



Governing Board

AGENDA

Wednesday, January 26, 2011
12:00 p.m. to 2:00 p.m.

Meeting Location:
MetroCenter
101 8th Street, Conference Room 171
Oakland, California 94612

For additional information, please contact:
Clerk of the Governing Board, (510) 464 7900

Agenda and attachments available at:
www.sfbayrestore.org

The Governing Board may take action on any item on this agenda.

1. Call to Order

Action

Sam Schuchat, Executive Officer, California State Coastal Conservancy

2. Roll Call

3. Public Comment

4. Announcements

5. Approval of Summary Minutes of October 27, 2010

Action

Attachment: Summary Minutes for October 27, 2010

6. Organizational Matters

A. Report on Phase II Polling—Update

Information

Sam Schuchat

B. Report on Staff Support for Proposed Ballot Measure

Information

Kenneth Moy, Legal Counsel, Association of Bay Area Governments

Attachment: Moy memo dated January 11, 2011

C. Authorization to Retain Counsel for Proposed Ballot Measure

Action

Kenneth Moy

7. Discussion on Funding Proposed Ballot Measure—Costs to Counties of Placing Measure on County Ballots

Information

John Gioia, Supervisor, County of Contra Costa

8. Discussion on Next Phase of Public Opinion Polling—Ballot Measure Concepts to be Tested

Information

Sam Schuchat, and Mary Selkirk, Center for Collaborative Policy

9. Adjournment

Agenda submitted by the Clerk of the Governing Board:
January 21, 2011

Agenda posted:
January 21, 2011



Governing Board

DRAFT SUMMARY MINUTES

Wednesday, October 27, 2010
12:00 p.m. to 2:00 p.m.

Meeting Location:
California State Coastal Conservancy
1330 Broadway, 11th Floor Conference Room
Oakland, California 94612

For additional information, please contact:
Clerk of the Governing Board, (510) 464 7913

Agenda and attachments available at:
www.sfbayrestore.org

1. Call to Order

Sam Schuchat, Chair, called the meeting to order at about 12:11 p.m.

2. Roll Call

Frederick Castro, Clerk, reported that five of seven members were present. A quorum of the Governing Board was present.

Present were Sam Schuchat, Dave Cortese, Rosanne Foust, John Gioia, John Sutter. Absent were Charles McGlashan and Phil Ting.

Staff members present were Ezra Rapport, ABAG Executive Director; Kenneth Moy, ABAG Legal Counsel; and Herb Pike, ABAG Finance Director.

3. Public Comment

There was no public comment.

4. Announcements

Schuchat welcomed newly appointed ABAG Executive Director Ezra Rapport.

Melanie Denninger, Project Specialist, State Coastal Conservancy, reported on the passage of AB 2103 and its clarification of the Restoration Authority's funding authority and process for raising funds.

Denninger announced that an Advisory Committee orientation webinar will be scheduled before the next Governing Board meeting for newly and previously appointed members.

Schuchat announced that a tour of North Bay wetlands is scheduled for November 8.

There were no other announcements.

5. Approval of Summary Minutes of July 28, 2010

A motion to approve the summary minutes of the Governing Board meeting on July 28, 2010, was made by Foust and seconded by Gioia. The motion passed unanimously.

6. Organizational Matters

A. Report on Authority Logo—Update

Moy reported on the recommended licensing agreement between the Restoration Authority and ABAG with regards to the Restoration Authority logo. The logo has been registered with and approved by the U.S. Patent and Trademark Office. The licensing agreement will have the following elements: (1) transfer all servicemark rights; (2) irrevocable; and no fee imposed.

A motion to approve staff recommendations with regards to the Restoration Authority logo to authorize the Chair of the Governing Board to execute a licensing agreement with ABAG for the Restoration Authority logo and to waive any conflict of interest which may arise from having Legal Counsel of both ABAG and the Restoration Authority draft the agreement was made by Gioia and seconded by Sutter. The motion passed unanimously.

B. Scheduling Governing Board Meetings—Update

Members reviewed a proposed Governing Board meeting schedule for 2011 and discussed changes in the meeting time and location.

A motion to approve the Governing Board meeting schedule for 2011, with the location as the MetroCenter, Oakland, was made by Foust and seconded by Gioia. The motion passed unanimously.

C. Report on Status of Public Opinion Polling, FM3 Presentation, and Subcommittee Formation and Timeline for Next Phase of Polling

Karen McDowell, Environmental Planner, San Francisco Estuary Partnership, reported on the Polling Subcommittee meeting held on October 6, 2010, at which a presentation of the initial findings of the public opinion polling conducted in August was made by Fairbank, Maslin, Maullin, Metz, and Associates (FM3).

Dave Metz, FM3, presented to the Governing Board the findings from the public opinion polling, with additional information based on comments made at the October Subcommittee meeting. The presentation included a review of the methodology, key findings, the mood of the electorate, perceptions of the San Francisco bay, support for a potential bay restoration finance measure, patterns of support for a potential parcel tax, and overall conclusions.

Members commented on the findings of the initial public opinion polling and next steps, regarding the following: regional equity; method of weighing responses; support for types of projects; formulating ballot measure; availability of complete polling results; qualifying ballot measures for each county; coalition building; public education; campaign funding; additional polling; and separation of campaign activities.

D. Discussion on Formulating and Funding Proposed Ballot Measures

Members discussed presenting the initial findings of the public opinion polling to the Advisory Committee; holding Advisory Committee and stakeholder meetings regarding the Restoration Authority, ballot measures to raise funds for projects, and activities and staffing related to ballot measure campaigns; reporting to the ABAG Executive Board on the work of the Restoration Authority and ballot measures; and forming a subcommittee to plan and a timeline for the next phase of polling.

Members formed a subcommittee for the next phase of polling, comprised of Schuchat, Foust, and McGlashan, with Cortese as an alternate.

7. Adjournment

The Governing Board meeting adjourned at about 2:13 p.m.

The next Governing Board meeting is on January 26, 2011.

Submitted by the Clerk of the Governing Board:
January 20, 2011

Approved by the Governing Board:



To: Judy Kelly
Fr: Kenneth Moy
Dt: January 11, 2011
Re: SFBRA: ABAG Staff Support for Ballot Measure

M E M O

Summary: Decided cases and the opinions of the Office of the Attorney General provide some guidance on activities that ABAG can undertake to support the San Francisco Bay Restoration Authority's efforts to place a funding measure on the ballot. This memorandum identifies those activities for which the guidance is clear. All other activities should be cleared with this office.

Background and Analysis: ABAG and the Conservancy have agreed to provide the SFBRA with staff support. At this time, the SFBRA is developing a regional measure to implement a regional revenue mechanism to fund wetlands restoration projects. With support from the staff of ABAG and the Conservancy, SFBRA anticipates placing such a measure on the ballot in November 2012.

ABAG as a local government entity is prohibited from expending public resources to advocate a particular vote on a measure or candidate before the electorate. This prohibition stems from the holdings made in the seminal case of *Stanson v. Mott*¹ which deemed that such expenditures violate the "fundamental precept of this nation's democratic electoral process . . . that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions." In the intervening decades, the holding in *Stanton* has evolved through decided cases and the opinions rendered by the Office of the Attorney General of the State of California.

You have asked for guidance on what activities can legally be undertaken to support the SFBRA. In reaching the conclusions set forth in this memorandum, I have relied primarily on a case decided in 1988 and an Attorney General's opinion issued in 2005.²

One must apply two step analysis³ to determine whether a proposed activity is prohibited:

- Are 'public resources' being expended?

¹ (1976) 17 Cal.3d 206 [130 Cal.Rptr. 697, 551 P.2d 1]

² *League of Women Voters Of California et al. v. Countywide Criminal Justice Coordination Committee, et al.* (1988, Second Appellate District, Division One) 203 Cal. App. 3d 529; 250 Cal. Rptr. 161; 1988 Cal. App. LEXIS 722 and 88 Ops. Cal. Atty. Gen. 46, 2005 Cal. AG LEXIS 7, respectively.

³ This memorandum does not address a frequent threshold issue raised under *Stanton*: whether the public entity has the authority to undertake the activity under review. I have reviewed ABAG's joint powers agreement and bylaws and have concluded that it has the authority to undertake all the activities sanctioned under this memorandum.



- Do the activities constitute ‘advocacy’ or ‘campaigning’?

If the answer to both questions is ‘yes’, the activity is prohibited. For the purposes of this memorandum, ABAG should consider any effort made by a staff member or any effort using ABAG resources (office space, equipment or supplies) as an ‘expenditure of public resources’. Thus, the critical question is whether the proposed activity constitutes ‘advocacy’ or ‘campaigning’.

This memorandum describes activities which are clearly sanctioned and clearly prohibited as guidance to staff. Activities that do not fall within these categories should be brought to my attention for further analysis.

A. Sanctioned Activities

1. Develop and Draft a Proposed Ballot Measure, including:
 - a. research public perception of the need for the proposed measure;
 - b. research and identify possible uses (restoration projects, public access, co-benefits projects, etc.); and
 - c. research and identify possible funding mechanisms (sales tax, parcel tax or assessment).
2. Formulate Strategies for Placing a Measure on the Ballot, including:
 - a. strategy for specifying uses of funds by type of project, geography, co-benefits or allocation principles;
 - b. feasibility of specific characteristics of the funding mechanism including, amounts to be raised, payers, duration, and type;
 - c. surveys and polling of public support for the ballot measure, including types of projects and specific funding mechanisms.⁴; and
 - d. strategy to qualify the measure, including costs of placing the measure on the ballot.
3. ‘Neutral’ or ‘Educational’ Activities after Ballot Measure Qualifies, including:
 - a. Governing Board adoption of a resolution of support disseminated in the same manner as all other actions of the Governing Board; and
 - b. General dissemination of information regarding SFBRA, San Francisco Bay, benefits of wetlands restoration, proposed projects and the like but only if such information does not include any language that by content or tone advocates for (or against) passage of the ballot measure.

⁴ These types of surveys and polls should be kept separate and distinct from surveys and polls designed to support a campaign, including development of ‘messages’ or ‘themes’. For example, the first polling conducted by FM3 focused solely on the public’s reaction to possible ballot measures. This survey, without more, cannot be used to develop a campaign in support of the measure.

- B. Prohibited Activities
1. Research or data gathering for the purpose of developing, or which can be used only to develop, campaign materials, including polls and surveys of the public response(s) to facets of a campaign.
 2. Recruiting or organizing people or entities to campaign, or to support a campaign, for the ballot measure.
 3. Raising funds for a campaign.
 4. Creation of 'traditional' campaign materials such as buttons, bumper stickers and door hangers regarding the ballot measure.
 5. Dissemination of 'information' about SFBRA, San Francisco Bay, benefits of wetlands restoration, proposed projects and the like which includes language that can be interpreted to advocate, directly or by implication, for a particular position or vote on the ballot measure.

With respect to activities prohibited under item 5, the Political Reform Act states: "A communication 'expressly advocates' the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if it contains express words of advocacy such as 'vote for,' 'elect,' 'support,' 'cast your ballot,' 'vote against,' 'defeat,' 'reject,' 'sign petitions for' or otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election."⁵ The use of such words in any communication that references the ballot measure is prohibited.

More subtle language can also be prohibited. For example: after describing or referencing the ballot measure, one should not use the statement "Your support is needed to restore critical habitat." However, one can state "Funds raised by the ballot measure will be used to restore critical habitat." The former advocates, the latter informs. In close cases, please consult with counsel.

cc: Governing Board
Ezra Rapport

⁵ Govt. Code Section 18225(b)(2).