



**SGVCOG**  
**City Managers' Steering Committee Minutes**  
**May 14, 2013**  
**10:00 AM**  
**El Monte City Hall**

**PRELIMINARY BUSINESS**

**1. Call to Order**

The meeting was called to order at 10:00 am.

**Members Present:**

Alhambra	J. Keating
Covina	D. Parrish
Diamond Bar	J. DeStefano
El Monte	J. Gomez
Glendora	C. Jeffers
La Canada Flintridge	M. Alexander
San Dimas	B. Michaelis
San Gabriel	D. Grilley
West Covina	C. Freeland

**Members Absent:**

Rosemead  
San Marino  
Walnut

**SGVCOG Staff:**

A. Miller, Executive Director  
K. Barlow, Legal Staff  
R. Richmond, ACE CEO  
J. Silvey, ACE General Counsel  
M. Christoffels, ACE Staff  
M. Creter, Staff

**Public:**

T. Ramos, City Manager, City of Claremont  
L. Lowry, City Manager, City of Pomona  
J. Makshanoff, City Manager, City of Azusa  
R. Bates, City Manager, City of Pico Rivera  
M. Swink, City Manager, City of Alhambra  
R. Bacio, Alhambra  
K. Radecki, City Manager, City of Industry  
R. Martinez, Vasquez & Co.  
L. Narciso, Vasquez & Co.  
F. Delach

**2. Pledge of Allegiance**

**3. Roll Call**

4. Public Comment  
There were no comments from the public.
5. Changes to Agenda Order: Identify emergency items arising after agenda posting and requiring action prior to next regular meeting  
There were no changes to the agenda.

## CONSENT CALENDAR

6. April 3, 2013 City Managers' Steering Committee Minutes  
**There was a motion to approve the consent calendar.** (M/S: DeStefano/Jeffers)

<b>AYES:</b>	Alhambra, Covina, Diamond Bar, El Monte, Glendora, La Canada Flintridge, San Dimas, San Gabriel
<b>NOES:</b>	
<b>ABSTAIN:</b>	
<b>ABSENT:</b>	Rosemead, San Marino, Walnut, West Covina

## ACTION ITEMS

7. Election of Chair and Vice-Chair  
**There was a motion to elect Chris Jeffers (Glendora) to serve as Chair for FY 2013-14 (M/S: Jeffers/DeStefano).**

<b>AYES:</b>	Alhambra, Covina, Diamond Bar, El Monte, Glendora, La Canada Flintridge, San Dimas, San Gabriel
<b>NOES:</b>	
<b>ABSTAIN:</b>	
<b>ABSENT:</b>	Rosemead, San Marino, Walnut, West Covina

**There was a motion to elect Mark Alexander (La Canada Flintridge) to serve as Vice-Chair for FY 2013-14 (M/S: Alexander/Jeffers).**

<b>AYES:</b>	Alhambra, Covina, Diamond Bar, El Monte, Glendora, La Canada Flintridge, San Dimas, San Gabriel
<b>NOES:</b>	
<b>ABSTAIN:</b>	
<b>ABSENT:</b>	Rosemead, San Marino, Walnut, West Covina

8. Financial Audit  
Staff from Vasquez & Co. presented on this item. They indicated that there were no findings in the audit.

**There was a motion to recommend the Governing Board receive and file the FY 2011-12 audit, provided the audit presentation incorporates the following two amendments: 1) Clarify that ACE is the component unit of the SGVCOG and 2) provide clarification that "unearned revenue" refers to member dues that were paid in advance (M/S: Alexander/Jeffers).**

<b>AYES:</b>	Alhambra, Covina, Diamond Bar, El Monte, Glendora, La Canada Flintridge, San Dimas, San Gabriel
<b>NOES:</b>	
<b>ABSTAIN:</b>	
<b>ABSENT:</b>	Rosemead, San Marino, Walnut, West Covina

**9. Proposed FY 2013-14 SGVCOG Budget**

A. Miller presented on this item. She indicated that the proposed budget was balanced and reflected the major organization changes that had occurred during FY 2012-13. C. Jeffers recommended that the transmittal letter be revised to include the SGVCOG's long-term goals.

**There was a motion to recommend the Governing Board adopt the proposed FY 2013-14 budget (M/S: DeStefano/Jeffers).**

<b>AYES:</b>	Alhambra, Covina, Diamond Bar, El Monte, Glendora, La Canada Flintridge, San Dimas, San Gabriel
<b>NOES:</b>	
<b>ABSTAIN:</b>	
<b>ABSENT:</b>	Rosemead, San Marino, Walnut, West Covina

**10. Southern California Gas (SCG) Company Agreement**

M. Creter presented on this item and reviewed the proposed scope and terms of the Gas Company agreement.

**There was a motion to recommend Governing Board approve contract with SCG for expansion of the San Gabriel Valley Energy Wise Partnership during 2013-14 (M/S: Jeffers/Keating).**

<b>AYES:</b>	Alhambra, Covina, Diamond Bar, El Monte, Glendora, La Canada Flintridge, San Dimas, San Gabriel
<b>NOES:</b>	
<b>ABSTAIN:</b>	
<b>ABSENT:</b>	Rosemead, San Marino, Walnut, West Covina

**11. ACE Quarterly Report**

R. Richmond presented on this item. At the request of the Committee, he provided additional explanation on the calculation of indirect costs.

**There was a motion to recommend Governing Board receive and file the ACE Quarterly Report (M/S: Jeffers/Michaelis).**

<b>AYES:</b>	Alhambra, Covina, Diamond Bar, El Monte, Glendora, La Canada Flintridge, San Dimas, San Gabriel
<b>NOES:</b>	
<b>ABSTAIN:</b>	
<b>ABSENT:</b>	Rosemead, San Marino, Walnut, West Covina

**12. ACE Project Transfer Agreement**

M. Alexander requested clarification from the SGVCOG General Counsel as to whether Committee members from cities that had adopted the ACE JPA should abstain from voting due to a potential conflict of interest. K. Barlow indicated that there was no conflict in terms of financial interest and therefore those members could vote.

A. Miller, R. Richmond, and K. Barlow presented on this item and reviewed the potential pros and cons of ACE separating as well as the purpose of the separation agreement, which is intended to protect the parties to the extent possible.

The Committee heard comments from members of the public and the City Managers' Technical Advisory Committee (TAC):

- R. Bates (City Manager, City of Pico Rivera): He stated that Pico Rivera has signed the ACE JPA and indicated his opinion that ACE's success does not impact the success of the SGVCOG, in terms of future funding.
- J. Makshanoff (City Manager, City of Azusa): He stated that the City of Azusa's General Counsel has questions regarding future liability should ACE separate, and the City of Azusa did not support separation as it could create future competition for funding.
- L. Lowry (City Manager, City of Pomona): She stated that ACE has managed itself since its formation and that ACE would function more effectively as an independent agency. She also indicated that the SGVCOG's proposed language regarding limitations on ACE pursuing new funding was excessive.
- T. Ramos (City Manager, City of Claremont): He requested the ACE CEO provide further information on the benefits of separation.

R. Richmond provided the benefits from ACE becoming a separate agency:

- It would provide a cleaner decision making process
- There is inherent conflict between the SGVCOG's mission, as a planning agency, and ACE, as a construction authority, and that this conflict of missions limits the ability of the SGVCOG to provide meaningful oversight. In prior years, there was not a significant conflict because the SGVCOG did not attempt to provide meaningful oversight.

The City Managers' Steering Committee developed both a policy recommendation regarding whether or not the Governing Board should approve separation of ACE and then discussed the specific terms of the draft project transfer agreement in the event the Governing Board directs staff to pursue separation.

**With regards to the policy issue, there was a motion as follows:**

**Having received and thoroughly reviewed and analyzed all of the information provided by the public, members of the City Managers' Steering and Technical Advisory Committees, the SGVCOG Executive Director, the ACE Chief Executive Officer, and legal counsel, and all of the materials in the staff report and documents related to the proposed transfer, the City Managers' Steering Committee finds the following:**

- In order to support the concept of separating ACE from the SGVCOG, there should be a significant benefit to the SGVCOG in so doing. Given the information that has been presented, the Steering Committee has not identified any significantly beneficial reason to recommend ACE's separation.**
- There remains significant uncertainty regarding CalPERS and associated liability to the SGVCOG, including whether the new ACE JPA would be accepted into the CalPERS system, how the new ACE JPA would be categorized by CalPERS (as a going concern or limited duration agency), and what the financial implications of the long term retirement obligations would mean to the new ACE JPA and/or the SGVCOG. These issues should be addressed before the SGVCOG commits to separation.**
- There is been insufficient assurance that the SGVCOG would not effectively be competing with the new ACE JPA in the future for important transportation or other grant funding. Additionally, there is a lack of clarity as to how a non-ACE JPA city could gain entry to the new ACE JPA in order to avail itself of any grant funds dedicated to the ACE JPA or to be considered for future grade separation funding that might come available.**
- There is uncertainty regarding the financial and general liability risks to both ACE and SGVCOG. Given that there cannot be complete assurance that those risks can be entirely transferred to the new ACE JPA, it is preferable for the SGVCOG to retain ACE as part of the SGVCOG in order to manage and control such risks and liabilities or, at a minimum, be in the position to direct ACE on how best to manage and control such risks.**

**Given these findings, the City Managers' Steering Committee recommends to the Governing Board that ACE not be separated from the SGVCOG (M/S: Alexander/Alhambra)**

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<b>NOES:</b>	Diamond Bar, El Monte, San Dimas, San Gabriel
<b>ABSTAIN:</b>	
<b>ABSENT:</b>	Rosemead, San Marino, Walnut

The City Managers then reviewed the draft Project Transfer Agreement in the event that the Governing Board directs that separation be pursued. With regards to the draft Project Transfer agreement, various changes proposed by the City Managers' group to the draft Project Transfer Agreement were agreed to by counsel for the SGVCOG and counsel for ACE during the

discussion. These changes were incorporated into the draft Project Transfer Agreement that was included in the May 30, 2013 Governing Board agenda packet.

Some of the changes proposed during the deliberation were not agreed to by ACE representatives. In these instances, the Committee adopted specific motions related to proposed language changes or identified differing perspectives.

- **Section 4.07:** This section of the Project Transfer Agreement pertains to competition for federal, state, regional, and local funds.
  - **Issue 1:** Counsel for the SGVCOG and counsel for ACE were unable to agree upon the language to be included in the Agreement. The Committee discussed this issue extensively and generally concurred that the language proposed by SGVCOG Counsel related to competition for funding better protects the SGVCOG's interests as well as the interests of those cities that are not members of the ACE JPA and seek funding for grade separation or other goods movement projects that are not part of the ACE Project. The Committee also concurred that the SGVCOG is responsible for prioritizing projects competing for limited transportation funding based on the regional significance. The language proposed by ACE and the SGVCOG is below.
    - ***SGVCOG Counsel proposed language:*** "The parties agree that ACE shall not seek, apply for, or accept funds for its Project from any funding program that are now or that may become available to fund SGVCOG programs or projects from any federal, state, regional, or local sources, without obtaining consent from SGVCOG in writing in advance, such consent not to be unreasonably withheld."
    - ***ACE Counsel proposed language:*** "The parties agree that ACE may seek, apply for, and accept funds from federal, state, regional, and local sources for the ACE Project as defined in Section 4.08 below but shall not seek, apply for, accept funds for any other project from any funding programs that are now or that may become available to fund SGVCOG programs or projects from any federal, state, regional, or local sources, without obtaining consent from SGVCOG in writing in advance, such consent shall not reasonably be withheld."

**There was a motion to recommend the SGVCOG General Counsel's recommended language (M/S: Jeffers/Alexander).**

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<b>NOES:</b>	Diamond Bar, San Gabriel
<b>ABSTAIN:</b>	
<b>ABSENT:</b>	Rosemead, San Marino, Walnut

- **Issue 2:** The Committee recommended, as a condition of approval of the Project Transfer Agreement, the ACE JPA cities to amend the ACE JPA and Bylaws to restate the provisions of 4.07 related to competition for funding as drafted by the

SGVCOG Counsel and require 45 days' notice to the SGVCOG of intent to seek funding. ACE did not agree to this amendment.

**There was a motion to recommend that approval of the project transfer agreement be conditioned upon the revision of the ACE JPA to include the revised language from Section 4.07 (M/S: Jeffers/Alexander).**

<b>AYES:</b>	Alhambra, Covina, El Monte, Glendora, La Canada Flintridge, San Dimas, West Covina
<b>NOES:</b>	Diamond Bar, San Gabriel
<b>ABSTAIN:</b>	
<b>ABSENT:</b>	Rosemead, San Marino, Walnut

- **Section 4.08:** This section defines the ACE Project.

**The Committee agreed by consensus to recommend that the last sentence of Section 4.08 be amended to read, “ACE shall not seek, or apply for, any funds for local betterment improvements which SGVCOG or cities in the San Gabriel Valley may or could compete.”**

This was intended to ensure cities that are not in the ACE JPA do not have to compete with the ACE JPA for funding for betterment projects.

- **Section 5.01 (b):** This provision related to waivers by ACE employees.

**There was a motion to include the following modified language: “ACE shall work diligently with each of the employees being transferred from SGVCOG to ACE to execute an agreement in writing agreeing to and acknowledging that ACE shall be fully responsible for any and all claims they may make in the future, excluding pension related liability, and waiving any and all liability against SGVCOG in connection with their employment.” (M/S: Jeffers/Alexander)**

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The proposed language is intended to protect the SGVCOG against claims that may be asserted in the future to the extent possible. ACE objected to the original language; while the revision addressed some of the concern, ACE objected to the sentence as revised.

- **Section 8.02(c):** This section relates to CalPERS termination, given that, if separation proceeds, the ACE JPA would be required to enter into a new agreement with CalPERS. In the Reallocation Section, Section 8.02(c), additional language requiring that ACE notify CalPERS of the estimated duration of the ACE Project and establish a mechanism to

annually review the termination costs based on the anticipated termination date and deposit the funding needed to ensure the required termination costs are fully funded by the projected termination date. The Parties would revisit this issue once additional information is received from CalPERS in this process.

**The Committee agreed, by consensus, to recommend this language be revised; ACE expressed concern with the necessity of this provision.**

- **Section 8.03:** This section related to creation of an escrow account by the ACE JPA for future CalPERS termination liability.

- **Issue 1:** The Steering Committee recognizes that there is liability and believes it is important to ensure that coverage is sufficient.

**There was a motion to revise the project transfer agreement to indicate that the minimum amount to be maintained in the escrow account to fund the CalPERS termination liability required pursuant to Section 8.03 from \$500,000 to \$2.6 million, which reflects the termination liability identified in the 2011 CalPERS actuarial report (M/S: Jeffers/Alexander).**

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<b>NOES:</b>	
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<b>ABSENT:</b>	Rosemead, San Marino, Walnut

- **Issue 2:** The Committee agreed, by consensus, to recommend that approval of the Project Transfer Agreement be conditioned upon the ACE JPA cities amending the ACE JPA and Bylaws to restate the provisions of 8.03 related to the escrow account for future CalPERS termination liability and require the cities to agree to the establishment of the trust, or escrow, account with a minimum balance of \$2.6 million and provide 45 days' written notice to the SGVCOG of any changes to the account.

The rationale for this requirement is that the sample Reallocation Agreements CalPERS has utilized in similar separations require that both agencies indemnify CalPERS for any unfunded retirement liability. Under the terms of the Reallocation Agreement with CalPERS, the SGVCOG would continue to be liable to CalPERS for any unfunded liability related to the ACE employees. This provision is intended to protect the SGVCOG from incurring future costs. ACE did not agree to this amendment.

- **Section 12.05:** This section related to indemnification. The Committee agreed, by consensus, to advise the Governing Board that Section 12.05 pertaining to indemnification involves a policy decision. Under accounting standards costs for liability can be apportioned to the various divisions of any organization. For a municipal entity, they usually pre-fund



through annual internal service charges or may directly charge such costs based on the allocation within the approved overhead calculation. Neither of these actions have previously been employed by the SGVCOG against ACE. Costs are unable to be apportioned.

#### **EXECUTIVE DIRECTOR'S REPORT**

**13. Monthly Report**

A. Miller presented on this item and provided an update on the CEESP Phase 3 and the status of efforts to recruit for clerical support.

#### **COMMITTEE MEMBER ITEMS**

#### **ANNOUNCEMENTS**

#### **ADJOURN**

The meeting adjourned at 5:10 pm.