

# MENDOCINO COUNCIL OF GOVERNMENTS

Approved MINUTES  
Monday, September 29, 2014  
Mendocino County Fairgrounds, Boonville

**The Mendocino Council of Governments (MCOG) meets as the Board of Directors of:**  
Mendocino Regional Transportation Planning Agency (RTPA) and  
Mendocino County Service Authority for Freeway Emergencies (SAFE)

**1. Call to Order / Roll Call.** After the Board members' bus tour of Anderson Valley area transportation projects (courtesy of Mendocino Transit Authority) and lunch (approximately 10:00 a.m. to 1:00 p.m.), the meeting was called to order at 1:00 p.m. with Directors Jackman (Caltrans/PAC), Steve Scalmanini (Alternate), Doug Hammerstrom, Larry Stranske, Trevor Sanders, John Pinches, Susan Ranochak, and Dan Gjerde present; Chair Gjerde presiding.

Staff present: Phil Dow, Executive Director; Janet Orth, Deputy Director for Administration; Loretta Ellard, Assistant Executive Director; Nephele Barrett, Senior Planner; and James Sookne, Regional Project Manager. Also present from County of Mendocino were Douglas Losak, Interim County Counsel; David Grim, Deputy CEO; and Nicole French, Executive Office.

**2. Convene as RTPA**

**3. Recess as RTPA - Reconvene as Policy Advisory Committee.** For the benefit of community members present, Chair Gjerde explained the purpose of this procedure.

**Public Expression.** Julie Andrews, a member of the Anderson Valley Community Services District, expressed concerns about traffic speeding through town on State Route 128 and the possibility of working with Caltrans to help address the problem.

**4 - 5. Consent Calendar.** Upon motion by Hammerstrom, second by Stranske, and carried unanimously (*8 Ayes; 0 Noes; 0 Abstaining; 0 Absent*): IT IS ORDERED that consent items are approved:

**4. Approval of August 18, 2014 Minutes** – *as written*

**5. Approval of September 15, 2014 Minutes** – *as written*

**6 - 9. Regular Calendar.**

**6. Discussion of Anderson Valley Transportation Planning Projects and Related Matters.** Chair Gjerde asked Executive Director Dow to describe the State Route 128 Corridor Valley Trail Feasibility Study. He noted the scope of study and locations visited on the morning's tour, noting priority projects recommended in the study. On the tour, community concerns were expressed that it would be difficult to stop a preconceived implementation of the Valley Trail project once construction started. Mr. Dow stated that the case would most likely be the opposite. Funding is scarce and competitive, and many steps will involve the community in decision making and design. He then yielded to board discussion.

Director Hammerstrom noted that MCOG typically does not start projects; often they are initiated by community needs. MCOG has various roles along the way. The study offers options and opportunities, focusing on achievable, feasible projects. Locals will drive the process.

Chair Gjerde noted that 5<sup>th</sup> District Supervisor Dan Hamburg attended the tour. He also introduced Howard Dashiell, Director of Mendocino County Department of Transportation (MCDOT), who helped guide the tour.

Staff noted the distribution and limited availability of print copies of the Valley Trail study. The document is also available at [http://www.mendocinocog.org/reports\\_projects-SR128Trail.htm](http://www.mendocinocog.org/reports_projects-SR128Trail.htm). No action was taken.

**7. Adoption of Resolution Authorizing Executive Director to Execute Master Agreements with Caltrans for Federal-Aid and State-Funded Projects and Related Program Supplement.**

Mr. Dow and Ms. Orth described the agreements and their purpose, which is to receive grant funds for the State Route 162 Corridor Multi-Purpose Trail (Phase 1) project. It is unknown at this stage whether federal or state-only funds will be allocated by the California Transportation Commission. To date MCOG has received funds for planning, but not for project implementation, so new master agreements are required for any construction projects managed by MCOG. A “program supplement” will specify the Covelo project.

**A motion by made** by Director Pinches, seconded by Alternate Director Scalmanini, to approve staff’s recommendation to adopt the draft resolution authorizing the Executive Director to sign both agreements and the program supplement. **Discussion on the motion** included status of a memorandum of understanding with the Round Valley Tribes for maintenance of the trail, currently under review. Director Hammerstrom commented this is an exciting project and new role for MCOG. **The motion carried** unanimously on roll call vote (8 Ayes – Jackman/PAC, Scalmanini/Alt., Hammerstrom, Stranske, Sanders, Pinches, Ranochak, and Gjerde; 0 Noes; 0 Abstaining; 0 Absent): IT IS ORDERED that the following resolution is adopted.

**Resolution No. M2014-11**

Authorizing the Executive Director to Execute Master Agreements  
with Caltrans for Federal-Aid and State-Funded Projects  
and Related Program Supplement  
(Reso. #M2014-11 is incorporated herein by reference)

**8. Review and Possible Approval of Professional Services Contract for Planning Services.**

County Counsel Douglas Losak stated why this item was returning to the Board following its approval on September 15. He asked for further clarification on the motion that had carried. Director Pinches, as the motion maker, stated he intended to accept the Davey-Bates Consulting (DBC) proposal as submitted. Chair Gjerde noted that Counsel and Ms. Davey-Bates had partially negotiated a contract previous to the September 15 meeting, and later the motion had carried as made by Director Pinches. Mr. Dow read aloud the action from the approved meeting minutes and showed a copy of the proposal as handed out at the previous meeting by Mr. Losak. A brief discussion followed.

Mr. Losak stated options available included reconsideration or for the motion maker to further clarify the motion. Director Pinches stated it was his assumption that the four percent inflation cap was included in the proposal, and explained why he did not think it was an important factor. Chair Gjerde called for a motion to reconsider, followed by a new motion.

**Upon motion** by Pinches, second by Sanders, and carried unanimously on roll call vote (8 Ayes – Jackman/PAC, Scalmanini/Alt., Hammerstrom, Stranske, Sanders, Pinches, Ranochak, and Gjerde; 0 Noes; 0 Abstaining; 0 Absent): IT IS ORDERED that the action of September 15, 2014, “the scope of work and cost for the Transportation Planning Services contract between MCOG and Davey-Bates Consulting shall be as originally submitted in the Davey-Bates Consulting proposal,” shall be reconsidered.

Discussion ensued to create a new motion. Director Hammerstrom proposed a rationale for including a not-to-exceed figure for healthcare costs, as discussed on September 15, suggesting a limit of 11 percent on annual increases. Mr. Losak noted the DBC proposal assumed 11.5% increases in annual healthcare costs and translated that into dollar amounts over the five-year contract. He had negotiated with DBC a four percent cap on Cost of Living Adjustments (COLA), with an agreement that DBC would make a direct request to the Board if cost increases exceed that figure.

Ms. Ellard called for a point of order concerning proper procedure following reconsideration, suggesting that the original action should be rescinded before any new action. After a brief exchange with County Counsel, Board action continued.

**A motion was made** by Director Hammerstrom, seconded by Sanders, to amend the previous motion to include a four percent cap on COLA; to return to the Board of Directors for approval of increases higher than four percent; to limit annual healthcare cost increases to 11 percent; and to base healthcare cost increases on actual amounts incurred. **Discussion on the motion:**

- Ms. Davey-Bates described her proposal and how this action would impact her business, how the contract will translate as annual costs, and her company's risk in covering retroactive cost increases. She asked the Board to consider that healthcare is the only annual increase in her proposal, other than actual Consumer Price Index inflation.
- Further questions and clarification. (Pinches, Losak)
- Is the motion 11 percent or 11.5 percent on healthcare costs? (Ranochak, Davey-Bates) The motion maker agreed to 11.5 percent.
- Desire for this new contract to go smoothly without conflict with the vendor; will not support the motion; the only amendment should be the four percent cap on COLA. (Pinches)

**The motion was denied** on roll call vote (2 Ayes – *Hammerstrom and Gjerde*; 6 Noes - *Jackman/PAC, Scalmanini/Alt., Stranske, Sanders, Pinches, Ranochak*; 0 Abstaining; 0 Absent).

**Upon motion** by Pinches, second by Ranochak, and carried on roll call vote (7 Ayes – *Jackman/PAC, Scalmanini/Alt., Stranske, Sanders, Pinches, Ranochak, and Gjerde*; 1 No - *Hammerstrom*; 0 Abstaining; 0 Absent): IT IS ORDERED that the scope of work and cost for the Transportation Planning Services contract between MCOG and Davey-Bates Consulting shall be as originally submitted in the Davey-Bates Consulting proposal, except that annual Cost of Living Adjustments (COLA) shall be limited to four percent, and if cost inflation exceeds four percent in a year, the contractor may negotiate directly with the Board of Directors; and the Chair is authorized to execute the contract.

**9. Designation of the Board's Representatives for its Negotiations with Dow & Associates for Professional Services Contract for Administrative & Fiscal Services - Pursuant to Gov. Code 54957.6(a).** Mr. Losak stated it was necessary to appoint a negotiator to act in closed session on the matter. Discussion and questions included:

- Is this a change; is there not an existing appointed negotiator? (Jackman) This action is necessary in order to go into closed session. To date County Counsel, acting as negotiator, has not had specific direction from the Board on contract terms. (Losak)
- In the September 15 meeting, Counsel stated that the Board could not meet in closed session during a special meeting. Is the need for today's closed session due to contracting with a public official? The Dow & Associates proposal includes more personnel than the Executive Director, so should the entire matter be dealt with in closed session? How should the Board address the rest of the team in the proposal? (Dow)

- This case is complicated by the fact that the contract is for a full proposal while Mr. Dow is a public official. Counsel does not know how to separate the two. It is the Board's decision whether or not to address any of the proposal in closed session. (Losak)

**Upon motion** by Pinches, second by Ranochak, and carried unanimously on roll call vote (8 Ayes – Jackman/PAC, Scalmanini/Alt., Hammerstrom, Stranske, Sanders, Pinches, Ranochak, and Gjerde; 0 Noes; 0 Abstaining; 0 Absent): IT IS ORDERED that Douglas Losak, Interim County Counsel, is designated to represent the Mendocino Council of Governments Board of Directors in negotiations with Dow & Associates for a Professional Services Contract for Administrative & Fiscal Services.

**10. CLOSED SESSION pursuant to Government Code § 54957 – Public Employee Appointment: Administrative and Fiscal Services. – Continued from September 15, 2014** [“For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee . . .” Cal. Gov. Code § 54957(b)(4)]

The Board convened in closed session at approximately 2:00 p.m., to include voting board members and alternates, Mr. Jackman as the Policy Advisory Committee representative (Caltrans), and Counsel. Not included were Executive Director Dow, MCOG staff, non-voting alternate board member Michael Carter, and County staff.

Report of closed session at 2:52 pm: Chair Gjerde announced that the Board had given direction to staff, i.e. to Mr. Losak, Interim County Counsel, as the designated negotiator.

**11. Discussion and Action to Approve Terms and Conditions of Professional Services Contract for Administration and Fiscal Services with Authority for the Chair to Execute Said Contract.** Chair Gjerde asked Counsel to describe the process conducted to date. Mr. Losak acknowledged the lengthy process, then noted procurement procedures, wide distribution, a good process that was fair and open, and County staff's role.

The Chair then invited Mr. Dow to make comments before action was taken. Mr. Dow said he had been waiting months for a chance to comment; summarized as follows:

- One of his questions was answered before closed session, that no direction had been given to the negotiator to date; a concern of his from the first meeting. The negotiator's emphasis was entirely on cost, with no discussion of services. He took that to mean there were no other concerns.
- He described the evaluation panel's interview. He had long said the current contract would likely be his last, but had not anticipated the state audit that caused division of his company into two separate firms. He had given much thought to how best to continue the roles of the very experienced staff team. His focus has been to ensure continuity of the agency's staffing needs. The past several performance audits have highlighted succession planning.
- He handed out three pages: 1) Attachment F of the Request for Proposals, indicating a weight .of 20 of 100 points for Cost. The evaluation panel considered cost. He spent weeks of preparation on his cost proposal. After he was informed Dow & Associates was the panel's top choice with “stellar” performance, coordinator Brandon Merritt of County Executive Office had said remaining issues were only details. 2) Dow's analysis of cost differences between the prior contract and this proposal. He reviewed each line, comparing like items to like items, noting changes, cost savings, and lost efficiencies due to the agency restructuring. The total cost increase to the public for this proposal is \$66,076. 3) Letter from his insurance agent estimating the anticipated 11.5% cost increase for healthcare. The proposal does not include any health insurance premiums for himself, only the staff team. A comparison cannot be made to large companies with economies of scale.

- His goals for MCOG include seeing completion of such priorities as county road maintenance, Gualala plan implementation, Covelo's non-motorized infrastructure projects, and East Side Potter Valley Road improvements, among others. He wants to maximize outside funding into this countywide region, as he has been doing for many years.
- He had thought the Board would be involved in this negotiation; apparently they were not. He is disappointed in the process, which took far too long. He did the best he could for his employees and himself, while also considering the impacts on other claimants, i.e. the transit system, as well as the newly added responsibilities of project implementation duties.

Chair Gjerde stated the procurement process was complete and called for a motion. **A motion was made** by Director Pinches, seconded by Stranske, to accept the Dow proposal with a four percent cap on COLA, with opportunity of board approval if inflation is higher, and with the standard 120-day optional termination clause. **Discussion on the motion:** Director Hammerstrom made comments to the effect that he looked forward to continued good service from the Executive Director and his staff.

**The motion carried** unanimously on roll call vote (*8 Ayes – Jackman/PAC, Scalmanini/Alt., Hammerstrom, Stranske, Sanders, Pinches, Ranochak, and Gjerde; 0 Noes; 0 Abstaining; 0 Absent*): IT IS ORDERED that the scope of work and cost for the Administrative & Fiscal Services contract between MCOG and Dow & Associates shall be as originally submitted in the Dow & Associates proposal, except that annual Cost of Living Adjustments (COLA) shall be limited to four percent, and if cost inflation exceeds four percent in a year, the contractor may negotiate directly with the Board of Directors; and the Chair is authorized to execute the contract.

**12. Recess as Policy Advisory Committee - Reconvene as RTPA - Ratify Action of Policy Advisory Committee.** Upon motion by Ranochak, second by Sanders, and carried unanimously (*7 Ayes – Scalmanini/Alt., Hammerstrom, Stranske, Sanders, Pinches, Ranochak, and Gjerde; 0 Noes; 0 Abstaining; 0 Absent*): IT IS ORDERED that the actions taken by the Policy Advisory Committee are ratified by the MCOG Board of Directors.

### **13. Reports - Information**

- a. Mendocino Transit Authority. There was no report.
- b. North Coast Railroad Authority. There was no report.
- c. MCOG Administration & Planning Staff
  1. *Summary of Meetings*. Mr. Dow referred to his written staff report.
  2. *US 101 Bypass of Willits*. A written report had been provided by the Caltrans project manager.
  3. *Miscellaneous*. Ms. Ellard reported that October 31 is the due date for Sustainable Communities grant applications. It is too late for MCOG to make a decision to sponsor any proposals as the eligible applicant. Chair Gjerde confirmed that MCOG could provide letters of support as needed, based on existing plans.
- d. MCOG Directors. Alternate Director Scalmanini inquired as to the anticipated completion date of the US-101 Bypass of Willits project. Mr. Dow noted delays resulting in the contractor's inability to install fill material in time for it to settle properly according to the construction schedule, and that MCOG is a 15% funding partner. A brief discussion followed. Mr. Scalmanini submitted for the record copies of a letter from the North Coast Regional Water Quality Control Board to Caltrans relative to the Mitigation and Monitoring Plan, and the District Director's reply.

Director Pinches thanked County staff for their extra work to conduct MCOG's staffing procurement process.

- e. California Association of Councils of Governments (CALCOG) Delegates. Chair Gjerde announced that he planned to attend the CALCOG Board retreat November 7-8 in San Jose.

**14. Adjournment.** The meeting was adjourned at 3:25 p.m.

Submitted: PHILLIP J. DOW, EXECUTIVE DIRECTOR

By Janet Orth, Deputy Director for Administration