

STAFF REPORT



MEETING DATE:	10/25/11
SUBJECT:	Regional Transportation Planning Agency (RTPA) Memorandum of Understanding (MOU) with Shasta County
AGENDA ITEM:	7
STAFF CONTACT:	Dan Little

SUMMARY and DISCUSSION:

The RTPA board has expressed a desire to have direct authority over appointment of its executive director and staffing levels. One option is to develop a structured MOU between the RTPA and the host agency (Shasta County). As directed by the board, RTPA counsel and county counsel have discussed and outlined initial talking points for further discussion (attached). The county is willing to entertain an MOU with several suggested stipulations. The county is not open to relinquishing control of RTPA staff to the RTPA board.

STAFF RECOMMENDATION:

It is recommended that the board consider if additional discussion and negotiation toward an MOU between the RTPA and Shasta County is appropriate or direct staff to explore and report on other options.

ALTERNATIVES:

The RTPA may continue to pursue an MOU with the county. The county has made it clear in the attached letter, however, that it is not willing to host the RTPA unless the county is allowed to maintain control over RTPA staff. Two alternatives remain if the RTPA wants to have authority over selection of its executive director and staffing levels:

1. The RTPA may explore an MOU with a different host agency. Other agencies may not have an issue with the RTPA board exercising authority over its staff provided there are suitable financial reimbursement and indemnity provisions.
2. The RTPA may provide its own staffing as an independent agency.

The board may direct staff to investigate all potentially viable options and weigh their respective merits against the board's objective.

OTHER AGENCY INVOLVEMENT:

Discussions regarding the MOU have involved RTPA counsel, county counsel, the Shasta County chief administrative officer, and the Shasta County director of public works.

FINANCING:

The county's suggested MOU terms would result in higher costs to the RTPA, primarily in the form of overhead charges currently calculated at 29% (above salaries and benefits). The terms of an MOU, including overhead charges, are negotiable. An MOU with a different host agency, or independent staffing provided by the RTPA, would have similar costs. RTPA staff, or a third-party firm, could prepare budgets for these staffing alternatives prior to RTPA action.

A handwritten signature in dark ink, appearing to read 'D. Little', is written over a horizontal line.
Daniel S. Little, AICP, Executive Director

Attachments: Correspondence from RTPA and county counsel

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October 20, 2011

Dan Little, Director
Shasta County Regional Transportation
Planning Agency
1855 Placer Street
Redding, CA 96001

Re: Regional Transportation Planning Agency Staffing

Dear Dan:

Enclosed is the letter recently received from County Counsel, Rubin Cruise, concerning the "talking points" for a Memorandum of Understanding ("MOU") between the Regional Transportation Planning Agency ("RTPA") and the County to provide staff. As the letter states, the points discussed are offered as a starting point for ongoing discussions.

The letter speaks for itself but I will attempt to summarize and comment where appropriate.

Point #1 – Appointment of the Executive Director.

It is suggested that the appointment by the Board of Supervisors of a County Director of Transportation (pursuant to Government Code § 65085) somehow should influence the appointment of the Executive Director of the RTPA. The issues are unrelated. If the legislature had intended that the appointment of County Director of Transportation strip the RTPA of its authority to appoint its own Executive Director it could have said so. It did not. To the contrary, Government Code § 39535 gives to the local Transportation Commission the authority to "employ staff, enter into contracts, and conduct other activities necessary to fulfill its responsibilities as a Regional Transportation Planning Agency and Local Transportation Commission." Nor is the Shasta County statute appointing the Director of Public Work's Executive Director of the Metropolitan Planning Organization ("MPO") of relevance. The MPO is a creature of federal law not local statute. It's the role of the RTPA Board to determine its Executive Director.

Point #2 – Provision of County Employees to Perform RTPA Services.

The County will consider continuing to use County employees to provide RTPA services but will not delegate any control over those employees. The County would consider avenues of increased input from RTPA but final decisions will remain with the Board of Supervisors or the Director of Public Works. Concern is expressed about potential liability to the County for actions of its employees if they were under the control of RTPA. The concern is understandable but could be addressed by hold harmless and indemnity agreements.

Point #3 – Provision of Office Space and Office Equipment.

The County is willing to continue to provide office space and office equipment but such would be secured in a manner consistent with County policies and would remain the property of the County. It is my understanding the RTPA already pays for much of its equipment.

Point #4 – Reimbursement from the RTPA for Expenses.

RTPA would reimburse the County for all employee expenses, purchases of RTPA assets and "overhead associated with the performance of RTPA services." The expenses to be included in overhead are not stated. It is my understanding that the current calculated DPW overhead rate is 29% over salaries and benefits.

Point #5 – Termination.

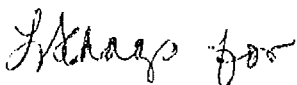
A 12-month termination is suggested.

The RTPA Board will have to determine whether it wishes to continue discussions with the County given these suggested stipulations, consider a hosting arrangement with another member agency that would be willing to forego RTPA "control," or provide its own staff. Perhaps there are other alternatives but none readily come to mind.

If you have any questions, please contact me.

Very truly yours,

KENNY, SNOWDEN & NORINE



JOHN SULLIVAN KENNY
JSK:jll/7004
137151

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October 18, 2011

VIA FACSIMILE: (530) 225-8944

John Sullivan Kenny
Kenny, Snowden & Norine
2701 Park Marina Drive
Redding, CA 96001

Re: Shasta County Regional Transportation Planning Agency Staffing

Dear John:

This is to respond to your September 28, 2011 letter proposing the idea of a memorandum of understanding ("MOU") between Shasta County and the Regional Transportation Planning Agency ("RTPA") concerning the County's provision of staff to the RTPA.

Currently, the RTPA Executive Director and persons performing services for the RTPA are all County employees within the County Department of Public Works. I understand that, since approximately 1972, County employees have served as the Executive Director and staff for the RTPA. I believe the longevity of this arrangement serves as a testament to its success. However, there is currently no written agreement between the County and the RTPA concerning the terms and conditions by which County employees provide services to the RTPA.

I agree that it would be beneficial for both the County and the RTPA to have an agreement establishing the terms and conditions by which County employees provide services to the RTPA. After discussing this matter with the County Director of Public Works Pat Minturn and the County Administrative Officer Larry Lees, I have the following "talking points" for such an agreement. Please bear in mind that this serves primarily as a basis for on-going discussions. Any final agreement would require approval from the Board of Supervisors.

John Sullivan Kenny
October 18, 2011
Page 2

Point # 1: Appointment of a County Officer or Employee as the RTPA Executive Director

Shasta County Code § 2.40.020(E) states that the County Director of Public Works shall serve as the executive officer of the metropolitan planning organization (which I understand is the same as the RTPA). Consistent with this ordinance, the existing RTPA by-laws provide that the County Director of Public Works, or a designee appointed by the Director of Public Works and approved by the RTPA Board, serves as the Executive Director of the RTPA.

It is recommended that the proposed agreement maintain this manner of appointment for the RTPA Executive Director because it is consistent with legislative intent.

The RTPA is responsible for developing a regional transportation plan directed at achieving a coordinated and balanced regional transportation system. Government Code § 65080. The Legislature has provided that, in order to insure coordinated planning, development, and operation of transportation systems of all types and modes, the board of supervisors of each county may appoint a county director of transportation, and specify the extent of the responsibilities of such officer. Government Code § 65084. The county board of supervisors may designate any county officer who is properly qualified to serve as the county director of transportation. Government Code § 65085.

These statutes reflect a legislative intent that a county officer appointed by the Board of Supervisors, such as the County Director of Public Works, serves a primary role in transportation planning activities. The current RTPA by-laws are consistent with that legislative intent by having the County Director of Public Works serve as the RTPA's Executive Director.

The current RTPA by-laws also appear to strike a proper balance by allowing the County Director of Public Works to appoint a designee to serve as the RTPA Executive Director, and the RTPA Board reserves the authority to reject that designee if it so chooses.

Point # 2: Provision of County Employees to Perform RTPA Services

Currently, County employees provide services to the RTPA. The number of such County employment positions is established by the Board of Supervisors. Their salaries and benefits are established by the Board of Supervisors either directly or through collective bargaining with their recognized employee representatives. Persons hired to fill those positions are selected by the County Director of Public Works. The County, consistent with the common law definition of an employer, exercises control over the manner and means by which the staff performs their work.

It is recommended that, as part of the proposed agreement, the County would be willing to continue to have County employees provide services to the RTPA, but the County would not delegate the right of control over those persons to the RTPA.

John Sullivan Kenny

October 18, 2011

Page 3

From a potential liability standpoint, it would not be in the County's interests, as these persons' employer, to delegate the County's right of control to the RTPA. With such a delegation the County, as the person's employer, would remain potentially liable for the person's misconduct, but would no longer have the necessary control available to mitigate or remedy the situation.

The County would be willing to explore avenues of increased input from the RTPA on issues such as (1) the number of positions allocated by the Board of Supervisors, (2) the persons hired by the County Director of Public Works, and (3) any potential re-organization or transfer of functions impacting the County employees providing services to the RTPA. This would be with the understanding that the final decisions remain with the Board of Supervisors or the County Director of Public Works, as appropriate.

Point # 3: Provision of office space, furniture, office equipment, and computers

The County currently provides the County employees performing RTPA services with office space, furniture, office equipment, computers, and other such items to perform their duties. It is recommended that, under the proposed agreement, the County would continue to provide such items. These items would remain County property and would be subject to all county policies related to the purchase, operation, and/or use of such property.

Point # 4: Reimbursement from the RTPA for Expenses

In exchange for the provision of labor and other items previously mentioned, it is proposed that the RTPA reimburse the County for its expenses. Such expenses include, but are not limited to, the following:

1. Employee compensation and benefits;
2. Purchases of any County assets to be used in performing RTPA services;
3. Payment of overhead associated with the performance of RTPA services.

Point # 5: Termination and Transition Provisions

Should either the RTPA or the County decide to terminate this relationship in the future, it is recommended that the agreement contain provisions addressing the termination and the transition of the relationship. It is proposed that the agreement require that any proposed notice of termination be provided at least twelve months in advance of the termination date or upon some other mutually agreeable date (a "transition period"). The responsibilities of the parties during this transition period would be detailed in the agreement.

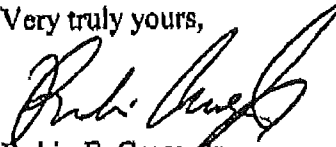
John Sullivan Kenny

October 18, 2011

Page 4

These points are designed to serve as a general framework for on-going discussions. Additional topics may be added as our discussions continue. If the RTPA is interested in pursuing an agreement under this general framework, please let me know. I look forward to working with you.

Very truly yours,



Rubin E. Cruse, Jr.
County Counsel

REC/plh

cc: Lawrence G. Lees, County Administrative Officer
Patrick J. Minturn, Director of Public Works

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*Member - American Board
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September 28, 2010

Rubin E. Cruse, Jr.
Shasta County Counsel
1450 Court Street, Suite 332
Redding, CA 96001

Re: Shasta County Regional Transportation Planning Agency ("RTPA") Staffing

Dear Rubin:

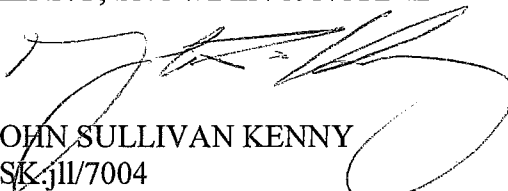
As you are probably aware, the RTPA Board has been considering issues relating to the RTPA staffing. The County presently provides staff but there is no written understanding between the RTPA and the County as to how staffing is to be provided. A recent unilateral change in staffing has raised questions about how staffing is provided and also about whether the RTPA Executive Director should be appointed by the RTPA Board. It seems to be generally accepted that there should be a Memorandum of Understanding ("MOU") between the RTPA and the County regarding staffing. Enclosed is a memorandum from me to Dan Little dated September 21, 2011 setting forth issues that most probably should be addressed in a MOU. Perhaps the County has others.

The RTPA Board has calendared for its October 25th meeting submission of a draft MOU regarding staffing or a progress report on the status of a MOU. The RTPA Board has discussed amending its Bylaws so that the RTPA Board appoints the Executive Director. The MOU should address staffing issues if the Executive Director was appointed by the RTPA Board rather than the County.

I would like to meet with you or whoever would be representing the County on this issue to discuss the matter. Please advise as to when we could meet to discuss this matter.

Very truly yours,

KENNY, SNOWDEN & NORINE


JOHN SULLIVAN KENNY

JSK:jl/7004

Enclosure(s)

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c: Dan Little

KENNY, SNOWDEN & NORINE

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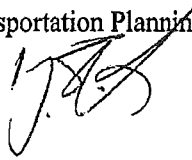
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MEMORANDUM

TO: Dan Little, Executive Director
Shasta County Regional Transportation Planning Agency

FROM: JOHN SULLIVAN KENNY 

DATE: September 21, 2011

RE: Memorandum of Understanding for Provision of Staff Services

The RTPA Board is considering a Memorandum of Understanding or agreement memorializing the understanding between the RTPA and any host agency (currently the County of Shasta) regarding the provision of staff services. The RTPA Board is also considering an independent RTPA, in which case this agreement would not be necessary. Presently the County of Shasta Department of Public Works provides staff services and is reimbursed by the RTPA. There is no written document that sets forth the understanding between the parties as to how staff is to be provided.

The terms of the agreement would have to be negotiated between the RTPA and host agency. An effective agreement should generally be structured to:

- Minimize any potential for conflicting staff roles
- Make clear the RTPA Boards desired level of authority
- Reimburse the host agency for all costs associated with RTPA activities.

The RTPA Board should propose the issues it wants included in the agreement. The following are suggested:

1. The manner in which staffing levels and staffing composition is determined. Does the RTPA Board or host agency determine staffing levels?
2. Appointment and supervision of employees. What control, if any, should the RTPA Board or RTPA Executive Director exercise over employees? Who selects and evaluates the RTPA employees?
3. The manner and levels of compensation for employees.

4. To whom do the RTPA employees report?
5. The terms of reimbursement to the host agency for the RTPA employees and overhead.
6. The term of the agreement and provisions for termination.
7. The manner in which liability for employee's actions will be allocated.
Would there be mutual indemnification provisions for the respective agencies?

The Board may have other issues (as might the host agency) but this might serve as a framework for issues to be included.

If you have any questions, please advise.

JSK;jll/7004
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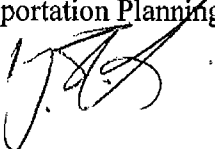
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7. The manner in which liability for employee's actions will be allocated. Would there be mutual indemnification provisions for the respective agencies?

The Board may have other issues (as might the host agency) but this might serve as a framework for issues to be included.

If you have any questions, please advise.

JSK:jl1/7004
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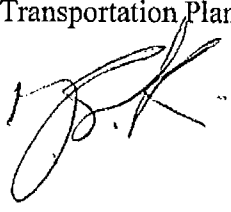
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MEMORANDUM

TO: Board of Directors
Shasta Community Regional Transportation Planning Agency

FROM: JOHN SULLIVAN KENNY 

DATE: September 15, 2011

RE: RTPA Staffing

A question has arisen concerning the relationship between RTPA and its staff. Staff is presently being provided by the County of Shasta. The RTPA budgets for staff and reimburses the County for time actually spent on RTPA projects. The Bylaws provide (Article 9 – Executive Director) that the RTPA Board will provide sufficient funds “for the Executive Director and staff to carry out the planning and administrative responsibilities of the RTPA.” The RTPA has approved a budget which provides for seven staff members which includes the Executive Director. The Director of Public Works for the County of Shasta or “a designee appointed by the Director and approved by the Board” serves as Executive Director for the RTPA. The County has reduced the budgeted RTPA staff from seven to five employees by eliminating two planners. The RTPA Board was not consulted on this staff reduction.

This prompts the question of who controls RTPA staff and staffing levels. The staff working on the RTPA projects are County employees. The Executive Director is a County employee. The Bylaws provide that there will be an annual evaluation by the RTPA Board of the Executive Director. (Article 9, Section 4.) The Bylaws also say that the RTPA Board shall “provide recommendations to the County on the Executive Director’s handling of personnel issues or other County of Shasta decisions affecting RTPA’s staff.” It is not clear how the evaluation by the RTPA Board affects the Executive Director’s status as an employee of Shasta County. If the Executive Director was a designee of the Shasta County Director of Public Works and the RTPA Board was dissatisfied with the Executive Director’s performance, presumably the RTPA Board could withdraw its approval of the appointment of the designee. If the Executive Director were the Shasta County Director of Public Works, an unsatisfactory evaluation would have no effect on job retention.

The Bylaws provide little control by RTPA over its Executive Director and employees. There is no written agreement between RTPA and the County establishing any parameters for control of staff and staffing levels. A contract between the County (or whatever agency may provide staff) delineating the terms and conditions relating to provision of staff could prevent the reoccurrence of confusion regarding staff matters.

If the RTPA Board wished to exercise control over the appointment of the Executive Director, a change in the Bylaws would be necessary. This could be accomplished by amending Article 9, Section 1 of the Bylaws to read:

Section 1 – The Board shall appoint an Executive Director. The Board shall approve sufficient funds for the Executive Director and staff to carry out the planning and administrative responsibilities of the RTPA.

Section 4 would also have to be amended to delete the provision for referring the Executive Director's evaluation to the County. These changes would not preclude the RTPA Board from appointing the Shasta County Director of Public Works as Executive Director.

If you have any questions, please advise.

JSK:jl/7004
136788