6:00 P.M., IN THE PACIFIC STATION CONFERENCE ROOM, 920 PACIFIC AVENUE, SANTA CRUZ, CALIFORNIA.

DRAFT

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

M E M O R A N D U M

Date: September 21, 2011
To: Board of Directors
From: Naomi Gunther, MAC Chair
Subject: Metro Advisory Committee Recommendation

On September 21, 2011 the Metro Advisory Committee met and voted to withdraw its recommendation that the Board consider finding another location for their first meeting of the month.

The members of the MAC would also like to express their appreciation to Santa Cruz METRO and the Board of Directors for providing bus service to the 2011 Santa Cruz County Fair.

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: October 14, 2011

TO: Board of Directors

FROM: Les White, General Manager

SUBJECT: CONSIDERATION OF ADOPTING A RESOLUTION AUTHORIZING THE GENERAL MANAGER TO REQUEST A LETTER OF NO PREJUDICE (LONP) AND SIGN NECESSARY AGREEMENTS WITH THE CALIFORNIA TRANSPORTATION COMMISSION (CTC) AND CALTRANS IN ORDER TO PROCEED WITH THE PURCHASE OF 11 NEW FIXED-ROUTE CNG-FUELED BUSES WITH STATE AND LOCAL PARTNERSHIP PROGRAM (SLPP) MATCHING FUNDS, IF NECESSARY, PRIOR TO CTC ALLOCATION

I. RECOMMENDED ACTION

That the Board of Directors consider adopting a Resolution authorizing the General Manager to request a Letter of No Prejudice (LONP) and sign necessary agreements with the California Transportation Commission (CTC) and Caltrans in order to proceed with the purchase of 11 new fixed-route CNG-fueled buses with State and Local Partnership Program (SLPP) matching funds, if necessary, prior to CTC allocation.

II. SUMMARY OF ISSUES

- On October 4, 2010, Santa Cruz METRO received a FTA §5309 State of Good Repair (SGR) discretionary grant for the purchase of 11 fixed-route, CNG-fueled buses in the amount of \$4,830,600.
- The buses are ADA-compliant, and the FTA match is 17%, or \$989,400. Of this, \$134,535 is capitalized preventative maintenance labor, leaving a cash match of \$854,865. The cash match is being met with programming and allocation requests to the CTC for \$427,432 in State and Local Partnership Program (SLPP) funds, which require an equal 50% transit-dedicated sales tax cash match of \$427,433.
- Approximately \$5.060 million is available to Santa Cruz METRO through SLPP. To date, it has not been accessed due to the high sales tax cash match requirement (50%), money that is used to fund operations, particularly during difficult economic times.
- Santa Cruz METRO recently received legislative confirmation that State Transportation Assistance (STA) program funds will retain operational flexibility through 2015, and that an increased allocation is expected.

- As a result, STA funds are more than sufficient to supplant operational sales tax cash proposed to be used for the SLPP match.
- Santa Cruz METRO's request for programming of SLPP is on the September 15th CTC agenda and the request for allocation of funds is on the October agenda. CTC staff has recommended the allocation. However, it may be necessary to request a Letter of No Prejudice (LONP), allowing METRO to proceed without an allocation and receive reimbursement once the allocation is approved.
- Authorizing the attached Resolution will allow the General Manager to request an LONP and sign necessary agreements with CTC and Caltrans in order to proceed with the purchase of 11 fixed-route CNG-fueled buses with State and Local Partnership (SLPP) matching funds, if necessary, prior to CTC allocation.

III. DISCUSSION

On October 4, 2010, Santa Cruz METRO received a FTA §5309 State of Good Repair (SGR) discretionary grant for the purchase of 11 fixed-route, CNG-fueled buses for \$4,830,600. The buses are ADA-compliant, and the FTA match is 17%, or \$989,400. Of this, \$134,535 is capitalized preventative maintenance labor, leaving a required cash match of \$854,865. The cash match is being met with programming and allocation requests submitted to the CTC on August 3rd for \$427,432 in State and Local Partnership Program funds, which require an equal 50% transit-dedicated sales tax cash match of \$427,433 from Santa Cruz METRO. CTC staff recommendation is that Santa Cruz METRO should receive the allocation.

Approximately \$5.060 million is available to Santa Cruz METRO through SLPP. To date, it has not been accessed due to the high sales tax cash match requirement (50%), money that is used to fund operations, particularly during difficult economic times. However, Santa Cruz METRO recently received legislative confirmation that State Transportation Assistance (STA) program funds will retain operational flexibility through 2015, and that an increased allocation is expected.

Thus, STA funds are sufficient to supplant the operational sales tax revenue proposed for the SLPP match. If, for some reason, SLPP funds are not promptly allocated despite the staff recommendation, CTC asks that agencies request a Letter of No Prejudice (LONP) and have a "Plan B." In this case, Santa Cruz METRO could potentially use a portion of the recently received \$2.49 million in FY10 PTMISEA bond sale revenue for this purpose. A PTMISEA corrective action plan/budget revision would have to be approved for a rolling stock purchase, which is an administrative change.

Santa Cruz METRO's request for programming of SLPP is on the September 15th CTC agenda and the request for allocation of funds is on the October agenda. As stated, CTC staff has recommended allocating SLPP funds to Santa Cruz METRO. Requesting an LONP would allow METRO to proceed without an immediate allocation and receive

reimbursement once the allocation is approved at a later date, just to be safe. This ensures matching funds are secured before contracts are signed and money is obligated on this time-sensitive project, which is expected to be a piggyback bid with a contract in place by December 31, 2011.

Authorizing the attached Resolution will allow the General Manager to request an LONP and sign necessary agreements with CTC and Caltrans in order to proceed with the purchase of 11 fixed-route CNG-fueled buses with SLPP matching funds, if necessary, prior to CTC allocation.

IV. FINANCIAL CONSIDERATIONS

CTC approval of Santa Cruz METRO's programming of \$427,432 in SLPP funds will potentially result in an allocation by October 2011 to provide 50% of the matching funds required for the FY10 FTA §5309 State of Good Repair grant for the purchase of 11 fixed-route, CNG-fueled, ADA-compliant buses. The additional \$427,433 required would come from local transit-dedicated sales tax revenues, which in turn would be supplanted in the operational budget with an equal amount in STA revenue, which is fungible for operational use through 2015.

V. ATTACHMENTS

Attachment A: Resolution Authorizing the General Manager to Request a Letter of No Prejudice (LONP) and Sign Necessary Agreements with the California Transportation Commission (CTC) and Caltrans in Order to Proceed with the Purchase of 11 New Fixed-Route CNG-Fueled Buses with State and Local Partnership Program (SLPP) Matching Funds, if Necessary, Prior to CTC Allocation

ATTACHMENT A

BEFORE THE BOARD OF DIRECTORS OF THE SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

Resolution No. _____

On the Motion of Director: _____

Duly Seconded by Director: _____

The Following Resolution is Adopted:

RESOLUTION AUTHORIZING THE GENERAL MANAGER TO REQUEST A LETTER OF NO PREJUDICE (LONP) AND SIGN NECESSARY AGREEMENTS WITH THE CALIFORNIA TRANSPORTATION COMMISSION (CTC) AND CALTRANS IN ORDER TO PROCEED WITH THE PURCHASE OF 11 NEW FIXED-ROUTE CNG-FUELED BUSES WITH STATE AND LOCAL PARTNERSHIP PROGRAM (SLPP) MATCHING FUNDS, IF NECESSARY, PRIOR TO CTC ALLOCATION

WHEREAS, Santa Cruz METRO received a FTA Section (§) 5309 State of Good Repair (SGR) discretionary grant for the purchase of 11 fixed-route, CNG-fueled buses in the amount of \$4,830,600 on October 4, 2010 ; and

WHEREAS, the equipment is ADA-compliant, so the required matching funds are 17% of the total project cost, or \$989,400; and

WHEREAS, \$134,535 of the required match is met with capitalized preventative maintenance labor, and the remaining match needed is \$854,865; and

WHEREAS, Santa Cruz METRO has submitted project programming and allocation requests to the California Transportation Commission (CTC) for \$427,432 in State and Local Partnership Program (SLPP) funds which must be matched with an equal amount of local transit-dedicated sales tax revenue (\$427,433); and

WHEREAS, Santa Cruz METRO has received legislative confirmation that State Transportation Assistance (STA) program funds will retain operational fungibility through 2015 and an increased allocation is expected, thus STA funds can be used to supplant transit-dedicated sales tax revenues in the operational budget for the purposes of this match; and

WHEREAS, Santa Cruz METRO's project programming request is on the CTC September agenda and the allocation request is on the October agenda, and the CTC staff recommendation is to fund Santa Cruz METRO's request; and

WHEREAS, it still may be necessary for Santa Cruz METRO to request a Letter of No Prejudice (LONP) from the CTC in order to proceed without an allocation and receive reimbursement from SLPP funds once the allocation is approved; and

ATTACHMENT A

Resolution No. _____

Page 2

WHEREAS, as the CTC requests an expenditure schedule for the project covered by any LONP, Santa Cruz METRO is scheduled to obligate funds and sign contracts by December 31, 2011, with all buses being delivered by December 31, 2012; and

WHEREAS, as CTC requests that an alternate funding source (“Plan B”) be in place if SLPP bond funds are not available for allocation, Santa Cruz METRO can potentially use a portion of the already received \$2.49 million in FY10 PTMISEA bond revenue for rolling stock purchases with submission of a corrective action plan or budget amendment and is willing to commit to pursuing this one-time use of FY10 PMTISEA for this project specifically;

NOW, THEREFORE, BE IT RESOLVED, that the General Manager of Santa Cruz METRO is authorized to request a Letter of No Prejudice (LONP) and sign necessary agreements with the California Transportation Commission (CTC) and Caltrans in order to proceed with the purchase of 11 new fixed-route CNG-fueled buses with State and Local Partnership Program (SLPP) matching funds, if necessary, prior to CTC allocation.

PASSED AND ADOPTED this 14th Day of October, 2011 by the following vote:

AYES: Directors -

NOES: Directors -

ABSTAIN: Directors -

ABSENT: Directors -

APPROVED _____
ELLEN PIRIE
Board Chair

ATTEST _____
LESLIE R. WHITE
General Manager

APPROVED AS TO FORM:

MARGARET GALLAGHER
District Counsel

5-4.a2

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: October 14, 2011
TO: Board of Directors
FROM: John Daugherty, METRO Accessible Services Coordinator
SUBJECT: ACCESSIBLE SERVICES REPORT FOR JULY 2011

I. RECOMMENDED ACTION

This report is informational only. No action required.

II. SUMMARY OF ISSUES

- After a demonstration project, the Accessible Services Coordinator (ASC) position became a full time position to organize and provide METRO services to the senior/older adult and disability communities.
- Services include the METRO Mobility Training program and ongoing public outreach promoting METRO's accessibility. The ASC also participates in METRO's staff training and policy review regarding accessibility.
- Two persons have served in the ASC position from 1988 to today. In 2002 the ASC position was moved into the newly created Paratransit Department. On May 27, 2011 the Board approved the staff recommendation to receive monthly reports on the activity of the ASC.

III. DISCUSSION

The creation of the Accessible Services Coordinator (ASC) position was the result of a successful demonstration project funded through the Santa Cruz County Regional Transportation Commission. Two persons have served in the ASC position from 1988 to today. Both hiring panels for the ASC included public agency representatives serving older adults and persons with disabilities.

Under direction, the Accessible Services Coordinator: 1) Organizes, supervises, coordinates and provides METRO services to the older adult and disability communities; 2) Organizes, directs and coordinates the activities and operation of METRO's Mobility Training function; 3) Promotes and provides Mobility Training and outreach services; 4) Acts as information source to staff, Management, funding sources, funding sources, clients, community agencies and organizations, and the general public regarding Mobility Training and accessibility; 5) Works with Department Managers to ensure compliance with METRO's accessibility program and policies.

During 2002 the ASC position was moved from Customer Service to the newly created Paratransit Department.

On May 27, 2011 the Board approved the following recommendation: “Staff recommends that this position be reinstated in FY 12 budget with the requirement that this position be evaluated during FY12 to make sure the service items that are being requested by the Community are being carried out by this position. Additionally, staff recommends that this position be required to provide a monthly activity report to the Board of Directors during FY12.”

IV. FINANCIAL CONSIDERATIONS

None

V. ATTACHMENTS

Attachment A: Accessible Services Coordinator (ASC) Activity Tracking Report for July 2011

Prepared by: John Daugherty, METRO Accessible Services Coordinator
Date Prepared: September 16, 2011

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: October 14, 2011
TO: Board of Directors
FROM: Frank L. Cheng, Project Manager
SUBJECT: CONSIDERATION OF METROBASE STATUS REPORT

I. RECOMMENDED ACTION

That the Board of Directors accept and file the MetroBase Status Report.

II. SUMMARY OF ISSUES

- Fleet Maintenance Building: On June 30, 2010, METRO and West Bay Builders resolved all claims and payments for the Fleet Maintenance Building Component of the Metro Base Project.
- Vernon Administration Building: On August 24, 2011, METRO and DMC Construction resolved all claims and payments for the Administration Building Component of the Metro Base Project.
- Service & Fueling Building: On September 9, 2011, staff is presenting recommendation to acquire Architectural & Engineering Services for the design of a second LNG tank and components.
- Operations Building: Invitation For Bids (IFB) is pending State release of Proposition 1B Bond Funds.

III. DISCUSSION

On June 30, 2011, METRO and West Bay Builders resolved all claims and payment for the Fleet Maintenance Building Component of the Metro Base Project. METRO moved into the complete building on July 2, 2010. METRO began negotiations with West Bay Builders and concluded at the end of December 2010. West Bay Builders was required to provide all missing Owner Manuals and Warranties before release of final payment. Final payment occurred in June 2011.

On August 24, 2011, METRO and DMC Construction resolved all claims and payments for the Administration Building Component of the Metro Base Project. METRO moved into the building on December 5, 2009. METRO staff began closing out the project in mid 2010 and due to lack of response and staff changes at DMC Construction, resolution was complete August 2011.

On September 9, 2011, staff is presenting recommendation to acquire Architectural & Engineering Services for the design of a second LNG tank and components. Once the

recommended firm is chosen, they will begin immediately and provide a design in six weeks. Once METRO receives the design plans and specifications, an Invitation For Bids will be release for the construction and installation of the second LNG tank and components. Depending on long lead items in the project, timeframe of completion is approximately six months. The addition of the second LNG tank and components will alleviate the fueling needs of a growing METRO CNG fleet to meet the clean energy requirements.

In regards to the Operations Building, METRO is awaiting the construction of the building to encapsulate the METRO agency and improve operations. RNL Design Inc, is the Architectural & Engineering firm hired for the design and has completed the re-package of the Operations Building Component of the Metro Base Project. The design plans have been reviewed by the City of Santa Cruz, and plan checked by Bureau Veritas. To continue, Invitation for Bids is pending State release of Proposition 1B Bond Funds.

Information for the MetroBase Project can be viewed at <http://www.scmtd.com/metrobase>

IV. FINANCIAL CONSIDERATIONS

Funds for the construction of the Operations Building Component of the Metro Base Project are pending state sale of Proposition 1B Bond Funds (PTMISEA). The second LNG tank and other supplemental projects are funded with the remaining funds from previous PTMISEA allocations.

V. ATTACHMENTS

None

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: October 14, 2011

TO: Board of Directors

FROM: Robert Cotter, Manager of Maintenance

SUBJECT: CONSIDERATION OF AWARD OF CONTRACT WITH NATIONWIDE BIRD CONTROL, INC. FOR BIRD ABATEMENT SERVICES FOR AN AMOUNT NOT TO EXCEED \$34,000.00

I. RECOMMENDED ACTION

That the Board of Directors authorize the General Manager to execute a contract with - Nationwide Bird Control, Inc. for bird abatement services for an amount not to exceed \$34,000.

II. SUMMARY OF ISSUES

- The Santa Cruz METRO Maintenance building has been infested with birds in the ceiling area of the facility. The birds are nesting and leaving waste in areas that METRO Facilities workers are unable to access and clean.
- A formal request for proposals was conducted to solicit proposals from qualified firms.
- Four firms submitted proposals for Santa Cruz METRO's review.
- A three-member evaluation committee comprised of Santa Cruz METRO personnel reviewed and evaluated the proposals.

III. DISCUSSION

Santa Cruz METRO sought proposals from qualified firms to provide all tools, equipment, materials, labor and incidentals required to abate the problem of bird intrusion into Santa Cruz METRO's Fleet Maintenance Building located at 138 Golf Club Drive, Santa Cruz, California. On July 25, 2011 Santa Cruz METRO Request for Proposal No. 12-06 was mailed to thirteen firms, was legally advertised, and a notice was posted on Santa Cruz METRO's web site. On August 26, 2011, proposals were received and opened from four firms. A list of these firms is provided in Attachment A. A three-member evaluation committee comprised of Santa Cruz METRO personnel reviewed and evaluated the proposals.

The evaluation committee used the following criteria as contained in the Request for Proposals:

| Evaluation Criteria | Possible Points |
|--|------------------------|
| 1. Understanding of the project requirements and proposal submittals provided. | 25 |
| 2. Qualifications and experience of firm. | 20 |
| 3. Cost/Price Proposal. | 40 |
| 4. References | 15 |
| 5. Disadvantaged Business Enterprise Participation | 10 |
| Total Points Possible | 110 |

The evaluation committee is recommending that the Board of Directors authorize the General Manager to execute a contract with Nationwide Bird Control, Inc. for bird abatement services for an amount not to exceed \$34,000. Contractor will provide all materials and services meeting all Santa Cruz METRO specifications and requirements.

IV. FINANCIAL CONSIDERATIONS

Funds to support the contract are included in the FY12 MetroBase Capital budget.

V. ATTACHMENTS

Attachment A: List of firms that submitted a proposal

Attachment B: Contract with Nationwide Bird Control, Inc.

Prepared By: Erron Alvey, Acting Purchasing Agent
Date Prepared: September 28, 2011

Note: The RFP along with its Exhibits and any Addendum(s) are available for review at the Administration Office of Santa Cruz METRO or online at www.scmttd.com

Attachment A

LIST OF FIRMS THAT SUBMITTED A PROPOSAL TO
SANTA CRUZ METRO RFP NO. 12-06 FOR BIRD ABATEMENT SERVICES

1. Nationwide Bird Control, Inc. of Tracy, California
2. ABC Pest Management Inc. of Yuba City, California
3. Orkin Commercial Services of Livermore, California
4. Bird Solutions International of Vista, California

Attachment B

CONTRACT FOR BIRD ABATEMENT SERVICES (12-06)

THIS CONTRACT is made effective on October 14, 2011 between the SANTA CRUZ METROPOLITAN TRANSIT DISTRICT, a political subdivision of the State of California ("Santa Cruz METRO"), and NATIONWIDE BIRD CONTROL, INC. ("Contractor").

1. RECITALS

1.01 Santa Cruz METRO's Primary Objective

Santa Cruz METRO is a public entity whose primary objective is providing public transportation and has its principal office at 110 Vernon Street, Santa Cruz, California 95060.

1.02 Santa Cruz METRO's Need for Bird Abatement Services

Santa Cruz METRO has the need for Bird Abatement Services. In order to obtain these services, Santa Cruz METRO issued a Request for Proposals, dated July 25, 2011, setting forth specifications for such services. The Request for Proposals is attached hereto and incorporated herein by reference as Exhibit "A".

1.03 Contractor's Proposal

Contractor is a firm/individual qualified to provide Bird Abatement Services and whose principal place of business is 1852 West 11th Street, #354, Tracy, California. Pursuant to the Request for Proposals by Santa Cruz METRO, Contractor submitted a proposal for Bird Abatement Services, which is attached hereto and incorporated herein by reference as Exhibit "B."

1.04 Selection of Contractor and Intent of Contract

On October 14, 2011 Santa Cruz METRO selected Contractor as the offeror whose proposal was most advantageous to Santa Cruz METRO, to provide the Bird Abatement Services described herein. This Contract is intended to fix the provisions of these services.

Santa Cruz METRO and Contractor agree as follows:

2. INCORPORATED DOCUMENTS AND APPLICABLE LAW

2.01 Documents Incorporated in this Contract

The documents listed below are attached to this Contract and by reference made a part hereof. This is an integrated Contract. This writing constitutes the final expression of the parties' contract, and it is a complete and exclusive statement of the provisions of that Contract, except for written amendments, if any, made after the date of this Contract in accordance with Section 13.14.

A. Exhibit "A"

Santa Cruz Metropolitan Transit District's "Request for Proposals" dated July 25, 2011 including addendum number one dated August 16, 2011.

B. Exhibit "B" (Contractor's Proposal)

Contractor's Proposal to Santa Cruz METRO for Bird Abatement Services, signed by Contractor and dated August 26, 2011.

Attachment B

2.02 Conflicts

Where in conflict, the provisions of this writing supersede those of the above-referenced documents, Exhibits "A" and "B". Where in conflict, the provisions of Exhibit "A" supersede Exhibit "B".

2.03 Recitals

The Recitals set forth in Article 1 are part of this Contract.

3. DEFINITIONS

3.01 General

The terms below (or pronouns in place of them) have the following meaning in the contract:

3.01.01 CONTRACT - The Contract consists of this document, the attachments incorporated herein in accordance with Article 2, and any written amendments made in accordance with Section 13.14.

3.01.02 CONTRACTOR - The Contractor selected by Santa Cruz METRO for this project in accordance with the Request for Proposals issued July 25, 2011.

3.01.03 CONTRACTOR'S STAFF - Employees of Contractor.

3.01.04 DAYS - Calendar days.

3.01.05 OFFEROR - Contractor whose proposal was accepted under the terms and conditions of the Request for Proposals issued July 25, 2011.

3.01.06 PROVISION - Any term, agreement, covenant, condition, clause, qualification, restriction, reservation, or other stipulation in the contract that defines or otherwise controls, establishes, or limits the performance required or permitted by either party.

3.01.07 SCOPE OF WORK (OR "WORK") - The entire obligation under the Contract, including, without limitation, all labor, equipment, materials, supplies, transportation, services, and other work products and expenses, express or implied, in the Contract.

4. TIME OF PERFORMANCE

4.01 Term

The term of this Contract will be for a period not to exceed one (1) year and shall commence upon the execution of the contract by Santa Cruz METRO.

At the option of Santa Cruz METRO, this contract agreement may be renewed for four (4) additional one (1) year terms upon mutual written consent.

5. COMPENSATION

5.01 Terms of Payment

Santa Cruz METRO shall compensate Contractor in an amount not to exceed the amounts/rates agreed upon by Santa Cruz METRO. Santa Cruz METRO shall reasonably determine whether work has been successfully performed for purposes of payment. Compensation shall be made within thirty (30) days of

Attachment B

Santa Cruz METRO written approval of Contractor's written invoice for said work. Contractor understands and agrees that if he/she exceeds the \$34,000 maximum amount payable under this contract, that it does so at its own risk.

5.02 Invoices

Contractor shall submit invoices with a purchase order number provided by Santa Cruz METRO on a monthly basis. Contractor's invoices shall include detailed records showing actual time devoted, work accomplished, date work accomplished, personnel used, and amount billed per hour. Expenses shall only be billed if allowed under the Contract. Telephone call expenses shall show the nature of the call and identify location and individual called. Said invoice records shall be kept up-to-date at all times and shall be available for inspection by Santa Cruz METRO (or any grantor of Santa Cruz METRO, including, without limitation, any State or Federal agency providing project funding or reimbursement) at any time for any reason upon demand for not less than four (4) years after the date of expiration or termination of the Contract. Under penalty of law, Contractor represents that all amounts billed to Santa Cruz METRO are (1) actually incurred; (2) reasonable in amount; (3) related to this Contract; and (4) necessary for performance of the project.

6. NOTICES

All notices under this Contract shall be deemed duly given upon delivery, if delivered by hand; or three (3) days after posting, if sent by registered mail, receipt requested; to a party hereto at the address hereinunder set forth or to such other address as a party may designate by notice pursuant hereto.

Santa Cruz METRO

Santa Cruz Metropolitan Transit District
110 Vernon Street
Santa Cruz, CA 95060
Attention: General Manager

CONTRACTOR

Nationwide Bird Control, Inc.
1852 West 11th Street, #354
Tracy, CA 95376
Attention: Vice President of Operations

Attachment B

7. AUTHORITY

Each party has full power and authority to enter into and perform this Contract and the person signing this Contract on behalf of each has been properly authorized and empowered to enter into this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

Signed on _____

SANTA CRUZ METRO - SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

Leslie R. White
General Manager

CONTRACTOR – NATIONWIDE BIRD CONTROL, INC.

By _____
Michael Gelder
Vice President of Operations

Approved as to Form:

Margaret Rose Gallagher
District Counsel

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: October 14, 2011

TO: Board of Directors

FROM: Robert Cotter, Maintenance Manager

SUBJECT: CONSIDERATION OF AWARD OF CONTRACT WITH STATE ELECTRIC GENERATOR FOR REMOVAL OF AN EXISTING ROOF-TOP GENERATOR AND INSTALLATION OF TWO TRANSFER SWITCHES AND A SANTA CRUZ METRO SUPPLIED GENERATOR FOR AN AMOUNT NOT TO EXCEED \$17,412.05

I. RECOMMENDED ACTION

That the Board of Directors authorize the General Manager to execute a contract with - State Electric Generator for removal of an existing roof-top generator and installation of two transfer switches and a Santa Cruz METRO supplied generator for an amount not to exceed \$17,412.05

II. SUMMARY OF ISSUES

- The generator located at Pacific Station has been determined to be inadequate for Santa Cruz METRO's needs. Santa Cruz METRO owns a 45 kilowatt generator which previously serviced the Encinal building. Santa Cruz METRO staff determined that Pacific Station could be better serviced by moving the METRO owned generator to that site.
- A competitive procurement was conducted to solicit bids from qualified firms.
- One firm submitted a bid for Santa Cruz METRO's review.
- Staff has reviewed the submitted bid.
- A sole bid justification was prepared.

III. DISCUSSION

Santa Cruz METRO sought bids for the removal of an existing roof-top generator, purchase of one transfer switch and the installation of two transfer switches and a Santa Cruz METRO supplied generator at Pacific Station. On July 27, 2011 Santa Cruz METRO Invitation for Bid No. 12-11 was mailed to nine generator firms, was legally advertised, and a notice was posted on Santa Cruz METRO's web site. On September 1, 2011, bids were received and opened from one firm. Staff has reviewed and evaluated the submitted bid.

Staff recommends that the Board of Directors authorize the General Manager to sign a contract with State Electric Generator for removal of an existing roof-top generator and installation of two transfer switches and a Santa Cruz METRO supplied generator for an amount not to exceed \$17,412.05 on behalf of Santa Cruz METRO. Contractor will provide all equipment and materials meeting all Santa Cruz METRO specifications and requirements. Sole bid analysis was required due to only one bid being received. District Counsel approved sole bid justification.

IV. FINANCIAL CONSIDERATIONS

Funds to support this contract are included in the fiscal year 2010 Prop 1B California Transit Security Program grant.

V. ATTACHMENTS

Attachment A: Contract with State Electric Generator

Prepared By: Erron Alvey, Acting Purchasing Agent
Date Prepared: September 27, 2011

Note: The IFB along with its Exhibits and any Addendum(s) are available for review at the Administration Office of Santa Cruz METRO or online at www.scmttd.com

Attachment A

CONTRACT FOR REMOVAL OF AN EXISTING ROOF-TOP GENERATOR AND INSTALLATION OF TWO TRANSFER SWITCHES AND A SANTA CRUZ METRO SUPPLIED GENERATOR No. 12-11

THIS CONTRACT is made effective on October 14, 2011 between the SANTA CRUZ METROPOLITAN TRANSIT DISTRICT, a political subdivision of the State of California ("Santa Cruz METRO"), and STATE ELECTRIC GENERATOR ("Contractor").

1. RECITALS

1.01 Santa Cruz METRO's Primary Objective

Santa Cruz METRO is a public entity whose primary objective is providing public transportation and has its principal office at 110 Vernon Street, Santa Cruz, California 95060.

1.02 Santa Cruz METRO's need for removal of an existing roof-top generator and installation of two transfer switches and a Santa Cruz METRO supplied generator

Santa Cruz METRO requires removal of an existing roof-top generator and installation of two transfer switches and a Santa Cruz METRO supplied generator. In order to obtain said removal of an existing roof-top generator and installation of two transfer switches and a Santa Cruz METRO supplied generator, the Santa Cruz METRO issued an Invitation for Bids, dated July 27, 2011 setting forth specifications for removal of an existing roof-top generator and installation of two transfer switches and a Santa Cruz METRO supplied generator. The Invitation for Bids is attached hereto and incorporated herein by reference as Exhibit A.

1.03 Contractor's Bid Form

Contractor is a licensed general contractor desired by the Santa Cruz METRO and whose principal place of business is 211 Fern Street, Santa Cruz, California. Pursuant to the Invitation for Bids by the Santa Cruz METRO, Contractor submitted a bid for Provision of said removal of an existing roof-top generator and installation of two transfer switches and a Santa Cruz METRO supplied generator, which is attached hereto and incorporated herein by reference as Exhibit B.

1.04 Selection of Contractor and Intent of Contract

On October 14, 2011 Santa Cruz METRO selected Contractor as the lowest responsive, responsible bidder to provide said removal of an existing roof-top generator and installation of two transfer switches and a Santa Cruz METRO supplied generator. The purpose of this Contract is to set forth the provisions of this procurement.

1.05 Contractor and Supplier Synonymous

For the purposes of this Contract, the terms "contractor" and "supplier" are synonymous.

Santa Cruz METRO and Contractor agree as follows:

2. INCORPORATED DOCUMENTS AND APPLICABLE LAW

2.01 Documents Incorporated in This Contract

The documents below are attached to this Contract and by reference made a part hereof. This is an integrated Contract. This writing constitutes the final expression of the parties' Contract, and it is a complete and exclusive statement of the provisions of that Contract, except for written amendments, if

Attachment A

any, made after the date of this Contract in accordance with Part III, Section 13.14 of the General Conditions of the Contract.

a) Exhibit A

Santa Cruz Metropolitan Transit District's "Invitation for Bids No. 12-11" dated July 27, 2011 including Addendum number one.

b) Exhibit B (Bid Form)

Contractor's Submitted Bid to Santa Cruz METRO for removal of an existing roof-top generator and installation of two transfer switches and a Santa Cruz METRO supplied generator as signed by Contractor.

2.02 Conflicts

Refer to PART I, Item 1.03, item B.

2.03 Recitals

The Recitals set forth in Article 1 are part of this Contract.

3. TIME OF PERFORMANCE

3.01 General

The work under this Contract shall be completed 365 calendar days after the date of commencement specified in the Notice to Proceed, unless modified by the parties under Part III, section 13.14 of the General Conditions, Instructions and Information for Bidders of this Contract or terminated pursuant to Part III, section 2.

3.02 Term

The term of this Contract shall commence upon the execution of the contract by Santa Cruz METRO and shall remain in force for one year after the date of commencement specified in the Notice to Proceed. Santa Cruz METRO and Contractor may extend the term of this Contract at any time for any reason upon mutual written consent.

3.03 Acceptance of Terms

Execution of this documents shall be deemed as acceptance of all of the terms and conditions as set forth herein and those contained in the Notice and Invitation to Bidders, the General Conditions, the Special Conditions, the FTA Requirements for Construction Contracts, the Specifications and all attachments and addenda, which are incorporated herein by reference as integral parts of this Contract

4. SCOPE OF WORK

4.01

Contractor shall furnish Santa Cruz METRO all supervision, labor, equipment, supplies, material, freight, transportation, tools and other work and services as specified in and in full accordance with the Invitation for Bid (IFB) No. 12-11 dated July 27, 2011 for removal of an existing roof-top generator and installation of two transfer switches and a Santa Cruz METRO supplied generator. The Contractor shall provide a complete project in conformance with the intent shown on the drawings and specified herein and as provided for and set forth in the IFB.

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4.02

Contractor and Santa Cruz METRO agree to comply with and fulfill all obligations, promises, covenants and conditions imposed upon each of them in the Contract Documents. All of said work done under this Contract shall be performed to the satisfaction of Santa Cruz METRO or its representative, who shall have the right to reject any and all materials and supplies furnished by Contractor which do not strictly comply with the requirements contained herein, together with the right to require Contractor to replace any and all work furnished by Contractor which shall not either in workmanship or material be in strict accordance with the contract documents.

5. COMPENSATION

5.01 Terms of Payment

Upon written acceptance, Santa Cruz METRO agrees to pay Contractor as identified in the Bid Form, Exhibit B, not to exceed \$17,412.05 for satisfactory completion of all work, including all costs for labor, materials, tools, equipment, services, freight, insurance, overhead, profit and all other costs incidental to the performance of the services specified under this contract, under the terms and provisions of this Contract within forty-five (45) days thereof. Contractor understands and agrees that if he/she exceeds the \$17,412.05 maximum amount payable under this contract, that it does so at its own risk.

5.02 Release of Claims

Payment by Santa Cruz METRO of undisputed contract amounts is contingent upon the Contractor furnishing Santa Cruz METRO with a Release of All Claims against Santa Cruz METRO arising by virtue of the part of the contract related to those amounts.

5.03 Retention of progress payments

Santa Cruz METRO will retain ten (10%) percent of the contract price from each progress payment made pursuant to the construction contract through the completion of the contract. The retention shall be released, with the exception of 150 percent (150%) of any disputed amount within 60 days after the date of completion of the work. Pursuant to Section 22300 of the Public Contract Code, the Contractor may substitute a deposit of securities in lieu of Santa Cruz METRO withholding any monies to ensure Contractor's performance under the Contract, or alternatively, request that Santa Cruz METRO make payment of retentions earned directly to an escrow agent at the expense of Contractor. The provisions of Public Contract Code Section 22300 are incorporated herein by reference as though set forth in full, and shall govern the substitution of securities and/or escrow account. If a Stop Notice is filed Santa Cruz METRO will retain 125% of the amount set forth in the Stop Notice from the next progress payment made to Contractor.

5.04 Change in Contract Price

5.04.01. General

- A. The Contract price constitutes the total compensation payable to the Contractor for performing the work. All duties, responsibilities, and obligations assigned to or undertaken by the Contractor to perform the work shall be at the Contractor's expense without change in the Contract price.
- B. The Contract price may only be changed by a change order. Any request for an increase in the Contract price shall be based on written notice delivered by the Contractor to the Construction Manager promptly, but in no event later than 10 days after the date of the occurrence of the event giving rise to the request and stating the general nature of the request. Notice of the amount of the request with supporting data shall be delivered within 45 days after the date of the occurrence, unless the Construction Manager allows an additional period of time to ascertain more accurate data in support of the request, and shall be accompanied by the Contractor's

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written statement that the amount requested covers all amounts (direct, indirect, and consequential) to which the Contractor is entitled as a result of the occurrence of the event. No request for an adjustment in the Contract price will be valid if not submitted in accordance with this Article.

- C. The value of any work covered by a change order or of any request for an increase or decrease in the Contract price shall be determined in one of the following ways:
 - 1. Where the work involved is covered by unit prices contained in the Contract documents, by application of unit prices to the quantities of the items involved; or
 - 2. By mutual acceptance of a lump sum, which may include an allowance for overhead and profit not necessarily in accordance with Article 5.04.04; or
 - 3. On the basis of the cost of work (determined as provided in Articles 5.04.02. and 5.04.03.) plus a Contractor's fee for overhead and profit (determined as provided in Article 5.04.04.)

5.04.02 Cost of Work (Based on Time and Materials)

- A. General: The term "cost of work" means the sum of all costs necessarily incurred and paid by the Contractor for labor, materials, and equipment in the proper performance of work. Except as otherwise may be agreed to in writing by Santa Cruz METRO, such costs shall be in amounts no higher than those prevailing in the locality of the project.
- B. Labor: The cost of labor used in performing work by the Contractor, a subcontractor, or other forces, will be the sum of the following:
 - 1. The actual wages paid plus any employer payments to or on behalf of workers for fringe benefits, including health and welfare, pension, vacation, and similar purposes. The cost of labor may include the wages paid to foremen when it is determined by the Construction Manager that the services of foremen do not constitute a part of the overhead allowance.
 - 2. There will be added to the actual wages as defined above, a percentage set forth in the latest "Labor Surcharge and Equipment Rental Rates" in use by the California State Department of Transportation which is in effect on the date upon which the work is accomplished. This percentage shall constitute full compensation for all payments imposed by State and Federal laws including, but not limited to, workers' compensation insurance and Social Security payments.
 - 3. The amount paid for subsistence and travel required by collective bargaining agreements.
 - 4. For equipment operators, payment for the actual cost of labor and subsistence or travel allowance will be made at the rates paid by the Contractor to other workers operating similar equipment already on the work, or in the absence of such labor, established by collective bargaining agreements for the type of workers and location of the extra work, whether or not the operator is actually covered by such an agreement. A labor surcharge will be added to the cost of labor described herein in accordance with the provisions of subsection 2 of Article 5.04.02.B herein, which surcharge shall constitute full compensation for payments imposed by State and Federal laws, and all other payments made to on behalf of workers other than actual wages.
- C. Materials: The cost of materials used in performing work will be the cost to the purchaser, whether Contractor or subcontractor, from the supplier thereof, except as the following are applicable:

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1. Trade discounts available to the purchaser shall be credited to Santa Cruz METRO notwithstanding the fact that such discounts may not have been taken by the Contractor.
 2. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by the Construction Manager. Markup, except for actual costs incurred in the handling of such materials, will not be allowed.
 3. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on extra work items or the current wholesale price for such materials delivered to the work site, whichever price is lower.
 4. If, in the opinion of the Construction Manager, the cost of material is excessive, or the Contractor does not furnish satisfactory evidence of the cost of such material, then the cost shall be deemed to be the lowest current wholesale price for the quantity concerned delivered to the work site, less trade discount. Santa Cruz METRO reserves the right to furnish materials for the extra work and no claim shall be made by the Contractor for costs and profit on such materials.
- D. Equipment: The Contractor will be paid for the use of equipment at the rental rate listed for such equipment specified in the current edition of the Department of Transportation publication entitled, "Labor Surcharge and Equipment Rental Rates," which is in effect on the date upon which the work is accomplished. Such rental rates will be used to compute payments for equipment whether the equipment is under the Contractor's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate resulting in the least total cost to Santa Cruz METRO for the total period of use. If it is deemed necessary by the Contractor to use equipment not listed in the foregoing publication, the Construction Manager will establish an equitable rental rate for the equipment. The Contractor may furnish cost data that might assist the Construction Manager in the establishment of the rental rate.
1. The rental rates paid, as above provided, shall include the cost of fuel, oil, lubrication supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance, and all incidentals. Operators of equipment will be separately paid for as provided in subsection 4 of Article 5.04.02.B.
 2. All equipment shall be in good working condition and suitable for the purpose for which the equipment is to be used.
 3. Before construction equipment is used on the extra work, the Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Construction Manager, in duplicate, a description of the equipment and its identifying number.
 4. Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment, which has no direct power unit, shall be powered by a unit of at least the minimum rating recommended by the manufacturer.
 5. Individual pieces of equipment or tools having a replacement value of \$500 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefore.

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- E. Owner Operated Equipment: When owner operated equipment is used to perform work and is to be paid for as extra work, the Contractor will be paid for the equipment and operator as follows:

Payment for the equipment will be made in accordance with the provisions in Article 5.04.02.D. "Equipment."

Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the Contractor to other workers operating similar equipment already on the project, or, in the absence of such other workers, at the rates for such labor established by collective bargaining agreement for type of worker and location of the work, whether or not the owner operator is actually covered by such an agreement. A labor surcharge will be added to the cost of labor described herein, in accordance with the provisions in subsection 2 of Article 5.04.02(B), "Labor."

To the direct cost of equipment rental and labor, computed as provided herein, will be added the markup for equipment rental and labor as provided in Article 5.04.04, "Contractor's Fee."

- F. Equipment Time: The rental time to be paid for equipment on the work shall be the time the equipment is in productive operation on the work being performed and shall include the time required to move the equipment to the new location and return it to the original location or to another location requiring no more time than that required to return it to its original location; except, that moving time will not be paid if the equipment is used on other than the extra work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power. No payment will be made for loading and transporting costs when the equipment is used at the site of the extra work on other than the extra work. The following shall be used in computing the rental time of equipment on the work:
1. When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be ½-hour of operation, and any part of an hour in excess of 30 minutes will be considered 1-hour of operation.
 2. When daily rates are listed, operation for any part of a day less than 4 hours shall be considered to be ½-day of operation.
 3. Rental time will not be allowed while equipment is inoperative due to breakdowns or Contractor caused delays.
- G. Cost of Work Documentation: The Contractor shall furnish the Construction Manager Daily Extra Work Reports on a daily basis covering the direct costs of labor and materials and charges for equipment whether furnished by the Contractor, subcontractor, or other forces. Santa Cruz METRO will provide the Extra Daily Work Report forms to the Contractor. The Contractor or an authorized agent shall sign each Daily Extra Work Report. The Daily Extra Work Report shall provide names and classifications of workers and hours worked; size, type, and identification number of equipment; and the hours operated. Copies of certified payrolls and statement of fringe benefit shall substantiate labor charges. Valid copies of vendor's invoices shall substantiate material charges.

The Construction Manager will make any necessary adjustments. When these reports are agreed upon and signed by both parties, they shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on a later audit.

The Contractor shall inform the Construction Manager when extra work will begin so that Santa Cruz METRO inspector can concur with the Daily Extra Work Reports. Failure to

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conform to these requirements may impact the Contractor's ability to receive proper compensation.

5.04.03. Special Services

Special services are defined as that work characterized by extraordinary complexity, sophistication, or innovations, or a combination of the foregoing attributes that are unique to the construction industry. The following may be considered by the Construction Manager in making estimates for payment for special services:

- A. When the Construction Manager and the Contractor, by agreement, determine that a special service is required which cannot be performed by the forces of the Contractor or those of any of its subcontractors, the special service may be performed by an entity especially skilled in the work to be performed. After validation of invoices and determination of market values by the Construction Manager, invoices for special services based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental costs.
- B. When the Contractor is required to perform work necessitating special fabrication or machining process in a fabrication or a machine shop facility away from the jobsite, the charges for that portion of the work performed at the offsite facility may, by agreement, be accepted as a special service and accordingly, the invoices for the work may be accepted without detailed itemization.
- C. All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. In lieu of the allowances for overhead and profit on labor, materials, and equipment specified in Article 5.04.04. herein, a single allowance of ten (10) percent will be added to invoices for special services.

5.04.04. Contractor's Fee

- A. Work ordered on the basis of time and materials will be paid for at the actual and necessary cost as determined by the Construction Manager, plus allowances for overhead and profit which allowances shall constitute the "Contractor's Fee," except as provided in subparagraph B of this Article. For extra work involving a combination of increases and decreases in the work, the actual necessary cost will be the arithmetic sum of the additive and deductive costs. The allowance for overhead and profit shall include compensation for superintendence, bond and insurance premiums, taxes, all field and home office expenses, and all other items of expense or cost not included in the cost of labor, materials, or equipment provided for under Articles 5.04.02.B, C, D, and E, herein. The allowance for overhead and profit will be made in accordance with the following schedule:

| Actual Necessary Cost | Overhead and Profit Allowance |
|-----------------------|-------------------------------|
| Labor..... | 33 percent |
| Materials | 15 percent |
| Equipment..... | 15 percent |

- B. Labor, materials, and equipment may be furnished by the Contractor or by the subcontractor on behalf of the Contractor. When a subcontractor performs all or any part of the extra work, the allowance specified in subparagraph A of Article 5.04.04 shall only be applied to the labor, materials, and equipment costs of the subcontractors to which the Contractor may add 5 percent of the subcontractor's total cost for the extra work. Regardless of the number of hierarchical tiers of subcontractors, the 5 percent increase above the subcontractor's total cost, which includes the allowances for overhead and profit specified herein, may be applied one time only for each separate work transaction.

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5.04.05. Compensation for Time Extensions

Adjustments in compensation for time extension will be allowed only for causes in Article 5.05.01.B.1 through Article 5.05.01.B.4 computed in accordance with Article 5.04 and the following. No adjustments in compensation will be allowed when Santa Cruz METRO caused delays to a controlling item of work and Contractor caused delays to a controlling item of work occur concurrently or for causes in Article 5.05.01.B.5 through Article 5.05.01.B.6.

Compensation for idle time of equipment will be determined in accordance with the provisions in Article 5.04.02.E and Section 8-1.09 of the State Specifications.

5.05. Change of Contract Time

5.05.01. General

- A. The Contract time may only be changed by a change order. Any request for an extension of the Contract time shall be based on written notice delivered by the Contractor to the Construction Manager promptly, but in no event later than 10 days after the date of the occurrence of the event giving rise to the request and stating the general nature of the request. Notice of the extent of the request with supporting data shall be delivered within 45 days after the date of such occurrence, unless the Construction Manager allows an additional period of time to ascertain more accurate data in support of the request, and shall be accompanied by the Contractor's written statement that the adjustment requested is the entire adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. No request for an adjustment in the Contract time will be valid if not submitted in accordance with the requirements of this Article.

The Contract time will only be extended when a delay occurs which impacts a controlling item of work as shown on the work schedules required in the Special Provisions. Time extensions will be allowed only if the cause is beyond the control and without the fault or negligence of the Contractor. Time extensions will also be allowed when Santa Cruz METRO caused delays to a controlling item of work and Contractor caused delays to a controlling item of work occur concurrently. The Contractor will be notified if the Construction Manager determines that a time extension is not justified.

- B. The Contract time will be extended in an amount equal to time lost due to delays beyond the control of the Contractor if a request is made therefore as provided in this Article. An extension of Contract time will only be granted for days on which the Contractor is prevented from proceeding with at least 75 percent of the normal labor and equipment force actually engaged on the said work, by said occurrences or conditions resulting immediately therefrom which impact a controlling item of work as determined by the Construction Manager. Such delays shall include:
1. Changes.
 2. Failure of Santa Cruz METRO to furnish access, right of way, completed facilities of related projects, Drawings, materials, equipment, or services for which Santa Cruz METRO is responsible.
 3. Survey error by Santa Cruz METRO.
 4. Suspension of work pursuant to Articles 7.05(A) and 7.05(C).
 5. Occurrences of a severe and unusual nature including, but not restricted to, acts of God, fires, and excusable inclement weather. An "act of God" means an earthquake, flood, cloudburst,

Attachment A

cyclone or other cataclysmic phenomena of nature beyond the power of the Contractor to foresee or to make preparation in defense against, but does not include ordinary inclement weather. Excusable inclement weather is any weather condition, the duration of which varies in excess of the average conditions expected, which is unusual for the particular time and place where the work is to be performed, or which could not have been reasonably anticipated by the Contractor, as determined from U.S. Weather Bureau records for the preceding 3-year period or as provided for in the Special Provisions.

6. Act of the public enemy, act of another governmental entity, public utility, epidemic, quarantine restriction, freight embargo, strike, or labor dispute. A delay to a subcontractor or supplier due to the above circumstances will be taken into consideration for extensions to the time of completion.

5.05.02. Extensions of Time for Delay Due to Excusable Inclement Weather

- A. The Contract time will be extended for as many days in excess of the average number of days of excusable inclement weather, as defined in Article 5.05.01.B.5., as the Contractor is specifically required under the Special Provisions to suspend construction operations, or as many days as the Contractor is prevented by excusable inclement weather, or conditions resulting immediately therefrom, from proceeding with at least 75 percent of the normal labor and equipment force engaged on critical items of work as shown on the schedule.
- B. Should the Contractor prepare to begin work at the regular starting time at the beginning of any regular work shift on any day on which excusable inclement weather, or the conditions resulting from the weather prevents work from beginning at the usual starting time and the crew is dismissed as a result thereof, the Contractor will be entitled to a 1-day extension whether or not conditions change thereafter during said day and the major portion of the day could be considered to be suitable for such construction operations.
- C. The Contractor shall base the construction schedule upon the inclusion of the number of days of excusable inclement weather specified in the Article titled "Excusable Inclement Weather Delays," of the Special Provisions. No extension of the Contract time due to excusable inclement weather will be considered until after the said aggregate total number of days of excusable inclement weather has been reached; however, no reduction in Contract time would be made if said number of days of excusable inclement weather is not reached.

5.06. Changed Site Conditions

If any work involves digging trenches or other excavations below the surface, the Contractor shall promptly and before the following conditions are disturbed, notify Santa Cruz METRO in writing of any:

- A. Material that the Contractor believes may be a regulated material that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- B. Subsurface or latent physical conditions at the site differing from those indicated in this Contract.
- C. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

Santa Cruz METRO will promptly investigate the condition and if it finds that the conditions do materially so differ, or do involve regulated material, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work, Santa Cruz METRO will issue a change order under the procedures described in this Contract. For regulated

Attachment A

materials, Santa Cruz METRO reserves the right to use other forces for exploratory work to identify and determine the extent of such material and for removing regulated material from such areas.

In the event that a dispute arises between Santa Cruz METRO and the Contractor on whether the conditions materially differ or on the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by this Contract but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by this Contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

5.07 Waivers and Releases

Contractor is required to provide unconditional waivers and releases of stop notices in accordance with California Civil Code §3262(d)(2). Santa Cruz METRO agrees to pay Contractor within 30 days after receipt of an undisputed and properly submitted payment request from the Contractor. If Santa Cruz METRO fails to make such payments in a timely manner, Santa Cruz METRO shall pay interest to the Contractor equivalent to the legal rate set forth in Subdivision (a) of Section 685.010 of the Code of Civil Procedure. For purposes of this section, "progress payment" includes all payments due contractor, except that portion of the final payment designated by the contract as retention earnings. Any payment request determined not to be a proper payment request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a written explanation of why the payment request is not proper. The number of days available to Santa Cruz METRO to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which Santa Cruz METRO exceeds the seven-day return requirement set forth above. A payment request shall be considered properly executed if funds are available for payment of the payment request and payment is not delayed due to an audit inquiry by Santa Cruz METRO's financial officer.

6. NOTICES

All notices under this Contract shall be in writing and shall be effective when received, if delivered by hand; or three (3) days after posting, if sent by registered mail, return receipt requested; to a party hereto at the address hereinunder set forth or to such other address as a party may designate by notice pursuant hereto.

Santa Cruz METRO

Santa Cruz Metropolitan Transit District
110 Vernon Street
Santa Cruz, CA 95060

Attention: General Manager

CONTRACTOR

State Electric Generator
211 Fern Street
Santa Cruz, CA 95060

Attention: President

7. ENTIRE AGREEMENT

Attachment A

- 7.01 This Contract represents the entire agreement of the parties with respect to the subject matter hereof, and all such agreements entered into prior hereto are revoked and superseded by this Contract, and no representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.
- 7.02 This Contract may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Contract shall be void and of no effect.

8. AUTHORITY

Each party has full power and authority to enter into and perform this Contract and the person signing this Contract on behalf of each has been properly authorized and empowered to enter into it. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

Signed on _____

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

Leslie R. White
General Manager

CONTRACTOR – STATE ELECTRIC GENERATOR

By _____
Ernest Alexander
President

Approved as to Form:

Margaret Rose Gallagher
District Counsel

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: October 14, 2011

TO: Board of Directors

FROM: Robert Cotter, Maintenance Manager

SUBJECT: CONSIDERATION OF AWARD OF CONTRACT WITH AIRTEC SERVICE FOR HEATING AND VENTILATION AND AIR CONDITIONING MAINTENANCE SERVICE

I. RECOMMENDED ACTION

That the Board of Directors authorize the General Manager to execute a contract with - Airtec Service for heating, ventilation and air conditioning service for an amount not to exceed \$15,000 for an initial one year, with options to extend for (4) additional one year terms.

II. SUMMARY OF ISSUES

- Santa Cruz METRO has a need for an outside vendor for heating, ventilation and air conditioning (HVAC) maintenance services as this is a specialty service requiring licensing and insurance.
- A formal request for proposals was conducted to solicit proposals from qualified heating, ventilation and air conditioning (HVAC) maintenance firms.
- Four firms submitted proposals for Santa Cruz METRO's review.
- A three-member evaluation committee comprised of Santa Cruz METRO staff reviewed and evaluated the proposals.

III. DISCUSSION

Santa Cruz METRO requested proposals for providing scheduled service and non-scheduled repairs on heating, ventilation and air conditioning (HVAC) systems at seven Santa Cruz METRO facilities. On August 24, 2011, Santa Cruz METRO Request for Proposal No. 12-09 was mailed to fifteen firms, was legally advertised, and a notice was posted on Santa Cruz METRO's web site. On September 23, 2011, proposals were received and opened from four firms. A list of these firms is provided in Attachment A. A three-member evaluation committee comprised of Santa Cruz METRO staff have reviewed and evaluated the proposals.

The evaluation committee used the following criteria as contained in the Request for Proposals:

| EVALUATION CRITERIA | EVALUATION POINTS |
|---|-------------------|
| 1. Proposal Cost | 50 |
| 2. Experience of Service Personnel | 30 |
| 3. Ability to meet all service requirements presented in this RFP | 30 |
| 4. Disadvantage Business Enterprise Participation | 25 |
| TOTAL POINTS POSSIBLE | 135 |

The evaluation committee is recommending that a contract be established with Airtec Service for providing scheduled service and non-scheduled repairs on heating, ventilation and air conditioning (HVAC) systems for an amount not to exceed \$15,000. Contractor will provide all services meeting all Santa Cruz METRO specifications and requirements.

IV. FINANCIAL CONSIDERATIONS

Funds to support contract are included in the Maintenance budget for FY12 account 503351.

V. ATTACHMENTS

Attachment A: List of firms that submitted a proposal

Attachment B: Contract with Airtec Service

Prepared By: Erron Alvey, Acting Purchasing Agent
Date Prepared: October 4, 2011

Note: The RFP along with its Exhibits and any Addendum(s) are available for review at the Administration Office of Santa Cruz METRO or online at www.scmttd.com

Attachment A

**LIST OF FIRMS THAT SUBMITTED A PROPOSAL TO
SANTA CRUZ METRO RFP NO. 12-09
FOR HVAC MAINTENANCE SERVICE**

- 1. Airtec Service of Watsonville, California**
- 2. Geo. H. Wilson, Inc. of Santa Cruz, California**
- 3. Roger's Refrigeration of Santa Cruz, California**
- 4. Prime Mechanical of Pleasanton, California**

Attachment B

CONTRACT FOR HVAC MAINTENANCE SERVICES (12-09)

THIS CONTRACT is made effective on October 14, 2011 between the SANTA CRUZ METROPOLITAN TRANSIT DISTRICT, a political subdivision of the State of California ("Santa Cruz METRO"), and AIRTEC SERVICE ("Contractor").

1. RECITALS

1.01 Santa Cruz METRO's Primary Objective

Santa Cruz METRO is a public entity whose primary objective is providing public transportation and has its principal office at 110 Vernon Street, Santa Cruz, California 95060.

1.02 Santa Cruz METRO's Need for HVAC Maintenance Services

Santa Cruz METRO has the need for HVAC Maintenance Services. In order to obtain these services, Santa Cruz METRO issued a Request for Proposals, dated August 24, 2011, setting forth specifications for such services. The Request for Proposals is attached hereto and incorporated herein by reference as Exhibit "A".

1.03 Contractor's Proposal

Contractor is a firm/individual qualified to provide HVAC Maintenance Service and whose principal place of business is 175 Aviation Way, Watsonville, California. Pursuant to the Request for Proposals by Santa Cruz METRO, Contractor submitted a proposal for HVAC Maintenance Service, which is attached hereto and incorporated herein by reference as Exhibit "B."

1.04 Selection of Contractor and Intent of Contract

On October 14, 2011, Santa Cruz METRO selected Contractor as the offeror whose proposal was most advantageous to Santa Cruz METRO, to provide the HVAC Maintenance Service described herein. This Contract is intended to fix the provisions of these services.

Santa Cruz METRO and Contractor agree as follows:

2. INCORPORATED DOCUMENTS AND APPLICABLE LAW

2.01 Documents Incorporated in this Contract

The documents listed below are attached to this Contract and by reference made a part hereof. This is an integrated Contract. This writing constitutes the final expression of the parties' contract, and it is a complete and exclusive statement of the provisions of that Contract, except for written amendments, if any, made after the date of this Contract in accordance with Section 13.14.

A. Exhibit "A"

Santa Cruz Metropolitan Transit District's "Request for Proposals" dated August 24, 2011 including Addenda number one dated September 8, 2011.

B. Exhibit "B" (Contractor's Proposal)

Contractor's Proposal to Santa Cruz METRO for HVAC Maintenance Service, signed by Contractor and dated September 23, 2011.

Attachment B

2.02 Conflicts

Where in conflict, the provisions of this writing supersede those of the above-referenced documents, Exhibits "A" and "B". Where in conflict, the provisions of Exhibit "A" supersede Exhibit "B".

2.03 Recitals

The Recitals set forth in Article 1 are part of this Contract.

3. DEFINITIONS

3.01 General

The terms below (or pronouns in place of them) have the following meaning in the contract:

3.01.01 CONTRACT - The Contract consists of this document, the attachments incorporated herein in accordance with Article 2, and any written amendments made in accordance with Section 13.14.

3.01.02 CONTRACTOR - The Contractor selected by Santa Cruz METRO for this project in accordance with the Request for Proposals issued August 24, 2011.

3.01.03 CONTRACTOR'S STAFF - Employees of Contractor.

3.01.04 DAYS - Calendar days.

3.01.05 OFFEROR - Contractor whose proposal was accepted under the terms and conditions of the Request for Proposals issued August 24, 2011.

3.01.06 PROVISION - Any term, agreement, covenant, condition, clause, qualification, restriction, reservation, or other stipulation in the contract that defines or otherwise controls, establishes, or limits the performance required or permitted by either party.

3.01.07 SCOPE OF WORK (OR "WORK") - The entire obligation under the Contract, including, without limitation, all labor, equipment, materials, supplies, transportation, services, and other work products and expenses, express or implied, in the Contract.

4. TIME OF PERFORMANCE

4.01 Term

The term of this Contract will be for a period not to exceed one (1) year and shall commence upon the execution of the contract by Santa Cruz METRO.

At the option of Santa Cruz METRO, this contract agreement may be renewed for four (4) additional one (1) year terms upon mutual written consent.

5. COMPENSATION

5.01 Terms of Payment

Santa Cruz METRO shall compensate Contractor in an amount not to exceed \$2,819 per quarter or \$11,276 annually. For emergency repairs, Santa Cruz METRO shall compensate Contractor: \$116 per hour for hourly straight time billing rate; \$158 per hour for repairs performed after normal working hours; and \$200

Attachment B

per hour for work performed on holidays. Contractor shall not charge for mileage to Santa Cruz METRO facilities. Contractor will bill Santa Cruz METRO for parts at a discount of 15% from list price. Santa Cruz METRO shall reasonably determine whether work has been successfully performed for purposes of payment. Compensation shall be made within thirty (30) days of Santa Cruz METRO written approval of Contractor's written invoice for said work.

5.02 Invoices

Contractor shall submit invoices with a purchase order number provided by Santa Cruz METRO on a monthly basis. Contractor's invoices shall include detailed records showing actual time devoted, work accomplished, date work accomplished, personnel used, and amount billed per hour. Expenses shall only be billed if allowed under the Contract. Telephone call expenses shall show the nature of the call and identify location and individual called. Said invoice records shall be kept up-to-date at all times and shall be available for inspection by Santa Cruz METRO (or any grantor of Santa Cruz METRO, including, without limitation, any State or Federal agency providing project funding or reimbursement) at any time for any reason upon demand for not less than four (4) years after the date of expiration or termination of the Contract. Under penalty of law, Contractor represents that all amounts billed to Santa Cruz METRO are (1) actually incurred; (2) reasonable in amount; (3) related to this Contract; and (4) necessary for performance of the project.

6. NOTICES

All notices under this Contract shall be deemed duly given upon delivery, if delivered by hand; or three (3) days after posting, if sent by registered mail, receipt requested; to a party hereto at the address hereinunder set forth or to such other address as a party may designate by notice pursuant hereto.

Santa Cruz METRO

Santa Cruz Metropolitan Transit District
110 Vernon Street
Santa Cruz, CA 95060
Attention: General Manager

CONTRACTOR

Airtec Service
175 Aviation Way
Watsonville CA 95076
Attention: President

Attachment B

7. AUTHORITY

Each party has full power and authority to enter into and perform this Contract and the person signing this Contract on behalf of each has been properly authorized and empowered to enter into this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

Signed on _____

SANTA CRUZ METRO - SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

Leslie R. White
General Manager

CONTRACTOR – AIRTEC SERVICE

By _____
David Olson
President

Approved as to Form:

Margaret Rose Gallagher
District Counsel

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: October 14, 2011

TO: Board of Directors

FROM: Robyn D. Slater, Human Resources Manager

SUBJECT: CONSIDERATION OF CONTRACT RENEWAL FOR EMPLOYEE DENTAL INSURANCE WITH DELTA DENTAL THROUGH THE CALIFORNIA STATE ASSOCIATION OF COUNTIES EXCESS INSURANCE AUTHORITY (CSAC-EIA)

I. RECOMMENDED ACTION

Staff recommends that the Board of Directors authorize the General Manager to execute a contract renewal for employee dental insurance for an additional one-year period with - Delta Dental through the CSAC-EIA.

II. SUMMARY OF ISSUES

- The contract for employee dental insurance will expire on December 31, 2011.
- Santa Cruz METRO currently has a contract with Delta Dental as part of a consortium with CSAC-EIA. Alliant Insurance Services is the insurance broker for this contract which has been in effect since December 2009.
- Prior to December 2010 Santa Cruz METRO had an individual contract with Delta Dental.
- Since 2009 there has been no rate increase. During this same time period the average increase within the Delta Dental PPO group has been 5 – 7% per year.
- Potential rate increases for 2010 and 2011 were eliminated by using rate stabilization funds.
- Stabilization funds helped reduce the rate increase for 2012 by 1.6%.
- Due to Santa Cruz METRO's experience and the depletion of stabilization funds there is a 13.4% increase for the upcoming year.
- Santa Cruz METRO will be placed in a different pool for rate review at the next renewal which should significantly reduce upcoming renewal rate changes.

- Staff is recommending that the Board of Directors authorize the General Manager to execute a contract amendment to extend the contract for one-year period.

III. DISCUSSION

Santa Cruz METRO provides dental insurance coverage for its employees. The current contract will expire on December 31, 2011. Santa Cruz METRO's Dental insurance is currently purchased as part of the CSAC-EIA. Alliant Insurance Services is the broker for the CSAC-EIA.

Prior to joining CSAC-EIA Santa Cruz METRO had an individual contract with Delta Dental for an identical insurance program. There has been no rate increase since 2009 even though the average rate increase for Delta Dental PPO insurance premiums has been 5 – 7% per year.

As part of the CSAC-EIA, Santa Cruz METRO has been able to use stabilization funds to maintain premiums at the 2009 level. However, at this time the stabilization funds will be depleted after reducing the proposed rate increase by 1.6%. The renewal rate increase for 2012 after using the last of the stabilization funds is an increase of 13.4%.

Santa Cruz METRO's experience in several areas has been higher than average for the past year, which has affected our renewal rate. Santa Cruz METRO will be included to a different pool within the EIA since the stabilization funds are depleted which will allow some smoothing of future renewal rates. The average renewal rate for organizations in the new pool for 2012 was a 4% increase.

The three-tier monthly rates offered for the new contract period by Delta Dental are as follows: Employee only - \$58.62; Employee plus one dependent - \$104.80; Employee plus two or more dependents - \$180.61.

District staff recommends that the Board authorize the General Manager to execute a one-year contract extension with Delta Dental of California for employee dental insurance coverage. The cost for this contract is estimated at \$527,017.

IV. FINANCIAL CONSIDERATIONS

Funding for this contract is contained in the Operating Budget, however, the account for Dental insurance will need to be adjusted with the next budget revision. Account 502041 will be increased by approximately 5% for the remainder of this fiscal year.

V. ATTACHMENTS

Attachment A: Renewal Proposal Submitted by Alliant Insurance Services

Section 3: Delta Dental 2012 Renewal Rates & Benefits



| Dental Benefits | Delta Dental Current / Renewal | Premier/Non-Delta |
|----------------------------------|--------------------------------|-----------------------|
| Calendar Year Maximum | PPO | \$1,700/Member |
| Calendar Year Deductible | Individual / Family | None |
| Diagnostic and Preventive | 100% | 100% |
| Oral Exam | | |
| X-Rays | | |
| Teeth Cleaning | | |
| Fluoride Treatment | | |
| Space Maintainers | | |
| Bitewirngs | | |
| Basic Services | 85% | 85% |
| Amalgam/Composite Fillings | | |
| Periodontics (Gum disease) | | |
| Endodontics (Root Canal) | | |
| Sealants | | |
| Major Services | 60% | 60% |
| Extractions & Other Oral Surgery | | |
| Crown Repair | | |
| Restorative - Inlays and Crowns | | |
| Prosthodontics | | |
| Complex Oral Surgery | | |
| Orthodontics | 60% | 60% |
| Eligible for Benefit | Child Only | |
| Lifetime Maximum | \$3,000 | |
| Rate Guarantee | 1/1/2011 - 12/31/2011 | 1/1/2012 - 12/31/2012 |
| MONTHLY RATES | CURRENT | RENEWAL |
| Employee | \$51.70 | \$58.62 |
| Employee + 1 | \$92.43 | \$104.80 |
| Family | \$159.29 | \$180.61 |
| TOTAL MONTHLY PREMIUM | \$38,734 | \$43,918 |
| TOTAL ANNUAL PREMIUM | \$464,807 | \$527,017 |
| ANNUAL DIFFERENCE | | \$62,210 |
| % ANNUAL DIFFERENCE | | 13.4% |

Enrollment from Delta Dental CSAC-EIA Renewal letter received 8/30/2011

Note: This summary is for informational purpose only. It does not amend, extend, or alter the current policy in any way. In the event information in this summary differs from the Plan Document, the Plan Document will prevail.



2012 BOARD OF DIRECTORS MEETING SCHEDULE

Meetings are scheduled for the 2nd and 4th Fridays of the month unless otherwise indicated.

**The first meeting of each month is TENTATIVE and will be held on an as-needed basis.*

- | | | |
|---|--------------------|--|
| 📅 | January 13, 2012* | 8:30 a.m. METRO Administrative Offices, 110 Vernon St., Santa Cruz |
| 📅 | January 21, 2012 | 9:00 a.m. Santa Cruz City Council Chambers, 809 Center St., Santa Cruz |
| 📅 | February 10, 2012* | 8:30 a.m. METRO Administrative Offices, 110 Vernon St., Santa Cruz |
| 📅 | February 24, 2012 | 9:00 a.m. Watsonville City Council Chambers, 275 Main St., Watsonville |
| 📅 | March 9, 2012* | 8:30 a.m. METRO Administrative Offices, 110 Vernon St., Santa Cruz |
| 📅 | March 23, 2012 | 9:00 a.m. Santa Cruz City Council Chambers, 809 Center St., Santa Cruz |
| 📅 | April 13, 2012* | 8:30 a.m. METRO Administrative Offices, 110 Vernon St., Santa Cruz |
| 📅 | April 27, 2012 | 9:00 a.m. Santa Cruz City Council Chambers, 809 Center St., Santa Cruz |
| 📅 | May 11, 2012* | 8:30 a.m. METRO Administrative Offices, 110 Vernon St., Santa Cruz |
| 📅 | May 25, 2012 | 9:00 a.m. Capitola City Council Chambers, 420 Capitola Ave., Capitola |
| 📅 | June 8, 2012* | 8:30 a.m. METRO Administrative Offices, 110 Vernon St., Santa Cruz |
| 📅 | June 22, 2012 | 9:00 a.m. Santa Cruz City Council Chambers, 809 Center St., Santa Cruz |

THERE ARE NO MEETINGS IN JULY

- | | | |
|---|---------------------|---|
| 📅 | August 10, 2012* | 8:30 a.m. METRO Administrative Offices, 110 Vernon St., Santa Cruz |
| 📅 | August 24, 2012 | 9:00 a.m. Watsonville City Council Chambers, 275 Main St., Watsonville |
| 📅 | September 14, 2012* | 8:30 a.m. METRO Administrative Offices, 110 Vernon St., Santa Cruz |
| 📅 | September 28, 2012 | 9:00 a.m. Scotts Valley City Council Chambers, 1 Civic Center Dr., Scotts Valley |
| 📅 | October 12, 2012* | 8:30 a.m. METRO Administrative Offices, 110 Vernon St., Santa Cruz |
| 📅 | October 26, 2012 | 9:00 a.m. Santa Cruz City Council Chambers, 809 Center St., Santa Cruz |
| 📅 | November 9, 2012* | 8:30 a.m. METRO Administrative Offices, 110 Vernon St., Santa Cruz |
| 📅 | November 16, 2012 | 9:00 a.m. Watsonville City Council Chambers, 275 Main St., Watsonville <i>(This meeting is scheduled for third Friday due to Thanksgiving Holiday)</i> |
| 📅 | December 14, 2012* | 8:30 a.m. METRO Administrative Offices, 110 Vernon St., Santa Cruz |
| 📅 | December 21, 2012 | 9:00 a.m. Santa Cruz City Council Chambers, 809 Center St., Santa Cruz <i>(This meeting is scheduled for third Friday due to Christmas Holiday)</i> |

5-11.1

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: October 14, 2011
TO: Board of Directors
FROM: Les White, General Manager
**SUBJECT: STATUS REPORTS OF PROPOSED FEDERAL AND STATE
LEGISLATION AND CURRENT LEGISLATIVE ISSUES**

I. RECOMMENDED ACTION

That the Board of Directors accept and file the status reports of proposed Federal and State legislation and current legislative issues through October 5, 2011.

II. SUMMARY OF ISSUES

- Status reports on Congress's, the State Assembly's and Senate's legislative issues are provided monthly to inform the Board of the status of Federal and State legislation of interest to Santa Cruz METRO.
- This month's State and Federal reports reflect pertinent legislative activities which occurred August 16, 2011 – October 5, 2011.
- Congress left town in a hurry following the debt ceiling vote and returned after Labor Day. The bipartisan debt reduction commission created has met and is tasked with the specification of the second round of cuts of mandatory budget cuts, or pre-determined cuts will be triggered by November 23rd.
- In September, Congress passed the eighth extension of SAFETEA-LU, through March 31st, 2012. House Transportation and Infrastructure Committee Chair John Mica (R-FL) says this is the final extension and a new act must be passed. Senator Boxer agrees. This extension is linked to the gas tax—if it expires, so does the tax.
- The President presented S1549, the American Jobs Act of 2011, to Senate Majority Leader Harry Reid on September 12th. Many components are items that the GOP has agreed with in the past. The questions now are whether or not parts of the bill can be passed and/or how the GOP might stall the bill prior to the 2012 election and be able to blame it on the other party.
- The California Legislature reconvened on August 15th, with a deadline of all pending bills passing by September 9th. The Governor must sign or veto bills by October 9th.
- In September, the State held its first bond sale since spring 2010 in order to meet California's cash flow needs. This bodes well for a fall bond sale to finance Proposition 1B job-creating, shovel-ready projects, such as our Operations Building.

III. DISCUSSION

Status reports on Federal House of Representatives' and Senate's proposed legislation and related issues at the state level are provided monthly to inform the Board of the status of legislation of interest to Santa Cruz METRO. The purpose of this report is to inform the Board of Directors of the current status of pending legislation which may be of interest to or have an eventual impact on Santa Cruz METRO and/or the transit industry. The Federal and State Legislation Status Reports are updated monthly for this purpose.

This month's State and Federal reports reflect pertinent legislative activities which occurred August 16, 2011 – October 5, 2011. In DC, Congress left town in a hurry following the debt ceiling vote and returned after Labor Day. Discussion began about appropriations bills and the necessity to quickly pass 12 of them, thus the spree of Continuing Resolutions and extensions to fund the government, as well as the extension of SAFETEA-LU discussed below. The promise to have a bill on the President's desk by the August recess clearly did not materialize. In addition, much focus was on the first meetings of the bipartisan debt reduction commission which is tasked with the specification of the second round of cuts or mandatory cuts, even to defense spending, will be triggered by November 23rd.

On September 13th, Congress passed the eighth extension of SAFETEA-LU, through March 31, 2012. House Transportation and Infrastructure Committee Chair John Mica (R-FL) says this is the final extension and a new act must be passed. This extension is linked to the gas tax—if it expires, so does the tax. Also introduced in early October was S1648, a bill proposed by Senator Rand Paul (R-KY) and co-sponsored by Minority Leader Senator Mitch McConnell (R-KY), to terminate the Transportation Enhancements (TE) program, which generally funds bicycle and pedestrian projects associated with mass transportation. S1648 redirects this funding to emergency infrastructure repairs, such as bridge and road construction.

The President presented S1549, the American Jobs Act of 2011, to Senate Majority Leader Harry Reid on September 12th. Many components are items that the GOP has agreed with in the past. The question now is how the GOP might stall the bill prior to the 2012 election and be able to blame it on the other party. Also coming up in the discussion will be the FY12 budget, the House version of which proposes over 30% in cuts to transportation funding, with some scenarios saying that the cuts exceed 38%, which would be a disaster for systems nationwide.

Pertinent federal issues and legislation are covered in **Attachments A and B**.

The California Legislature reconvened on August 15th, with a deadline of all pending bills passing by September 9th. The Governor must sign or veto bills by October 9th. In September, Governor Brown said that legislators would be “singing the veto blues,” as he intended to veto many of the 590+ passed bills on his desk. So far, transit remains unscathed other than two vetoed bills which included employer commute programs and the establishing of a blue ribbon task force on transportation. More important to Santa Cruz METRO is that, via the passage of SB565, the flexibility to use STA funds for operational purposes through 2015 has been retained.

In September, the State held its first bond sale since spring 2010 in order to meet California's cash flow needs. This bodes well for a fall bond sale to finance Proposition 1B job-creating, shovel-ready projects, such as our Operations Building.

Pertinent state issues and legislation that were introduced in this session and which have been vetted by CTA are identified on **Attachments C and D**.

IV. FINANCIAL CONSIDERATIONS

As most potential legislation carries a fiscal impact, staff will report on a monthly basis of newly implemented federal and/or State legislation which financially impacts Santa Cruz METRO.

The extension of SAFETEA-LU's authorization through March 31, 2012 would secure transportation funding and the related gas tax until then. Chair Mica has said this is the final extension, so look for action on a new transportation act, probably by the beginning of the year if not sooner. In addition, we are keeping a close eye on appropriations due to HR5 (see **Attachments A and B**) to see if the extension is truly a "clean" one. For now, transportation advocates are watching all the appropriations bills in the House very closely, and government is funded through November 18th via a Continuing Resolution at the level set in the debt-ceiling negotiations (\$1.043 trillion) since a FY12 federal budget was not passed by the end of the federal fiscal year at September 30, 2011.

It is unknown at this time what impact the President's Jobs Bill will have on discretionary and formula funding for transit infrastructure projects. Santa Cruz METRO will aggressively pursue any applicable funding opportunities released should the bill pass.

Santa Cruz METRO also received news that it will receive its FY10 PTMISEA allocation of \$2.49 million, possibly as soon as the end of October, and that STA flexibility for operational use has been secured through 2015.

V. ATTACHMENTS

- Attachment A:** Federal Legislative Issues and Status Report, October 5, 2011
- Attachment B:** Federal House and Senate Bills Status Report, October 5, 2011
- Attachment C:** State of California Legislative Issues and Status Report, October 5, 2011
- Attachment D:** State of California Assembly and Senate Bills Status Report, October 5, 2011

ATTACHMENT A

Federal Legislative Issues and Status Report October 5, 2011

Current Legislative Issues

FY12 Federal Budget

Update at 10/5/11: Unable to deal with all authorizing and appropriations legislation by the end of the federal fiscal year (9/30/11), Congress has passed a Continuing Resolution (CR) funding the government through November 18th at the level agreed to in the debt ceiling vote (\$1.043 trillion). Expect the FY12 budget fight to become even more incendiary as the deadline grows closer and especially following the November 23rd recommendations (if made) of the Joint Select Committee on Deficit Reduction.

Update at 8/16/11: The debt ceiling crisis took precedence this month, forcing all other legislative issues, including the FY12 federal budget, long-term surface transportation act, farm, trade and other appropriations legislation into the background. The debt ceiling was raised in two separate actions totaling \$2.4 trillion, was heavily back-loaded with an equal amount in cuts, and established a bipartisan committee whose recommendations are due by November 23rd.

Long Term Surface Transportation Act (MAP-21) and S. 1648

Update at 10/5/11: On 9/13/11, the House passed the eighth extension of SAFETEA-LU through March 31st, 2012. House Chair Mica says that this is the final extension and a new act must be passed by the time this extension expires. This extension is also tied to the gas tax expiration—in other words, a greater incentive than any to get a new act passed. When the extension was passed to the Senate, it was being held up for 30 hours by Sen. Coburn (R-OK) who was holding it hostage over bike/pedestrian funding (“transportation enhancements” or TE) and human rights’ funding to Myanmar. It then passed and now S. 1648 has been introduced by Senator Rand Paul (R-KY) and backed by Minority Leader Mitch McConnell (R-KY) to funnel TE funding into infrastructure repairs, exchanging bikes and footpaths for bridges and roads.

Update at 8/16/11: Because the debt ceiling deal pushes the next set of decisions into November and the current extension of SAFETEA-LU expires on 9/30/11, it has become even more crucial to either pass a bill (unlikely), hope that Congress can pass a large omnibus spending package by the end of the session (considering the recent FAA authorization, this is probably not a good bet), or pass another continuing resolution, which is possibly the most likely thing to happen.

The NAT GAS (New Alternative Transportation to Give Americans Solutions) Act (HR1380)

Updates at 10/5/11, 8/16/11, 6/15/11 and 5/19/11: No change at this time; has been referred to the Subcommittee on Energy and Power of the Committee on Energy and Commerce and the House Science, Space and Technology Committee.

ATTACHMENT A

Update at 4/13/11: Santa Cruz METRO's Alternative Fuel Tax Credit for CNG fuel (50 cents per gallon equivalent tax credit) has now been rolled into the NAT GAS Act (HR1380). This bill extends the credit through 2016. The bill has bipartisan support.

House Resolution 5 (H.R. 5)

Updates at 10/5/11, 8/16/11, 6/15/11, and 5/19/11: We are still monitoring potential effects of HR5, which will probably be seen after the FY12 budget is authorized and appropriations commence, closer now that the surface transportation act extension is in the process of passing. How it is appropriated will indicate the potential impact of HR5.

Update at 1/18/11: In a secret caucus held on January 4th, House GOP members held an unrecorded vote on a proposed Rules package. Passed in this package was H.R. 5, a separation of the authorization and appropriations processes in regard to infrastructure (such as transit) funding. What this means to transit is that, for the first time in decades, the transparency of the authorization process driving the appropriations process is lost.

American Infrastructure Investment Fund Act of 2011 (S 936)

Update at 10/5/11, 8/16/11: No change at this time. Read twice. Upstaged by the President's Jobs Bill.

Update at 5/19/11: Senators Rockefeller (D-WV) and Lautenberg (D-NJ) introduced this act to create a \$5 billion fund to drive private investment in transportation infrastructure. This allows better leveraging of federal funds for infrastructure investments, using a variety of means (loans, loans guarantees) to encourage private, regional, state and federal investment and authorizes \$5 billion a year for 2012 and 2013. It is intended to also provide states with greater flexibility for the types of projects they may fund with federal dollars.

Attachment B

Santa Cruz METRO
Federal House and Senate Bills
Status Report
October 5, 2011

| Federal Bills House | Subject | Introduced | Status |
|---|---|-----------------------|--|
| <p>MAP-21 (Moving Ahead for Progress in the 21st Century = New name for long-term surface transportation act) (Mica-R-FL; Boxer, D-CA)</p> | <p>Because of time spent on the debt ceiling issue, as well as time lost on other legislation such as the FAA reauthorization bill (due in part to the insertion of some anti-Labor provisions), on September 13th, the House passed the eighth extension of SAFETEA-LU through March 31, 2012. The President introduced his "Jobs Bill" in September which put emphasis on infrastructure projects as a key to job creation. A long-term act is not expected until next year.</p> | <p>TBD</p> | <p>Extensions were passed through 11/18/11 for the entire government, and 3/31/12 for SAFETEA-LU. What remains to be seen is what happens when House appropriators make their recommendations (a 38% cut in transportation funding) and whether or not consensus can be reached with the Senate on this and other appropriations bills needing to be finished by the end of session.</p> |
| <p>Federal Budget FY12</p> | <p>The House's "Ryan proposal" included a 30% cut to transportation, no gas tax increase, and dismantling of entitlements. On May 25, the Senate voted it down. The debt ceiling vote then took up all Congressional time, which increased the debt limit by \$2.4 trillion in 10 years. These cuts are backloaded, so may not immediately occur and may be impacted by future Congresses. The 12-member bipartisan panel tasked with an additional \$1.5 trillion in cuts over 10 years began meeting in early September--if they don't reach agreement, certain triggered cuts across the board will go into effect. How this will impact the FY12 budget fight remains to be seen.</p> | <p>Week of 4/4/11</p> | <p>Expect the rest of the FY12 budget battle to fire up leading into the November 23rd deadline for the "Joint Select Committee on Deficit Reduction's" recommendations.</p> |
| <p>HR 1380: New Alternative Transportation to Give Americans Solutions Act (NAT GAS Act) (Sullivan, R-OK)</p> | <p>Promotes the use of natural gas as fuel with an emphasis on heavy-duty and fleet vehicles, and includes various credits and incentives to promote production and use of such vehicles and fueling stations/pumps and discretionary/competitive grants for development of new technologies re: natural gas vehicles.</p> | <p>4/6/2011</p> | <p>Since this bill was authored by a Republican, it is "hot" right now as a place to look for alternatives to the President's Jobs Bill (see below). 4/6/11: Referred to House Energy & Commerce Committee's Subcommittee on Energy and Power and the House Committee on Science, Space and Technology.</p> |

Attachment B

Santa Cruz METRO
Federal House and Senate Bills
Status Report
October 5, 2011

| Federal Bills | Subject | Introduced | Status |
|---|--|------------------|--|
| <p>S936: American Infrastructure Investment Fund Act of 2011 (Rockefeller, D-WV)</p> | <p>Creates \$5 billion fund to drive private investment in transportation infrastructure in 2012 and 2013, creates leveraging ability at both federal and state levels for transportation projects.</p> | <p>5/10/2011</p> | <p>Easily upstaged by the President's Jobs Bill. Introduced in Senate Science, Commerce and Transportation Committee on 5/10/11, read twice @ 8/16/11.</p> |
| <p>S1549: American Jobs Act of 2011 (Reid, D-NV)</p> | <p>The legislation includes the following job-creating provisions: payroll tax exemption for previously unemployed workers; employer credit of \$1,000 for every new employee that works at least a year; closing of various tax loopholes; creation of small-business loan programs, and provisions to convert tax credit bonds to Build America Bonds. For transportation, the bill includes a transfer of \$19.5 billion from the General Fund to the HTF to finance infrastructure job-creating projects and halts the repayments that the HTF makes to the General fund for tax-exempt users of the highway program (including transit). The bill extends some unemployment benefits, and extends expiring health care provisions. The bill is financed by various IRS code adjustments and changes designed to raise \$9 billion, tightens standards and credits for biofuels (raising \$24 billion); some basically incompressible changes to the Economic Substance Doctrine (\$5 billion) and a reduction in the Medicare Improvement Fund worth \$8 billion.</p> | <p>9/12/2011</p> | <p>This is the President's "Jobs Bill" which is in the process of being debated section by section. The GOP says the whole bill cannot be passed as is. However, many components are things that the GOP has agreed with in the past and now that the GOP Presidential "primary season" has been moved up to January, it may behoove the party to actually enact at least some parts of the legislation. Another fight right now is whether or not the House GOP can pass it and insert a "poison pill" that will make it unpalatable to the Senate, thus stalling the bill and allowing the GOP to blame the President's party.</p> |
| <p>S1648: A bill to Terminate the Transportation Enhancements Program (Paul, R-KY)</p> | <p>This legislation is, as it is titled, a bill to terminate the Transportation Enhancements (TE) program, which funds things like bicycle and pedestrian related projects, etc., and redirect the funding to "emergency infrastructure repairs" that enhance "roads and bridges." Co-sponsored by Senate Minority Leader Mitch McConnell (R-KY), who says, "Kentuckians are tired of financing every turtle tunnel and solar panel company, and not using the funds to repair our bridges and roads."</p> | <p>10/3/2011</p> | <p>In Senate Environment and Public Works Committee</p> |

ATTACHMENT C
State of California
Legislative Issues and Status Report
October 5, 2011

FY12 State Budget

Update at 10/5/11: The State held the first “cash flow” bond sale since Spring 2010 in mid-September, meaning that a November (Fall) bond sale to finance Proposition 1B projects that are queued up (such as our Operations Building) may be soon to follow. If this is the case, checks will be cut by March 2012, the same time a Spring sale is planned to finance new projects. Much of this is dependent on revenue projections meeting their targets at January 1, 2012.

Update at 8/16/11: When the state budget was finally passed, it included increased revenue projections to fill some budget gaps and additional triggers for more. Transit remained unscathed, but if revenues are not up, bets are off. The new fees required for California’s RDAs are draconian at best. For Santa Cruz METRO, State Transit Assistance funding has increased.

Proposition 1B Bond Sale(s)

Update at 10/5/11: The state conducted a General Fund (cash flow) bond sale, as mentioned above, which bodes well for the upcoming Fall bond sale (November) to fund queued-up projects such as Santa Cruz METRO’s Operations Building. According to the California Transit Association personnel, November bond sale proceeds would be approved for allocation at the December California Transit Commission (CTC) meeting, with checks cut by March 2012. The 2012 Spring bond sale is scheduled for the same month, and proceeds from this sale would then go to new project funding.

Update at 8/16/11: Santa Cruz METRO received its \$2.49 million FY10 Proposition 1B PTMISEA allocation and is waiting for the check while discussing appropriate projects on which to obligate funds within the six-month window for this funding.

The California Legislature: Bills of Interest

Update at 10/5/11: California legislators returned from recess in mid-August, with about two weeks of flurried activity to bring bills to the floor, propose amendments, pass bills and/or send them to the file to die. Bill status is described in Attachment D. Of note is that the former SB791 (initially a Senator Steinberg transit vehicle, now a Senator Simitian mammogram bill—in legislative parlance, this is called “gutting and stuffing” a bill), which is not included on the attached matrix and will be reintroduced next session with a new number. It will be a proposal to implement some sort of regional fee to finance the ongoing statewide mandated implementation of SB375. Other bills of interest which were enrolled and passed to the Governor this session include AB147, AB427, AB650, AB1097 and SB565, which includes language to extend STA flexibility for operational use through 2015. The Governor has four more days to sign or veto legislation into law at the time of this report. Please see Attachment D.

Santa Cruz METRO
State of California
Assembly and Senate Bills Status Report
October 5, 2011

Attachment D

| State Bills Assembly | Subject | Last Amended | Status |
|--|--|--------------|--|
| AB147: Transportation Impact Fees (Dickinson) (D) | <p>Under the Subdivision Map Act, cities and counties are authorized to charge developer fees to defray the costs of infrastructure improvements to support development projects. Fees levied are charged as a condition of the building permit. Current law limits the use of these fees for the mitigation of traffic impacts to bridges and major thoroughfares. This bill would authorize a local agency to use fees collected under the Subdivision Map Act for transit, bicycle and pedestrian facilities and augments the current powers of local government, not limits them.</p> | 8/15/2011 | 9/6/11: Signed by Governor. Chaptered with Sec'y of State. |
| AB427: Transportation bond funds: transit system safety (Perez) (D) | <p>Prop 1B Transit Safety capital projects: This bill would authorize operators of intercity rail systems/commuter rail to be eligible for funds designated for capital expenditures of planning agencies, transportation commissions and other specified transit-related agencies. Various fund distribution formulas have been amended throughout the bill and continue to be amended. Funds that are not used can be reallocated by Cal-EMA, but a transportation planning agency that is aware an entity in their region is not using the funds can request Cal-EMA redistribute the funds to the planning agency for subsequent distribution. All action is pursuant to Cal-EMA guidelines. If the transportation planning agency does not reallocate funds, then Cal-EMA may redistribute to an eligible entity. STA formula does not apply.</p> | 8/15/2011 | 10/5/11: Enrolled and passed to Governor; CTA is adopting a "watch" position on this bill. |
| AB485: Local Planning: transit village development districts (Ma) (D) | <p>In an extension of the last session's Ma bill extending the area around a transit development to 1/2 mile, this bill requires that a city/county that uses infrastructure financing district bonds to finance a transit oriented development ("transit village") uses at least 20% of bond revenue for the purpose of increasing, improving and preserving the amount of low-income and moderate-income housing and requires that these units be occupied by low- to moderate-income tenants for at least 55 years for rental units and 45 for owner-occupied units. This bill eliminates the requirement of voter approval and also adds additional IFD reporting requirements.</p> | 6/29/2011 | 9/9/11: Ordered to Senate inactive file; CTA supports. |

Santa Cruz METRO
State of California
Assembly and Senate Bills Status Report
October 5, 2011

Attachment D

| State Bills | Subject | Last Amended | Status |
|---|--|--|--|
| AB650: Blue Ribbon Task Force on Public Transportation for the 21st Century (Blumenthal) (D) | This bill would require a 12-member task force to prepare a written report containing findings and recommendations relating to the current state of California's transit system, among other things, and the cost of bringing the system to a state of good repair and potential sources of funding to do so. The report would be presented to the Governor, the Legislature, the Budget Committee, the Senate Rules Committee, the Assembly Speaker and various other committees by March 31, 2013, at which point the panel will disband. \$750K from the PTA will be appropriated to support this panel. | VETOED by Governor; (last amendment 8/15/2011) | 10/5/11: Vetoed by Governor; CTA supported. |
| AB845: Transportation Bond Funds (Ma) (D) | Proposition 1A, passed in 2008, governs high-speed rail and connectivity funds. This bill sets forth provisions for governing the distribution of Prop 1A connectivity funds (~\$950 million). This bill codifies guidelines established by the CTC, including the requirement that priority projects have in place matching funds, and this bill further defines matching funds for Proposition 1A funding. This bill confirms those guidelines. | 5/10/2011 | 9/9/11: Ordered to Senate inactive file; CTA supports. |
| AB1097: Transit Projects: domestic content (Skinner) (D) | Requires Sec'y of Business, Transportation and Housing to adopt a policy that provides a preference on transit projects receiving FTA funding to bidders that use a higher percentage of domestic content in materials, supplies and equipment than required by federal law. Current guidance from the FTA (in the form of a "Dear Colleague" memo in February 2011) states that FTA Administrator Rogoff will no longer be issuing "Buy America" waivers for any transit projects, so all FTA direct recipient agencies (such as Santa Cruz METRO) are currently governed by more stringent guidance than proposed by AB1097. This could mean that projects proposed by FTA direct recipient agencies will likely score higher on state funding for projects funded in-part by the FTA. | 6/13/2011 | 10/3/11: Governor signed into law. |

Santa Cruz METRO
State of California
Assembly and Senate Bills Status Report
October 5, 2011

Attachment D

| State Bills Senate | Subject | Last Amended | Status |
|---|--|----------------------------------|---|
| SB582: Commuter Benefit Policies (Yee) (D) | <p>Beginning on 1/1/13, this bill would authorize an MPO, in partnership with the local Air District, to adopt a commute benefit ordinance requiring employers with 20+ employees to offer commute benefits such as an option to pay for their transit, vanpools or bicycling expenses, as allowed by federal law, offering a transit/vanpool subsidy; and/or provide employees with a free shuttle or vanpool operated by the employer. The employer may also offer a more comprehensive program if they so wish.</p> | <p>VETOED by Gov. 8/1/11</p> | <p>10/5/11: Governor vetoed.</p> |
| SB565: Vehicles (DeSaulnier) (D) | <p>The Senate Transportation Committee bill is being amended to include language to extend the current State Transportation Assistance (STA) funding flexibility to use STA for operational purposes through FY 2014-2015 without meeting STA efficiency criteria. Policy committees have "blessed the language" and this bill is expected to pass.</p> | <p>8/15/2011</p> | <p>10/5/11: Governor signed into law.</p> |

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: October 14, 2011
TO: Board of Directors
FROM: Les White, General Manager
SUBJECT: STATUS REPORT OF ACTIVE GRANTS AND SUBMITTED GRANT PROPOSALS FOR SEPTEMBER 2011

I. RECOMMENDED ACTION

This report is for informational purposes only. Active grants and grant proposals are current as of September 9, 2011. No action is required.

II. SUMMARY OF ISSUES

- Santa Cruz METRO relies upon grant funding from other agencies for more than 25% of its FY12 operating revenue and nearly 80% of its FY12 capital funding.
- A list of Santa Cruz METRO's active grants (Attachment A) and a list of grant proposals for new funds (Attachment B) are provided monthly in order to apprise the Board of the status of grants funding.
- Santa Cruz METRO has active grant awards totaling \$41,541,007.
- Items in **bold** on Attachments A and B depict changes from last month's report.
- Santa Cruz METRO staff is developing new operating and capital projects for approximately \$19,603,210 in grant program funding.

III. DISCUSSION

Santa Cruz METRO relies upon grants from a number of other entities throughout the year for more than 25% of its FY12 operating revenue and over 80% of its FY12 capital funding. Programs such as the Transportation Development Act (TDA) and the Federal Transit Administration (FTA) urbanized area program annually allocate funds by formula while others such as the Monterey Bay Unified Air Pollution Control District's AB2766 Motor Vehicle Emissions Reduction Program and the California Department of Transportation (Caltrans) discretionary planning grants are competitively awarded based on merit. Santa Cruz METRO relies on both formula and discretionary grant revenue to support its operating and capital budgets.

This staff report is to apprise the Board of Directors of active grants funding current projects and proposed grants for new projects and ongoing operating costs. **Attachment A** lists all of Santa Cruz METRO's active grants with the award amount, the remaining balance and the status of the projects funded by the grant. **Attachment B** lists Santa Cruz METRO's open grant applications

with a brief description, source and status of proposed funds. Items in **bold** on Attachments A and B depict changes from last month's report.

IV. FINANCIAL CONSIDERATIONS

Active grant awards for operating and capital projects total \$41,541,007 with an unspent balance of \$23,001,597. Changes from last month's amounts result from the addition of FY10 PTMISEA funds, grant close-outs and slight changes in allocation amounts to executed grants. Current grant applications request \$19,603,210, a decrease from August due to prior applications now shown as active grants.

Santa Cruz METRO staff has written new discretionary grant applications for revenue vehicle replacements in the FTA's State of Good Repair program (\$7,525,226) and allocations for capital funding from Proposition 1B SLPP formula funds. Total new grant project applications total \$19,603,210.

V. ATTACHMENTS

Attachment A: Santa Cruz METRO Active Grants Status Report as of September 9, 2011

Attachment B: Santa Cruz METRO Grant Applications as of September 9, 2011

Staff Report prepared by Thomas Hiltner and Tove Beatty, Grants/Legislative Analysts

Date Prepared: September 9, 2011

Attachment A

Santa Cruz METRO Active Grants as of September 9, 2011

| # | Grant | Description | \$ Grant Awarded | \$ Grant Balance | Funding Source | Grant Status |
|---|---|--|------------------|------------------|--|--|
| 1 | Smartcard Farebox; ParaCruz Vans; IT Upgrades; Operating Assistance | Upgrade dispatch, scheduling and customer information software; purchase 27 replacement paratransit vans; purchase new fareboxes with magnetic card readers; operating assistance. | \$ 4,909,939 | \$ 538,064 | Federal Transit Administration (FTA) 5307 American Recovery and Reinvestment Act (ARRA) funds | Project funding from ARRA through FTA urbanized area formula program. Santa Cruz METRO has received and installed fareboxes and ticket vending machines; has accepted paratransit vans and expects to complete the Giro/Hastus roll-out by early 2012. |
| 2 | Smartcard Farebox | Purchase new fareboxes with magnetic card readers. | \$ 475,000 | \$ 2,078 | FTA 5309 Bus and Bus Facilities Program | Fareboxes installed, this grant will be closed-out by 9/30/11. |
| 3 | Bus Stop Improvements | Improve bus stops in Santa Cruz METRO service area | \$ 500,000 | \$ 476,189 | Caltrans from State Transportation Improvement Program (STIP) | Construction projects started 5/27/11. This project is on schedule. |
| 4 | CT Transit Planning - Watsonville | 18-month transit planning study of Watsonville service as subrecipient of MPO (AMBAG). | \$ 100,000 | \$ 93,877 | Caltrans (FTA 5304) | Outreach meetings with transit stakeholders at NGOs is completed. This project is on task and on scheduled for delivery by 3/31/12. |
| 5 | Prop 84 Challenge Grant | Discretionary grant proposals for planning/zoning of unincorporated areas (Live Oak, Soquel Dr. corridor) w/ County of Santa Cruz; and sustainable growth communities grant w/ AMBAG. All need METRO as a partner. | \$ 10,000 | \$ 10,000 | Funding from Proposition 84 Planning Grants from the State of California Strategic Growth Council. | County received \$500K for Prop. 84 Sustainable Communities Planning Grant Program for a project entitled "The Santa Cruz County Sustainable Community and Transit Corridors Plan" on December 6, 2010. Notification of award 6/3/11. |

5-13.a1

Attachment A

Santa Cruz METRO Active Grants as of September 9, 2011

| # | Grant | Description | \$ Grant Awarded | \$ Grant Balance | Funding Source | Grant Status |
|----|---|--|------------------|------------------|--|--|
| 6 | Sustainable Communities Planning Grant | Discretionary grant sub-award. | \$ 9,560 | \$ 9,560 | AMBAG sub-award. | Participating in development of Sustainable Communities Strategies June-Dec 2011. |
| 7 | Caltrans Small Urban Transit Planning Grant | Discretionary grant. | \$ 7,183 | \$ 7,183 | State of California | Grant awarded July 2011; METRO to participate with RTC on on-board ridership survey to inform RTP update. |
| 8 | Comprehensive Security & Surveillance (LMR) | Continue LMR upgrade. | \$ 440,505 | \$ 26,374 | FY09 CTSGP funds from Cal EMA | Day Wireless continues work on \$530,000 contract to upgrade fleet mobile radios. \$ Grant Balance as of 5/26/11. Expires 3/31/12. |
| 9 | Comprehensive Security & Surveillance: CCTV, LMR, EG | Continue video surveillance, LMR upgrade and install emergency generator. | \$ 440,505 | \$ 440,505 | FY10 CTSGP funds from Cal EMA | Cal-EMA paid \$440,505 grant advance on 3/28/11. \$ Grant Balance as of 5/26/11. Expires 3/31/13. |
| 10 | FY10 Discretionary Bus/Facilities Program | Purchase 11 new CNG replacement buses from FTA discretionary grant program. | \$ 4,830,600 | \$ 4,830,600 | FTA 5309 Bus & Bus Facilities/State of Good Repair Program | BOD authorized the purchase of 11 New Flyer low-floor 40' CNG Buses. Amendment required to change local share from PTMISEA to SLPP. |
| 11 | FY11 FTA Operating Assistance | Operating Assistance 7/1/10 - 6/30/11 | \$ 4,727,487 | \$ 4,727,487 | FTA FY11 5307 urbanized area formula funds + STIC | Grant contract executed 8/22/11. METRO will draw the funds after the FY11 financial audit concludes in December |
| 12 | FY11 Rural Operating Assistance | Operating assistance for public transit service in rural areas of Santa Cruz County. | \$ 156,312 | \$ 156,312 | Caltrans (FTA 5311) | METRO executed grant on 7/27/11. |

5-13.a2

Santa Cruz METRO

Active Grants as of September 9, 2011

Attachment A

| # | Grant | Description | \$ Grant Awarded | \$ Grant Balance | Funding Source | Grant Status |
|----|---------------------------------|--|------------------|------------------|---|--|
| 13 | FY12 TDA Operating Assistance | FY12 Transportation Development Act (TDA) revenue for public transit operations. | \$ 5,244,963 | \$ 3,933,722 | SCCRTC | The SCCRTC approved Santa Cruz METRO's TDA/STA Claim 5/5/11. The FY12 TDA allocation is \$243,226 above the FY11 allocation. Funds are paid quarterly, with the first quarter's payment received 9/1/11. |
| 14 | FY12 STA Funds | FY12 State Transit Assistance (STA) one-time operating revenue for public transit. | \$ 2,851,031 | \$ 2,851,031 | SCCRTC | The FY12 CA Budget increased the statewide STA apportionment. The revised SCO allocation letter of 8/1/11 allocated \$2,851,031 to Santa Cruz METRO, an increase of \$539,388 over the amount approved by RTC on 5/5/11. The RTC will revise its budget and workplan to allocate the revised amount as a quarterly payment with the first quarter's payment by 10/30/11. |
| 15 | FY09 Operating/MetroBase const. | Operating Assistance and MetroBase construction funding. | \$ 4,753,504 | \$ 1,108,062 | FTA 5307 urbanized area formula funds and Small Transit Intensive Cities (STIC) funds, both now for operating assistance. | FY09 transit operations were completed 6/30/09. Amend grant contract to move MetroBase construction funds to operating assistance. PTMISEA will be used with AB 2766 funds (next grant in list) for the second LNG tank. No expiration. |

5-13.a3

Attachment A

Santa Cruz METRO
Active Grants as of September 9, 2011

| # | Grant | Description | \$ Grant Awarded | \$ Grant Balance | Funding Source | Grant Status |
|----|-----------------------|---|------------------|------------------|---|--|
| 16 | FY11 AB2766 | MetroBase construction of second L/CNG storage tank. | \$ 200,000 | \$ 200,000 | AB2766 Monterey Bay Unified Air Pollution Control District (Air District) AB 2766 Motor Vehicle Emissions Reduction Program | Project kicked-off 3/8/11. IFB for the CNG tank architectural Design and equipment procurement, including noise attenuation equipment for the L/CNG vaporization fans, released 6/22/11. Engineering contract to be awarded 9/23/11. Construction contract to be awarded 10/21/11. Project is 45 days behind schedule. To be completed by 4/30/12. |
| 17 | MetroBase Development | MetroBase design and construction. | \$ 9,540,751 | \$ 2,689,152 | FY08, FY09 Prop. 1B Public Transportation Modernization and Service Enhancement Account (PTMISEA) through Caltrans | FY08, FY09 PTMISEA funds are nearly expended on MetroBase projects. The SCO released the FY10 allocation of \$2,491,923 in September to be paid by 9/30/11. This amount has been added to the total grant balances since we are only waiting for the payment. \$ Grant balance as of 8/18/11. |
| 18 | Pacific Station Land | Purchase Greyhound property for Pacific Station (Metro Center) renovation | \$ 1,457,667 | \$ 15,401 | FY05 FTA 5309 Bus and Bus Facilities program - legislative earmark. | Speed bumps have been installed at 425 Front Street, fencing is in procurement. The lot will be sealed in 2012. Project completion currently scheduled for 12/31/11. \$ Grant balance as of 6/30/11. |

5-13.a4

Attachment A

Santa Cruz METRO
Active Grants as of September 9, 2011

| # | Grant | Description | \$ Grant Awarded | \$ Grant Balance | Funding Source | Grant Status |
|----------|------------------------------------|--|------------------|------------------|---|--|
| 19 | Pacific Station Design Engineering | Contract architectural and engineering services for Pacific Station expansion and renovation | \$ 396,000 | \$ 396,000 | FY06 FTA 5309 Bus and Bus Facilities program - legislative earmark. | On hold pending recovery of the real estate market. No expiration. |
| 20 | Pacific Station Design Engineering | Contract architectural and engineering services for Pacific Station expansion and renovation | \$ 490,000 | \$ 490,000 | FY08 FTA 5309 Bus and Bus Facilities program - legislative earmark. | On hold pending recovery of the real estate market. No expiration. |
| Total \$ | | | 41,541,007 | \$ 23,001,597 | | |

Attachment B

Santa Cruz METRO Grant Applications as of September 9, 2011

| # | Application Date | Grant | Description | \$ Grant | Funding Source | Status of Award |
|-------|------------------|--|---|---------------|---|---|
| 1 | 7/28/2011 | Section 5309 Bus/Facilities State of Good Repair | Discretionary, competitive grant program. | \$ 7,525,226 | FTA Section 5309 | New grant to finance capital projects: 16 buses, equipment, ITS, FCC narrow-banding equipment (mobile data terminals). |
| 2 | 6/15/2011 | MBUAPCD AB2766 FY12 Grant | Discretionary Grant | \$ 200,000 | MBUAPCD (Air District) | Conversion of non-revenue vehicles (staff/supervisor vehicles and forklift) to alternative fuel path. Award notification in August 2011. Santa Cruz METRO's project was recommended for award. |
| 3 | 10/1/2011 | Proposition 1B - State and Local Partnership Program | Proposition 1B Formula Funds | \$ 427,432 | State of California FY11-12, of \$5,060,000 | Requires 50% local sales tax match. |
| 4 | 4/30/2011 | California Energy Commission AB118 Program | Implementation plan; then grants | unknown | CEC | AB118 grants to be announced in summer; plus rebates on purchase of CNG buses (looking into for last 5 purchased through VTA). |
| 5 | 3/15/2011 | FY11 Transit Security Project | Santa Cruz METRO security fencing and video surveillance projects | \$ 440,505 | FY11 CTSGP funds from Cal EMA | Application submitted 3/11/11. Funds will expire 3/31/14. |
| 6 | 6/1/2011 | FY11 PTMISEA | FY11 Public Transportation Modernization Improvement and Service Enhancement Activity (PTMISEA) funding for the MetroBase Operations Building | \$ 11,010,047 | FY11 PTMISEA funds from Caltrans Division of Mass Transit | The State Controller's Office estimated FY11 allocation to Santa Cruz METRO is \$11,010,047. Santa Cruz METRO resubmitted its allocation request 5/27/11 for \$11,010,047. |
| Total | | | | \$ 19,603,210 | | |

5-13.b1



Santa Cruz County Regional Transportation Commission

MINUTES

Thursday
August 4, 2011
9:00 a.m.

Watsonville City Council Chambers
275 Main St, Fourth Floor
Watsonville CA 95076

1. Roll call

The meeting was called to order at 9:02 am.

Members present:

| | |
|-------------------------|-----------------------|
| Ron Graves (Alt) | John Leopold |
| Martin Garcia (Alt) | Don Lane |
| Neal Coonerty | Kirby Nicol |
| Eduardo Montesino | Ellen Pirie |
| Donald Hagen | Michelle Hinkle (Alt) |
| Aileen Loe (ex officio) | Mark Stone |

Member absent:

Randy Johnson

Staff present:

| | |
|-----------------|---------------|
| George Dondero | Luis Mendez |
| Gini Pineda | Yesenia Parra |
| Karena Pushnik | Tegan Speiser |
| Rachel Moriconi | Ginger Dykaar |
| Kim Shultz | Cory Caletti |
| Grace Blakeslee | |

2. Oral communications – *None*

3. Additions or deletions to consent and regular agendas

There was a handout for Item 17. Item 22 was removed from the agenda.

CONSENT AGENDA (Nicol/Leopold – unanimous)

MINUTES

4. Approved draft minutes of the June 2, 2011 regular SCCRTC meeting
5. Approved draft minutes of the June 16, 2011 Transportation Policy Workshop meeting

POLICY ITEMS

No consent items

PROJECTS and PLANNING ITEMS

6. Accepted *State Route 1 Corridor System Management Plan (CSMP)*
7. Accepted fourth quarter FY 10-11 Regional Transportation Commission (RTC) work program progress report
8. Accepted Regional Transportation Plan – Smart Growth Implementation Plan Regional Advisory Committee appointments

BUDGET AND EXPENDITURES ITEMS

9. Accepted status report on Transportation Development Act (TDA) revenues

ADMINISTRATION ITEMS

10. Approved Bicycle Committee membership appointment

INFORMATION/OTHER ITEMS

11. Accepted monthly meeting schedule
12. Accepted correspondence log
13. Accepted letters from SCCRTC committees and staff to other agencies
 - a. Letter from the Regional Transportation Commission to the City of Scotts Valley regarding the Vine Hill Elementary School sidewalk construction project
14. Accepted miscellaneous written comments from the public on SCCRTC projects and transportation issues
15. Accepted information items - *None*

REGULAR AGENDA

16. Commissioner reports-oral reports – Taken out of order after Item 19

Commissioner Montesino invited everyone to the Strawberry Festival to be held Saturday, August 6th in Watsonville. He asked if a guardrail could be installed on Highway 1 between Rio del Mar and State Park Drive and was told that Caltrans was already planning to install one there.

17. Director's report – oral report

Executive Director George Dondero showed a clip of the current episode of the RTC's "Transportation Café" program which can be seen on the Community TV website. The episode was about highway safety in Santa Cruz County.

Mr. Dondero announced that an independent RTC fiscal audit will take place on August 11-12. He said that the RTC received four proposals from rail design consultants who will be interviewed by a team comprised of staff from Caltrain, the public works departments of the cities of Watsonville and Santa Cruz and RTC staff. In addition, Mr. Dondero reported that the RTC was awarded two planning grants from Caltrans. One will be used to fund a half-time transit planning intern and the other will fund an on-board transit ridership survey.

18. Caltrans report and consider action items

Aileen Loe, Caltrans District 5, said that its Project Initiation Document program to scope new projects was vetoed in the recent budget but that the agency is trying to find a way to maintain hands-on support for local projects. She reminded everyone to slow for the cones in construction zones adding that currently there is a law to move to an adjacent lane when lights are flashing in a construction area. She added that the Salinas road project is on schedule.

19. State and federal legislative updates - Taken out of order after approval of the consent agenda

Assemblymember Bill Monning provided updates on state legislative activities, including highlights of the state budget. Mr. Monning said that the state's bond rating has improved, and that longer term bonds are planned to be released in September. Assemblymember Monning mentioned a bill (AB 441) that he introduced that asks that a voluntary agency be formed to identify adverse public health impacts in transportation projects or to identify mitigations to these negative impacts. The bill is supported by public health agencies. Mr. Monning also emphasized the need for support for public transportation.

Responding to a question from Commissioner Leopold about the state's plan to help local jurisdictions perform the functions previously tasked to the redevelopment agencies, Mr. Monning said that there are bills being proposed to reestablish redevelopment agencies with specific funding criteria and principles.

Commissioners discussed how AB 441 would apply to local transportation projects noting that these agencies would be voluntary and that in some areas these goals are folded into local jurisdictions' general plans.

The RTC also received updates on proposed provisions of the next federal transportation act and a list of state bills that could impact transportation projects and programs.

20. Social media use policy

Senior Planner Karena Pushnik described a proposal to establish policies, guidelines, and standards on RTC use of social media technology. Social media is intended to disseminate information and receive public input and could be useful for a variety of the RTC's programs and projects including the Commute Solutions program, specific information campaigns, and special events. The RTC currently posts segments from its Transportation Café television show on social media outlets and will consider expansion to Facebook and other interactive sites to reach broader segments of the community.

Commissioners discussed policies used in other agencies, staff time required to maintain the sites, defining what is appropriate for postings, free speech issues, and tying the sites to future 511 links. Commissioner Coonerty said it was important that the policy language be clear that that ultimate decision concerning what is posted rest with the Executive Director.

Commissioner Pirie moved and Commissioner Nicol seconded to approve the staff recommendations that the Regional Transportation Commission (RTC) approve the proposed Social Media Use Policy that establishes policies, guidelines, and standards on RTC use of social media technology with the change to the policy language clarifying that the Executive Director is responsible for all content decisions and that staff return in a month with a report from county counsel about handling inappropriate material and an assessment from staff about the amount of time required to maintain the sites.

21. Santa Cruz Branch Rail Line acquisition project

Deputy Director Luis Mendez presented a status update on the branch line acquisition. The RTC is still waiting for approval from the Federal Surface Transportation Board (STB) for the Branch Line purchase transaction. Congressman Farr has sent a letter to the STB Chair regarding the RTC's petition for declaratory order and has communicated with the STB Chair. RTC staff and consultants have been working on completing all of the other tasks necessary to close escrow on the purchase; however there will still be 2-4 weeks of work to complete following STB approval. The community celebration planned for September 10 will be postponed until after the rail line purchase is fully complete.

Commissioners recommended that Senator Boxer, Assemblymember Eshoo and possibly the California Transportation Commission contact the STB.

22. New Regional Transportation Commission (RTC) websites- Removed from agenda

23. Monterey Bay Sanctuary Scenic Trail (MBSST) Network Project Update

Senior Planner Cory Caletti introduced Mike Sherrod, RRM Design Group, the firm contracted to develop the Master Plan and Environmental Review document for the MBSST Network project. Mr. Sherrod gave a presentation on the planned bicycle/pedestrian trail describing a detailed Scope of Services that includes identifying and analyzing potential alignments, preliminary design, environmental compliance, and community outreach for the development of the Trail Network Master Plan. The consultant team will be responsible for coordinating all planning tasks, including but not limited to data collection, trail mapping, opportunities and constraints analysis, public workshops, presentations to all relevant bodies, draft and final document production, and California Environmental Quality Act compliance. The first set of public meetings could take place early this fall.

Commissioners discussed additional workshops in North County especially in the north coast region, linking existing trails, connecting to local attractions, easement, right-of-way issues, signage issues and retrofitting of trestles.

Commissioner Leopold asked to be part of the bike signage program.

Bob Culbertson said that there are several networks that could be connected to the scenic trail network including the Watsonville wetlands trails, and trail networks in the Mt Madonna, Castle Rock and north coastal areas. He supported a vertical trail network such as along Highway 9 to connect to the scenic trail. He suggested coordinating with other jurisdictions that have their own trail master plans.

Piet Canin commended the Commission for moving forward with this project adding that he would like more public workshops saying that there are many stakeholders.

Lowell Hurst said that he hopes things move forward smoothly and quickly.

Staff will work with the consultant on the feasibility of adding public workshops.

24. Adjourn to special meeting of the Service Authority for Freeway Emergencies

The RTC adjourned to the SAFE meeting at noon.

25. Next Meetings

George Dondero announced that a ribbon cutting ceremony for the RTC's Watsonville satellite office will be held Tuesday, August 16 at 11am.

The meeting adjourned at 12:11 pm.

The next Transportation Policy Workshop meeting is scheduled for Thursday, August 18, 2011 at 9:00 a.m. at the SCCRTC Offices, 1523 Pacific Avenue, Santa Cruz, CA.

The next SCCRTC meeting is scheduled for Thursday, September 1, 2011 at 9:00 a.m. at the Board of Supervisors Chambers, 701 Ocean St., Santa Cruz, CA 95060.

Respectfully submitted,

Gini Pineda, Staff

ATTENDEES

Dan Herron
Bob Culbertson
Lowel Hurst
Piet Canin
Mike Sherrod

Caltrans
Watsonville Wetlands
Watsonville City Council
Ecology Action
RRM Designs

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**Santa Cruz County Regional
Transportation Commission
Service Authority for Freeway Emergencies**

MINUTES

Thursday
August 4, 2011

Watsonville City Council Chambers
275 Main St
Watsonville CA 95076

1. Oral communications - *None*
2. Additions or deletions to consent and regular agendas - *None*

CONSENT AGENDA

No consent items

REGULAR AGENDA

3. Safe on 17 Safety Corridor Project – 2010 Annual Report

Transportation Planner Ginger Dykaar presented the 2010 Safe on 17 Annual Report which reviews the work done by the California Highway Patrol, Caltrans, RTC and the Metropolitan Transportation Commission's Service Authority for Freeway Emergencies and other stakeholders to continue improving safety on Highway 17. Efforts resulted in extra enforcement, collision and citation rate monitoring, Safe on 17 Task Force Meetings, public information and outreach, and highway safety improvements. Due to the State's budget crisis, overtime enforcement was eliminated for 2010, preventing the CHP from providing overtime enforcement through the Safe on 17 program even though it is funded with local funds. Caltrans made a number of safety improvements during 2010.

Commissioner Leopold moved and Commissioner Pirie seconded to approve the staff recommendations that the Regional Transportation Commission/Service Authority for Freeway Emergencies (SAFE) accept the 2010 Annual Report for the Safe on 17 Safety Corridor Project.

The motion passed unanimously.

4. Adjourn

The Commission adjourned to the regular RTC meeting at 12:10 pm.

Respectfully submitted,

Gini Pineda, Staff

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Santa Cruz County Regional Transportation Commission SPECIAL MEETING

MINUTES

Monday
August 29, 2011
2:00 p.m.

SCCRTC Conference Room
1523 Pacific Avenue
Santa Cruz, CA 95060

1. Roll call

The meeting was called to order at 2:02 pm.

Members present:

| | |
|--------------------|---------------|
| Dene Bustichi | Randy Johnson |
| Greg Caput | Don Lane |
| Neal Coonerty | Kirby Nicol |
| Daniel Dodge (Alt) | Ellen Pirie |
| Donald Hagen | Lynn Robinson |
| Mark Stone | John Leopold |

Staff present:

George Dondero
Luis Mendez
Yesenia Parra

2. Oral communications

Micah Posner urged the commission to continue moving forward with the purchase of the rail line.

3. Additions or deletions to consent and regular agendas

CONSENT AGENDA

No consent items

REGULAR AGENDA

4. Review of items to be discussed in closed session

The Commission adjourned to closed session at 2:05 pm.

CLOSED SESSION

5. Conference with Real Property Negotiator Pursuant to Government Code 54956.8 relating to the freight easement: Santa Cruz Branch Rail Line from Watsonville Junction to Davenport

Agency Negotiator: Paul Chrisman, Miller & Owen

Negotiation Parties: SCCRTC, Sierra Northern Railway, Union Pacific

Under Negotiation: Price and Terms

OPEN SESSION

The Commission reconvened and adjourned the meeting at 3:30 pm.

6. Report on closed session- no items to report
8. Next Meetings

The next SCCRTC meeting is a special meeting scheduled for Thursday, September 15, 2011 at 9:00 a.m. at the Board of Supervisors Chambers, 701 Ocean St., Santa Cruz, CA.

Respectfully submitted,

Yesenia Parra, Staff

ATTENDEES

Micah Posner



Santa Cruz County Regional Transportation Commission

MINUTES

Thursday
September 15, 2011
9:00 a.m.

Board of Supervisors Chambers
701 Ocean St
Santa Cruz CA 95060

1. Roll call

The meeting was called to order at 9:03 am.

Members present:

| | |
|---------------------------|---------------|
| Dene Bustichi | John Leopold |
| Greg Caput | Don Lane |
| Neal Coonerty | Kirby Nicol |
| Eduardo Montesino | Ellen Pirie |
| Donald Hagen | Lynn Robinson |
| Brandy Rider (ex officio) | Mark Stone |

Member absent:

Randy Johnson

Staff present:

| | |
|----------------|-----------------|
| George Dondero | Luis Mendez |
| Gini Pineda | Yesenia Parra |
| Karena Pushnik | Rachel Moriconi |
| Kim Shultz | Grace Blakeslee |

2. Oral communications - none

3. Additions or deletions to consent and regular agendas

Executive Director George Dondero noted additional information including a written report for Item 20, two sets of add-on pages for Item 23 and a flier promoting Rideshare month.

CONSENT AGENDA (Pirie/Leopold – unanimous)

5-14.11

MINUTES

4. Approved draft minutes of the regular August 4, 2011 SCCRTC meeting
5. Approved draft minutes of the August 4, 2011 SCCRTC Service Authority for Freeway Emergencies (SAFE) meeting
6. Approved draft minutes of the August 18, 2011 Transportation Policy Workshop meeting
7. Approved draft minutes of the special August 29, 2011 SCCRTC meeting
8. Accepted draft minutes of the August 4, 2011 Interagency Technical Advisory Committee (ITAC) meeting
9. Accepted draft minutes of the August 8, 2011 Bicycle Committee meeting
10. Accepted draft minutes of the August 9, 2011 Elderly & Disabled Transportation Advisory Committee meeting

POLICY ITEMS

11. Accepted legislative update

PROJECTS and PLANNING ITEMS

12. Accepted revised adoption date for the Regional Transportation Plan (RTP)

BUDGET AND EXPENDITURES ITEMS

13. Accepted status report on Transportation Development Act (TDA) revenues

ADMINISTRATION ITEMS

No consent items

INFORMATION/OTHER ITEMS

14. Accepted monthly meeting schedule
15. Accepted correspondence log
16. Accepted letters from SCCRTC committees and staff to other agencies
 - a. Letter from RTC to State Senator Kehoe and Assemblymember Alejo regarding support for SB 436

- b. Letter from RTC Bicycle Committee to Highway 1 Auxiliary Lanes Management Plan Implementation Team regarding accommodations for cyclists as part of the project
17. Accepted miscellaneous written comments from the public on SCCRTC projects and transportation issues
 18. Accepted information items
 - a. Letter from League of Women Voters to AMBAG regarding support for regional planning

REGULAR AGENDA

19. Commissioner reports-oral reports – none
20. Director's report

Commissioner Nicol arrived at the meeting.

Executive Director George Dondero reported that he attended an AMBAG meeting on September 14th, where Interim Director Les White presented the *Future of AMBAG Report* which recommends modifying the MOUs AMBAG has with its participating agencies. These modifications would reduce RTC revenues. Mr. Dondero distributed the executive summary and encouraged Commissioners to read the report.

Mr. Dondero said that staff responded to the Surface Transportation Board (STB) comments on September 7th. There has been no response from the STB regarding approval of the Santa Cruz Branch Rail Line purchase.

Mr. Dondero said that a short-term extension of the federal surface transportation bill is being held up in the Senate by Senator Tom Coburn who wants an amendment to eliminate funds that go to Transportation Enhancement (TE) projects. TE makes up about 10% of California's State Transportation Improvement Program funding. He said that President Obama proposed an infrastructure jobs act that included \$50 billion for transportation in a speech before a joint session of Congress on September 8th. If this bill is approved, it is expected that strict deadlines will be set to use the funds.

Mr. Dondero also reported on the August 31st CalCOG meeting. Discussion focused on controversial bills including AB1220 which would expand the statute of limitations to sue a city or county in order to challenge the adoption of a housing element, among other ordinances.

Mr. Dondero said that the RTC will host a free workshop titled "Designing for Pedestrian and Bicycle Safety" on November 30th. He said that the Cash for

Carpools promotion is currently underway and that October is Rideshare month.

21. Caltrans report and consider action items

Brandy Rider, Caltrans District 5, said that the micro-surfacing project on Highway 1 is almost complete and that the detour on Salinas Rd has been in place for three weeks. She thanked the RTC for helping Caltrans put over 139 projects into construction over the past six years.

22. Transportation Development Act (TDA) Article 8 allocation claim from the City of Watsonville for curb cuts

Senior Planner Karena Pushnik presented the staff report saying that the City of Watsonville, in accordance with the Americans with Disabilities Act, adopted a policy that curb cuts must be installed on streets scheduled for repaving.

Commissioner Nicol moved and Commissioner Montesino seconded to approve the Elderly & Disabled Transportation Advisory Committee and staff recommendations that the Regional Transportation Commission approve a resolution approving the City of Watsonville's Transportation Development Act Article 8 allocation claim for \$174,800 for curb cuts at 52 locations in the city.

A roll call vote was taken and the motion (Resolution 02-12) passed with Commissioners Caput, Coonerty, Lane, Leopold, Montesino, Nicol, Pirie, and Stone voting "yes". Commissioner Johnson was absent.

23. 2012 Regional Transportation Improvement Program (RTIP) development

Senior Planner Rachel Moriconi gave an overview of the RTIP process and presented a PowerPoint illustrating the RTC funding sources under discussion, how much funding is available and how the funds can be used. She emphasized that funds were not sufficient for the region's needs and reviewed the staff recommendations before the Commission.

Commissioner Stone suggested asking the California Transportation Commission (CTC) to make a policy exception and program funding for local roads considering the state of emergency in certain parts of the county due to recent flooding.

Commissioner Leopold asked for details regarding any precedents for the Federal Highway Administration (FHWA) taking money back from an agency due to the 10 year rule. He asked for more information about which projects could become unfunded if the funding is given to the HOV Lanes project.

Commissioner Pirie agreed that the RTC needs to push back on the FHWA demand regarding the ten year rule and asked that a lawyer review what the RTC's past contracts stated. She said that she supported only showing the

intent to program \$4million of STIP funds which would allow the RTC to buy time while investigating options and said she did not support giving up the Mar Vista pedestrian overcrossing.

Commissioners discussed shifting funds within the STIP, the need for local street and road improvements, and effects to projects if the RTC only received the mandated STIP funds instead of the estimated STIP funding.

Executive Director Dondero said that staff can do more research to provide the Commission with additional information, but that it was critical that the RTC makes its proposals to the CTC by December 15, 2011.

John Presleigh, Santa Cruz County Public Works, said the RTC needs to prioritize funding for local roads and that the county is in dire straits. He asked if the RTC requested an extension from the CTC on the entire HOV Lane project, eliminating the need to move forward with the Tier 2 approach. He asked for clarification on the county's ability to apply directly for STIP funds.

Micah Posner said that most people in his neighborhood need the roads used in day to day life to be in good repair. He advocated funding for the Chanticleer and Mar Vista overpasses.

Jeanette Cook said that Nelson Road was in bad condition even before the rock slide and that there is only one lane to get in and out for a part of it posing not only an inconvenience to residents but also a safety hazard in an emergency situation.

Susan Zerwick said that Adams Road in the Santa Cruz mountains is a mess and was paved 25 years ago. She said it deserves funding more than one mile of Highway 1.

Lucy McCullough said that Longview Road is not maintained and that existing problems should be more important than future projects. She added that the cost of the EIR doesn't make sense.

Tom Williams, Nelson Road resident, said that people will begin to resent money spent on a one mile highway widening project when local roads are in such disrepair.

John Mekis said that Highway 1 *is* a local road and is the major connector between north and south counties and is necessary for commuters. He supported moving forward on the Tier 2 project.

Daja Evans, Nelson Road resident, said that emergency vehicles can't get to residents in a timely manner.

Bob Orsera, Nelson Road resident, said that keeping county roads in good shape is more important than moving a traffic jam one mile further south.

Larry Lopp said he doesn't care about Highway 1 and is more concerned about making it through the winter on the already damaged local roads.

Jack Nelson said that adding freeway lanes to congested highways leads to increased usage resulting in increased congestion and greenhouse gas emissions.

Debbie Bulger advised being fiscally responsible and not throw good money after bad since there is little chance to fund the HOV lanes project. She supported fixing local roads and building pedestrian bridges across the freeway to help people get out of their cars.

Ron Pomerantz said that Highway 1 is a state highway and not a local road. He opposed tying up ten years of future funding, saying that funding for one mile of highway could fund improvements for 100 miles of local roads.

John Herr said he is appalled at the condition of public roads and that not taking care of them results in more problems in the future.

Michael Becker asked if paying back the \$5 million will come from money to fix roads.

Erin Hackett, Schulties and Redwood Lodge Roads resident, said she gets scared when funding is designated to only one project.

Emilie Holder said that if all the money is spent on Highway 1 then local roads won't get fixed. She objected to tying up STIP funding for the next 10 years.

Commissioner Pirie said that there is a lot of confusion and that it is not true that if the RTC doesn't program funding for Highway 1 that the funding could be used to fix local roads.

Commissioner Pirie moved that staff do further research to see if the RTC has to pay back money already spent on the HOV EIR per the 10 year rule and recommended spending up to \$5,000 for legal advice, directed staff to file an intention to program \$4million of STIP funding to the HOV EIR and to return to the next meeting to consider the rest of the staff recommendations. Commissioner Nicol seconded.

Commissioner Leopold asked the maker to include directing staff to prepare a priority list of projects that could be funded with STIP funds.

Commissioners discussed job creation in south county to cut down on commuting, using advocacy as a tool to change federal intent, issuing a call for projects to more clearly understand what local jurisdictions consider priorities,

the long term prognosis for the Highway 1 project, and recommending that RSTP funds not be spent on Highway 1.

Commissioner Coonerty proposed a separate motion to first find out if it is necessary to pay back the funding used for the EIR before filing an intent to program \$4million additional STIP dollars.

Commissioners discussed concerns about spending \$4 million dollars and then deciding that the project is not feasible and not moving forward at all and considering a local sales tax

Commissioner Stone said that the motion had been split and that the three sections would be voted on separately.

It was clarified that:

- 1) Commissioner Pirie moved and Commissioner Nicol seconded to direct staff to investigate and research through legal analysis and through contacts with state and federal agencies whether the RTC is required to pay back the \$5.5 million already spent on the EIR for the HOV Lanes project.

The motion passed unanimously.

- 2) Commissioner Pirie moved and Commissioner Nicol seconded to indicate the RTC's intent to program \$4 million to the 41st Avenue/Soquel Drive Auxiliary Lanes project, Tier 2 of the HOV project.

The motion passed on a 6-5 vote with Commissioners Bustichi, Coonerty, Lane, Leopold and Stone voting "no".

- 3) Commissioner Pirie moved and Commissioner Nicol seconded to direct staff to return to the October Transportation Policy Workshop meeting with information on the impact of programming the \$4 million to the 41st/Soquel Auxiliary Lanes would be on the remaining staff recommendations.

The motion passed unanimously

Commissioners Leopold and Lane put forward two additional motions.

Commissioner Leopold moved and Commissioner Coonerty seconded to direct staff to issue a call for projects to project sponsors, including local jurisdictions, the Metro and the RTC, to determine current priorities for the \$9.25 STIP funds and provide the list at the October Transportation Policy Workshop meeting.

The motion passed with Commissioner Montesino voting "no".

Commissioner Lane moved and Commissioner Caput seconded to develop an updated timeline regarding construction of the HOV lanes project as a whole with milestones, costs and funding sources to see if the project is still viable under the current economic conditions.

The motion passed with Commissioner Bustichi voting "no".

24. Highway 1 Soquel/Morrissey Auxiliary Lanes Project – construction support

Senior Planner Kim Shultz gave the staff report saying that the California Transportation Commission released funding for the project on August 10, 2011 and that the state requires a construction contract to be awarded within six months from the fund release date.

Commissioners discussed whether the proposed costs for construction management and design support services were typical and if awarding the contract was premature if the HOV Lanes project did not move forward. It was clarified that funding for the Auxiliary Lanes project was already in place and defaulting on the Corridor Mobility Improvement Account (CMIA) funding would result in the funding being removed from Santa Cruz County.

Commissioner Pirie moved and Commissioner Hagen seconded to approve the staff recommendations that the Regional Transportation Commission (RTC) approve:

1. A resolution authorizing contracts with Parsons Brinckerhoff Americas, Inc. in the amount of \$1,896,360 for construction management services, and with Nolte Associates Inc. in the amount of \$268,300 for design support services in association with the construction of the Highway 1 Soquel/Morrissey Auxiliary Lanes project; and
2. A resolution amending the Highway 1 Construction page of the fiscal year (FY) 2011-12 RTC budget to move funds from the contingency line to the construction management team line.

The motion (Resolutions 03-12 and 04-12) passed unanimously.

25. 2010-2011 Santa Cruz County Grand Jury Report

Deputy Director Luis Mendez gave the staff report and reviewed the Grand Jury findings and the RTC's responses. The RTC agreed that traffic congestion on Highway 1 is problematic. The RTC also stated that insufficient funding is the main reason why the Regional Transportation Plan (RTP) is not fully implemented by the local jurisdictions and other agencies.

Commissioner Pirie moved and Commissioner Robinson seconded to approve the staff recommendations that the Santa Cruz County Regional Transportation

Commission (RTC) approve the proposed responses to the 2010-2011 Santa Cruz County Grand Jury Final Report.

The motion passed unanimously.

26. Adjourn to special meeting of the Service Authority for Freeway Emergencies
 - a. No agenda items this month
27. Next Meetings

The meeting adjourned at 12:21 pm.

The next SCCRTC meeting is scheduled for Thursday, October 6, 2011 at 9:00 a.m. at the County Board of Supervisors Chambers, 701 Ocean St., Santa Cruz, CA.

The next Transportation Policy Workshop meeting is scheduled for Thursday, October 20, 2011 at 9:00 a.m. at the SCCRTC Offices, 1523 Pacific Avenue, Santa Cruz, CA

Respectfully submitted,

Gini Pineda, Staff

ATTENDEES

| | |
|-------------------------|------------------------|
| Tom Williams | |
| Daja Evans | |
| Robert Orser | |
| Emilie Holder | |
| Grace Voss | |
| John Presleigh | SC County Public Works |
| John Mertz | |
| Valerie Emery | |
| Ralph and Susan Zerweck | |
| Andre and Anne Kobel | |
| Michael Becker | Take Back Santa Cruz |
| Tove Beatty | SCMTD |
| Jim Mekis | |
| Jack Nelson | |
| Elizabeth Levy | |
| Lucy McCullough | |

Steve Wiesner
Chris Schneiter
Larry Lapp
Erin Hackett
Debbie Bulger
Dana Juncker
Jeanette Cook
Charlie-Robbie Norman
Amber Sanchez
Ron Pomerantz
Bart Little
Peter Scott
Micah Posner
John Herr

SC County Public Works
City of Santa Cruz Public Works

Parsons Brinckerhoff
CFST

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SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: October 14, 2011

TO: Board of Directors

FROM: Les White, General Manager

SUBJECT: REPORT ON RESPONSE TO COMMENTS ON THE U.S. DEPARTMENT OF COMMERCE CENSUS BUREAU GEOGRAPHY DIVISION'S PROPOSED URBAN AREA CRITERIA FOR THE 2010 CENSUS

I. RECOMMENDED ACTION

That the Board of Directors accept and file this report on the response to Santa Cruz METRO's comments on the U.S. Department of Commerce Census Bureau Geography Division's Proposed Urban Area Criteria for the 2010 Census.

II. SUMMARY OF ISSUES

- The Department of Commerce Census Bureau Geography Division asked for comments on "Proposed Urban Area Criteria for the 2010 Census" in the 8/24/10 *Federal Register*. The Notice designated Santa Cruz-Watsonville-Salinas as a proposed urban agglomeration along with 50 other UAs across the country.
- The Notice said the Census Bureau was not responsible for the consequences of urban-rural designations since their job is to collect and report data only. This was the only opportunity for comments, even if the new designations had harmful effects.
- Santa Cruz METRO serves two UAs (called UZAs in transit parlance) and rural areas. If Santa Cruz METRO served one UA, the District would have potentially lost FTA operational funds of \$5-6 million/year because of the rules governing the funds.
- Santa Cruz METRO staff examined the methodology in-depth. The methodology did not work, which staff clearly demonstrated in the November 2010 response. In addition, many regulations, policies, ballot initiatives, General Plan measures and topographical features which regulate urban growth precluded these areas from growing as modeled.
- Santa Cruz METRO argued that the Census Bureau's proposal was based on computer-generated projections from 2000 Census data, with no consideration of any of the above and, that these actions robbed protected populations of basic services like access to housing or transportation. Santa Cruz METRO took the position that if a government Department is aware of negative effects on protected populations, their obligation is to provide accessible opportunities for input. The *Federal Register* is an inaccessible publication to those of Limited English Proficiency (LEP).
- For these and other reasons detailed in the staff report of November 10, 2010 on this topic, Santa Cruz METRO was excited to read the August 24, 2011 *Federal Register*

“Bureau of the Census: Urban Area Criteria for the 2010 C ensus” response to comments to find that, on page 53039, it reads, “...Census 2000 urbanized areas will continue to be recognized as separate urbanized areas if these areas continue to qualify as urbanized under the 2010 Census urban delineation area criteria.” In other words, the proposed agglomeration that would have cost Santa Cruz between \$5-6 million per year in operational funds, will not happen.

III. DISCUSSION

The Department of Commerce Census Bureau Geography Division asked for comments on “Proposed Urban Area Criteria for the 2010 C ensus” in the 8/24/10 *Federal Register*. The Notice designated Santa Cruz-Watsonville-Salinas as a proposed urban agglomeration along with 50 ot her UAs across the country. The Notice also said the Census Bureau was not responsible for the consequences of urban-rural designations since their job is to collect and report data only. This was the only opportunity for comments offered, even if the new designations had harmful effects, as they might have in Santa Cruz and Monterey Counties.

Santa Cruz METRO serves two UAs (called UZAs in transit parlance) and rural areas. If Santa Cruz METRO served one UA, the District would have potentially lost FTA operational funds of \$5-6 million/year because of the rules governing the funds. Santa Cruz METRO staff (Tove Beatty, Grants/Legislative Analyst; Erich Friedrich, Jr. Transportation Planner; and, Claire Fliesler, Transit Intern) were tasked with formulating a response to the Census Bureau.

Santa Cruz METRO staff then examined the methodology in-depth and, after much effort, found that it simply did not work, which was clearly demonstrated in the November 2010 response. In addition, many regulations, policies, ballot initiatives, General Plan measures and topographical features which regulate urban growth precluded these areas from growing as the Bureau had modeled. These issues were raised by General Manager Les White with the Census Bureau personnel in a conference call in October 2010. Census Bureau staff seemed not to have considered this and told those on the call that they were not responsible for the consequences of making these designations, even if they were based on old data and new computer modeling technology being used for the first time.

Santa Cruz METRO then argued in their comments that the Census Bureau’s proposal was based on computer-generated projections from 2000 Census data, with no consideration of any of the above and, that these actions robbed protected populations of basic services like access to housing or transportation. Santa Cruz METRO took the position that if a government Department is aware of negative effects on protected populations, their obligation is to provide accessible opportunities for input. The *Federal Register* is an inaccessible publication to those of Limited English Proficiency (LEP).

For these and other reasons detailed in the staff report of November 10, 2010 on the topic, Santa Cruz METRO was excited to read the August 24, 2011 *Federal Register’s* “Bureau of the Census: Urban Area Criteria for the 2010 C ensus” response to comments to find that, on page 53039, it reads, “...Census 2000 urbanized areas will continue to be recognized as separate urbanized areas if these areas continue to qualify as urbanized under the 2010 C ensus urban delineation area criteria.” In other words, the proposed agglomeration that would have cost Santa Cruz between \$5-6 million per year in operational funding, will not happen, at least not as

a result of the 2010 C ensus. Santa Cruz METRO staff and the General Manager are to be congratulated for the significant amount of work that went into the initial set of comments as well as the positive result for Santa Cruz METRO and the community it serves.

IV. FINANCIAL CONSIDERATIONS

Since the Santa Cruz-Watsonville-Salinas (“Santalinasville”) urban agglomeration was not designated in 2012, Santa Cruz METRO will continue to receive \$5-6 million annually in federal operational funds through 2020.

V. ATTACHMENTS

Attachment A: *Federal Register*, Vol. 76, No. 164, Wednesday, August 24, 2011, Department of Commerce Notice: “Urban Area Criteria for the 2010 Census”

ATTACHMENT A



FEDERAL REGISTER

Vol. 76

Wednesday,

No. 164

August 24, 2011

Part II

Department of Commerce

Census Bureau

Urban Area Criteria for the 2010 Census; Notice

6.a1

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 110714393–1393–01]

Urban Area Criteria for the 2010 Census

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of final program criteria.

SUMMARY: This notice announces the Bureau of the Census’ (hereafter, Census Bureau’s) final criteria for defining urban areas based on the results of the 2010 Decennial Census (the term “urban area” as used throughout this notice refers generically to urbanized areas of 50,000 or more population and urban clusters of at least 2,500 and less than 50,000 population). This notice also provides a summary of comments received in response to proposed criteria published in the August 24, 2010, **Federal Register** (75 FR 52174), as well as the Census Bureau’s response to those comments.

The Census Bureau’s urban-rural classification is fundamentally a delineation of geographic areas, identifying both individual urban areas and the rural areas of the nation. The Census Bureau’s urban areas represent densely developed territory, and encompass residential, commercial, and other nonresidential urban land uses. The Census Bureau delineates urban areas after each decennial census by applying specified criteria to decennial census and other data. Since the 1950 Census, the Census Bureau has reviewed and revised these criteria, as necessary, for each decennial census. The revisions over the years reflect the Census Bureau’s desire to improve the

classification of urban and rural territory to take advantage of newly available data, as well as advancements in geographic information processing technology.

DATES: Effective Date: The Census Bureau will begin implementing the criteria as of August 24, 2011.

FOR FURTHER INFORMATION CONTACT: Vincent Osier, Chief, Geographic Standards and Criteria Branch, Geography Division, U.S. Census Bureau, via e-mail at vincent.osier@census.gov or telephone at (301) 763–3056.

SUPPLEMENTARY INFORMATION: The Census Bureau’s delineation of urban areas is designed to identify densely developed territory, and encompass residential, commercial, and other nonresidential urban land uses. The boundaries of this “urban footprint” have been defined using measures based primarily on population counts and residential population density, but also through criteria that account for nonresidential urban land uses, such as commercial, industrial, transportation, and open space that are part of the urban landscape. Since the 1950 Census, when densely settled urbanized areas (UAs) of 50,000 or more people were first defined, the urban area delineation process has addressed nonresidential urban land uses through criteria designed to account for commercial enclaves, special land uses such as airports, and densely developed noncontiguous territory.

In delineating urban areas and the resultant classification of territory outside these urban areas as rural, the Census Bureau does not take into account or attempt to meet the requirements of any nonstatistical uses

of these areas or their associated data. Nonetheless, the Census Bureau recognizes that other government agencies use the Census Bureau’s urban-rural classification for allocating program funds, setting program standards, and implementing aspects of their programs. The agencies that use the classification and data for such nonstatistical purposes should be aware that the changes to the urban area criteria might affect the implementation of their programs.

The Census Bureau is not responsible for the use of its urban-rural classification in nonstatistical programs. If a federal, tribal, state, or local government agency voluntarily uses the urban-rural classification in a nonstatistical program, it is that agency’s responsibility to ensure that the classification is appropriate for such use. In considering the appropriateness of the classification for use in a nonstatistical program, the Census Bureau urges each government agency to consider permitting appropriate modifications of the results of implementing the urban-rural classification specifically for the purposes of its program. When a program permits such modifications, the Census Bureau urges each agency to describe and clearly identify the different criteria being applied to avoid confusion with the Census Bureau’s official urban-rural classifications.

I. Summary of Changes Made to the 2010 Census Urban Area Criteria

The following table compares the final 2010 Census delineation of urban areas criteria with the provisions that were proposed in the August 24, 2010, **Federal Register** (75 FR 52174).

| Criteria | Proposed 2010 Census criteria | Final 2010 Census criteria |
|--|--|--|
| Identification of Initial Urban Area Cores. | Census tract and block population density, count, and size thresholds. Use of National Land Cover Database to identify territory with a high degree of impervious land cover. | Census tract and block population density, count, and size thresholds. Use of National Land Cover Database to identify territory with a high degree of impervious land cover. |
| Inclusion of Noncontiguous Territory Separated by Empty Territory. | Bodies of water and wetlands as identified in the National Land Cover Database. | Bodies of Water. |
| Inclusion of Noncontiguous Territory via Hops and Jumps. | Maximum hop distance 0.5 miles, maximum jump distance 2.5 miles, and no hops after jumps. Solicited comment on returning to the maximum jump distance of 1.5 miles implemented for pre-Census 2000 delineations. | Maximum hop distance 0.5 miles, maximum jump distance 2.5 miles, and no hops after jumps. |
| Inclusion of Enclaves | Two types of enclaves are identified when surrounded solely by qualifying land territory, and one type of enclave can be included when surrounded by both land that qualified for inclusion in the urban area and water. | Two types of enclaves are identified when surrounded solely by qualifying land territory, and one type of enclave can be included when surrounded by both land that qualified for inclusion in the urban area and water. |

ATTACHMENT A

| Criteria | Proposed 2010 Census criteria | Final 2010 Census criteria |
|---|---|--|
| Splitting Large Urban Agglomerations. | The urban agglomeration encompasses at least 1,000,000 people. Split occurs at the metropolitan statistical area boundary (or metropolitan New England city and town area), and compensates for incorporated place and census designated place boundaries to attempt to avoid splitting places between urban areas. | The agglomeration consists of urbanized areas defined separately for Census 2000. Split location is guided by location of Census 2000 urbanized area boundaries. Potential split locations will also consider metropolitan statistical area, county, place, and/or minor civil division boundaries as well as distance from each component urbanized area. |
| Merging Individual Urban Areas. | N/A | Merge qualifying territory from separately defined 2010 Census urban cores that share territory contained within the boundaries of the same Census 2000 urban area. Merge only occurs if an area is at risk of losing urbanized area or urban status and is preventable by the merge. |
| Inclusion of Indentations | 5 square mile maximum area of the territory within the indentation to be added to the urban area. | 3.5 square mile maximum area of the territory within the indentation to be added to the urban area. |
| Inclusion of Airports | Annual enplanement of at least 2,500 passengers and be contiguous to the urban area. | Currently functioning airport with an annual enplanement of at least 2,500 passengers and is within 0.5 miles to the urban area. |
| Additional Nonresidential Urban Territory. | N/A | Inclusion of groups of census blocks with a high degree of impervious surface and are within 0.25 miles of an urban area. |
| Assigning Urban Area Titles | Clear, unambiguous title based on commonly recognized place names derived from incorporated places, census designated places, minor civil divisions, and the Geographic Names Information System. | Clear, unambiguous title based on commonly recognized place names derived from incorporated places, census designated places, minor civil divisions, and the Geographic Names Information System. |
| Minimum Population Residing Outside Institutional Group Quarters. | At least 1,500 persons must reside outside institutional group quarters for the area to qualify as its own urban area. | At least 1,500 persons must reside outside institutional group quarters for the area to qualify as its own urban area. |
| Density Criteria for Military Installations. | Census blocks on military installations with 2,500 or more persons are automatically given a population density of 1,000 persons per square mile; census blocks between 1,000 and 2,500 population are automatically given a population density of 500 persons per square mile. | N/A. |

Throughout this **Federal Register** Notice and the urban area criteria for the 2010 Census, the Census Bureau uses the term “contiguous” where the term “adjacent” was used in the proposed 2010 urban area criteria.

II. History

Over the course of more than a century of defining urban areas, the Census Bureau has introduced conceptual and methodological changes to ensure that the urban-rural classification keeps pace with changes in settlement patterns and with changes in theoretical and practical approaches to interpreting and understanding the definition of urban areas. Prior to the 1950 Census, the Census Bureau primarily defined “urban” as any population, housing, and territory located within incorporated places with a population of 2,500 or more, but with the additional allowances to classify certain New England towns and other areas urban by “special rule”. That definition was easy and straightforward to implement, requiring no need to calculate population density, to understand and account for actual settlement patterns on the ground in relation to boundaries of administrative units, or to consider densely settled

populations existing outside incorporated municipalities. For much of the first half of the twentieth century, that definition was adequate for defining “urban” and “rural” in the United States, but by 1950 it became clear that it was incomplete.

Increasing suburbanization, particularly outside the boundaries of large incorporated places led the Census Bureau to adopt the Urbanized Area (UA) concept for the 1950 Census. At that time, the Census Bureau formally recognized that densely settled communities outside the boundaries of large incorporated municipalities were just as “urban” as the densely settled population inside those boundaries and the large unsettled or sparsely settled areas inside those boundaries were just as “rural” as those outside. Due to the limitations in technology for calculating and mapping population density, delineation of UAs was limited to cities of at least 50,000 people (in the 1940 Census) and their surrounding territory. The geographic units used to analyze settlement patterns were enumeration districts (similar to census block groups), but to facilitate and ease the delineation process, each incorporated place was analyzed as a single unit—that is, the overall density of the place

was calculated and if it met the minimum threshold, it was included in its entirety in the UA. Outside UAs, “urban” was still defined as any place with a population of at least 2,500. The Census Bureau recognized the need to identify distinct unincorporated communities existing outside the UAs, and thus created the “census designated place” (CDP)¹ and designated those with populations of at least 2,500 as urban.

Starting with the 1960 Census and continuing through the 1990 Census, the Census Bureau made a number of changes to the methodology and criteria for defining UAs, but retained the 1950 Census basic definition of “urban” which was defined as UAs with a population of 50,000 or more and defined primarily on the basis of population density, as well as places with a population of 2,500 or more located outside UAs. The enhancements made by the Census Bureau to the methodology and criteria used during this period included:

¹ A CDP is a statistical geographic entity encompassing a concentration of population, housing, and commercial structures that is clearly identifiable by a single name, but is not within an incorporated place. CDPs are the statistical geography counterparts of incorporated places.

(1) Lowering, and eventual elimination, of minimum population criteria for places that formed the “starting point” for delineating a UA. This made recognition of population concentrations independent of the size of any single place within the concentration.

(2) Identification of “extended cities”—incorporated places containing substantial amounts of territory with very low population density, which were divided into urban and rural components using 100 persons per square mile (ppsm) as the density criterion. This kept the extent of urban territory from being artificially exaggerated by sparsely settled and overbounded incorporated places.

(3) Implementation for the 1990 Census of nationwide coverage by census blocks, and use of interactive analysis of population density patterns at the census block level, or by groups of blocks known as “analysis units,” using Census Bureau-developed delineation software. This enhancement allowed greater flexibility when analyzing and defining potential UAs, as opposed to using enumeration districts and other measurement units defined prior to decennial census data tabulation.

(4) Implementation of qualification criteria for incorporated places and CDPs for inclusion within a UA based on the existence of a densely populated “core” containing at least fifty percent of the place’s population. This eliminated certain places from the urban area classification because much of their population was scattered rather than concentrated.

For the 2000 Census (Census 2000), the Census Bureau took advantage of technological advances associated with geographic information systems (GIS) and spatial data processing to classify urban and rural territory on a more consistent and nationally uniform basis than had been possible previously. Rather than delineating urban areas in an interactive and manual fashion, the Census Bureau developed and utilized software that automated the examination of population densities and other aspects of the criteria. This new automated urban area delineation methodology provided for a more objective application of criteria compared to previous censuses in which individual geographers applied the urban area criteria to delineate urban areas interactively. This new automated approach also established a baseline for future delineations to enable the Census Bureau to provide comparable data for subsequent decades.

Changes for Census 2000

The Census Bureau adopted six substantial changes to its urban area criteria for Census 2000:

(1) *Defining urban clusters.* Beginning with Census 2000, the Census Bureau created and implemented the concept of an urban cluster. Urban clusters (UCs) are defined as areas of at least 2,500 and less than 50,000 persons using the same residential population density-based criteria as applied to UAs. This change provided for a conceptually consistent, seamless classification of urban territory. For previous censuses, the lack of a density-based approach for defining urban areas of less than 50,000 persons resulted in underbounding of urban areas where densely settled populations existed outside place boundaries or overbounding when cities included territory with low population density. Areas where annexation had lagged behind expansion of densely settled territory, or where communities of 2,500 up to 50,000 people were not incorporated and were not defined as CDPs, were most affected by the adoption of density-based UCs. As a result of this change, the Census Bureau no longer needed to identify urban places located outside UAs for the purpose of its urban-rural classification.

(2) *Disregarding incorporated place and CDP boundaries when defining UAs and UCs.* Taking place boundaries into account in previous decades resulted in the inclusion of territory with low population density within UAs when the place as a whole met minimum population density requirements, and excluded densely settled population when the place as a whole fell below minimum density requirements. Implementation of this change meant that territory with low population density located inside place boundaries (perhaps due to annexation, or the way in which a CDP was defined) no longer necessarily qualified for inclusion in an urban area. However, it also meant that nonresidential urban land uses located inside a place’s boundary and located on the edge of an urban area might not necessarily qualify to be included in a UA or UC.

(3) *Adoption of 500 persons per square mile (ppsm) as the density criterion for recognizing some types of urban territory.* The Census Bureau adopted a 500 ppsm population density threshold at the same time that it adopted its automated urban area delineation methodology. This ensured that census blocks that might contain a mix of residential and nonresidential urban uses, but might not have a population density of at least 1,000

ppsm, could qualify for inclusion in an urban area. For the 1990 Census, geographers could interactively modify analysis units to include census blocks with low population density that might contain nonresidential urban uses, while still achieving an overall population density of at least 1,000 ppsm. Adoption of the lower density threshold facilitated use of the automated urban area delineation methodology, and provided for comparability with the 1990 methodology. This change did not result in substantial increases to the extent of urban areas.

(4) *Increase in the jump distance from 1.5 to 2.5 miles.* The Census Bureau increased the jump distance from 1.5 to 2.5 miles. A “jump” is the distance across territory with low population density separating noncontiguous qualifying territory (area of high population density) from the main body of an urban area. The increase in the jump distance was a result of changing planning practices that led to the creation of larger clusters of single-use development. In addition, research conducted prior to Census 2000 showed that some jumps incorporated in UA definitions in 1990 were actually longer than 1.5 miles as a result of the subjective identification of the gap in developed territory. As used in previous censuses, only one jump was permitted along any given road connection.

(5) *Introduction of the hop concept to provide an objective basis for recognizing small gaps within qualifying urban territory.* For Census 2000, the Census Bureau officially recognized the term “hops,” which is defined as gaps of 0.5 mile or less between qualifying urban territory. Hops are used primarily to account for territory in which planning and zoning processes resulted in alternating patterns of residential and nonresidential development over relatively short distances. This provided for a more consistent treatment of short gaps with low population density, some of which had been treated as jumps in the 1990 urban area delineation process (and not permitted if identified as a second jump), while others were interpreted as part of the pattern of urban development and grouped with contiguous, higher density blocks to form qualifying analysis units.

(6) *Adoption of a zero-based approach to defining urban areas.* The urban area delineation process in previous censuses had generally been an additive process, where the boundary of a UA from the previous census provided the starting point for review for the next census. The changes made for Census 2000 were substantial enough to warrant

the Census Bureau to re-evaluate the delineation of all urban areas as if for the first time, rather than simply making adjustments to the existing boundary. The Census Bureau adopted this zero-based approach to ensure that all urban areas were nationally defined in a consistent manner.

The six changes described above represent the major modifications implemented for Census 2000. They illustrate a substantial shift in approach adopted by the Census Bureau in its procedure for delineating urban areas. The availability of new datasets and continued research since Census 2000 showed the potential for further improvements for the 2010 Census.

III. Summary of Comments Received in Response to Proposed Criteria

The notice published in the August 24, 2010 *Federal Register* (75 FR 52174) and requested comments on proposed criteria for the 2010 Census urban areas. In response, the Census Bureau received 179 comment letters from regional planning and nongovernmental organizations, municipal and county officials, Members of Congress, state governments, federal agencies, and individuals.

Comments Pertaining to Proposed Criteria for Splitting Large Urban Agglomerations

The proposed criteria for splitting large agglomerations formed during the delineation process drew the largest number of comments. Of the 179 responses received, 160 commented on the proposed criteria for splitting large agglomerations. Of these, 102 commenters expressed concern about the potential merger of specific pairs of urban areas, with 87 commenters expressing concern about the impact on planning and policymaking as well as the potential loss of federal funding as a result of the loss of individual UA status. Other commenters expressed concern about the loss of local control over funding allocation and policy decisions, lack of consistency with the Census 2000 urban classification, and loss of meaningful data.

Twenty-five commenters supported splitting large urban agglomerations along metropolitan statistical area boundaries or (in New England) New England city and town area (NECTA) boundaries. Ten also supported the proposal to avoid splitting incorporated places and CDPs between urban areas. Six of the comments suggested splitting urban areas along NECTA Division in New England where available or Primary Metropolitan Statistical Area boundaries (although the latter are no

longer defined by the Office of Management and Budget). Thirteen commenters specifically suggested basing the urban agglomeration splits on the location of the current urban area boundaries; those commenters who expressed favor for maintaining separate UA status for areas identified as part of potential agglomerations can be assumed to favor splitting along Census 2000 UA boundaries. Five commenters advocated the use of commuting data to determine how and where to split large agglomerations. Twenty-six commenters favored splitting urban agglomerations within metropolitan statistical areas, with some wondering whether the lack of such a provision in the proposed criteria was an oversight.

The Census Bureau received sixty-five comments regarding the minimum population threshold to identify which urban agglomerations should be split. Of these, six commenters favored the proposed 1,000,000 person threshold. Thirty commenters favored a 250,000 person threshold and eleven commenters suggested keeping the 50,000 person threshold implemented for the Census 2000 delineation. Among other suggested minimum population thresholds, commenters also suggested using a threshold consistent with Federal Transit Administration and Federal Highway Administration funding thresholds, or no minimum population threshold at all.

In addition to requests for clarification, the Census Bureau also received comments expressing concern about the arbitrary nature of the proposed criteria for splitting and merging urban areas as well as a lack of local input. Other suggestions include the identification of combined urban areas through commuting patterns, examining each urban agglomeration individually to determine the location of each split boundary, defining agglomeration splits along county and sub-county boundaries, and retaining the current split boundaries defined for the Census 2000 delineation.

In response to the comments regarding criteria for splitting large agglomerations, the Census Bureau will adopt criteria ensuring that urbanized areas defined for Census 2000 continue to be identified as separate urbanized areas for the 2010 Census, but only if these areas continue to qualify as urbanized under the 2010 urban area delineation criteria. The boundary used to split large agglomerations will be based on the locations of Census 2000 urban area boundaries. To the extent possible, this will facilitate continuity and comparability between the Census

2000 and the 2010 Census urban area definitions.

Comments Pertaining to Proposed Hop and Jump Criteria

The Census Bureau received seventy-five comments regarding the proposed hop and jump criteria designed to include noncontiguous, but qualifying territory within an urban area. Of these, forty commenters suggested lowering the maximum jump distance threshold from 2.5 to 1.5 miles. These commenters suggested that, in addition to preventing the consolidation of functionally separate urban areas, a shorter maximum jump distance would improve the overall delineation by preventing inclusion in the urban area of long stretches of qualifying territory that are more appropriately classified as rural, especially with the presence of large expanses of exempted territory and long distance commuting patterns. Further, one commenter expressed concern that retaining the existing 2.5-mile maximum jump threshold indicates that the Census Bureau has moved away from a morphological concept of urban towards one based on function relationships.

Thirty-three commenters favored no change to the 2.5 mile maximum jump distance threshold. Reasons for retention of the 2.5 mile maximum jump distance provided by these commenters included retaining consistency with the Census 2000 urban area delineation, the ability to account for future urbanization and extended suburbanization, and mitigation of the presence of undevelopable land not identified by the Census Bureau. One commenter suggested that the 2.5 maximum jump distance allowed is too restrictive in coastal areas where large areas of wetlands are present, even if such territory is identified as exempted. One commenter suggested different maximum jump thresholds should be applied to urban areas of different population sizes, with longer jumps allowed for larger initial urban cores.

Three commenters expressed concern that the proposed criteria do not allow for a second iteration of hops after jumps; one commenter agreed with the proposal to not allow hops after a jump had been made. Two commenters requested clarification on the sequence of hops and jumps in relation to the identification of airports, wondering whether it is possible to hop or jump from an urban area to additional qualifying territory if airports are included in the urban area after the hop and jump criteria have been implemented. One commenter suggested that all intervening census

blocks separating an initial urban core and its noncontiguous qualifying territory must have a minimum population density of at least 500 ppsm. One commenter suggested not allowing multiple hops, and another opposed including any noncontiguous densely settled territory via hops and jumps.

Based on the comments received as well as a general desire to maintain comparability between the Census 2000 and 2010 Census criteria, the Census Bureau will continue to use the maximum jump distance of 2.5 miles, as well as the maximum hop distance of 0.5 miles. The Census Bureau notes that the comments pertaining to the maximum distance of a jump did not strongly favor either retention of the 2.5-mile maximum jump distance implemented for the Census 2000 or reversion to the 1.5 mile maximum of previous decades. In response to concerns that application of the hop and jump criteria allows urban areas to reach too far into rural territory, the Census Bureau will not allow for a second iteration of hops after a jump. The Census Bureau will also retain the proposed requirement for an overall density of at least 500 ppsm for all noncontiguous qualifying territory (both the high density destination and intervening territory).

Comments Pertaining to Proposed Criteria for Identifying and Linking Across Exempted Territory

The Census Bureau received thirty-three comments pertaining to the proposed criteria for recognizing territory in which urban development is constrained due to either topographic or land cover/land use conditions during the inclusion of noncontiguous, but qualifying urban territory. Sixteen commenters agreed with the proposed criteria to identify wetlands as exempted territory in addition to water features, national parks, and national monuments as was done for the Census 2000 delineation. Five of these commenters, however, suggested that wetlands only be identified as exempt if the maximum jump distance was lowered to 1.5 miles. In addition to identifying wetlands as exempted territory, five commenters suggested additional classes of land cover restricting development, such as farmland, forested land, conservation easement properties, and steeply sloped territory in which mountain passes are present. Although still in agreement with the identification of wetlands as exempted territory, commenters expressed additional concerns regarding the vintage of the 2001 National Land Cover Database (NLCD) developed by

the Multi-Resolution Land Characteristics Consortium (MRLC)² and suggested using the NLCD 2006 update as well as incorporating additional wetlands datasets based on ground-truth samples, more current imagery, and/or projection models, and locally produced surface data where available. Commenters also expressed concern about the objectivity in determining whether these territories will not be developed as well as not be included in the overall population density calculation of urban areas.

Five commenters opposed the identification of wetlands as exempted territory, citing NLCD data vintage and quality, the compatibility of the NLCD to data within the Census Bureau's Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) database (MTDB), lack of local input in defining wetlands, and the proper vetting of NLCD prior to inclusion in the criteria as issues of concern. Commenters also suggested that the combination of wetlands and water features as exempted territory with a 2.5-mile maximum jump distance threshold exaggerates the amount of urban territory defined and noted that only considering wetlands as exempted does not account for other types of land cover/uses that act as barriers to urban development. One commenter also questioned how close wetlands territory must be to road segments as well as why it is necessary to be located on both sides of the road, to be considered exempted territory.

The Census Bureau received three comments opposing the identification of water features as exempted territory suggesting that wide expanses of water should clearly separate urban areas. One commenter suggested the use of Radio Detection And Ranging (RADAR) mapping to better identify water landscape features as exempted territory. Three commenters opposed the identification of all exempted territory in the urban area delineation criteria. These commenters suggested that the exempted territory criteria allow for the extension of urban areas across county boundaries, which is counter to the overall intent for defining urban areas by the Census Bureau. Note that the Census Bureau's urban area criteria have always allowed for the extension of urban area boundaries across the county boundaries. Other commenters suggested adding floodplains, regional parks, national

wildlife areas, steeply sloped terrain, and other defined open space with restricted development properties as exempted territory classes.

In response to the comments received, the Census Bureau will continue to take into account exempted territory when delineating urban areas, as it has for several decades. The Census Bureau will also continue to only consider conditions where exempted territory is on both sides of a road, otherwise development would not be fully constrained. However, based on concerns raised by commenters and to maintain decennial comparability, for the 2010 Census urban area delineation, bodies of water included in the Census Bureau's MTDB will be the only specific class of territory identified as exempted. Similar to the Census 2000 delineation criteria, additional exempted territory will include land area in which the populations of the census blocks on both sides of a road segment are zero and the road connection crosses at least 1,000 feet of water. This methodology is designed to identify unpopulated wetlands and floodplains adjacent to water that separate areas of urban development. Nonetheless, the Census Bureau decided to break from the Census 2000 delineation criteria by not considering national parks and national monuments as exempted territory because of concerns regarding the data quality and vintage. The Census Bureau also decided not to include any of the proposed wetlands classes in the category of exempted territories. The presence of large expanses of wetlands territory coupled with a maximum jump distance threshold of 2.5 miles would facilitate the over extension of urban territory in certain locations around the nation. The consideration of wetlands as exempted territory imparts a regional bias to the delineation process due to the greater prominence of wetlands in some parts of the country, such as the southern and southeastern United States. The Census Bureau has decided against adding additional classes of exempted territory until a larger and more robust category of land cover/land use types acting as barriers to urban development can be identified consistently and uniformly for the entire United States and Puerto Rico.

Comments Pertaining to Proposed Criteria To Qualify Territory Containing a High Degree of Impervious Surface Land Cover

Twenty-three commenters responded to the proposed use of the NLCD to assist in identifying and qualifying as urban, sparsely populated urban-related territory associated with a high degree

²The NLCD includes data for the entirety of the United States, Puerto Rico, and the U.S. Virgin Islands.

of impervious surface land cover. Eighteen comments favored adoption of the proposal to qualify territory based on the percentage of impervious surfaces. Ten commenters, however, expressed concern about the vintage of the data, questioning the relevance of using the 2001 NLCD as it is more representative of urban conditions at the time of Census 2000 and does not account for subsequent development. Commenters suggested using the NLCD 2006 update, supplemental land cover/land use datasets based on ground-truth samples, more current imagery, and/or projection models, as well as local opinion and locally produced surface data, where available. Five commenters who favored using impervious surface data conditioned their support on the premise that the maximum jump distance threshold should revert to 1.5 miles to prevent the over extension of urban territory. Other commenters expressed concern about the overall quality of the NLCD, how well these data match data in the MTDB, that introduction of these data were not properly vetted, and requested that the Census Bureau provide public products merging impervious surface data with information for census blocks.

After considering the comments received, the Census Bureau, as described in the proposed criteria, will include impervious surface data when delineating urban areas as a means to identify business districts, commercial, and industrial zones, located both on the edge and in the interior of an urban area that would not qualify as urban based on residential population measures alone. In response to the comments, the Census Bureau will use the 2006 NLCD update wherever available and will use the 2001 NLCD in areas of the Nation not yet covered by the 2006 NLCD update in its efforts to promote a more publicly replicable urban area delineation. For the 2010 Census urban area delineation, the most consistent, comprehensive, and accessible impervious surface database for the United States and Puerto Rico is the NLCD.

Comments Pertaining to Proposed Use of Census Tracts as Building Blocks

The Census Bureau received twenty-one comments regarding the proposed use of the census tract as the analysis unit (or geographic building block) during the delineation of the initial urban area core. Of these, sixteen commenters favored the proposal. Three commenters also supported the use of census tracts as analysis units, but suggested modifications to the initial urban core delineation criteria. These

commenters expressed concern that the minimum population density threshold of 500 ppsm was too high, proposed increasing the maximum land area threshold to four square miles, and suggested applying the Census 2000 block group-based delineation criteria after using census tracts as analysis units to capture lower density territory in mountainous areas resulting from census geography primarily being defined along visible features. The two letters opposing the use of census tracts as analysis units both questioned the relevance of this criterion when delineation of initial urban cores also occurs at the census block level. An additional concern was about the reduced population density measurements resulting from the inclusion of water area in census tracts (although population density is based only on land area). One letter requested clarification on the iterative nature of the initial urban core building process once the delineation criteria moves down to the census block level.

In response to the comments received regarding these criteria, the Census Bureau will replace census block groups with census tracts as the analysis unit during the delineation of the initial urban area core for the 2010 Census urban area delineation as described in the proposed criteria. Changing the urban area core delineation analysis unit to the census tract offers advantages of increased consistency and comparability, since census tracts are more likely to retain their boundaries over the decades than census blocks and block groups. The Census Bureau decided to retain the minimum 500 ppsm threshold to maintain comparability with the Census 2000 urban area delineation. This population density threshold was chosen to allow the Census Bureau to account for the inclusion of open space and other nonresidential urban uses within census tracts and blocks that also contain residential development. The Census Bureau also decided not to adopt the suggested maximum census tract size criterion of four square miles and to include a maximum census tract size criterion of three square miles to avoid adding large amounts of sparsely settled territory to urban areas. Water area, as depicted in the Census Bureau's MTDB, has never been included in population density calculations for the urban area delineation program.

Research by the Census Bureau has indicated that the initial urban cores tend to experience slight decreases in territory and only slight increases in population qualifying as urban when the initial analysis unit is changed from

the block group to the census tract. The small reduction in initial urban area core territory is due to the use of census tracts, which are larger geographic units and therefore less likely than block groups to qualify under the density requirements. Similar to the way block groups were used for Census 2000, if a census tract does not meet specified area measurement and density criteria, the focus of analysis will shift to individual census blocks within the tract, and delineation will continue at the block level. As a result, when using census tracts, the delineation process shifts to census block-level analysis sooner than would be the case when using block groups. This methodology is iterative as additional qualifying census tracts and blocks are added to the initial urban core until no such qualifying territory exists during this phase of the delineation.

Comments Pertaining to Proposed Criteria for Inclusion of Enclaves and Indentations

The Census Bureau received six comments regarding proposed criteria for inclusion of territory in indentations and enclaves formed during the delineation process. Three commenters supported the proposed criteria for including indentations, by way of criteria similar to those implemented for the Census 2000, citing the jagged nature of the current urban area boundaries. Conversely, one commenter opposed the indentation criteria if the only purpose was to produce a more cartographically pleasing depiction of boundaries. One commenter suggested modifying the enclave criteria by lowering the maximum area threshold of five square miles and requiring the majority of the enclave boundary to border territory qualifying as urban. One commenter questioned if these criteria are still necessary.

In response to the comments received regarding the criteria for the inclusion of enclaves and indentations, the Census Bureau decided not to make any changes to the proposed enclave and indentation criteria to maintain comparability from one decade to another. In situations where an enclave is identified and is contiguous to both qualifying territory and a water feature, the territory within the enclave can only be captured if the line of contiguity with the qualifying territory is greater than the line of contiguity with the water feature. These criteria are designed to qualify internal and fringe territory that may not qualify as urban due to large census blocks with a substantial presence of open space (parks, golf

courses, etc.) but should be considered part of the urban footprint.

Comments Pertaining to Proposed Criteria for Inclusion of Airports

The Census Bureau received ten comments pertaining to the proposed criteria for including airports in urban areas; all ten agreed with the proposal to include census blocks in their entirety approximating the territory encompassed by major airports. One commenter, however, disagreed with the proposal to lower the minimum enplanement threshold to 2,500 passengers, noting that commercial hubs are better represented than facilities with a mixture of charter or business flights and joint-use (military/general aviation) airports according to commercial enplanements only. This commenter also suggested that the criteria should take into consideration the number of flights. Two commenters favored the inclusion of cargo flights in addition to general aviation enplanements when identifying airports according to the minimum enplanement threshold. Another commenter noted that more recent enplanement data (2009) are available through the Federal Aviation Administration (FAA) than were referenced in the proposed criteria. Additional comments included requests for data content clarification such as whether the data include commercial only, military activities, or all enplanements, as well as whether the Census Bureau will consider cargo weight in identifying major airports. The Census Bureau also received one comment requesting the recognition of rail yards, sea ports, and utilities facilities as qualifying as urban territory in addition to airports.

Upon considering the comments received, the Census Bureau will retain the Census 2000 criteria to include whole census blocks representing airports in urban areas. In order to qualify, an airport must report a minimum annual enplanement of 2,500 passengers as reported by the FAA for at least one calendar year from 2001 to the most current data available for the delineation. All identified airports must be currently in service and providing services for the urban area in which it is to be included. The 2,500 passenger threshold was chosen to provide for a more complete coverage of airports, particularly those near smaller initial urban cores. The annual passenger boarding data will include only commercial service enplanements (primary and nonprimary) to promote consistency with the Census 2000 urban area criteria as well as to facilitate a more replicable delineation. Also in

accordance with the Census 2000 delineation, the inclusion of airports will represent the last step in identifying qualifying urban territory. However, upon further consideration and review of data, the Census Bureau has decided to also include airports within 0.5 miles of the urban area. This process simulates the connection of noncontiguous qualifying territory via the hop criteria. All other urban land cover/land use not qualifying through residential population count and density measures will be represented through the enclave and indentation criteria designed for the Census 2000 delineation and supplemented with the impervious surface data introduced for the 2010 Census.

Comments Pertaining to the Proposed Criterion Requiring at Least 1,500 Persons Residing Outside Institutional Group Quarters for an Area To Qualify as an Urban Area

Five commenters supported the proposed criterion requiring that an area must encompass at least 1,500 persons living outside institutional group quarters (GQs) in order to qualify as an urban area. Two commenters opposed this criterion, with one stating that an urban area should qualify only on the basis of population residing outside group quarters and the other suggesting that qualification as an urban area should be based on total population without distinction based on status within institutional group quarters. One commenter requested that the Census Bureau more closely examine the nature of the land use associated with large group quarters before disqualifying territory as urban as it contradicts the proposed criteria relating to population density and impervious surfaces.

In response to the comments received, the Census Bureau is finalizing the provision that all qualifying urban areas must encompass at least 1,500 persons living outside institutional GQs without change to avoid the delineation of an urban area comprising only a few census blocks in which an institutional GQ was located. The Census Bureau recognizes that although the population densities of these areas exceed the minimum thresholds specified in the urban area criteria, and the total populations exceed 2,500, they lack most of the residential, commercial, and infrastructure characteristics typically associated with urban territory.

Comments Pertaining to the Proposal to Eliminate the Central Place Concept

The Census Bureau received nine comments regarding the proposed elimination of the central place concept

from the urban area delineation criteria. Eight commenters agreed with the proposal. The one commenter who disagreed requested that the Census Bureau should continue to identify central places until it is clear that the elimination of these criteria will not impact the designation of principal cities of metropolitan and micropolitan statistical areas.

In response to the comments received, the Census Bureau is finalizing its proposal to discontinue identifying central places as part of the 2010 Census urban area delineation process. The Census Bureau notes that the identification of central places is no longer necessary for the process of delineating urban areas and can result in some central places being split between urban and rural territory. Moreover, the Office of Management and Budget (OMB) always had its own criteria to identify principal cities as part of the metropolitan and micropolitan statistical areas program.³ The list of principal cities identified by the OMB is quite similar to what would emerge if the urban area process created a list of central places. The Census Bureau no longer sees a need for a second representation of the same concept in its statistical and geographic data products. Principal cities of metropolitan and micropolitan statistical areas are identified based on different set of criteria and as part of the metropolitan and micropolitan area delineation process. This decision will have no impact on the metropolitan and micropolitan area delineation process.

Comment Pertaining to the Shape Index Used When Measuring Compactness of Census Blocks

The Census Bureau received one comment concerning the shape index proposed to identify census blocks considered compact during the delineation of the initial urban area cores. This commenter suggested modifying the compactness criterion to only include those census blocks that score 0.310 or higher according to the proposed shape index formula, as opposed to the proposed shape index value of 0.185 or higher.

The Census Bureau will retain the shape index threshold as proposed. Internal research and investigation has shown this to be a reasonable metric for measuring compactness for all census blocks having the potential to qualify as urban without excluding census blocks

³ See the "2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas," *Federal Register*, 75 FR 37246, June 28, 2010.

that should be included in an urban area.

Comments Pertaining to the Nonstatistical Uses of Urban Area Delineations

Seventeen commenters expressed concern that the Census Bureau does not acknowledge or consider any nonstatistical uses of urban areas when developing delineation criteria. Thirteen of these commenters suggested that the Census Bureau initiate an inter-agency task force to identify the potential negative impacts, particularly on federal funding, resulting from changes to the urban area delineation criteria, and design mitigation measures and/or solutions to these issues if the proposed changes were implemented. These commenters also suggested delaying the delineation of urban areas until provisions are adopted that would prevent adverse impacts on programs and funding formulas relating to urban areas as currently defined.

Nine commenters stressed the importance of consistency in both urban area delineation criteria and status from one decade to another to aid long-term planning and policy making. Five of these commenters specifically requested that territory defined as urban in Census 2000 continue to be defined as urban for the 2010 Census.

Five commenters expressed concern that there are no provisions in the delineation criteria for local input and requested the opportunity to review and comment on the definition of urban areas before boundaries become final. These commenters also expressed concern about the automated and inflexible nature of the delineation process and suggested that the extent of each urban area should be evaluated individually. The Census Bureau also received two comments expressing concern that the proposed delineation criteria do not take into account local zoning laws and incorporated place boundaries.

Two commenters criticized the timing for developing the urban area delineation criteria. These commenters stated that the methodology is flawed because projections related to potential changes in the delineation criteria are based on Census 2000 data and geography. These commenters suggested that the Census Bureau should delay development of the proposed delineation criteria until after 2010 Census data and geography become available.

The Census Bureau received eight requests for the extension of the public comment period on the proposed urban area delineation criteria to further assess

its potential impacts. Additional comments expressed difficulty in predicting results of changes to criteria as published in the August 24, 2010 **Federal Register** (75 FR 52174), and requested clarification of the proposed urban area delineation criteria. Commenters also submitted requests for real-world examples of how changes to the urban area delineation criteria would manifest on the landscape, maps of the proposed urban areas, and access to the delineation software to facilitate better informed public comment.

In response to the comments received regarding the nonstatistical uses of Census urban areas, the Census Bureau recognizes that some federal and state agencies use the Census Bureau's urban-rural classification for allocating program funds, setting program standards, and implementing aspects of their programs. The Census Bureau remains committed to an objective, equitable, and consistent nationwide urban area delineation, and thus identifies these areas solely for the purpose of tabulating and presenting statistical data. This provides data users, analysts, and agencies with a baseline set of areas from which to work, as appropriate. Given the many programmatic and often conflicting or competing uses for Census Bureau-defined urban areas, the Census Bureau cannot attempt to take each program into account. Therefore, by not taking any one nonstatistical use into account, the Census Bureau does not favor one program over another. The Census Bureau's designations are used to identify areas to receive funding for urban programs and also to identify areas for exclusion from rural-based programs.

In building upon the Census 2000 urban area criteria, the Census Bureau is developing urban area criteria for the 2010 Census consisting of a single set of rules that allow for application of automated processes based on the input of standardized nationwide datasets that yield consistent results. Rather than defining areas through a process of accretion over time, the criteria also provide a better reflection of the redistribution of population and how it affects the current state of urbanism. This can be done only by reexamining all territory that qualified as either urban or rural in earlier censuses based on different criteria, geography, and population distribution patterns as measured by those censuses. Nonetheless, the Census Bureau will apply urban agglomeration split and individual urban area merge criteria to ensure, to the greatest extent possible, the continued existence of all urbanized

areas defined for the Census 2000; although the actual urban territory these areas comprise may differ.

The delineation and production of urban areas and their associated data were scheduled to begin in March 2011, to ensure sufficient time to delineate and review the urban area definitions and prepare geographic information files in time to tabulate statistical data from both the 2010 Census and the American Community Survey (ACS). Adherence to this schedule prevented any attempts toward a test delineation using all of the proposed 2010 urban area criteria for the entire United States and Puerto Rico, thus prohibiting the availability of real-world examples without showing preference to any particular location. Further, this schedule also dictated that the development of the delineation software coincided with the development of the proposed and final criteria.

IV. Changes to the Proposed Urban Area Criteria for the 2010 Census

This section of the **Federal Register** provides information about the Census Bureau's decisions on changes that were incorporated into the Urban Area Criteria for the 2010 Census in response to the many comments received. These decisions benefited greatly from the public participation, which served as a reminder that, although identified for purposes of collecting, tabulating, and presenting federal statistics, the urban areas defined through these criteria represent areas in which people reside, work, and spend their lives and to which they attach a considerable amount of local pride. In reaching our decisions, the Census Bureau took into account the comments received in response to the proposed criteria published in the **Federal Register** on August 24, 2010, (75 FR 52174), as well as comments received during webinars, conference presentations, and meetings with federal, state, and local officials, other users of data for urban areas, and additional research and investigation conducted by Census Bureau staff.

The changes made to the proposed criteria in Section II of the August 24, 2011, **Federal Register** Notice, "Proposed Urban Area Criteria for the 2010 Census," are as follows:

1. In Section II, "Proposed Urban Area Criteria for the 2010 Census," in the introductory paragraph to this section, the Census Bureau removed the reference to Island Areas in the first sentence because the Census Bureau, in consultation with government officials in the Island Areas (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S.

ATTACHMENT A

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Virgin Islands), is still considering whether to identify urban and rural areas for the Island Areas. Census 2000 was the only census in which density-based criteria were applied to defining urban areas in the Island Areas.

2. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.1, the Census Bureau corrected the initial urban area core delineation criteria to better represent the iterative nature of these criteria. After the initial urban area core with a population density of 1,000 ppsm or more is identified, additional qualifying census tracts may be included only if contiguous to other qualifying census tracts.

3. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.1, the Census Bureau removed reference to census blocks within military installations. Due to imposed restrictions on the selection of features that could be used as census block boundaries within military installations for Census 2000, blocks on military installations that had a population of 2,500 or more were treated as having a population density of 1,000 ppsm even if the density was less than 1,000 ppsm. Census blocks that had a population greater than 1,000 and less than 2,500 were treated as having a population density of 500 ppsm. The Census Bureau has removed these criteria as the restrictions on the selection of features for census block boundaries within military installations is no longer in effect for the 2010 Census.

4. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.1, the Census Bureau clarified references to the MRLC NLCD data used in determining impervious surfaces during the delineation of initial urban cores. The Census Bureau has decided to use the MRLC NLCD 2006 update (recently made available for the conterminous United States in February 2011) to better represent land use/land cover conditions at the time of the delineation. The MRLC 2001 NLCD will be used only where the 2006 data are not available.

5. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.1, the Census Bureau added criteria to include in the initial urban core census blocks that are associated with a high degree of impervious surface land cover and are mostly contiguous to qualifying territory, but fail the shape index threshold of compactness. These criteria were added to compensate for the presence of elongated census blocks defined along road medians, which

create narrow strips of territory not qualifying as urban. Through further investigation, the Census Bureau found instances where one or more of these intervening census blocks associated with road medians created a barrier which prevented nearby qualifying territory from being considered contiguous. Furthermore, the Census Bureau has decided census blocks associated with road medians sharing a large degree of contiguity with qualifying territory should be included in the urban area.

6. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.1, the Census Bureau added reference to describe the review of the initial urban area cores. In an effort to mitigate the overextension of territory classified as urban into rural areas, the Census Bureau will identify census blocks qualifying as urban via the impervious surface criteria that are added to the initial urban cores late in the delineation process. The Census Bureau will review these census blocks located on the edge of an initial urban area core to determine if their classification as urban is appropriate. This review will also determine if these late-qualifying census blocks are elongated or small and consistently qualified when compared to the relatively large cell size of the impervious surface data.

7. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.2, the Census Bureau removed the identification of wetlands as exempted territory criteria and references to the MRLC's 2001 NLCD wetlands class definitions. The Census Bureau decided to only consider bodies of water as exempted territory until a more comprehensive category of land use/land cover classes can be identified for the entirety of the United States and Puerto Rico. Furthermore, because the Census Bureau will retain the 2.5 mile maximum jump distance threshold implemented for the Census 2000, it has decided to limit the recognition of exempted territories to prevent the over expansion of urban areas.

8. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.2, the Census Bureau added criteria to include the identification of land area where the populations of the census blocks on both sides of a road segment are zero and, additionally, the road connection crosses at least 1,000 feet of water. The Census Bureau added this criterion to remain consistent with the urban area delineation criteria implemented for Census 2000.

9. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.3, the Census Bureau added a criterion for the inclusion of noncontiguous territory via hops and jumps to allow stand-alone census blocks, that are not contiguous to territory that qualify as part of the initial urban core, but having a population density greater than or equal to 500 ppsm, to be added to an urban area. This criterion is designed to include densely settled territory proximate to the urban fringe within a relatively larger census block that remains separated from the initial urban area core due to the local road network configuration. The addition of this criterion is also consistent with the Census 2000 urban area delineation criteria.

10. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.4, the Census Bureau added reference to the data extracted from the FAA Air Carrier Activity Information System to clarify the dataset that is to be used in the identification of airports that are included in urban areas. The Census Bureau has decided to use data representing annual enplanements for only primary and nonprimary commercial service facilities as defined by the FAA. Limiting the enplanement data to commercial service airports offers the advantage of minimizing the amount of data manipulation required to identify airports, which in turn facilitates public replication of the criteria. This also results in consistency with the Census 2000 urban area delineation criteria.

11. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.4, the Census Bureau modified the criteria for including airports in urban areas by clarifying that the qualifying airport does not need to be contiguous with an urban area, but rather within 0.5 miles of the urban area. The Census Bureau changed this criterion to simulate the connection of noncontiguous qualifying territory via the hop criterion.

12. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.4, the Census Bureau modified the airport inclusion criteria so that the Census Bureau will only identify functioning airports at the time of the delineation. This modification ensures that these criteria will not include an airport if it no longer services a particular urban area.

13. In Section II, "Proposed Urban Area Criteria for the 2010 Census," the Census Bureau moved subsection B.4 in its entirety to follow the criteria for the inclusion of indentations to urban areas

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(subsection B.6). The Census Bureau reordered the delineation criteria so that the inclusion of airports will represent the last step in identifying urban territory, as was done for the Census 2000 delineation. Although the airport inclusion criteria do allow for the qualification of noncontiguous facilities to urban areas, they prohibit an airport from serving as a source area from which hops and jumps can originate.

14. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.5, the Census Bureau clarified the criteria for the inclusion of enclaves in urban areas. The criteria distinguish between the two types of enclaves completely surrounded by qualifying land territory, and a third enclave type completely surrounded by qualifying land and nonqualifying water.

15. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B.6, the Census Bureau modified the maximum area of the territory within the indentation that is added to the urban area from less than five square miles to less than 3.5 square miles. The Census Bureau changed this criterion for the 2010 Census urban area delineation to reduce the amount of territory qualifying through indentations without lowering the maximum length of the potential closure lines.

16. In Section II, "Proposed Urban Area Criteria for the 2010 Census," the Census Bureau moved subsection B.6 in its entirety to follow immediately the criteria relating to splitting large agglomerations and merging of individual urban areas. For Census 2000, the splitting of large urban agglomerations occurred prior to the inclusion of indentations to urban areas. Splitting the urban agglomerations before the addition of urban territory through the indentation criteria enabled the Census Bureau to better identify where the corridor of contiguity between urban areas was truly at its narrowest, which aided in determining the best split location. The Census Bureau reordered the delineation criteria to remain consistent with the criteria implemented for the Census 2000.

17. In Section II, "Proposed Urban Area Criteria for the 2010 Census," the Census Bureau replaced subsection B.7 with a new set of criteria for splitting large agglomerations based on comments received. The Census Bureau adopted criteria that will ensure that Census 2000 urbanized areas will continue to be recognized as separate urbanized areas if these areas continue to qualify as urbanized under the 2010 Census urban area delineation criteria.

Adoption of these criteria will facilitate continuity and comparability between the two decades' urban definitions.

18. In Section II, "Proposed Urban Area Criteria for the 2010 Census," the Census Bureau modified subsection B.8, which addressed the criteria for assigning urban area titles, to allow for more equal representation of local places if the urban area does not contain a place with an urban population of at least 2,500 people. This change is also intended to promote consistency with the Census 2000 criteria for titling urban areas.

19. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection B, the Census Bureau added new criteria to identify and qualify additional nonresidential urban-related territory that is not contiguous with, but near qualifying urban areas. The Census Bureau added these criteria in its effort to capture large commercial and/or industrial land uses separated from an urban area by a relatively small amount of undeveloped territory. As a final review, the Census Bureau will examine the territory surrounding the urban areas associated with a high degree of impervious surface land cover and determine whether they should be included in an urban area.

20. In Section II, "Proposed Urban Area Criteria for the 2010 Census," subsection C, the Census Bureau modified the definitions for *contiguous*, *exempted territory*, *group quarters*, and *impervious surface* to clarify how these key terms relate to the 2010 urban area delineation criteria. Additional definitions are provided for *enclave*, *hop*, *indentation*, *initial urban area core*, *institutional group quarters*, *jump*, and *noninstitutional group quarters*, all terms used in the proposed criteria.

21. Throughout this **Federal Register** Notice and the urban area criteria for the 2010 Census, the Census Bureau uses the term "contiguous" wherever the term "adjacent" was used in the proposed 2010 urban area criteria. This change was made for the purposes of clarity.

The Following Sets Forth the Urban Area Criteria for the 2010 Census.

V. Urban Area Criteria for the 2010 Census

The criteria outlined herein apply to the United States⁴ and Puerto Rico. The Census Bureau will use the following criteria and characteristics for use in identifying the areas that will qualify for designation as urbanized areas and urban clusters for use in tabulating and

presenting data from the 2010 Census, the American Community Survey (ACS), the Puerto Rico Community Survey, and potentially other Census Bureau censuses and surveys.

A. 2010 Census Urban Area, Urbanized Area, and Urban Cluster Definitions

For the 2010 Census, an urban area will comprise a densely settled core of census tracts and/or census blocks that meet minimum population density requirements, along with contiguous territory containing nonresidential urban land uses as well as territory with low population density included to link outlying densely settled territory with the densely settled core. To qualify as an urban area on its own, the territory identified according to the criteria must encompass at least 2,500 people, at least 1,500 of which reside outside institutional group quarters. Urban areas that contain 50,000 or more people are designated as urbanized areas (UAs); urban areas that contain at least 2,500 and less than 50,000 people are designated as urban clusters (UCs). The term "urban area" refers to both UAs and UCs. The term "rural" encompasses all population, housing, and territory not included within an urban area.

As a result of the urban area delineation process, an incorporated place or CDP may be partly within and partly outside an urban area. Any place (incorporated place or CDP) that is split by an urban area boundary is referred to as an extended place. Any census geographic areas, with the exception of census blocks, may be partly within and partly outside an urban area.

All criteria based on land area, population, and population density, reflect the information contained in the Census Bureau's Master Address File/ Topologically Integrated Geographic Encoding and Referencing (MAF/ TIGER) Database (MTDB) produced for the 2010 Census. All calculations of population density include only land; water area contained within census tracts and census blocks are not used to calculate population density.

B. UA and UC Delineation Criteria

The Census Bureau defines urban areas primarily on the basis of residential population density measured at the census tract and census block levels of geography. Two population density thresholds are used in the delineation of urban areas: 1,000 persons per square mile (ppsm) and 500 ppsm. The higher threshold is consistent with population density criteria used in the 1960 Census through 1990 Census urban area delineation processes; it is used to identify the

⁴ The United States includes the 50 States and the District of Columbia.

starting point for delineation of individual, potential urban areas and ensures that each urban area contains a densely settled core area that is consistent with previous decades' delineations. The lower threshold was adopted for the Census 2000 process when the Census Bureau adopted an automated delineation methodology; it provides that additional territory that may contain a mix of residential and nonresidential urban uses can qualify for inclusion in an urban area.

1. Identification of Initial Urban Area Cores

The Census Bureau will begin the delineation process by identifying and aggregating contiguous census tracts, each having a land area of less than three square miles and a population density of at least 1,000 ppsm. After the initial urban area core with a population density of 1,000 ppsm or more is identified, additional census tracts with a land area less than three square miles and with a population density of at least 500 ppsm will be included if contiguous to any qualifying census tracts. If a qualifying census tract does not exist, then one or more contiguous census blocks that have a population density of at least 1,000 ppsm are identified and aggregated.

A census block is included in the initial urban area core if it is contiguous to other qualifying territory, and

- a. Has a population density of at least 500 ppsm, or
- b. At least one-third of the census block consists of territory with a level of imperviousness of at least twenty percent,⁵ and is compact in nature as defined by a shape index. A census block is considered compact when the shape index is at least 0.185 using the following formula: $I = 4\pi A/P^2$ where I is the shape index, A is the area of the block, and P is the perimeter of the block, or

- c. At least one-third of the census block consists of territory with a level of imperviousness of at least twenty percent, and at least forty percent of its boundary is contiguous with qualifying territory.⁶

⁵ The data used to define impervious surfaces are limited to only those that are included in the MRLC's 2001 NLCD or NLCD 2006 update where available. The Census Bureau has found in testing the NLCD that territory with an impervious percent less than twenty percent results in the inclusion of road and structure edges, and not the actual roads or buildings themselves.

⁶ The Census Bureau found in testing with the new 2010 Census geography that a number of census blocks were associated with a high degree of impervious surface land cover and contiguous to territory qualifying as urban, but fail the shape index threshold of compactness. These elongated

The Census Bureau will apply criteria 1.a, 1.b, and 1.c above until there are no census blocks to add to an urban area.⁷ Any "holes" or remaining nonqualifying territory completely contained within an initial urban area core that is less than five square miles in area will qualify as urban via the criteria for the inclusion of enclaves set forth in V.B.4.a.

2. Inclusion of Noncontiguous Territory Separated by Exempted Territory

The Census Bureau will identify and exempt territory in which residential development is substantially constrained or not possible due to either topographic or land use conditions.⁸ Such territory offsets urban development due to particular land use, land cover, hydrological, and/or topographic conditions. For the 2010 Census, the Census Bureau identifies bodies of water as exempted territory. Additional exempted territory will include land area where the populations of the census blocks on both sides of a road segment are zero and the road connection crosses at least 1,000 feet of water.

Noncontiguous qualifying territory will be added to a core when separated by exempted territory, provided that:

- a. The road connection across the exempted territory (located on both sides of the road) is no greater than five miles, and
- b. The road connection does not cross more than a total of 2.5 miles of territory not classified as exempted (those segments of the road connection where exempted territory is not on both sides of the road), and
- c. The total length of the road connection (exempt distance and nonexempt distance) is no greater than five miles for a jump and no greater than 2.5 miles for a hop.

census blocks are largely the result of block boundaries defined along road medians and can artificially separate qualifying territory that should be considered contiguous. Where appropriate, these elongated census blocks will be added to the urban area to maintain contiguity of qualifying territory.

⁷ The Census Bureau will identify census blocks qualifying as urban via the impervious surface criteria that are added to an initial urban area core during later iterations of the delineation criteria. These census blocks located on the edge of initial urban cores will be reviewed to determine if their classification as urban is appropriate. The Census Bureau will also determine if these census blocks were added as a result of the relatively large cell size of the impervious surface data when overlaid with a small or thin census block.

⁸ The land cover and land use types used to define exempted territory are limited to only those that are included in or can be derived from the Census Bureau's MTDB nationally, consistently, and with a reasonable level of accuracy.

3. Inclusion of Noncontiguous Territory via Hops and Jumps

Noncontiguous territory that meets the proposed population density criteria specified in Sections 1.a, 1.b, and 1.c above, but is separated from an initial urban area core of 1,000 or more people, will be added via a "hop" along a road connection of no more than 0.5 miles. Multiple hops may be made along a single road connection, thus accounting for the nature of contemporary urban development which often encompasses alternating patterns of residential and nonresidential land uses.

After adding territory to an initial urban area core via hop connections, the Census Bureau will identify all cores that have a population of 1,500 or more and add other qualifying territory via a jump connection.⁹ Jumps are used to connect densely settled noncontiguous territory separated from the core by territory with low population density measuring greater than 0.5 and no more than 2.5 road miles. This process recognizes the existence of larger areas of nonresidential urban uses or other territory with low population density that do not provide a substantial barrier to interaction between outlying territory with high population density and the main body of the urban area. Because it is possible that any given densely settled area could qualify for inclusion in multiple cores via a jump connection, the identification of jumps in an automated process starts with the initial urban area core that has the largest total population and continues in descending order based on the total population of each initial urban area core. Only one jump is permitted along any given road connection, unless the territory being included as a result of the jump was an initial urban area core with a population of 50,000 or more. This limitation, which has been in place since the inception of the urban area delineation process for the 1950 Census, prevents the artificial extension of urban areas over large distances that results in the inclusion of communities that are not commonly perceived as connected to the particular initial urban area core. Exempted territory is not taken into account when measuring road distances along hop and jump corridors.

In addition to the distance criteria listed above, a hop or a jump will qualify only if:

- a. The territory identified in the high-density destination and along the hop or

⁹ All initial urban area cores with a population less than 1,500 are not selected to continue the delineation as separate urban areas; however, these cores still are eligible for inclusion in an urban area using subsequent proposed criteria and procedures.

jump corridor has a combined overall population density of at least 500 ppsm, or

b. The high-density destination to be added via the hop or jump has a total population of 1,000 or more.

Although census blocks with a population density greater than or equal to 500 ppsm, but less than 1,000 ppsm, and not contiguous to qualifying territory containing at least one census tract or census block with a population density of at least 1,000 ppsm do not qualify as part of the initial urban core, these census blocks may still qualify as urban via hops or jumps.¹⁰

4. Inclusion of Enclaves

The Census Bureau will add enclaves (that is, nonqualifying area completely surrounded by area already qualified for inclusion as urban) within the urban area, provided that they are surrounded only by land area that qualified for inclusion in the urban area based on population density criteria and at least one of the following conditions is met:

a. The area of the enclave must be less than five square miles, or

b. All area of the enclave is surrounded by territory that qualified for inclusion in the initial core, and is more than a straight-line distance of 2.5 miles from a land block that is not part of the urban area.

Additional enclaves will be identified and included within the urban area if:

c. The area of the enclave is less than five square miles, and

d. The enclave is surrounded by both land that qualified for inclusion in the urban area and water, and

e. The length of the line of adjacency with the water is less than the length of the line of adjacency with the land.

5. Splitting Large Agglomerations and Merging Individual Urban Areas

Population growth and redistribution coupled with the automated urban area delineation methodology that will be used for the 2010 Census may result in large urban agglomerations of continuously developed territory that may encompass urban areas that were defined as separate urbanized areas in Census 2000. Conversely, the delineation methodology may also result in separate urbanized areas that were previously defined as belonging to a single urbanized area. If such results

¹⁰ These isolated census blocks not contiguous to an initial core remain eligible destinations for either hops or jumps. These census blocks may be included via the noncontiguous qualifying territory criteria in an effort to capture proximate densely settled territory on the urban fringe within a relatively larger census block that is separated from the initial urban area core.

occur, the Census Bureau will apply split and merge criteria guided by the Census 2000 urban area boundaries to the greatest extent possible to ensure the continued recognition of all such urbanized areas. All territory subject to either the splitting or merging criteria must first qualify as urban according to the 2010 Census delineation criteria.

The rule to retain the inventory of urbanized areas that continue to separately qualify for the 2010 Census does not apply to urban clusters. Urban clusters may be merged with other urban areas. The Census Bureau retains previously separate urbanized areas because these urban areas have historically developed as the functional units of 50 years of urbanized area delineation. Mandating this rule for urban clusters would artificially impede these areas from merging to form urbanized areas.

The Census Bureau will split a large urban agglomeration if the agglomeration consists of urbanized areas that were defined separately for the Census 2000. Potential split locations will include territory not qualifying as urban for the 2010 Census, water features, jump or hop corridors,¹¹ impervious census blocks,¹² where the corridor of contiguity between the component urbanized areas is at its most narrow, other geographic boundaries,¹³ and/or the nearest location to the midpoint between the two component urbanized areas. In all cases, the Census Bureau will split the urban agglomeration at the best possible location that ensures the continued existence of all urbanized areas defined for the Census 2000.

After splitting all qualifying urbanized agglomerations into their component urbanized areas, the Census Bureau will examine all urban area cores sharing territory contained within the boundaries of the same urban area previously defined for the Census 2000. The Census Bureau will merge qualifying urban territory if an urban area defined for the Census 2000 is at risk of changing urban status from an

¹¹ The Census Bureau will remove the jump or hop connection if the component urban areas are connected via the noncontiguous qualifying territory criteria.

¹² The Census Bureau may remove the entire connection in cases where urban areas are only contiguous via elongated census blocks qualifying as urban and associated with road medians. The connection will remain intact in situations where additional impervious census blocks are present.

¹³ In situations where an incorporated place, CDP, or minor civil division crosses the Census 2000 urbanized area boundary, the 2010 urbanized area boundary may be modified to follow these boundaries if it is deemed that territory qualifying as urban belongs more to a particular urbanized area.

urbanized area to an urban cluster, or losing its urban status entirely. If it is possible to maintain the urban status of a Census 2000 urban area, the Census Bureau will merge noncontiguous urban territories in descending order of population¹⁴ until the urban area status threshold is met.¹⁵

After application in their entirety, the splitting and merging criteria will not prevent the formation of new urban areas consisting of territory previously defined as belonging to a Census 2000 urban area. These criteria also will not completely prevent urban areas from changing urban status.

6. Inclusion of Indentations

The Census Bureau will evaluate and include territory that forms an indentation within an urban area. This recognizes that small, sparsely settled areas that are partially enveloped by urban territory are more likely to be affected by and integrated with contiguous urban territory.

To determine whether an indentation should be included in the urban area, the Census Bureau will identify a closure line, defined as a straight line no more than one mile in length, that extends from one point along the edge of the urban area across the mouth of the indentation to another point along the edge of the urban area.

A census block located wholly or partially within an indentation will be included in the urban area, if at least 75 percent of the area of the block is inside the closure line. The total area of those blocks that meet or exceed the 75 percent criterion is compared to the area of a circle, the diameter of which is the length of the closure qualification line. The territory within the indentation will be included in the urban area if its area is at least four times the area of the circle and less than 3.5 square miles.

If the collective area of the census blocks inside the closure line does not meet the criteria listed above, the Census Bureau will define successive closure lines within the indentation, starting at its mouth and working inward toward the base of the indentation, until the criteria for inclusion are met or it is determined that the indentation will not qualify for inclusion.

7. Inclusion of Airports

After all territory has been added to the urban area via hop and jump connections, enclaves, and indentations,

¹⁴ All urban territory separated solely by water may also be merged regardless of its population.

¹⁵ Nonqualifying intervening territory separating the merged urban territories will be included to avoid the formation of noncontiguous urban areas.

the Census Bureau will then add whole census blocks that approximate the territory of major airports, provided at least one of the blocks that represent the airport is within a distance of 0.5 miles of the edge of qualifying urban territory. An airport qualifies for inclusion, if it is currently functional and had an annual enplanement of at least 2,500 passengers in any year between 2001 and the last year of reference in the FAA Air Carrier Activity Information System.¹⁶ In cases where the qualifying airport is not contiguous to the qualifying urban area, the intervening nonqualifying census blocks will also be included in the urban area.

8. Additional Nonresidential Urban Territory

The Census Bureau will identify additional nonresidential urban-related territory that is noncontiguous, yet near the urban area. The Census Bureau recognizes the existence of large commercial and/or industrial land uses that are separated from an urban area by a relatively thin "green buffer," small amount of undeveloped territory, and/or narrow census block required for tabulation (such as a water feature, offset boundary, road median, or area between a road and rail feature). The Census Bureau will review all groups of census blocks whose members qualify as urban via the impervious surface criteria set forth in Section 1.b, have a total area of at least 0.15 square miles,¹⁷ and are within 0.25 miles of an urban area. A final review of these census blocks and surrounding territory¹⁸ will determine whether to include this territory in an urban area.

9. Assigning Urban Area Titles

A clear, unambiguous title based on commonly recognized place names helps provide context for data users, and ensures that the general location and setting of the urban area can be clearly identified and understood. The title of an urban area identifies the place(s) that is (are) most populated within the urban area. All population requirements for places and minor civil divisions (MCDs) apply to the portion of

the entity's population that is within the specific urban area being named. The following criteria will be used by the Census Bureau to determine the title of an urban area:

a. The most populous incorporated place with a population of 10,000 or more within the urban area will be listed first in the urban area title.

b. If there is no incorporated place with a population of 10,000 or more, the urban area title will include the name of the most populous incorporated place or CDP having at least 2,500 people in the urban area.

Up to two additional places, in descending order of population size, may be included in the title of an urban area provided that:

c. The place has 250,000 or more people in the urban area, or

d. The place has at least 2,500 people in the urban area, and that population is at least two-thirds of the urban area population of the most populous place in the urban area.

If the urban area does not contain a place with an urban population of at least 2,500 people, the Census Bureau will consider the name of the incorporated place, CDP, or MCD with the largest total population in the urban area, or a local name recognized for the area by the United States Geological Survey's (USGS) Geographic Names Information System (GNIS), with preference given to names also recognized by the United States Postal Service (USPS). The urban area title will include the USPS abbreviation of the name of each state or statistically equivalent entity into which the urban area extends. The order of the state abbreviations is the same as the order of the related place names in the urban area title.¹⁹ If an MCD name is used (outside of New England), the title also will include the name of the county in which the MCD is located.

If a single place or MCD qualifies as the title of more than one urban area, the largest urban area will use the name of the place or MCD. The smaller urban area will have a title consisting of the place or MCD name and the direction (North, South, East, and/or West) of the smaller urban area as it relates geographically to the larger urban area with the same place or MCD name.

If any title of an urban area duplicates the title of another urban area within the same state, or uses the name of an

incorporated place or CDP, that is duplicated within a state, the name of the county that has most of the population of the largest place or MCD is appended, in parentheses, after the duplicate place name for each urban area. If there is no incorporated place or CDP name in the urban area title, the name of the county having the largest total population residing in the urban area will be appended to the title.

C. Definitions of Key Terms

Census Block: A geographic area bounded by visible and/or invisible features shown on a map prepared by the Census Bureau. A block is the smallest geographic entity for which the Census Bureau tabulates decennial census count data.

Census Designated Place (CDP): A statistical geographic entity encompassing a concentration of population, housing, and commercial structures that is clearly identifiable by a single name, but is not within an incorporated place. The CDPs are the statistical counterparts of incorporated places and represent distinct, unincorporated communities.

Census Tract: A small, relatively permanent statistical geographic division of a county defined for the tabulation and publication of Census Bureau data. The primary goal of the census tract program is to provide a set of nationally consistent, small, statistical geographic units, with stable boundaries that facilitate analysis of data between decennial censuses.

Contiguous: A geographic term referring to two or more areas that are adjacent to one another, sharing either a common boundary or at least one common point.

Core Based Statistical Area (CBSA): A statistical geographic entity defined by the U.S. Office of Management and Budget (OMB), consisting of the county or counties associated with at least one core (urban area) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties containing the core. Metropolitan and micropolitan statistical areas are the two types of CBSAs.

Enclave: A territory not qualifying as urban that is either completely surrounded by qualifying urban territory or surrounded by qualifying urban territory and water.

Exempted Territory: A territory that is exempt from the urban area criteria because its extent is entirely of water or an unpopulated road corridor that crosses water.

¹⁶ The annual passenger boarding data only includes primary and nonprimary commercial service enplanements as defined and reported by the FAA Air Carrier Activity Information System.

¹⁷ The Census Bureau found in testing that individual (or groups of) census blocks with a high degree of impervious surface land cover with an area less than 0.15 square miles tend to be more associated with road infrastructure features such as cloverleaf overpasses and multilane highway medians.

¹⁸ Additional census blocks within eighty feet of the initial groups also qualifying as impervious, but failing the shape index, are also identified for review.

¹⁹ In situations where an urban area is only associated with one place name but is located in more than one state, the order of the state abbreviations will begin with the state within which the place is located and continue in descending order of population of each state's share of the population of the urban area.

Group Quarters (GQ): A place where people live or stay, in a group living arrangement that is owned or managed by an entity or organization providing housing and/or services for the residents. These services may include custodial or medical care, as well as other types of assistance, and residency is commonly restricted to those receiving these services.

Hop: A connection from one urban area core to other qualifying urban territory along a road connection of 0.5 miles or less in length.

Impervious Surface: Man-made surfaces, such as building roofs, roads, and parking lots.

Incorporated Place: A type of governmental unit, incorporated under state law as a city, town (except in New England, New York, and Wisconsin), borough (except in Alaska and New York), village, or other legally recognized description that provides a wide range governmental services for a concentration of people within legally prescribed boundaries.

Indentation: A recess in the boundary of an urban area produced by settlement patterns and/or water features resulting in a highly irregular urban area shape.

Initial Urban Area Core: Contiguous territory qualifying as urban according to population count, density, and degree of impervious surface land cover.

Institutional Group Quarters: People under formally authorized, supervised care or custody in institutions at the time of enumeration, who are generally, restricted to the institution, under the care or supervision of trained staff, and classified as "patients" or "inmates."

Jump: A connection from one urban area core to other qualifying urban territory along a road connection that is greater than 0.5 miles, but less than or equal to 2.5 miles in length.

MAF/TIGER (MTDB): Database developed by the Census Bureau to support its geocoding, mapping, and other product needs for the decennial census and other Census Bureau

programs. The Master Address File (MAF) is an accurate and current inventory of all known living quarters including address and geographic location information. The Topologically Integrated Geographic Encoding and Referencing (TIGER) database defines the location and relationship of boundaries, streets, rivers, railroads, and other features to each other and to the numerous geographic areas for which the Census Bureau tabulates data from its censuses and surveys.

Metropolitan Statistical Area: A core based statistical area (CBSA) associated with at least one urbanized area that has a population of at least 50,000. A metropolitan statistical area comprises a central county or counties containing the urbanized area, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured by commuting.

Micropolitan Statistical Area: A core based statistical area (CBSA) associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000. A micropolitan statistical area comprises a central county or counties containing the urban cluster, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured by commuting.

Minor Civil Division (MCD): The primary governmental or administrative division of a county in 29 states and the Island Areas having legal boundaries, names, and descriptions. MCDs represent many different types of legal entities with a wide variety of characteristics, powers, and functions depending on the state and type of MCD. In some states, some or all of the incorporated places also constitute MCDs.

New England City and Town Area (NECTA): A statistical geographic entity that is delineated by the U.S. Office of Management and Budget (OMB) using cities and towns in the New England

states as building blocks rather than counties, and that is conceptually similar to the metropolitan and micropolitan statistical areas.

Noncontiguous: A geographic term referring to two or more areas that do not share a common boundary or a common point along their boundaries, such that the areas are separated by intervening territory.

Noninstitutional Group Quarters: Dwelling of people who live in group quarters other than institutions.

Rural: Territory not defined as urban.

Urban: Generally, densely developed territory, encompassing residential, commercial, and other nonresidential urban land uses within which social and economic interactions occur.

Urban Area: The generic term used to refer collectively to urbanized areas and urban clusters.

Urban Cluster (UC): A statistical geographic entity consisting of a densely settled core created from census tracts or blocks and contiguous qualifying territory that together have at least 2,500 persons but fewer than 50,000 persons.

Urbanized Area (UA): A statistical geographic entity consisting of a densely settled core created from census tracts or blocks and contiguous qualifying territory that together have a minimum population of at least 50,000 persons.

Executive Order 12866

This notice has been determined to be not significant under Executive Order 12866.

Paperwork Reduction Act

This notice does not contain a collection of information subject to the requirements of the Paperwork Reduction Act, 44 United States Code, chapter 35.

Dated: August 16, 2011.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. 2011-21647 Filed 8-23-11; 8:45 am]

BILLING CODE 3510-07-P

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: October 14, 2011
TO: Board of Directors
FROM: Angela Aitken, Finance Manager and Acting Assistant General Manager
**SUBJECT: CONSIDERATION OF NOMINATIONS OF MEMBERS VQ'VJ G
SANTA CRUZ CIVIC IMPROVEMENT CORPORATION**

I. RECOMMENDED ACTION

That the Board of Directors nominate members for the Santa Cruz Civic Improvement Corporation.

II. SUMMARY OF ISSUES

- The Santa Cruz Civic Improvement Corporation (the Corporation) was formed July 30, 1986 by the Santa Cruz Metropolitan Transit District (Santa Cruz METRO) in conformity with Section 5110 et. seq. of the California Corporations Code. The Corporation is a 501(c)(3), non-profit, benefit corporation organized for the sole purpose of providing financial assistance to Santa Cruz METRO for the construction and acquisition of major capital facilities.
- The Corporation has not provided financial assistance to Santa Cruz METRO since June of 1994 but it is available for use if needed.
- The current membership of the SCCIC Board of Directors is as follows:

Dene Bustichi

Donald Hagen

Ellen Pirie

John Leopold

Mark Stone

III. DISCUSSION

At today's meeting, the Board of Directors will nominate members to the SCCIC.

IV. FINANCIAL CONSIDERATIONS

None

V. ATTACHMENTS

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Prepared by: Anthony Tapiz, Administrative Services Coordinator
Date Prepared: October 7, 2011

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: October 14, 2011

TO: Board of Directors

FROM: Ellen Pirie, Chair, Board of Directors

SUBJECT: CONSIDERATION OF DEFERRING, AT THIS TIME, DISCUSSION OF MERGING THE SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION AND THE SANTA CRUZ METROPOLITAN TRANSIT DISTRICT.

I. RECOMMENDED ACTION

That the Board of Directors defer discussion of a potential merger between the Santa Cruz Regional Transportation Commission and the Santa Cruz Metropolitan Transit District.

II. SUMMARY OF ISSUES

- The current General Manager at METRO, Leslie R. White, has indicated that he intends to retire at the end of 2012.
- On April 8, 2011 Les White presented a Staff Report to the Board of Directors that outlines a series of options that the Board might want to consider in preparing for a transition of staff leadership.
- One of the options that was presented to the Board of Directors on April 8, 2011 was the potential of merging the Santa Cruz County Regional Transportation Commission (SCCRTC) with METRO.
- The Board directed the Chair, District Counsel, and General Manager to meet with their counterparts at the SCCRTC to examine the issues that would need to be addressed in a merger of the two agencies.
- In the review of a potential merger of SCCRTC and METRO there were two issues that received the majority of attention. These issues were; potential savings, and tax capacity retention.
- SCCRTC and METRO staff and Counsels were tasked with exploring the savings and tax issues.
- On August 22, 2011 SCCRTC Chair Mark Stone met with METRO Chair Ellen Pirie accompanied by staff members.
- There was not a consensus regarding what the savings of a merger would be. It was agreed that pursuit of a merger would require the use of a financial/ organizational consultant and would be expensive and time consuming.

- The Representative from the Santa Cruz County Counsel's Office and the METRO District Counsel agreed that the only way to ensure that the current transit sales tax stays in place in a merger would be for METRO to absorb the SCCRTC. There would be a requirement for new state legislation for both METRO and SCCRTC and the meeting participants did not feel that would be prudent at this time.
- It was agreed at the August 22, 2011 meeting that the recommendation would be to defer consideration at this time of any merger of the Santa Cruz County Regional Transportation Commission with the Santa Cruz Metropolitan Transit District.

III. DISCUSSION

On April 8, 2011 METRO General Manager presented a series of organization options to the Board of Directors. One of the options that was presented was the consideration of merging the Santa Cruz County Regional Transportation Commission (SCCRTC) with the Santa Cruz Metropolitan Transit District. With the impending retirement of General Manager Les White the consideration of merging the two agencies seemed timely.

At the April 8, 2011 meeting the Board directed the Chair, District Counsel, and General Manager to meet with their counterparts at the SCCRTC to examine the issues that would need to be addressed in a merger of the two agencies. The review of a potential merger of SCCRTC and METRO there were two issues that received the majority of attention. These issues were; potential savings, and tax capacity retention.

On August 22, 2011 SCCRTC Chair Mark Stone met with METRO Chair Ellen Pirie along with Legal Counsels and staff. It was reported that there was not a consensus regarding what the savings of a merger would be. It was agreed that pursuit of a merger would require the use of a financial/organizational consultant and would be expensive and time consuming.

The Representative from the Santa Cruz County Counsel's Office and the METRO District Counsel agreed that the only way to ensure that the current transit sales tax stays in place in a merger would be for METRO to absorb the SCCRTC. There would be a requirement for new state legislation for both METRO and SCCRTC and the meeting participants did not feel that would be prudent at this time.

It was agreed at the August 22, 2011 meeting by the two agency Chairs that the recommendation to the SCCRTC and METRO would be to defer consideration at this time of any merger of the Santa Cruz County Regional Transportation Commission with the Santa Cruz Metropolitan Transit District.

IV. FINANCIAL CONSIDERATIONS

There is not an agreement regarding the financial implications of a merger of the SCCRTC and METRO. However, any action that placed the transit sales tax in jeopardy would result in the loss of over \$15 million annually.

V. ATTACHMENTS

Attachment A: April 8, 2011 Staff Report

Attachment A

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: April 08, 2011

TO: Board of Directors

FROM: Leslie R. White, General Manager

SUBJECT: DISCUSSION OF ISSUES RELATING TO OPTIONS FOR THE FUTURE ORGANIZATION STRUCTURE AT METRO.

I. RECOMMENDED ACTION

That the Board of Directors discuss options for the future organization of METRO.

II. SUMMARY OF ISSUES

- The Santa Cruz Metropolitan Transit District (METRO) is created by enabling statutes contained in the California State Public Utility Codes Chapter 98000.
- The Enabling Statutes that grant powers and authority to special districts also apply to METRO.
- METRO has operated as a full service, stand alone, special district since 1985 when the fleet maintenance function was transferred to METRO from the City of Santa Cruz. The Operations function had previously been absorbed into METRO from the private operator in 1976.
- Currently, the METRO Board of Directors is facing difficult decisions regarding budget stability and the service levels provided to the public.
- In November 1978 the voters of Santa Cruz County approved a permanent ½ cent sales tax dedicated to METRO designed to support the provision of county-wide fixed route service.
- The current anemic economy and the federal ADA complimentary paratransit service requirements, that legally must be provided, have resulted in multi-year budgetary shortfalls.
- In the next two years the Board of Directors will need to identify an individual to serve as the General Manager of METRO after Les White retires.
- The change in leadership at METRO presents the Board of Directors with the opportunity to evaluate alternate organization structures in light of the financial/service challenges facing the agency.
- This Staff Report outlines four possible options designed to stimulate discussion by the Board of Directors.

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- The four options outlined in this Staff Report include; merging METRO with the Santa Cruz County Regional Transportation Commission (SCCRTC), employing a recruiting firm to search for new General Manager, conducting an “internal-only” recruit for a new General Manager, employing the services of a Management Company to provide a new General Manager as well as other management services.
- This Staff Report does not suggest or require any decisions from the Board of Directors, but rather is submitted to assist in discussions.

III. DISCUSSION

The Board of Directors is currently confronted with challenges with respect to the financial sustainability of the transportation service provided in Santa Cruz County. Additionally, METRO will undergo a transition in staff leadership in the next two years. These changes present the Board of Directors with the opportunity to evaluate alternate organization structures in light of the financial/service challenges facing the agency.

METRO has operated as a full service, stand alone, special district since 1985 when the fleet maintenance function was transferred to METRO from the City of Santa Cruz. The Operations function had previously been absorbed into METRO from the private operator in 1976. METRO is created in Chapter 98000 of the California State Public Utility Codes as well as having powers granted in other state statutes relating to special purpose districts. The METRO Board of Directors has the authority to employ personnel, accept grants, levy taxes (subject to voter approval), issue debt, and exercise Eminent Domain (with consent from the affected local jurisdiction) to acquire rights, equipment, facilities, and property necessary to provide public transportation services. In 1978 the voters of Santa Cruz County approved a permanent ½ cent sales tax to support the provision of fixed route bus service throughout the county. In recent years the anemic economy and the unfunded federal ADA complimentary paratransit service requirements, that legally must be provided, have resulted in multi-year budgetary shortfalls.

There are four options presented in this Staff Report. This report is a cursory review of the options. Those options that are of interest to the Board can be evaluated in greater detail with specific costs and efficiencies quantified. However, some of the examinations could require the use of outside consulting services and it is felt to be prudent to determine the level of interest from the Board prior to hiring consultants.

For organization options that could be implemented at METRO in the future are as follows:

SCCRTC Merger Option

The Santa Cruz County Regional Transportation Commission has the responsibility for planning and funding surface transportation facilities and services in Santa Cruz County. The SCCRTC is the Regional Transportation Planning Agency (RTPA) for the county which required under the State of California Transportation Development Act. The SCCRTC is the recipient of both state and federal funds which are used to support transportation projects. Included in the funds

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received by the SCCRTC are the receipts from a ¼ cent sales tax (TDA) that are used to support city/county pedestrian projects, some SCCRTC administration expenses, Community Bridges paratransit service, the Volunteer Center, The Red Cross, other transportation projects and METRO. The majority of the TDA funds that are received by the SCCRTC are granted to METRO and have been used by METRO to support the operating budget. The SCCRTC also receives funds under the State of California State Transit Assistance (STA) program. These funds have also been passed through to METRO. The STA funding has been the most unstable in recent years and at one time the program was suspended by the Legislature. Prior to FY 10 METRO used the STA funds for capital expenses due to restrictions from the state. The State Legislature removed the restrictions and allowed STA funds to be used for operating expenses for FY11, & 12. The ability to use STA for operating expenses will expire in FY 13 unless legislation to the contrary is passed. The SCCRTC is also a recipient for funds from the 2006 Proposition 1B Bond Program. Part of the transit capital funds that are made available by bond sales under the Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) go to the SCCRTC and part of these funds go directly to METRO. The SCCRTC has passed funds received from the PTMISEA through to METRO for the MetroBase Facility Construction Project.

The SCCRTC is also created by state enabling legislation. This legislation provides powers and authority to the SCCRTC in a manner similar to METRO. Currently, the SCCRTC carries out a number of roles, including, the SAFE Authority, the Rail/Trail Authority, and the RTPA responsibility. In examining the need to achieve efficiency in administering transportation services and projects in Santa Cruz, in light of the current economy, the Board could elect to examine whether there savings that could be achieved by merging METRO with the SCCRTC. A merger of this type would add to the various roles that the SCCRTC currently fulfills.

A cursory examination of the operation of the SCCRTC and METRO indicates that there could be savings and efficiencies in the areas of Executive Management, Finance, IT, Planning, Grants, Board support, and facilities leases. A rough estimate indicates that annual savings achieved by the merger of the two agencies could be in the range of \$1.5 to \$2 million.

Any discussion of a merger of the SCCRTC and METRO would have to include discussions by the SCCRTC Commission Members. Currently, this topic is on the agenda for the SCCRTC Commission Members for discussion on April 21, 2011. One of the sensitive areas of a merger of the two agencies could be the construction of the new Board/Commission. It would be necessary to pass new enabling legislation that would outline the construction of the governing Board and be crafted in such a way as to preserve the current ½ cent sales tax that supports transit operations. Additionally, it would necessary to negotiate new Labor Agreements with the Unions that would be affected by a merger. The tasks outlined in this paragraph would take a significant amount of time at both the local and state levels.

Should the Board have an interest in further examination of the Merger Option it would be necessary to employ the services of a consultant to refine the savings estimates.

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External General Manager Recruit

If the Board has an interest in maintaining the current operating structures and would like to have a wide selection of candidates to choose from for the next General Manager then an external search option would be the approach. This was the approach used by the Board of Directors when Les White was hired to replace Scott Galloway. The Los Angeles firm of Norman Roberts and Associates was used to assist the Board in identifying the characteristics of a General Manager that the Board was seeking. A national search was conducted that included an evaluation of candidates that were seeking a new position and inquiries to candidates that were not actively seeking a new position. The list of candidates was screened by the consultants to achieve the number of finalists that the Board had determined that it wanted to directly evaluate. A subcommittee of three Members of the Board was appointed to oversee this phase of the recruitment. From this point the subcommittee selected a number of candidates that they wished to bring to Santa Cruz to meet with. At the conclusion of this process the subcommittee selected three finalists to be interviewed by the entire Board. One of the selected finalists withdrew and the full Board interviewed the remaining two candidates. The total cost of the recruitment process was approximately \$35,000 in 1997.

If the Board has interest pursuing the External Recruitment Option an RFP for the selection of a professional recruiting firm would be the first step in this process. It is anticipated that current costs for external recruiting would be approximately \$50,000. It is also anticipated that this process would require approximately 9 months to execute.

Internal-Only General Manager Recruit

There are individuals currently working within METRO that may have an interest in being considered as candidates for the position of General Manager. There also may be local individuals, not working for METRO, who may have an interest in being considered for the position of General Manager. This was the option that was used by the Board of Directors in the mid 1970's when Scott Galloway was employed as the General Manager. If the Board has an interest in pursuing this option a subcommittee could be appointed to oversee the candidate solicitation process and to identify individuals that would be qualified to be considered by the full Board. Given the nature of an internal-only recruit it might be appropriate for the Board to request assistance from the Human Resources Departments of either one of the Cities or the County.

It is anticipated that the internal-only approach would be the quickest of the options contained in this Staff Report. It would also be the least expensive of the listed options, with a cost estimated to be approximately \$10,000.

Professional Management Company

There are many smaller transit systems in the United States that have found it to be preferable to contract with professional transit management companies to provide for a General Manager and

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other services. This approach provides the opportunity for the Board to select firms on the basis of experience and qualifications and then to select a General Manager from the candidates offered by the firm. If conflicts develop it is easier for a Board to request a change in personnel as the firm maintains a list a managers and the departing manager is assigned to another community where there is better compatibility. This approach can diminish some of the “Board/Manager” tensions that can emerge if the community wants to move in a direction that manager is not comfortable with. There are a number of professional management companies that operate in the bay area including, First Transit, MV, Veolia, and McDonald Transit. The drawback to this option is that is typically more expensive, depending on the needs of the Board and the transit system.

If the Board has an interest in pursuing this option the next logical step would be the preparation of Request for Proposals and a scope of work that could be distributes to prospective firms. It is anticipated that the implementation of the Professional Management Firm Option would take approximately 9 months to execute and would cost approximately \$450,000 annually.

The information presented in this Staff Report does not suggest or require any decisions from the Board of Directors at this time, but rather is submitted to assist in the discussions.

IV. FINANCIAL CONSIDERATIONS

The financial impact on METRO of each of the various options outlined in this Staff Report is not totally known at this time.

V. ATTACHMENTS

None

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

DATE: October 14, 2011

TO: Board of Directors

FROM: Leslie White, General Manager

SUBJECT: CONSIDERATION OF AUTHORIZING THE GENERAL MANAGER TO ENTER INTO A LICENSE AND INDEMNITY AGREEMENT WITH THE UNIVERSITY OF CALIFORNIA AT SANTA CRUZ (UCSC) FOR THE USE OF METRO BUS STOPS FOR THE “NIGHT OWL” SERVICE

I. RECOMMENDED ACTION

Consider Whether to Authorize the General Manager to execute a License and Indemnity Agreement with the University of California at Santa Cruz (UCSC) for the Use of Metro Bus Stops for the “Night Owl” Service

II. SUMMARY OF ISSUES

- UCSC has a need for a Night Owl Service, a late night daily bus service for its students. In the past, METRO ran a Night Owl Service for UCSC, but had to terminate the service due to budget cuts. UCSC has asked METRO to enter into a License and Indemnity Agreement with UCSC, allowing it to utilize certain METRO bus stops for the implementation of the Night Owl Service.

III. DISCUSSION

UCSC has begun operating a “Night Owl Service” providing late night bus service for its students, which was previously provided by METRO. METRO had to eliminate the service due to budget cuts this past year. UCSC would like to utilize certain bus stops for this “Night Owl Service,” which are specified in the attached Agreement.

The time period for the Agreement will be 12 months. However, METRO can terminate the service at any time with 5 days notice to UCSC.

In August 2013, the Board will also be asked to consider a proposed License Agreement for UCSC’s Fall Frolic, considering UCSC’s request for utilizing certain METRO bus stops to accommodate student transportation to and from its Fall Frolic, which occurs in September of each school year.

IV. FINANCIAL CONSIDERATIONS

The Agreement allows UCSC to utilize the bus stops without cost.

V. ATTACHMENTS

Attachment A: (Draft) License and Indemnity Agreement

Attachment A

LICENSE AND INDEMNITY AGREEMENT

This LICENSE AND INDEMNITY AGREEMENT (hereinafter "Agreement") is entered into as of the latest date of execution set forth below (the "Effective Date") by and between Santa Cruz Metropolitan Transit District (hereinafter "Licensor") and the Regents of the University of California (hereinafter "Licensee"), on behalf of its Santa Cruz campus. Licensor and Licensee are each referred to individually herein as a "Party" and collectively as the "Parties."

RECITALS:

1. Licensor is a local public transportation agency with administrative offices located at 110 Vernon Street, Santa Cruz, California and has bus stops located at various locations in the City of Santa Cruz, in the County of Santa Cruz, California, as further described in Exhibit "A", which is hereby attached and incorporated (hereinafter collectively "Bus Stops").
2. Licensee desires to utilize Licensor's Bus Stops in order to load and unload bus passengers who are utilizing the Licensee's late-night Night Owl bus service (the "NO Bus").
3. Licensor is willing for Licensee to utilize Licensor's Bus Stops for this purpose, subject to the terms and conditions of this License and Indemnity Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises, covenants, conditions and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Grant of License to Licensee.** Licensor hereby grants Licensee (and their respective officers, managers, employees, contractors and other authorized agents acting under Licensee's authority and within the scope of its consent) permission to utilize at no cost the Bus Stops for the exclusive purpose of loading and unloading passengers utilizing the NO Bus. Licensee's right of use shall be confined to the Bus Stop locations described in Recital 1 above **and specifically identified in Exhibit A which is attached hereto and incorporated herein by reference. Licensee further agrees to utilize these Bus Stops only in accordance with the schedule which is attached hereto as Exhibit B and incorporated herein by reference.** Licensor further grants permission to Licensee to allow its passengers to enter onto the Bus Stops in order to access them and to wait at the Bus Stops for the NO Bus. Licensor further grants permission to Licensee to maintain and keep the Bus Stops clean and free of trash and debris left by any NO Bus passengers.
2. **Licensee's Satisfaction with Bus Stops.** Licensee has inspected each of the Bus Stops identified in Exhibit A and on a regular and recurring basis will inspect them prior to its use of them to satisfy itself of their condition. Licensee has found the Bus Stops fit for the intended purpose herein and in safe and good working order. Should Licensee become dissatisfied with the safe condition of the Bus Stop(s), Licensee shall immediately inform Licensor of such dissatisfaction and provide Licensor the opportunity to correct the Bus Stop(s) condition prior to any further use. Licensee warrants that its Bus Operators will not use any Bus Stop identified in Exhibit A that is not in safe and good working order.

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3. **Term and Termination.** It is understood and agreed that this License Agreement shall remain in full force for a twelve (12) month period, beginning on the Effective Date (the “Commencement Date”) and ending twelve (12) months thereafter (the “Expiration Date”). It is further agreed that if at any time Licensor determines that it is no longer in its best interests to continue to grant this license to Licensee, that it can, upon five (5) days written notice, terminate this license without further notice or liability of any kind.
4. **Permits.** Licensee shall, at its sole cost and expense, obtain all necessary governmental permits and approvals required to operate the NO Bus. Licensees shall comply with all laws, codes, rules, regulations and permits applicable to the use of the Bus Stops for the purposes herein contemplated.
5. **Non-Interference with Licensor’s Operations.** Licensee shall utilize this license and the permission granted herein in such a way that it does not unreasonably disrupt Licensor’s transit operations and shall minimize any inconvenience to Licensor’s customers, passengers, invitees, employees or the public. **Licensee shall not use the Bus Stops for Holdovers and will utilize them only for the purpose of picking up and dropping off passengers.** Licensee shall also take every reasonable precaution to prevent and avoid damage to the Bus Stops, their improvements, and any and all persons or property located thereon, arising from Licensee’s use of the Bus Stops or from any other permitted use thereon. Licensee is required to keep the Bus Stops clean and free of debris left by NO Bus passengers. **Should Licensee cause damage to the Bus Stop(s) in any way, Licensee shall immediately report such damage to Licensor and shall make arrangements for the repair of same at its sole cost.**
6. **Liability and Duty to Pay for Damages and Insurance.** Licensee shall be liable for any and all damages, harm, losses, expenses or injuries to the Bus Stops (including their improvements) **or to any person(s)** or any other property (collectively “Damages”) caused by Licensee’s use of the Bus Stops or by its agents’, employees’, invitees’ or guests’ use thereof, regardless of whether such Damages were caused by accident, mistake, negligence, or intentional conduct. Licensee shall at its sole expense promptly repair or remediate any such Damages to the reasonable satisfaction of Licensor. Licensee, at its sole expense, shall obtain and keep in force during the term of this Agreement a policy of general liability self-insurance insuring Licensee **and Licensor** for Licensee’s use of Licensor’s Bus Stops including their condition. Such self-insurance shall be in the amount of not less than \$5 million per occurrence. The limit of such insurance, shall not, however, limit the liability of Licensee hereunder. The provisions of this Paragraph 5 shall survive termination of this Agreement. A certificate of such insurance may be viewed at or downloaded from the following web address:

<http://www.ucop.edu/riskmgmt/faq/documents/generic-certificate-self-ins.pdf>

Licensor, its directors, officers, employees, agents and volunteers are hereby named as additionally covered parties on Licensee’s general liability self-insurance program, as relating to the activities described in this Agreement, provided that such provision shall apply only in proportion to and to the extent of the negligent acts or omissions, of Licensee, its officers, employees, agents, invitees or guests.

Attachment A

7. **Indemnity.** Licensee shall to the fullest extent permitted by law, indemnify and hold harmless Licensor from and against any and all claims, causes of action, demands, losses, judgments, fines, penalties, obligations, liens, and liabilities (including, without limitation, all expenses, attorneys' fees, and costs incurred in investigating or defending against the same) (collectively, "Costs") that are asserted against Licensor (i) relating to or arising out of or as a result of Licensee's herein-permitted use; (ii) that arise out of access to the Bus Stops pursuant to this Agreement by Licensee, its agents, employees, invitees, or guests; (iii) that are due to any violation of law by Licensee, its agents, employees, invitees, or guests in utilizing these "Bus Stops"; or (iv) that are due to breach of any of the provisions of this Agreement by Licensee; but, the foregoing notwithstanding, Licensee's indemnification obligation to Licensor under this Paragraph 6 shall only be in proportion to and to the extent that such Costs are caused by the negligent or intentional acts or omissions of Licensee, its officers, agents, employees, invitees, or guests. The provisions of this Paragraph 6 shall survive termination of this Agreement.
8. **Adverse Litigation Rights.** Licensor shall have the right to control all legal proceedings enumerated in Paragraph 6 asserted against Licensor, including the right to (i) select counsel and/or mediators reasonably satisfactory to Licensor, (ii) approve, in its sole discretion, of any settlements that would require the taking of any action or payment of money on the part of Licensor, and (iii) oversee all other choices associated with such legal proceedings. The provisions of this Paragraph 7 shall survive termination of this Agreement.
9. **Reimbursement for Expenses and Attorney Fees.** Each party shall bear its own costs incurred in the preparation and negotiation of this Agreement. In the event any party shall commence legal proceedings against another party for the purpose of enforcing any provision of this Agreement, or by reason of any breach arising under the provisions hereof, then the prevailing party or parties in such proceedings shall be entitled to reasonable litigation expenses, including attorneys' fees and expert fees, to be determined by the Court.
10. **Assignment, Successor and Assigns.** Licensee may not assign any of its rights under this Agreement, either voluntarily or by operation of law, without Licensor's prior written consent, which shall not be unreasonably withheld. No assignment by Licensee shall release Licensee from any liability under this Agreement. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns, including without limitation subsequent owners of the Bus Stops.
11. **Execution of Agreement.** Each signatory hereto warrants to the other parties hereto its authority to sign on behalf of the party for whom he or she purports to sign.
12. **Entire Agreement.** This Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, understandings or agreements relating thereto.
13. **Time is of the essence.** Time is of the essence in this Agreement.

Attachment A

14. **No Oral Modification.** No alteration or variation of this Agreement shall be valid or binding unless made in writing and signed by the parties hereto.
15. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of California.
16. **Venue.** Licensor and Licensees hereby stipulate that the proper venue in which any legal proceeding arising between the parties shall be heard is in Santa Cruz County, California Superior Court.
17. **Notices.** Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person or (b) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

To Licensor:

Leslie R. White
General Manager
Santa Cruz Metropolitan Transit District
110 Vernon Street
Santa Cruz, CA 95060-2101

To Licensee:

University of California, Santa Cruz
ATTN: Larry Pageler, TAPS
1156 High Street
Santa Cruz, CA 95064

With a copy to:

University of California, Santa Cruz
ATTN: Real Estate Office
1156 High Street
Santa Cruz, CA 95064

18. **Counterparts; Facsimile Signatures.** This Agreement may be executed in one or more counterparts and delivered by facsimile transmission with original signatures to follow, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.
19. **Property Rights.** The right granted in Paragraph 1 of this Agreement is a mere license only, and does not constitute an easement, right of way, or real property interest in the Property. No legal title or interest in Licensor's Bus Stops is otherwise created or vested in Licensee under this Agreement.
20. **No Third Party Beneficiaries.** This Agreement is solely for the benefit of Licensor and Licensees. Nothing contained in this Agreement shall be deemed to confer on anyone

Attachment A

other than Licensor and Licensees the right to enforce the performance of or compliance with of any of the obligations contained herein.

21. **Partial Invalidity.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.
22. **Recording.** This License shall not be recorded.
23. **Rule of Construction.** Licensor and Licensees shall both be deemed to have drafted this Agreement, and the rule of construction that a document is to be construed against the drafting party shall not be employed in the construction or interpretation of this Agreement.

This license is entered into as of the latest date of execution set forth below, by and between:

LICENSOR:
SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

By: _____

Title: _____

Date: _____

LICENSEE:
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: _____

Title: _____

Date: _____

Attachment A

EXHIBIT **A**

Printed at 14:00 on Tue Aug 17 2010

Page 1

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT BUS STOPS INVENTORY LISTING -- BY ROUTE

ROUTE / SUFFIX: 16NO UCSC - 16/19 NIGHT OWL SCHOOL TERM

| Seq | Stop | Street | Cross Street | O/I | Dr | Sd | Stickers |
|-----|------|-------------|-----------------|-----|----|----|---|
| | 2701 | METROCENTER | LANE ONE | O | W | M | 42 03MB 16WE 10 16NO 13 41 15 16WD 19 20 40 |
| 10 | 1591 | LAUREL | CENTER ST | O | W | F | 12 16WD 15 16WE 16NO 42 41 40 |
| 20 | 2731 | LAUREL | BLACKBURN | O | W | N | 12 16NO 16WE 40 42 41 16WD 15 |
| 40 | 1630 | MISSION | LAUREL | O | S | F | 16NO 16WE 12 42 13 41 40 16WD 15 |
| 50 | 1226 | BAY ST | MISSION | O | W | F | 12 16NO 13 16WE 41 19 16WD 15 |
| 60 | 1227 | BAY ST | KING | O | W | F | 12 16WE 16NO 41 15 19 16WD 13 |
| 70 | 1228 | BAY ST | ESCALONA | O | N | N | 12 16WE 16NO 41 13 19 16WD 15 |
| 80 | 1230 | BAY ST | IOWA | O | N | F | 12 16WE 16NO 41 13 19 16WD 15 |
| 90 | 1232 | BAY ST | MEDER | O | N | M | 12 16WE 41 16NO 19 13 16WD 15 |
| 100 | 1341 | COOLIDGE | MAIN ENTRANCE | O | N | F | 16NO 16WE 10 20 12 16WD |
| 110 | 1342 | COOLIDGE | HAGAR | O | N | N | 16NO 12 10 16WE 20 16WD |
| 120 | 2669 | HAGAR | QUARRY | O | N | N | 10 12 16WD 16NO 16WE 20 |
| 130 | 1501 | HAGAR | EAST REMOTE | O | N | F | 12 16NO 16WE 10 20 16WD |
| 140 | 2101 | HAGAR | EAST FIELD HOUS | O | N | N | 10 12 16WE 20 16WD 16NO |
| 150 | 2102 | HAGAR | STEVENSON COL | O | N | F | 10 12 16NO 16WE 20 16WD |
| 60 | 1617 | MCLAUGHLIN | CROWN COLLEGE | O | W | F | 12 16WE 10 20 16NO 16WD |

EXHIBIT **A**
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Page 2

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT BUS STOPS INVENTORY LISTING - BY ROUTE

ROUTE / SUFFIX: 16NO UCSC - 16/19 NIGHT OWL SCHOOL TERM

| Seq | Stop | Street | Cross Street | O/I | Dr | Sd | Stickers |
|-----|------|--------------|-----------------|-----|----|----|-------------------------------------|
| 170 | 1616 | MCLAUGHLIN | SOCIAL SCIENCES | O | W | N | 12 16WE 20 16WD 10 16NO |
| 180 | 1615 | MCLAUGHLIN | SCIENCE HILL | O | W | F | 12 10 16NO 20 16WE 16WD |
| 190 | 1509 | HELLER | KRESGE COLLEGE | O | S | F | 12 10 16NO 16WD 16WE 20 |
| 200 | 2448 | HELLER | COLLEGE EIGHT/P | O | S | F | 12 16NO 16WE 20 10 16WD |
| 210 | 2516 | HELLER | FAMILY STUDENT | O | S | N | 12 10 16WE 16WD 16NO 20 |
| 220 | 1505 | HELLER | OAKES COLLEGE | O | S | N | 10 16WD 12 16WE 16NO 20 |
| 230 | 2328 | EMPIRE GRADE | ARBORETUM | I | S | M | 10 16WE 42 12 41 16WD 16NO 20 |
| 240 | 2739 | EMPIRE GRADE | TOSCA TERRACE | I | S | F | 41 16NO 10 12 42 16WD 20 16WE |
| 250 | 1510 | HIGH | WESTERN DR | I | E | F | 12 16NO 16WE 42 10 41 16WD 20 |
| 260 | 2376 | BAY ST | HIGH | I | S | F | 12 16NO 16WE 41 42 19 13 16WD 15 |
| 270 | 1231 | BAY ST | NOBEL | I | S | F | 12 16WE 42 41 19 16NO 16WD 13 15 |
| 280 | 2056 | BAY ST | KING | I | S | F | 13 16WE 16NO 42 12 41 15 19 16WD |
| 290 | 1625 | MISSION | TRESCONY | I | N | F | 12 13 16WE 42 16NO 41 15 40 16WD |
| 300 | 1629 | MISSION | LAUREL | I | N | N | 13 16NO 16WE 42 12 41 15 40 16WD |
| 310 | 1590 | LAUREL | BLACKBURN | I | E | F | 12 16WE 42 16NO 41 15 40 16WD |
| 320 | 2572 | LAUREL | CHESTNUT | I | E | F | 16NO 12 42 16WE 41 15 40 16WD |

EXHIBIT A
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Page 3

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT BUS STOPS INVENTORY LISTING -- BY ROUTE

ROUTE / SUFFIX: 16NO UCSC - 16/19 NIGHT OWL SCHOOL TERM

| Seq | Stop | Street | Cross Street | O/I | Dr | Sd | Stickers |
|-----|------|--------------|-----------------|-----|----|----|----------------------------------|
| 330 | 1592 | LAUREL | CENTER ST | I | E | N | 15 16WE 16NO 42 41 12 40 16WD |
| 340 | 2697 | PACIFIC | CENTER | O | S | N | 20 16NO 19 03MB |
| 350 | 1890 | PACIFIC | W CLIFF | O | S | F | 03MB 19 20 16NO |
| 360 | 2592 | PACIFIC | VIADUCT | O | S | N | 03MB 16NO 19 20 |
| 370 | 2582 | BAY ST | W CLIFF | O | W | F | 03MB 16NO 19 20 |
| 380 | 2583 | BAY ST | LAGUNA | O | W | N | 03MB 19 20 16NO |
| 390 | 2584 | BAY ST | NATIONAL | O | W | F | 03MB 19 16NO |
| 400 | 1220 | BAY ST | #721 | O | W | M | 03MB 19 16NO |
| 410 | 2291 | BAY ST | CALIFORNIA | O | W | F | 03MB 19 16NO |
| 420 | 1223 | BAY ST | SEASIDE | O | W | F | 16NO 19 03MB |
| 430 | 2588 | BAY ST | MISSION | O | W | N | 19 16NO |
| 440 | 2375 | HIGH | BARN THEATER | O | W | F | 13 41 15 16NO 19 |
| 450 | 2374 | HIGH | WESTERN | O | W | N | 15 16NO 41 13 19 |
| 460 | 1385 | EMPIRE GRADE | ARBORETUM | O | N | M | 15 13 16NO 19 41 |
| 470 | 2670 | HELLER | OAKES COLLEGE | O | E | F | 13 15 19 16NO |
| 480 | 2671 | HELLER | COLLEGE EIGHT/P | O | E | N | 13 15 19 16NO |
| 490 | 2672 | HELLER | KERR HALL | O | E | N | 13 15 19 16NO |
| 500 | 2673 | HELLER | KRESGE COLLEGE | O | E | N | 13 15 16NO 19 |
| 510 | 2674 | MCLAUGHLIN | SCIENCE HILL | O | E | N | 15 16NO 13 19 |
| 520 | 2675 | MCLAUGHLIN | SOCIAL SCIENCES | O | E | N | 13 15 19 16NO |
| 530 | 2676 | HAGAR | BOOKSTORE | O | E | F | 15 16NO 13 19 |
| 540 | 2677 | HAGAR | EAST REMOTE | O | E | N | 13 15 19 16NO |
| 550 | 2678 | HAGAR | LOWER QUARRY | O | E | N | 15 13 16NO 19 |
| 560 | 2679 | COOLIDGE | LOWER CAMPUS | O | E | N | 15 13 16NO 19 |

EXHIBIT A
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Page 4

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT
 BUS STOPS INVENTORY LISTING -- BY ROUTE

ROUTE / SUFFIX: 16NO UCSC - 16/19 NIGHT OWL SCHOOL TERM

| Seq | Stop | Street | Cross Street | O/I | Dr | Sd | Stickers |
|-----|------|---------|--------------|-----|----|----|-----------------|
| 570 | 1225 | BAY ST | MISSION | I | E | F | 19 16NO |
| 580 | 1224 | BAY ST | SEASIDE | I | E | F | 19 16NO |
| 590 | 1222 | BAY ST | REDWOOD ST | I | E | N | 19 16NO |
| 600 | 1219 | BAY ST | #721 | I | E | M | 19 16NO |
| 610 | 2585 | BAY ST | NATIONAL | I | E | N | 19 16NO |
| 620 | 2586 | BAY ST | LAGUNA | I | E | N | 19 16NO |
| 630 | 2587 | BAY ST | W CLIFF | I | E | N | 19 20 03MB 16NO |
| 640 | 2593 | PACIFIC | SECOND | I | N | N | 19 20 16NO |
| 650 | 2636 | BEACH | PACIFIC | I | E | F | 19 03MB 16NO |
| 660 | 1318 | CLIFF | BEACH | I | N | F | 19 16NO |
| 670 | 1319 | CLIFF | SECOND | I | N | N | 19 16NO |
| 680 | 2428 | SECOND | MAIN | I | W | N | 03MB 19 16NO |
| 690 | 1779 | SECOND | PACIFIC | I | W | N | 03MB 16NO 19 |

EXHIBIT A 9-a9

UCSC Night Owl Bus Service

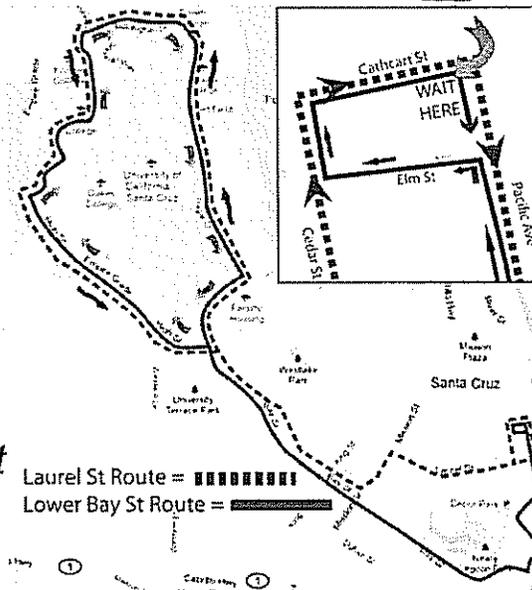
Temporary Bus Stop Info

The Night Owl bus service is currently unable to use off-campus Metro bus stops. Until this issue is resolved, the only stop between the campus and Cathcart and Pacific will be at Bay Street, just north of Mission. Buses heading downtown will stop next to the Rip Curl store; buses heading to campus will stop just north of the Metro stop next to Burger.

Fall Quarter Service Dates:
9/19/11 – 12/8/11

No service from 11/24 – 11/26/11

A valid UCSC student or employee ID card is required to ride.



| Sunday through Thursday Schedule | | | | |
|---|--------------------------------|--------------|-------------|---------------------|
| Cathcart at Pacific | Bay & High | Science Hill | Bay & High | Cathcart at Pacific |
| 11:45 PM | 11:53 PM | 12:00 AM | 12:07 AM | 12:20 AM |
| 12:30 AM | 12:38 AM | 12:45 AM | 12:52 AM | 1:05 AM |
| 1:15 AM | 1:23 AM | 1:30 AM | 1:37 AM END | --- |
| All Sunday through Thursday trips use Laurel Street route. Laurel Street trips travel from east to west through campus (counter-clockwise). | | | | |
| Friday and Saturday Schedule | | | | |
| Cathcart at Pacific | Bay & High | Science Hill | Bay & High | Cathcart at Pacific |
| --- | SATURDAY ONLY TRIP 11:00 PM | 11:07 PM | 11:14 PM | 11:27 PM |
| SATURDAY ONLY TRIP 11:30 PM | 11:38 PM | 11:45 PM | 11:52 PM | 12:05 AM |
| FRIDAY ONLY TRIP 11:45 PM | 11:53 PM | 12:00 AM | 12:07 AM | 12:20 AM |
| SATURDAY ONLY TRIP 11:50 PM | 11:58 PM | 12:05 AM | 12:12 AM | 12:25 AM |
| FRIDAY and SATURDAY TRIPS | | | | |
| 12:10 AM | 12:18 AM | 12:25 AM | 12:32 AM | 12:45 AM |
| 12:30 AM | 12:38 AM | 12:45 AM | 12:52 AM | 1:05 AM |
| 12:50 AM | 12:58 AM | 1:05 AM | 1:12 AM | 1:25 AM |
| 1:10 AM | 1:18 AM | 1:25 AM | 1:32 AM | 1:45 AM |
| 1:30 AM | 1:38 AM | 1:45 AM | 1:52 AM | 2:05 AM |
| 1:50 AM | 1:58 AM | 2:05 AM | 2:12 AM | 2:25 AM |
| 2:10 AM | 2:18 AM | 2:25 AM | 2:32 AM | 2:45 AM |
| 2:30 AM | 2:38 AM | 2:45 AM | 2:52 AM END | --- |
| 2:50 AM | 2:58 AM | 3:05 AM | 3:12 AM END | --- |
| Friday 12:30AM, 1:30AM, 2:30AM trips use Lower Bay Street route. All other Friday trips use Laurel Street route. Saturday 11:30PM, 12:30AM, 1:30AM, 2:30AM trips use Lower Bay Street route. Lower Bay Street trips travel from west to east (clockwise) through campus. | | | | |
| Operated by UCSC Transportation & Parking Services | | | | |

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

STAFF REPORT

DATE: October 14, 2011

TO: Board of Directors

FROM: Leslie White, General Manager
Margaret Gallagher, District Counsel

SUBJECT: CONSIDERATION OF THE DEPARTMENT OF TRANSPORTATION (DOT) FINAL RULE EFFECTIVE OCTOBER 19, 2011 REGARDING AMENDMENTS TO THE AMERICANS WITH DISABILITIES ACT (ADA) REGULATIONS FOR THE TRANSPORTATION OF WHEELCHAIRS ON SANTA CRUZ METRO'S FIXED ROUTE AND PARATRANSIT SERVICES

I. RECOMMENDED ACTION

Advise METRO Staff How Best to Proceed with regard to Wheelchairs that Cannot Be Secured on Transit Vehicles in any Manner

II. SUMMARY OF ISSUES

- On February 27, 2006, the Department of Transportation (DOT) issued a Notice of Proposed Rulemaking (NPRM) which included among other items a question regarding the use of the “common wheelchair” definition for purposes of design, construction and operational use for public transportation vehicles and other issues. DOT did not include in the NPRM what its specific proposal was with regard to the definition of the “common wheelchair” but merely asked for comments on the current regulation. Essentially, the DOT did not provide “notice” of its proposed rule. It is contended by some transit providers that this is a violation of the administrative regulations which govern the NPRMs.
- DOT received over 360 comments to the NPRM, including two from the Santa Cruz METRO. Comments came primarily from members of the transportation industry and the disability community. DOT held a public hearing on August 29, 2010 that resulted in in-person comments and additional written comments.
- On September 19, 2011, DOT issued its Final Rule regarding some of the issues in the NPRM. As a result the DOT is amending its ADA regulations modifying its provisions concerning the carriage of wheelchairs and other issues.
- This staff report is designed to outline the provisions of the Final Rule related to the carriage of wheelchairs and their users on METRO's transit vehicles.

III. DISCUSSION

The current ADA regulations require that public transit agencies must transport all “common wheelchairs” and their users. A “common wheelchair” is a wheelchair that does not exceed 30 inches in width and 48 inches in length measured two inches above the ground, and does not weigh more than 600 pounds when occupied. Currently, wheelchairs are defined to include both three-wheeled and four-wheeled mobility aids. Three-wheeled “scooters” and other non-traditional designs that fit within these standards must be transported. The “common wheelchair” definition originated as a design concept, answering the question of what a vehicle lift should be designed to accommodate, but has also been applied as an operational concept, permitting a transit operator to exclude from its vehicles wheelchairs that do not meet the weight and/or dimensional criteria. The Court in *Kiernan v. Utah Transit Authority* (339 F. 3d 1217, 10th Cir., 2003) held that the transit authority could exclude from its vehicles a wheelchair that did not meet the common wheelchair criteria, even if the transit vehicle could physically accommodate the device. While, METRO has been permitted to deny service to a wheelchair that exceeded the “common wheelchair” definition METRO staff have generally carried such mobility devices in order to provide full access if METRO staff was able to secure the wheelchair. However, there are some very large and/or heavy wheelchairs that exceed the weight limit or the dimensions set forth in the regulations and in those cases if METRO staff could not secure the wheelchair, service has been denied.

The current regulations also allowed METRO to require as a condition of service that the wheelchair be secured. METRO has incorporated into its policies that securement is required. METRO’s transit vehicles are equipped with securement devices that are able to secure wheelchairs that meet the “common wheelchair” definition. However, under the regulations, if the wheelchair met the “common wheelchair” definition and could not be secured to METRO’s satisfaction, METRO was nonetheless required to carry the wheelchair. METRO staff, however, is not aware of any situation in which a common wheelchair was unable to be secured with METRO’s securement system. If a wheelchair did not meet the “common wheelchair” definition and could not be secured, METRO was allowed to refuse to provide transit service and did so in those types of situations.

During the NPRM comment period, disability community commenters generally stated that the “common wheelchair” definition was used as an unnecessary obstacle to transportation opportunities for individuals with disabilities. They suggested that if the transit vehicle could carry the wheelchair, no matter the size or weight, it should be carried. The transportation industry commenters wanted to either maintain the “common wheelchair” definition or establish some other size and weight criteria for the carriage of wheelchairs. The transportation industry expressed safety concerns if the definition was eliminated or modified.

The DOT’s Final Rule determined that to the extent that the design and construction standards established by the Access Board (currently in a process of revision) retain the “common wheelchair” definition, or another set of specifications for lifts and other aspects of a transit vehicle, DOT anticipates continuing to incorporate those guidelines for vehicle design and construction purposes.

However, DOT decided that operational requirements are a different matter. DOT stated, if a transportation provider has a vehicle and equipment that meet or exceeds the Access Board's guidelines, and the vehicle and equipment can in fact safely accommodate a given wheelchair, then it is not appropriate, under disability nondiscrimination law for the transportation provider to refuse to transport the device and its user. Therefore, beginning October 19, 2011, Santa Cruz METRO is required to carry a wheelchair and its user, as long as the lift can accommodate the size and weight of the wheelchair and its user and there is space for the wheelchair on the vehicle whether or not the wheelchair meets the definition of the "common wheelchair." METRO would not be required to carry a wheelchair if in fact the lift or vehicle is unable to accommodate the wheelchair and its user, consistent with legitimate safety requirements. DOT requires that to be a legitimate safety requirement, any limitation must be based on actual risks, not on mere speculation, stereotypes or generalizations about individuals with disabilities or their mobility devices. However, according to the DOT, if a wheelchair is of a size that would block an aisle and therefore interfere with the safe evacuation of passengers in an emergency, the transit provider can deny carriage of that wheelchair, if doing so was necessary as the result of a legitimate safety requirement.

Beginning with the DOT's initial ADA regulation in 1991, the DOT has taken the position that a transportation provider cannot deny transportation to a wheelchair or its user on the grounds that the device cannot be secured or restrained satisfactorily by the vehicle's securement system. Consequently, DOT further stated in the Final Rule that a transit provider cannot impose a limitation on the transportation of wheelchairs and other mobility aids based on the inability of the securement system to secure the device to the satisfaction of the transportation provider, including those wheelchairs that do not meet the "common wheelchair" definition.

Under the Final Rule, METRO cannot deny transportation to a wheelchair and its user because the wheelchair cannot be secured or restrained by a vehicle's securement system to the entity's satisfaction even if the wheelchair does not meet the "common wheelchair" definition.

April Warnock, METRO's Paratransit Superintendent, reported that in the past, ParaCruz turned away an individual because the "hook" on the tie down could not be secured appropriately on the wheelchair frame, because the frame was too large. Warnock advised that the user was supplied with Stokes straps and once installed the issue was resolved. Under the new regulations, as long as the wheelchair could safely board and maneuver into the securement area whether or not it could be secured METRO will be required to transport it.

Valley Transportation Authority (VTA) in the past had a securement policy that left the securement choice up to the customer. In 2000, a passenger who suffered from cerebral palsy boarded a VTA bus using a scooter. The passenger's wheelchair was not secured. When the bus rounded a corner, the scooter tipped over causing the passenger serious injuries. The passenger sued VTA alleging that she had requested that the driver strap her in but that he failed to do so. The driver claimed that the passenger did not request securement and, therefore, he was under no obligation to secure the wheelchair. The passenger also argued that the policy of leaving the choice up to the individual was ill-advised. The passenger reasoned that it was the VTA Policy that was flawed and that the agency should have required securement of all wheelchairs

regardless of the desires of any one passenger. The jury agreed with the passenger and awarded her \$2.165 million.

Under the new regulations, METRO will be required to transport individuals whether or not their wheelchairs can be secured if the wheelchair can safely be boarded and there is space for the wheelchair in the securement area.

The NPRM also provided a definition for “direct threat” in the transportation context as follows: “a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.” The question should be asked, “At what point does the inability to secure the oversized wheelchair meet the direct threat definition?” and “How should METRO respond?”

California law holds that anyone who offers to the public to carry persons, property or messages is a common carrier (Civil Code Section 2168). This definition covers all forms of public transportation, including rail, bus, boat and plane; it also includes passenger elevators and escalators. Paid carriers owe their passengers an especially high duty of care. Rather than mere reasonable care, such carriers must use the utmost care and diligence for their passengers’ safe carriage. They must provide everything necessary for that purpose and must exercise to that end a reasonable degree of skill (Civil Code Section 2100). This duty extends to all passengers, including those in the process of boarding and alight vehicles. The common carrier has a duty to take all reasonable steps to protect its passengers from harm.

METRO staff is working on possible solutions to the issues raised in this staff report. Ideas are being solicited in order to assist METRO staff to be able to comply with the new directive while still maintaining a safe ride for all of its passengers.

IV. FINANCIAL CONSIDERATIONS

METRO’s reserves for liability purposes may need to be raised in order to insure that funds are available as these situations arise.

V. ATTACHMENTS

No attachments