

REGULAR MEETING CALIFORNIA VANPOOL AUTHORITY

Board of Directors

1340 North Drive * Hanford, California 93230
(559) 852-2711

Meeting Date: October 11, 2012

Time: 10:00 AM

Place: Kings County Association of Governments
CalVans office at 1340 North Drive, Hanford, CA 93230

This Meeting may also be attended at the following locations:

- Association of Monterey Bay Area Governments, 147 Fourth Street, Community Room, Gonzales, CA 93936
- Fresno Area Council of Governments, Huron City Hall, Council Chambers, 36311 Lassen Avenue, Huron, CA 93234
- Kern Council of Governments, 1401 19th Street, Board Room, Bakersfield, CA 93301 661-861-2191
- Madera County Transportation Commission, Citizens Business Bank, Room 101, 2001 Howard Road, Madera, CA 93637
- Napa County Transportation and Planning Agency, 707 Randolph Street, Suite 100, Napa, CA 94559
- Sacramento Area Council of Governments, Sutter Buttes Room, 1415 L Street, Suite 300, Sacramento, CA 95814
- Santa Barbara County Association of Governments, 4th Floor Board of Supervisors Conference Room, 105 East Anapamu Street, Santa Barbara, CA 93101
- Tulare County Association of Governments, Conference Room, 210 N Church St., Suite B, Visalia, CA 93291
- Ventura County Transportation Commission, Conference Room, 950 County Square Drive, Suite 108, Ventura, CA 93003

The call in number for this meeting is 1-866-244-8528, Password 574681

Please note that the Brown Act requires that Board members calling in do so from one of the above locations noted above. Please contact Ronald Hughes the Executive Director at least 72 hours before the meeting date and time if you plan on calling in from another location.

A person with a qualifying disability under the Americans with Disabilities Act of 1990 may request the Authority to provide a disability-related modification or accommodation in order to participate in any public meeting of the Authority. Such assistance includes appropriate alternative formats for the agendas and agenda packets used for any public meetings of the Authority. Requests for such assistance and for agendas and agenda packets shall be made in person, by telephone, facsimile, or written correspondence to Ron Hughes, at the office of the California Vanpool Authority, at least 48 hours before a public Authority meeting.

A G E N D A

- | <u>Item #</u> | <u>Description</u> | <u>Action</u> |
|---------------|--|---------------|
| 1. | CALL TO ORDER | |
| | Roll Call – Clerk of the Board | |
| 2. | PUBLIC COMMENT (Unscheduled Appearances) | |
| | <p>The public may address the Board of Directors on any item relevant to the Authority. To comment on an agenda item, speakers should notify the Board or Staff member at the meeting location, when the agenda item is announced. The Board or Staff member will indicate whether speakers are to make their comments before or after any staff comment or report. Public comment shall precede discussion of the item by the Board of Directors. Comments by individuals and entities will be limited to five minutes or as may be reasonable as determined by the conducting officer.</p> | |
| 3. | Consent Items: | Approval |
| | <p>All items listed as consent items are considered routine and will be enacted by one motion. For any discussion of any consent item, it will be removed at the request of any Board member and made a part of the regular agenda.</p> | |
| | A. Minutes of September 13, 2012 meeting | |
| 4. | System Update | Information |
| | <p>a. Movement of vanpools to Yuma area</p> <p>b. Award of \$200,000 Monterey Air District Grant</p> <p>c. Review of Various Agencies Vanpool support programs</p> | |
| 5. | Approval of Credit Card Vendor | Action |
| 6. | Approval of full time Transit Aide position for Greenfield office | Action |
| 7. | Approval to establish Transit Assistant I/II/III Pay Range | Action |
| 8. | Discussion on establishment of a line of \$300,000 line of credit | Action |
| 9. | Announce Next Meeting Date | Information |
| 10. | Comments from Board members or Staff | Information |
| 11. | Adjournment | |

Attachments:

<u>Item</u>	<u>Page</u>	<u>Description</u>
A-	8	Minutes of September 13, 2012 Board Meeting
B-	15	Minutes of September 27, 2012 Technical Advisory Committee
C-	21	General Vanpool Letter with links to website
D-	22	Response Letter for Agricultural Vanpool Inquiries
E-	25	Attachment A , Vehicle/Driver Requirements
F-	26	Attachment B, Vehicle Code section defining farm labor vehicles
G-	27	Attachment C, PUC Section noting Vanpool exemption
H-	28	Attachment D, Letter from FDOL approving project
I-	41	Attachment E, Email from SDOL noting project is not in violation
J-	42	Attachment F, Opinion from Rob Roy on voucher use by Growers
K-	49	Attachment G, Description of Vouchers and Transit Passes

STAFF REPORT

3. Consent Items:

A Minutes of September 13, 2012 meeting.

4. System Update:

a. Movement of vanpools to Yuma area

For the past several years vanpools from the Salinas Valley area have shifted to the Yuma and Imperial areas as work shifted to these areas. During the winter months the Salinas Valley growers are unable to grow lettuce and broccoli and must temporarily move their operations. The ability to move the vanpools allows Salinas Valley workers to follow the crop and remain employed. It also helps insure a stable work force while reducing unemployment in the Salinas Valley area.

Last year three growers utilized the CalVans program for their workers, providing vouchers that the workers could use to pay their weekly vanpools charge. This year it looks like there will be at least 5 Monterey County companies offering to provide vouchers to their workers if they move their vanpool to the Yuma or Imperial area. The growers and number of vans being considers are:

Company	Location	# of Vanpools
Elkhorn Packing	Salinas	4
Dominguez Farms	Greenfield	4
Sonora Packing	Salinas	2
Foothill Packing	Salinas	12
GTO Packing	Soledad	<u>10</u>
Estimated Total		32

Last year a Staff member was temporally moved from the Greenfield office to the Yuma area to provide support for the operation. Staff is proposing the same this year with an extra help individual to help out as needed.

b. Award of \$200,000 Monterey Air District Grant

Staff was notified this month by the Monterey Air Pollution Control District that a \$200,000 grant was awarded for the promotion and support of agricultural vanpools in the Monterey, San Benito and Santa Cruz areas. This is the third grant in as many years that the District has awarded for the promotion of vanpools in the Salinas Valley area. The total of all three grants is approximately \$400,000. The grants are administered through AMBAG. This grant targets Salinas Valley farm workers and will allow for continued growth of the program in the area.

c. Review of Various Agencies Vanpool support programs

Each member of CalVans has various levels of support for vanpooling in their area. This support often benefits other members as vanpools travel from one area to another member's area. Staff works to identify and apply for funding that can be used to promote the expansion in the areas served by CalVans. An example of this was the recent application to Caltrans for Job Access Reverse Commute funds for most areas served by CalVans. Caltrans ended up funding four of the applications. Applications to Monterey Bay Air Pollution Control and San Joaquin Valley Air Districts are also

limited by the fact one serves three Counties on the coast while the other serves five Counties in the Valley.

The various programs used to attract new riders are an important part of CalVans overall growth. The programs allow new riders to try vanpool for the first time at a reduced cost. When the reduced cost ends most riders continue vanpooling. The riders state that this is because of CalVans excellent service and support.

The following lists each area and notes any available funds for residents of that area. The highlighted areas represent the recent JARC grants that will take affect around January.

Association of Monterey Bay Area Governments

\$350 per month for 12 months for new vanpool group

Fresno Area Council of Governments

\$150 per week for agricultural vanpool group

\$600 per month for 1st 12 month period for new vanpool group

\$300 per month for 2nd 12 month period for new vanpool group

Kern Council of Governments

Kings County Association of Governments

CMAQ funded emergency ride home and outreach

Madera County Transportation Commission

JARC program providing 50% of rider cost up to \$75

Napa County Transportation and Planning Agency

JARC funded subsidy for new rider.

Tulare County Association of Governments

CMAQ funded emergency ride home, outreach and vouchers

Sacramento Area Council of Governments

JARC funded \$300 per month for 12 months for new vanpool group

(Sutter County) JARC program providing 50% of rider cost up to \$75

Santa Barbara County Association of Governments

Quick Start program, 50% off 1st month, 25% of 2nd month, \$100/new rider

JARC program providing 50% of rider cost up to \$75

Ventura County Transportation Commission

JARC program providing 50% of rider cost up to \$75

d. Review of outreach material

There was some discussion at the last Board meeting on efforts by Staff to market the CalVans program. As Staff explained at the meeting, with the exception of several areas that provide reimbursement, there is presently no line item in the budget for outreach and marketing. Staff does respond to requests to attend events centered around rideshare activities. One on one meetings are held with organizations and growers who are interested in promoting the program to those they represent or their employees.

A large amount of material is either mailed or emailed to those who call for information. Follow-up phone calls or meetings often occur where additional information is provided. Many times this leads to vanpools being assigned to new vanpool groups. The two packages that are given out have been added as attachments. The first is focused on questions related to agricultural vanpools; the second focuses on general vanpool users.

Staff will answer any question Board members may have on the attached items

5. Approval of Credit Card Vendor

The Federal Government is doing away with the travel checks they now issue to their employees for their monthly vanpool cost. In their place they will be issuing a debit card that the employee will use to pay the monthly vanpool cost. At the present time we do not have a method for vanpool riders to go online and schedule their payments using a debit/card.

Staff has researched several firms and found that they all charge something for the service with the lowest rate at about 3%. Staff has reviewed proposals from representatives of Bank of America and Wells Fargo and found the one from Wells Fargo to be the most workable. The Wells Fargo Staff has indicated that they will work closely with CalVans Staff to set up the ability to use debit/credit cards

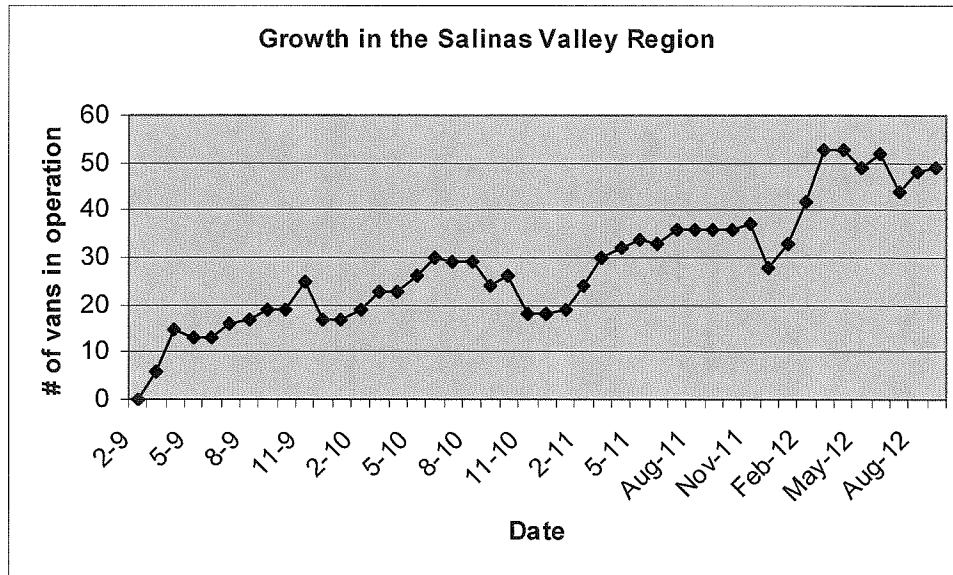
Staff is recommending that the ability to receive debit/card cards for the receipt of vanpool payments be established with Wells Fargo.

6. Approval of full time Transit Aide position for Greenfield office

The Greenfield office is staffed with a Transit Coordinator, a Transit Aide Lead worker and a part time Transit Aide extra help for the summer months. The program has had steady growth over the past 2-1/2 years. The continued funding by the local Air District has been significant in aiding this growth. Last year Hector Aldaco, the Transit Aide Leadworker relocated temporarily to Yuma to support the vanpools there. He was given this assignment because he works with the vans and driver's while they are in the Salinas Valley.

In his absence we were able to cover the Salinas area with the Transit Coordinator and backup from the Hanford office. Given the increased number of vans now operating in the Salinas Valley we will need to add an additional full time employee to assist the Coordinator in the Greenfield office. The operating revenues from the growth in operations will cover the additional position. As the position is presently filled for six months out of the year, going to full time will add additional 6 months and benefits.

The following charts the growth in vanpools operating in the Salinas Valley Region. The chart does not reflect the 21 additional vanpools operating outside the valley that are sponsored by growers in the Salinas Valley through the use of vouchers.



Staff is recommending the addition of a Transit Aide position in Greenfield and the ability to advertize and fill the position.

7. Approval to establish Transit Assistant I/II/III Pay Range

The Transit Assistant position is responsible for managing the location and assignments of all vehicles, as well as maintaining and updating all driver files. Presently there are three Transit Assistants in the organization. Two Assistants maintain the files and the third manages the van ridership data that comes through our GPS system. This includes preparing the monthly and annual summary of ridership data that is submitted to the NTD each year.

The most senior Transit Assistant functions as a Lead Worker, assigning tasks and making sure things are followed up on. The establishment of a Transit Assistant III position will recognize the present role and allow for a clear line of authority in assigning work and responsibility.

The establishment of the three steps will result in a new pay range topping out a 10% over the current pay range. It is anticipated that entry level workers would be brought in at the level I until they are proficient in the job duties. The level II would be established so that it matches the current pay range of the existing position. The Level III would be a supervisory or lead worker role over the other level I and II positions.

Staff is recommending the establishment of the Transit Assistant I/II/III position and the ability to advertize and fill the level III position.

8. Discussion on establishment of a line of \$300,000 line of credit

The FY 11/12 budget recognized a \$300,000 cushion between revenues and expenditures. CalVans is on track to exceed this cushion by years end. This cushion plays a role in the agencies ability to provide the various vanpool support programs identified for new vanpool riders as well as meeting day to day cash flow needs. The vanpool support programs generally result in CalVans receiving IOUs from the riders that are later reimbursed on a monthly or quarterly basis.

The agency's cash flow is historically impacted by the various State, Federal and local grants used to provide funding to new vanpool riders. These grants and the associated cash flow has increased over this past year and is set to increase again as several new or revised programs or grants get underway. The programs, taken in total, may begin impacting the agency's cash flow and ability to pay bills in a timely manner.

Staff would like to explore the availability of establishing a line of credit in the amount of \$300,000 to provide for adequate cash flow. The credit line is not needed for the overall operations of CalVans. If there weren't for need to fund the vanpool support programs use of grant funding the agency would be fine. However, the use of the various funding sources encourages new riders to start vanpooling for the first time; with more than 80% of them continuing to vanpool once their subsidy or grant runs out.

The following breaks down the various programs and the associated monthly and/or quarterly cash flow needs of each:

San Joaquin \$30 Voucher program	\$115,000-monthly
Vouchers Provided by Growers to workers	100,000-monthly
Fresno Measure C program	20,000-quarterly
Federal JARC program in 6 counties	125,000-quarterly
Monterey Air District new van subsidy	<u>24,000</u> -quarterly
Projected total	\$384,000

If approved Staff would research and bring back the ability and cost of establishing a line of credit for CalVans.

9. Miscellaneous Comments

The next meeting regular meeting will be November 8th at 10AM.

Ron Hughes, Heather Corder, Temo Ortiz, Susan Haverland, Gus Banda and Trish Barberick from CalVans.

Also in attendance were Alan Holmes, Kent Epperson, Christine Chavez, Teresa Nickell, Jim Mackey and Jason Mackey.

2. UNSCHEDULED APPEARANCES:

There were no unscheduled appearances.

3. CONSENT CALENDAR:

A. Minutes of June 14, 2012

Motion was made, seconded Sprowls/Funk and carried by Chavez and Wolf to approve the consent calendar item A: Approval of minutes of August 9, 2012. Commissioners Barba, Roberts, Mendoza and Brooks abstained.

B. Claim for damages

Motion was made, seconded Roberts/Brooks and unanimously carried to deny claim and refer it to Philadelphia Insurance Company.

4. SYSTEM UPDATE.

• Reporting of VMT

Ron reported that Staff has completed the sorting of vans by County of origin for the purpose of reporting trips to the California Air Resource Board. The passenger vehicle miles traveled, increased by 22% over the prior year. The biggest increases were in Fresno and Tulare Counties. A large increase of VMT in Monterey, San Luis Obispo and Yuma were noted.

The drop in Kern County reflects the end of the JARC grant that was used to help promote the program to Kern County residents.

Commissioner Funk questioned if the original intent of the vanpools were for farm labor. Ron responded no, that CalVans provides general vanpools and agricultural vanpools. Commissioner Funk also inquired if CalVans had been in touch with the Farm Bureau regarding marketing. Ron responded that the Farm Bureau is usually the first contact, but then they refer to the Growers.

Ron stated that there currently aren't any subsidies for Agricultural workers and zero grant funds for marketing in other locations. Tulare County has measure C and Kings County has CMAQ funds to support new vanpools.

Commissioner Wolf inquired into the passenger trips and the significant increase in Santa Barbara. Ron responded that the vehicle miles traveled each day are counted as two trips, as the vanpools travel to and from work.

- Modifications to Fresno's Measure C Plan

Staff met with Measure Citizens Advisory Committee to review proposed changes to Measure C funds in Fresno County. Currently, Fresno County Farm Workers receive \$10 weekly vouchers used to reduce the cost of their vanpool bill. New general vanpool groups receive \$300 per month for one year.

The Measure C Committee approved the following modification to the program:

1. Farm Worker vanpool groups will now receive a maximum of \$150 per week toward their vanpool cost
2. General vanpools will receive \$600 per month for the first year and \$300 per month for the second year.
3. CalVans Staff will use Measure C funds to market the agricultural vanpool program in smaller rural communities.

Commissioner Roberts questioned why the general vanpools receive more assistance than the farm worker vanpools. Ron explained both vanpools receive \$600 per month, only agricultural vanpools pay by the week and the general vanpools pay monthly.

- SACOG vanpool incentive program

SACOG launched its new vanpool incentive program. New vanpool groups traveling out of the SACOG area, or traveling to the area for employment can now receive \$300 per month in support for one year. Currently the program doesn't assist with support if vanpools travel along corridors used by local transit agencies during peak hours in or out of the SACOG area.

- Use of vanpools by Foothill Packing employees

Foothill Packing, located in Salinas Valley, contacted CalVans Staff in the SACOG area asking if they knew of any laborers in the area that they could hire for work. After distributing flyers in the Napa and SACOG region, they could not find workers in that area and decided to use their Salinas Valley employees to do the work. The workers will be using several CalVans vanpools to travel to the SACOG area for three to five weeks to do the work. Foothill Packing will provide the employees with vouchers to cover their vanpool cost.

They will also be providing lodging as well during the three to five weeks their employees are working in the SACOG area.

- Presentation before SANDAG (San Diego Association of Governments)

Staff was asked by SANDAG for a presentation on the CalVans program and how it might work in the SANDAG region. SANDAG Staff have received requests from residents who would like to use a vanpool program, but do not qualify for one of the two private vanpool providers in that area.

SANDAG has an impressive vanpool program. It presently provides \$400 per month to 715 vanpools that then generate over \$11 million in FTA 5307 funds.

Staff stated there isn't an interest to establish a presence in the San Diego area, but suggested they find a local transit operator that may wish to replicate the CalVans model in their area.

Teresa Nickell from KCAG questioned the VMT in San Diego. Ron responded that a van must have originated from that area in order to have it reported on our list. Susan Haverland explained further that a vanpool did travel from Borrego Springs in San Diego County to Ventura for employment.

- Response to VPSI

Staff responded to the request for information from VPSI. The response included budget and audit documents for the past 10 years of operation.

Alan Holmes informed everyone that VPSI have changed their name to V-Ride. Ron responded that the response was to VPSI because that was the name used on the request for information.

5. APPROVAL OF KERN COUNCIL OF GOVERNMENTS AS CALVANS MEMBER.

The Board lacked the needed majority to approve Kern County Council of Government's request to join CalVans at the last Board meeting.

CalVans and its predecessor, KCAPTA have operated in Kern County for the last five years. The original partnership was through a JPA signed between KCAPTA and Kern County. This JPA focused on bringing the vanpool program to agricultural workers in Kern County.

Kern COG and CalVans Staff have worked closely to move the program started under KCAPTA to CalVans, so those now using the vanpools in Kern County to get to and from work would not have their vans taken away.

Staff recommended that the Board approve Kern COG as a member of CalVans.

Motion was made, seconded Brooks/Wolf and unanimously carried to approve Kern Council of Governments as a CalVans member.

6. APPROVAL OF FRP FOR PROVIDING UNIFORM SERVICE.

Ron explained that CalVans three year contract for uniform service will expire soon. The present firm has been doing a fairly decent job on cleaning the uniforms for the Transit Aides; unfortunately they no longer have the ability to press uniforms. The Staff at CalVans hopes a firm can be found that can provide this service.

Commissioner Mendoza inquired what the yearly cost was for this service. Staff responded the yearly cost is approximately \$2500 per year. He also requested an explanation as to why uniforms were necessary. Ron explained that the Transit Coordinators pay for their own uniforms to be cleaned but the Transit Aides are under the vehicles and oil, transmission fluid, acid, etc. get on the uniforms. The uniform service cleans and replaces damaged items.

Staff will prepare an RFP to solicit proposals from the firms interested in providing uniform service and will bring back a recommendation to the Board.

Motion was made, seconded Barba/Wolf and unanimously carried to approve an RFP to provide uniform service.

7. APPROVAL OF RFP FOR LEASE/PURCHASE ADDITIONAL 15-PASSENGER GMC VANS.

Staff explained that the Agency is almost out of 15-passenger vans and need to have the ability to add more to the fleet to keep up with demand. High gas prices and incentives are part of reasons for this demand.

CalVans will be receiving 27 CNG vans in the next several months, but placement will be limited due to the availability of CNG fueling sites.

Commissioner Brooks inquired if all contacts for lease/purchase providers would be given a chance to participate in the RFP. Ron responded that a copy of the RFP will be sent to all Board members to share with their staff.

Commissioner Sprowls questioned if CalVans had received SACOG's list of GMC dealers. Ron responded that the list had been received.

Motion was made, seconded Funk/Roberts and unanimously carried to approve an RFP to lease/purchase additional 15-passengers GMC vans.

8. DISCUSS POSSIBLE RFQ FOR SELECTION OF INSURANCE BROKER.

The Agency presently uses the services of Mackey & Mackey to solicit insurance proposals from the insurance industry. Staff has been pleased with their service, they have been available when needed and have done an excellent job of soliciting insurance proposals. It has been about five years since the last RFP for a Broker was performed. Requests have been made from other firms asking if we would consider another insurance broker.

Jim and Jason Mackey were present at the meeting and took the time to explain the process and time involved with selecting a new insurance broker. Mackey & Mackey have been associated with the Agency for 14 years. Mackey & Mackey have been in business since 1964. Mackey & Mackey have enjoyed the marvelous relationship first with KCAPTA and now with CalVans.

Mackey & Mackey have strived to get the best price possible for insurance coverage for CalVans. Currently Philadelphia Insurance Company provides vehicle insurance for CalVans. KCAPTA and now CalVans have been poster children for the insurance company due to all the safety measures in place.

Since November 2011 to current, Mackey & Mackey have "touched" CalVans policies 497 times. A stewardship report was handed out that included; 248 activities entered, 15 certificates issued, 7 claims handled, 47 claim attachments, 11 documents/correspondence, 152 e-mails sent and received, 10 endorsements issued and 7 lines of coverage written.

Mackey & Mackey would like to continue the relationship with CalVans but understands that being a public entity, a new RFQ should go out next year. Since it takes so much time to underwrite all the policies and get quotes from different insurance companies, it was suggested to wait until March 2013 before a new RFQ goes out.

Ron supported Mackey & Mackey to begin the process for an RFQ in March 2013. At that time an RFQ will go out and a selection committee will be formed

Commissioner Roberts commented that being a public entity it is important to go out to bid periodically. Not to suggest that Mackey & Mackey may not be awarded the RFQ next year anyway, after all the quotes have been received and evaluated, if they are best insurance broker for CalVans.

Motion was made, seconded Roberts/Brooks and unanimously carried to continue with the current broker, Mackey & Mackey until March, 2013, at which time Staff will begin the process of an RFQ for an Insurance broker and insurance company.

9. ANNOUNCE NEXT MEETING DATE

The next California Vanpool Authority (CalVans) meeting is scheduled for Thursday, October 11, 2012 at 10:00 am.

10. MISCELLANEOUS COMMENTS FROM MEMBERS AND STAFF.

Kent Epperson suggested CalVans Staff check into public versus private vanpool subsidy programs for the next TAC meeting.

Commissioner Brooks would like future agenda items added to the miscellaneous comments.

Ron commented that CalVans have not received the statement of economics (700 forms) from all of the Board members and their alternates. Please contact Trish at CalVans if you have any questions.

The meeting was adjourned at 10:46 a.m.

Respectfully submitted,


Ronald H. Hughes
Executive Director

9/13/12 tb

Technical Advisory Committee Minutes

An unofficial meeting of the California Vanpool Authority Technical Advisory Committee was held on September 27, 2012 at 1:30 p.m. in the conference room of CalVans, 1340 North Drive, Hanford, CA. 93230

California Vanpool Authority Members

AMBAG – Association of Monterey Bay Area Governments
Fresno COG – Fresno Council of Governments
KCOG – Kern Council of Governments
KCAG – Kings County Association of Governments
MCTC – Madera County Transportation Commission
NCTPA – Napa County Transportation & Planning Agency
SACOG – Sacramento Area Council of Governments
SBCAG – Santa Barbara County Association of Governments
TCAG – Tulare County Association of Governments
VCTC – Ventura County Transportation Commission

1. ROLL CALL AND ATTENDANCE

Ron Hughes, Heather Corder, Susan Haverland, Gus Banda and Trish Barberick from CalVans. Carmen Mora *Joined @1:33

Also attending were Alan Holmes, Christine Chavez, Bob Snoddy, Suzanne Campbell, Suzanne Martinez and Teresa Nickell.

2. PUBLIC COMMENT

No comments were received.

3. CONSENT ITEMS

All items listed as consent items are considered routine and will be enacted by one motion. For any discussion of any consent item, it will be removed at the request of any Board member and made a part of the regular agenda.

A. Minutes of August 23, 2012

Motion was made, seconded Bob Snoddy/Alan Holmes and unanimously carried to approve the consent calendar item A: Approval of minutes of August 23, 2012.

4. SYSTEM UPDATE

A. Movement of vanpools to Yuma, AZ.

Ron explained that for the past several years, vanpools from the Salinas Valley area have traveled to Yuma, AZ and Imperial Valley, CA. during the winter months to grow lettuce and broccoli.

The ability to move the vanpools to Yuma, AZ and Imperial Valley, CA. allows the Salinas Valley workers to follow the crops and remain employed.

Last year three growers utilized the CalVans program for their workers, providing vouchers which the employees used to pay their weekly vanpool cost. This year it looks like there will be at least five companies offering to provide vouchers to their workers if they move their vanpool to Yuma or Imperial. It is estimated 35-40 vans will be used during this time.

Last year a Staff member was temporarily moved from the Greenfield office to the Yuma area to provide support for the operation. Staff is proposing the same this year.

Bob Snoddy requested clarification in regard to CalVans vanpools being used in Yuma, AZ.

Ron replied that for the last couple of years, CalVans vanpools have been utilized by Growers from the Salinas Valley and their employees working in Yuma, AZ and the Imperial Valley. Public Transit Agency vehicles are approved to temporarily work in Arizona per their vehicle codes.

B. Award of \$200,000 Monterey Air District Grant.

Staff was notified this month by Monterey Air Pollution Control District that a \$200,000 grant was awarded for the promotion and support of agricultural vanpools in the Monterey, San Benito and Santa Cruz areas.

This is the third year that the District has awarded a grant for the promotion of vanpools in the Salinas Valley area. The total of all three grants is approximately \$400,000.

C. Review of Various Agencies Vanpool Support Programs.

Staff explained that each CalVans member has various levels of support for vanpooling in their area as follows:

AMBAG - \$350 per month for 12 months for new vanpools.

Fresno COG - \$150 per week for agricultural vanpools.

\$600 per month for the first 12 month period for new Vanpools and \$300 per month for the second 12 month period.

KCAG – CMAQ funded emergency ride home and outreach.

MCTC – JARC program providing 50% of rider cost up to \$75.

NCTPA – JARC funded subsidy for new rider.

TCAG – CMAQ funded emergency ride home, outreach and vouchers.

SACOG – JARC funded \$300 per month for 12 months for new vanpools.

(Sutter County) JARC program providing 50% of rider cost up to \$75.

SBCAG – Quick start program, 50% off first month, 25% of second month and \$100 per month off starting the third month and going forward.

JARC program providing 50% of rider cost up to \$75.

VCTC – JARC program providing 50% of rider cost up to \$75.

Bob Snoddy inquired regarding 2013 JARC, MAP21 and 5307 funds and how it will affect CalVans. He would like CalVans Staff to set up a meeting with Golden Empire Transit and Delano to discuss the benefits of having CalVans vanpools in their area.

Staff replied they will approach GET (Golden Empire Transit) and Delano regarding STIC funds and the benefit to their area.

5. APPROVAL OF CREDIT CARD VENDOR.

Staff explained that in January 2013, the Federal Government is doing away with travel checks they currently use for their employees' share of the monthly vanpool cost. They will be issuing a debit card to their employees to use to pay the monthly vanpool cost.

Currently, CalVans doesn't have an electronic method for vanpool riders to pay their payments on-line or use a debit card. Staff has researched several firms and the average cost is 3%. Staff has found that Wells Fargo has been the most cooperative and has indicated they will work closely with CalVans Staff to set up the ability to use debit/credit cards.

Staff recommended that Wells Fargo be used to establish and receive debit/credit cards for the receipt of vanpool payments.

Motion was made, seconded Bob Snoddy/Teresa Nickell and carried unanimously to approve Wells Fargo to establish and receive debit/credit card payments for CalVans.

6. APPROVAL OF FULL TIME TRANSIT AIDE POSITION IN GREENFIELD.

The Greenfield office is currently staffed with a Transit Coordinator, Transit Aide Lead Worker and a Transit Aide Extra Help. The program has had steady growth over the last two and half years. The continued funding by the local Air District has been significant in aiding this growth.

Last year, Hector Aldaco, the Transit Aide Lead Worker relocated temporarily to Yuma to support the vanpools there. He works closely with the growers and employees in the Salinas Valley area. We were able to help cover the Salinas area with the Transit Coordinator and backup from the Hanford office. Given the number of vans operating in that area now, we need to add an additional full time employee to the Greenfield office.

The operating revenues from the growth in operation will cover the cost for the position. Currently a Transit Aide Extra Help works for approximately six months out of the year. A full time position will add an additional six months and benefits.

Staff recommended the addition of a full time Transit Aide position to Greenfield.

A motion was made, seconded Bob Snoddy/Teresa Nickell and unanimously carried to approve a full time Transit Aide position in Greenfield.

7. APPROVAL TO ESTABLISH TRANSIT ASSISTANT I/II/III PAY RANGE.

The Transit Assistants are responsible for managing the locations and assignments of all vehicles as well as maintaining and updating all drivers' files.

The Transit Assistant that has been a Transit Assistant the longest functions as a Lead Worker, assigning tasks and making sure things are completed in a timely manner.

The establishment of a Transit Assistant I/II/III positions will recognize the present roles and allow for a clear line of authority for the Transit Assistant III.

Staff recommended the establishment of the Transit Assistant I/II/III positions and the ability to advertise and fill the level III position.

A motion was made, seconded Christine Chavez/Bob Snoddy and unanimously carried to establish the Transit Assistant I/II/III positions and pay range.

8. DISCUSSION TO ESTABLISH A \$300,000 LINE OF CREDIT.

The Agency's cash flow is historically impacted by the various State, Federal and local grants used by the vanpool riders. These grants and the associated cash flow has increased over this past year and is set to increase again as several new or revised programs or grants get underway.

Staff would like to explore the possibility of establishing a line of credit in the amount of \$300,000 to provide adequate cash flow during those times. Currently approximately \$384,000 is needed to cover the various grants (monthly/quarterly). The estimated time it takes for vouchers to be paid is approximately one to three months. Growers sending payment for their employees' vouchers are approximately two to four weeks.

The JARC representative/employee in Sacramento for Caltrans is constantly changing and requiring new training, causing a delay also.

Staff requested approval to research and bring back the ability and cost of establishing a line of credit for CalVans.

Bob Snoddy liked the idea of a credit line to help with the cash flow, especially with the State budget and year end problems related with such.

Alan Holmes requested clarification as to whether this was only to explore the option and bring back before the Board.

Staff responded that this was to research the ability and the cost involved with establishing a line of credit and to bring it back before the Board for a vote.

Motion was made, seconded Bob Snoddy/Alan Holmes to explore the possibility to obtain a line of credit in the amount of \$300,000 and bring back the cost of the line of credit before the Board for approval.

9. MISCELLANEOUS COMMENTS.

Staff requested the TAC members remind their Board members to please turn in their 700 forms to CalVans.

Staff also mentioned not having a meeting in November because of Thanksgiving.

ANNOUNCE NEXT MEETING DATE

The next California Vanpool Authority Technical Advisory Committee meeting is scheduled for Thursday, October 25, 2012 at 1:30 p.m. in the CalVans conference room located at 1340 North Drive, Hanford, CA.

ADJOURNMENT

The meeting was adjourned at 2:05 p.m.

Respectfully submitted



Ron Hughes
Executive Director

9/27/12 tb



Public Vanpools Leading The Way

California Vanpool Authority

1340 North Drive
Hanford, CA 93230
559-852-2711
866-655-5444

Good news! You have found the right place to help you save money on your commute while reducing freeway congestion and improving air quality. It's simple: CalVans supplies the vehicles, and you provide a driver and passengers. You and your passengers decide the route and schedule, with CalVans standing by 24/7 in the event of any problems. We urge you to take a moment to explore the benefits of sharing your ride with others in a CalVans vanpool.

1. Start by reading in [Consider the Options](#), where you can see some immediate benefits of starting or joining a vanpool. If your first concern is cutting your commuting costs, you can calculate your possible savings on the [Vanpool Price Proposal](#).
2. If you like what you see, read [Steps in Starting and Operating a Vanpool](#) to learn how you can make your vanpool a reality. Print the [CalVans Vanpooling Poster](#) to help you find passengers or co-drivers. To find passengers outside of your workplace, post your route under [Suggest a Route](#) so others can see your proposed trip path and join your group through email.
3. Once you have recruited your passengers, complete and return the [Driver Application Form](#). (If others want to share the driving responsibility, they need to submit the same form.) CalVans staff will review your application and once you are approved we will help you arrange for a Class B physical (required only for drivers of 15-passenger vans).
4. After you pass the physical, CalVans will add you to our insurance policy and you are set to go! You can pick up your van at one of CalVans' six regional offices or CalVans staff can deliver the van to your home or place of work. At that time you will fill out all necessary paperwork such as the [Main Driver Agreement](#) or [Backup Driver Agreement](#).
5. And away you go! Once your vanpool is up and running you will receive bills on about the 25th of the month which are due by the 15th of the following month. CalVans provides you with prepaid self-addressed envelopes for sending your payments from each rider along with a completed [Vanpool Payment Form](#) detailing how much each rider is paying.
6. Enjoy the ride! Your van will come with an easy-to-use fuel card accepted at most major gas stations—no need to use your own card and wait for reimbursement. CalVans also provides on-site routine maintenance, such as lube and oil changes, either at your worksite or at home. In the event you experience mechanical problems, CalVans' support staff is available 24/7. Not only will we arrange for repairs to your van; we also will bring you a replacement van that is yours to use until your own van is ready.
7. Still not convinced? Check out one of our [Training Videos](#) on starting, outreach and maintenance, designed to entertain while giving you more information.
8. Be good to yourself and the planet. Vanpooling is a great way to reduce the stress of your daily commute while doing the right thing for the environment, and the CalVans program offers benefits no other such programs provide. Visit www.calvans.org to learn more today.

Ron Hughes, Executive Director
California Vanpool Authority



California Vanpool Authority

1340 North Drive
Hanford, CA 93230
559-852-2711
866-655-5444

September 14, 2012

Stan Venancio
Stan Venancio Labor Services
PO Box 420
Salinas, CA 93902

RE: Use of Vanpools by agricultural workers

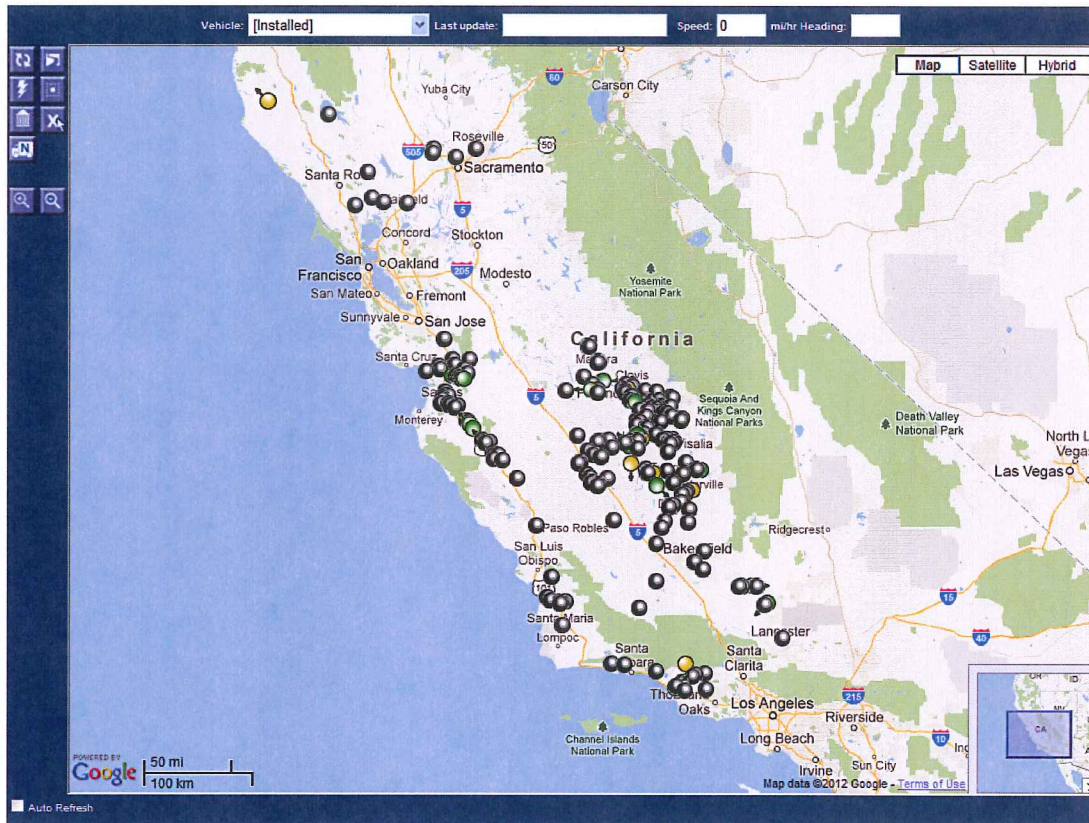
Thank you for inquiring about the vanpool program provided by our agency. CalVans (California Vanpool Authority) is a public transit agency focused on providing vanpool vehicles to eligible California residents who wish to vanpool to work. The vanpool program was started in 2001 by Kings County Area Public Transit Agency. In January 2012 the program was re-established as CalVans. CalVans currently provides over 430 vanpools to residents of 14 counties who use the program to travel between home and work. The Agency's Board is comprised of 10 planning agencies ranging from Ventura County Transportation Commission in the south to Sacramento Area Council of Governments in the north. Participation in the program is voluntary with the employer able to assist in the cost of transportation through the use of vouchers.

CalVans insures safety by monitoring all vehicles and drivers on an ongoing basis. Vehicles are equipped with a GPS system that shows location and speed; as well as requiring all drivers to use a personal ID to start the vehicle. Drivers who fail to drive in a safe manner are dropped from the program. Qualified drivers must have fewer than three points on their record and not have received a reckless or drunk driving citation in the past five years. As a public agency, CalVans is notified within three days if any driver receives a citation. Depending on the citation drivers may be dropped from the program. Each van comes with a fuel card requiring the same personal ID when the driver uses it for fueling the vehicle.

The onboard GPS reports distance traveled which is then used by the office staff to prepare the weekly bill. This bill is then sent electronically to the vehicle's GPS system for the driver to read and share with the riders. The bill is simply the distance traveled times 90¢ divided by the number of passengers. The driver collects this amount from the passengers and mails it to the CalVans office. If the riders are using vouchers, they would sign the vouchers; write in the amount and mail to the office. If the driver falls behind by more than three weeks the van is pulled.

CalVans carries a 10 million dollar policy as well as separate \$5,000 med pay coverage. The program stresses the separation of those who use the van from their employer so that our coverage is primary should an accident occur. The use of vouchers by the employers maintains this separation. This is because the vouchers are given to the employee as an option, they can elect to pay the fare and not use the voucher.

The following shows vanpool locations using the GPS program.



The following walks through the various rules or regulations that in some way impact the program:

Attachment A lists the requirements for both the driver and vehicle. This attachment notes that the vanpool group is operating the vehicle in a shared ride carpool mode with no one making a profit. This is important because MSPA provides the ability for employees to share a ride in a carpool. MSPA does not state the size of the vehicle or require the riders to change vehicles from day to day.

As a public transit agency CalVans is able to provide vans to farmworkers traveling to the field. Attachment B notes that any vehicle being operated under specific authority granted to a transit system by an authorized City or County is not classified as a farm labor vehicle.

Vehicles operated by CalVans are also exempt from PUC regulations as noted in Attachment C.

The agency began working with the Federal Department of Labor in 2002. Following a question and answer period covering several years, the Department issued an approval letter in January of 2007. This letter is referenced as Attachment D.

At about the same time the agency contacted the State Department of Labor looking for direction. It wasn't until a citation was issued to one of the vanpool drivers in September of 2007 that a resolution was reached. The citation was that the driver should have been registered with the State as an FLC for the purpose of transporting workers for a fee. Following several meetings with department Staff Ann Hipshman, Assistant Chief Council, stated that the driver was not in violation of SDOL law because he was collecting a fare on behalf of a transit agency. (See Attachment E) The citation was then dismissed by the court.

Internal Revenue Code (IRC), Section 132(f) permits an employer to subsidize employees' cost of commuting to work by a public transit entity. Attachment F was prepared by Rob Roy, council for Ventura County Agricultural Association. In it Mr. Roy explains how an employer might use vouchers to assist his employees in getting to work in a vanpool.

Attachment G covers some aspects of how vouchers are recognized by the Federal Government as a way employers might assist their employees in getting to work using public transit. The use of vouchers is a benefit to the employees but also offers the employer some tax benefits as well. The \$235 referenced in the attachment has been reduced to \$125.

The California Vehicle Code places a number of conditions on both the driver and vehicle. These include the requirement that all drivers pass a Class B Physical and have not had a drunk or reckless driving citation within the past 5 years. The vehicle must be labeled on three sides and be serviced at least every 6 months or 6,000 miles. Records of this service must be kept in the vehicle. Attachment H summarizes these requirements and is kept in the van to be given to any law enforcement officer who may stop and question the driver.

The CalVans program is focused on providing safe, insured and affordable transportation option that any worker can take advantage of. The program also looks at ways an employer might encourage or assist workers in getting to work safely.

Please call if you need more information or would like to schedule a visit.

Sincerely,

Ronald Hughes, Executive Director
California Vanpool Authority
www.CalVans.org

Attachment A

Vanpool Vehicle Definition

668 A vanpool vehicle" is any motor vehicle, other than a motortruck or truck tractor, designed for carrying more than 10 but not more than 15 persons including the driver, which is maintained and used primarily for the nonprofit work-related transportation of adults for the purpose of ridesharing.

Vanpool Driver Requirements

12804.9 (G) (j) A driver of a vanpool vehicle may operate with a class C license but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or hit-and-run offense in the past five years.

Vanpool Vehicles: Equipment and Inspection

34509. Vanpool vehicles, as defined in Section 668, and vanpool vehicles when used for purposes other than traveling to and from a work location and transporting not more than 10 persons including the driver, shall be exempt from the regulations adopted pursuant to Section 34501, except that the following shall apply:

(a) The vanpool vehicle shall be equipped with an operable fire extinguisher which is of the dry chemical or carbon dioxide type with an aggregate rating of at least 4-B:C and which is securely mounted and readily accessible.

(b) The vanpool vehicle shall be equipped with a first aid kit, conforming to the minimum requirements for schoolbuses. First aid kits shall be readily visible, accessible, and plainly marked "First Aid Kit."

(c) The vanpool vehicle shall be regularly and systematically inspected, maintained, and lubricated in accordance with the manufacturer's recommendations, or more often if necessary to ensure the safe operating condition of the vehicle. The maintenance shall include, as a minimum, an in-depth inspection of the vehicle's brake system, steering components, lighting system, and wheels and tires, to be performed at intervals of not more than every six months or 6,000 miles, whichever occurs first.

(d) Operators of vanpool vehicles shall document each systematic inspection, maintenance, and lubrication and repair performed for each vehicle under their control. Required records shall include services performed, the person performing the service, the date, and the mileage on the vehicle at the time of the repair. The records shall be maintained with the vehicle for one year, and shall be presented upon demand to any authorized representative of the California Highway Patrol.

(e) Vanpool vehicles being operated pursuant to the exemptions specified in this section shall display, upon the rear and sides of the vehicle, a sign or placard, clearly visible and discernable for a distance of not less than 50 feet, indicating that the vehicle is being used as a vanpool vehicle.

Vanpool Vehicle-Not a Bus

233, (d) A vanpool Vehicle is not a bus.

Attachment B

V C Section 322 Farm Labor Vehicle

Farm Labor Vehicle

322. (a) A "farm labor vehicle" is any motor vehicle designed, used, or maintained for the transportation of nine or more farmworkers, in addition to the driver, to or from a place of employment or employment-related activities.

(b) For the purpose of this section, a farmworker is any person engaged in rendering personal services for hire and compensation in connection with the production or harvesting of any farm products.

(c) **"Farm labor vehicle" does not include:**

(1) Any vehicle carrying only members of the immediate family of the owner or driver thereof.

(2) **Any vehicle while being operated under specific authority granted by the Public Utilities Commission or under specific authority granted to a transit system by an authorized city or county agency.**

Amended Sec. 1, Ch. 308, Stats. 2000. Effective January 1, 2001.

Attachment C

5353. **This chapter does not apply to any of the following:**

(a) Transportation service rendered wholly within the corporate limits of a single city or city and county and licensed or regulated by ordinance.

(b) Transportation of school pupils conducted by or under contract with the governing board of any school district entered into pursuant to the **Education Code**.

(c) Common carrier transportation services between fixed termini or over a regular route that are subject to authorization pursuant to Article 2 (commencing with Section 1031) of Chapter 5 of Part 1 of Division 1.

(d) Transportation services occasionally afforded for farm employees moving to and from farms on which employed when the transportation is performed by the employer in an owned or leased vehicle, or by a nonprofit agricultural cooperative association organized and acting within the scope of its powers under Chapter 1 (commencing with Section 54001) of Division 20 of the **Food and Agricultural Code**, and without any requirement for the payment of compensation therefor by the employees.

(e) Transportation service rendered by a publicly owned transit system.

(f) Passenger **vehicles** carrying passengers on a noncommercial enterprise basis.

(g) Taxicab transportation service licensed and regulated by a city or county, by ordinance or resolution, rendered in **vehicles** designed for carrying not more than eight persons excluding the driver.

(h) **Transportation of persons between home and work locations or of persons having a common work-related trip purpose in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code,** when the ridesharing is incidental to another purpose of the driver. This exemption also applies to a vehicle having a seating capacity of more than 15 passengers if the driver files with the commission evidence of liability insurance protection in the same amount and in the same manner as required for a passenger stage corporation, and the vehicle undergoes and passes an annual safety inspection by the Department of the California Highway Patrol. The insurance filing shall be accompanied by a one-time filing fee of seventy-five dollars (\$75). This exemption does not apply if the primary purpose for the transportation of those persons is to make a profit. "Profit," as used in this subdivision, does not include the recovery of the actual costs incurred in owning and operating a vanpool vehicle, as defined in Section 668 of the **Vehicle Code**.

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

JAN 17 2007

Ms. Gale Ogawa, Acting Division Chief
California Department of Transportation
Mass Transportation Program
P.O. Box 942874 MS 39
Sacramento, California 94274-0001

Mr. Ronald Hughes
Kings County Area
Public Transit Agency/AITS
1340 N. Drive
Hanford, California 93230

Dear Ms. Ogawa and Mr. Hughes:

The California Department of Transportation (CALTRANS) Mass Transportation Program has posed several questions concerning the implementation of a pilot program designed to provide safe and efficient transportation services to seasonal farm workers commuting to/from the multiple work sites within the Central Valley. Our understanding of the program, which follows, is based on your July 15, 2003 correspondence, meetings between representatives from CALTRANS and Kings County Area Public Transportation Authority (KCAPTA) and Wage and Hour Division (WHD) staff in California, and the sample written agreement between KCAPTA and an individual driver you provided.

KCAPTA has used a federal grant to purchase 50 vans to transport workers to packing sheds/processing plants and to field work sites in the Central Valley. Each van is equipped with a global positioning system chip so that KCAPTA will know the coordinates of each van's location. KCAPTA also has a means for monitoring the speed at which the van is traveling. KCAPTA seeks to limit the vans to a daily roundtrip of 60 miles, but this has been exceeded in some cases. KCAPTA ensures that the vans meet all applicable state and local safety and insurance requirements.

You indicate that it is imperative that the program be financially self-supporting because Kings County cannot subsidize the program. KCAPTA sets a fee to be collected by the van driver from each passenger, and the driver turns over that fee to KCAPTA. The driver does not have to pay the fare for the commute. The driver is not allowed to keep any of the fare money received and must turn over all fares collected to KCAPTA. The maximum fare for rides to packing sheds or processing establishments is \$60 per month per rider and for rides to field sites \$80 per month per rider.¹ Riders receive a fare agreement that details the cost of the ride. To ensure that riders are not being overcharged, KCAPTA conducts unannounced "ride alongs" where its staff will show up

¹ Riders to packing sheds or processing establishments pay \$5 per day for the first three days of the week. After the third day the rider pays no more that week. Riders to field sites pay \$5 per day up to a maximum of four days per week except in the Orosi farm area, where the charge is \$4 per day up to five days a week.

at the end of the workday at the work site and ride home in the agency provided van. KCAPTA staff count the number of riders in the van and compares that number to the log of riders maintained by the driver. KCAPTA also supplies each van with questionnaires for riders to complete.

The driver and riders are allowed to transport their children at the beginning of the day and at the end of the day in the event the driver or workers need to drop their child or children off at a daycare or childcare facility. Similarly, the driver and riders may stop at a grocery store on the way to or from work to buy groceries. The driver may use the van outside of the commute time only for a medical emergency.

KCAPTA has developed a video to promote the program and also markets the program through radio advertisements, tables at flea markets, and talking to workers at work sites and common pay points. KCAPTA has spoken to workers at fields and packing sheds during workers' meal breaks or at the end of the workday. So far, KCAPTA has spoken to workers of approximately fifty of the larger growers in the area. KCAPTA advises workers of the availability of the vans and seeks riders and drivers.

Each agricultural worker who agrees to be a driver must pass a drug screening, have a check of their driving record, have no felony conviction within the past five years, and pass a medical examination. Drivers of vans to packing sheds or processing establishments must possess a Class C license. Drivers of vans to fields must possess a Class B license. All drivers must find a sufficient number of riders in order to keep their van. KCAPTA has established a Web site to facilitate matching riders with drivers and vans. Van drivers agree to check vehicle fluids, pick up riders, and drive the van to and from the work site each workday. Van drivers are not expected to perform any maintenance on the vehicle, but the driver is expected to clean and wash the van. Each driver is to give KCAPTA 30 days' notice if the driver no longer wishes to drive the van. The program encourages having a "back up" driver from each van's ridership in the event the primary driver is sick or cannot drive for a period of time.

Although the program is designed so that participation of drivers and riders is voluntary rather than required or influenced by the employer of the driver or riders, there are no specific program provisions to prevent the employer of a driver or rider from requiring or influencing the employee's participation. There are also no program provisions addressing the participation of farm labor contractors or agents (*i.e.*, foremen or supervisors) of agricultural employers (growers, packing sheds or processing establishments) or agricultural associations.

The two statutes enforced by WHD that are most relevant to this program are the Fair Labor Standards Act (FLSA) and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). The FLSA establishes federal minimum wage and overtime pay requirements for covered employees. MSPA establishes wage, housing, transportation, disclosure, and recordkeeping standards for migrant and seasonal agricultural workers.

MSPA also requires farm labor contractors to register with the U.S. Department of Labor (the Department).

The FLSA recognizes the generosity and public benefits of volunteering and does not seek to pose unnecessary obstacles to *bona fide* volunteer efforts for charitable and public purposes. The Department is committed to ensuring that citizens are able to volunteer their services freely for charitable and public purposes within the legal constraints established by Congress. However, given the information provided, it remains unclear as to whether the drivers of the program vans are *bona fide* volunteers or, in actuality, should be considered employees of Kings County. In defining the term "employee," Section 3(e)(4)(A) of the FLSA states:

The term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State or an interstate government agency, if -

- (i) the individual receives no compensation or is paid expenses, reasonable benefits or a nominal fee to perform services for which the individual volunteered; and
- (ii) such services are not the same type of services which the individual is employed to perform for such public agency.

The Department's regulations indicate that an individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation, or receipt of compensation for the services rendered is considered a volunteer during such hours. *See* 29 C.F.R. § 553.101. Individuals are considered volunteers only where their services are offered freely and without pressure or coercion, direct or implied, from an employer. We are unable to determine whether any of the drivers meets the above statutory and regulatory criteria to be considered a volunteer. The limited use of the van described in your program does, however, appear to be a "reasonable benefit" for the drivers, as envisioned in Section 3(e)(4)(A) of the FLSA. Therefore, the limited use of the vans for personal purposes would not serve, in and of itself, as a basis for concluding that the drivers are not volunteers.

Applying MSPA to your program requires full consideration of the of the statute's purpose, which is "to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers." 29 U.S.C. § 1812.

MSPA establishes certain safety and health standards for the transportation of migrant and seasonal agricultural workers. These transportation standards—which include vehicle safety, vehicle insurance, and driver licensure—impose responsibility on any agricultural

employer (AGER)², agricultural association (AGAS)³, or farm labor contractor (FLC)⁴ that is using or causing to be used any vehicle for providing transportation of such workers. As a government component, KCAPTA does not meet the definition of an AGER, AGAS, or FLC; therefore, neither KCAPTA nor its employees are covered by MSPA's transportation standards.

Vehicle drivers who are considered volunteers (as opposed to employees of KCAPTA) may, however, be covered as farm labor contractors by MSPA § 3(7) if they receive a fee or *valuable consideration* for the transportation, or engage in any other farm labor contracting activity⁵, such as recruiting or furnishing riders to work for agricultural employers or associations.

Review of your correspondence and the sample written agreement indicates that drivers would receive no money/fee for their driving, and their personal use of the van would be limited to personal emergencies. Meetings between KCAPTA and WHD staff revealed that the drivers *and* their riders may also use the van to transport their children to/from day care facilities and stop at grocery stores. Such personal use of a van may, in some circumstances, rise to the level of a *valuable consideration*, thus requiring that the driver meet the applicable MSPA provisions.

Viewed in light of Kings County's special role and humanitarian interest in this program, we will not consider the limited personal use of the van described above to be a *valuable consideration* under MSPA, to the extent that such use of the van to pick up/drop off children and stop for groceries:

1. Is available for all riders, and not limited to the driver; and
2. Occurs only during the home-to-work and work-to-home commutes of the driver and the riders.

With respect to compliance with the MSPA transportation standards, nothing in MSPA is intended to prevent an employer from encouraging workers to participate in voluntary

² "Agricultural employer" means any person who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits hires, employs, furnishes or transports any migrant or seasonal agricultural worker. See MSPA § 3(2).

³ "Agricultural association" means any nonprofit or cooperative association of farmers, growers, or ranchers, incorporated or qualified under applicable State law, which recruits, solicits, hires, employs, furnishes or transports any migrant or seasonal agricultural worker. See MSPA § 3(1).

⁴ "Farm labor contractor" means any person—other than an agricultural employer, or agricultural association, or an employee of an agricultural employer or agricultural association—who, for any money or other valuable consideration paid or promised to be paid, recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker. See MSPA § 3(7).

⁵ The term "farm labor contracting activity" means recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker. See MSPA § 3(6).

arrangements designed to provide safe and efficient transportation. However, if any of the following circumstances is found to exist, the employer (AGER, AGAS, or FLC) of the vehicle driver would be considered to be causing the transportation and therefore responsible for compliance with MSPA's transportation standards:

1. The AGER, AGAS, or FLC employer organizes or helps to organize the transportation;
2. The AGER, AGAS, or FLC employer directs or requests such transportation arrangements or provides money or other valuable consideration for the transportation;
3. The AGER, AGAS, or FLC employer makes such transportation (driving or riding) a condition of employment; or
4. An agent of the AGER, AGAS, or FLC employer (*i.e.*, foreman or supervisor) is a driver and the transportation provided can reasonably be perceived as an activity on behalf of his employer (*i.e.*, all riders of the van driven by the agent work for the agent's employer).⁶

It is important to note that the existence of one or more of the above circumstances may result in a monetary obligation under the FLSA for wages owed to the driver by the employing AGER, AGAS, or FLC.

We trust that the above is responsive to your questions regarding the application of MSPA and the FLSA to the program. You have also asked whether the existence of a written agreement between KCAPTA and the driver would affect the analysis of whether an employment relationship exists. The determination of an employment relationship depends on all the facts of that relationship. Although the existence of an agreement such as the one you provided would clarify the responsibilities and obligations of each party, it would not alter the existence of an employment relationship.

You also asked whether MSPA distinguishes between vehicles used to transport packing shed or processing plant employees to their packing shed or processing plant work sites and vehicles used to transport field employees to their field work sites. With limited exceptions⁷, each AGER, AGAS, or FLC that uses or causes to be used any vehicle to transport migrant or seasonal agricultural workers must ensure compliance with the MSPA's transportation provisions, without regard to the destination of the worker. We agree with your conclusion that the program would not meet the definition of a day-haul

⁶ See WH opinion letter July 17, 1998 (copy enclosed); 29 C.F.R. § 500.103(c); and 61 Fed. Reg. 24681, 24682 (May 16, 1996).

⁷ MSPA's vehicle safety standards and insurance requirements do not apply to the transportation of any seasonal or migrant agricultural worker on a tractor, combine, harvester, picker, or other similar equipment while such worker is actually engaged in the planting, cultivating, or harvesting of any agricultural commodity or the care of livestock or poultry; to any individual migrant or seasonal agricultural worker when the only other occupants of that individual's vehicle are immediate family members; or to *bona fide* carpooling arrangements. See 29 C.F.R. § 500.103.

operation provided the transportation of farm workers to and from their work sites includes only those workers for whom an employment relationship already exists with their field, packing shed, or processing plant employer and does not include those workers assembled at a pick-up point waiting to be hired and employed.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between an employer Wage and Hour Division or the Department of Labor.

The Department supports your efforts in providing safe, reliable, and economical transportation to farm workers in the Central Valley and is willing to assist you with your compliance questions. If you require more information or have additional questions, please feel free to have a member of your staff contact Michael Ginley, Office of Enforcement Policy at (202) 693-0745.

Sincerely,



Paul DeCamp
Administrator



JUL 17 1998

Thank you for your letter requesting clarification of the Department's regulations concerning "carpools" under the Migrant and Seasonal Agricultural Worker Protection Act ("MSPA"), 29 U.S.C. 1801 et seq. The guidance provided in this letter is based only on the facts as stated in the hypothetical situations presented in your letter; any modification in the facts could yield different results under the regulations. Further, the guidance assumes that all other applicable labor standards and safety requirements are satisfied, or are not at issue.

The MSPA and the Department's regulations issued thereunder establish certain safety and health standards for the transportation of migrant and seasonal agricultural workers. These transportation standards -- which include vehicle safety, vehicle insurance, and driver licensure -- impose responsibility on any agricultural employer ("AGER"), agricultural association ("AGAS"), or farm labor contractor ("FLC") which is "using or causing to be used, any vehicle for providing transportation" of such workers. 29 U.S.C. 1841(b)(1). The Department recognizes that bona fide "carpools" are outside the scope of these MSPA requirements, and has provided regulatory and interpretative guidance for the identification of such carpools. 29 CFR 500.100(c), 500.103(c), 500.70(c); 61 Fed.Register 10913-14 (March 18, 1996); 61 Fed.Register 24861-62 (May 16, 1996). A bona fide carpool may exist so long as the ridesharing arrangement is voluntary among the workers using the workers' own vehicles,

yields no more than the cost of the operation for the person providing the vehicle, is not "specifically directed or requested" by an AGAS or AGER and does not include a farm labor contractor as a participant.

You have presented several hypothetical situations involving transportation arrangements. The following responses take into account the specific facts of each situation, as well as your introductory statement that, in all the situations, the vehicle operator is reimbursed for no more than the actual operating costs, the persons designated "C" and "E" are non-supervisory MSPA-covered agricultural workers; and the person designated "G" is an AGER. For some of the situations, as indicated in the responses, the Department in an actual investigation would seek further information in order to have a clearer understanding of the circumstances and make a more conclusive determination as to the existence of a bona fide carpool.

Hypothetical No. 1: C is an employee of G. C gives migrant agricultural workers who are also employed by G rides to and from work each day in C's vehicle. While G knows about this situation, G neither directed nor requested C to allow C's co-workers to commute with C. Is this carpooling as defined under 29 CFR 500.103(c)?

DOL Response: Yes. It appears that this is a totally voluntary ridesharing arrangement among the workers and that G (the AGER employer of the workers) is totally separated from the transportation function.

Hypothetical No. 2: E is an employee of G. E tells F, one of G's foremen, that E needs a ride to and from work. F suggests to E that E ask E's co-worker, C, about commuting with C in C's vehicle. Upon being asked by E, C gives E rides to and from work. Is this carpooling, despite F's suggestions?

DOL Response: Yes. While a carpool would not exist if the AGER or one of his foremen/supervisors were involved in the ridesharing arrangement, an AGER or his foremen/supervisors may encourage workers to make such an arrangement without such encouragement subjecting the AGER to responsibilities under the MSPA transportation provisions. See 61 Fed. Reg. 24858, 24862 (May 16, 1996), Preamble to the MSPA Final Rule

on vehicle liability insurance). Since it is the worker E who has initiated the inquiry, and the foreman F has merely identified another worker C as someone whom E could contact regarding ridesharing, the AGER (through his foreman/supervisor) has not gone beyond encouragement into "causing" the transportation by "specifically direct[ing] or request[ing]" the ridesharing arrangement.

Hypothetical No. 3: Same facts as Hypothetical No. 2, except that F, rather than suggesting that E ask C about riding with C, tells E, "Maybe you should ask one of your co-workers about riding with them." After asking a few of these co-workers about riding with them in their vehicles, C allows E to ride in C's vehicle. Is this carpooling, despite F's suggestion?

DOL Response: As with Hypothetical No. 2, this situation would be a bona fide carpool. The AGER and his foreman/supervisor may encourage the workers to make ridesharing arrangements, without such encouragement subjecting the AGER to responsibility for the transportation under the regulations.

Hypothetical No. 4: G issues a policy stating that while G does not request or direct any employee to ride with any other employee, employees are encouraged to commute to work together in vehicles that are mechanically safe and insured as required by law. In response to G's policy, two of G's employees, E and C, decide to commute together in C's vehicle. Is this carpooling, despite the issuance of this policy?

DOL Response: Same response as for Hypothetical No. 3.

Hypothetical No. 5: L is a crew leader employed by G. The members of L's crew are seasonal or migrant agricultural workers. L tells his crew members in which field rows to work, monitors his crew members' work activities, including their compliance with safety rules and, with the input of each crew member, records for G's records that member's time worked and piece-rate output. L gives some of his crew members rides to and from work in L's vehicle. No crew member is either specifically directed or requested to ride with L. Is this carpooling?

4

DOL Response: This situation would probably be considered to be a bona fide carpool, since L is described as "a crew leader employed by G" but not as a foreman or supervisor (in contrast to other hypotheticals). So long as G (the AGER employer) is totally separated from the transportation function and L is not an agent of G (i.e., not a foreman or supervisor), then L's providing his crew member co-workers with rides would not render G liable under MSPA's transportation provisions. In an investigation with facts such as this hypothetical, the Department would seek further information to determine whether, in fact, crew leader L is an agent of the AGER such that L's activities in operating the ridesharing would be perceived as activities on behalf of G. Pertinent information would include the relationship between L and the workers, the nature and extent of L's authority over the workers, and the workers' perception of the authority which L has been granted by G.

Hypothetical No. 6: G has a policy forbidding supervisors from giving any other employee a ride in the supervisor's vehicle. Despite this policy, S, a supervisor of G, lets seasonal agricultural workers commute to work with him in S's vehicle, although they are neither directed nor requested to do so. Neither G nor any other supervisor of G knows that S is giving employees rides. Is this carpooling?

DOL Response: Based on these facts, this ridesharing probably would not be considered to be a bona fide carpool for purposes of MSPA. The AGER's acknowledged agent -- supervisor S -- provides the shared transportation, which would reasonably be perceived to be provided on behalf of the AGER. The existence of G's policy forbidding supervisors to give such rides would not, in itself, be enough to dispel the agency authority of S to act on G's behalf in this matter. Allowing G to avoid MSPA transportation responsibilities simply by declaring this policy would encourage willful ignorance on the part of the AGER and would frustrate the intentions of the MSPA transportation requirements. In an investigation with facts such as this hypothetical, the Department would seek further information to determine, among other pertinent matters, the nature and extent of supervisor S's agency authority, the means by which the "no rides" policy was communicated to the workers, the extent to which the workers understood the policy and, thus, understood that supervisor S was not acting on behalf

of the AGER in this particular matter despite S's agency authority. It would likely be difficult for the AGER to demonstrate that he had not "caused" the transportation which was provided by supervisor S, even though that supervisor had acted contrary to a stated policy of the AGER.

Hypothetical No. 7: C is an employee of FLC. C gives migrant and seasonal agricultural workers who are also employed by FLC rides to and from work each day in C's vehicle. While FLC knows about this situation, FLC neither directed nor requested C to allow C's co-workers to commute with C. Is this carpooling? If not, is C a farm labor contractor employee [FLCE] who must obtain under 29 CFR 500.40 a Farm Labor Contractor Certificate of Registration authorizing transportation activity?

DOL Response: Yes, the arrangement would be considered a bona fide carpool. The ridesharing appears to be strictly voluntary, to be done for the convenience of the workers involved, not done at the direction or request of the FLC, and not an arrangement in which the FLC participates. Inasmuch as this arrangement is considered carpooling, then C is not engaging in these transportation activities on behalf of the FLC, and is therefore not deemed a farm labor contractor employee who must comply with the FLCE registration requirements.

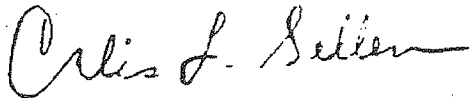
Hypothetical No. 8: L is a crew leader employed by FLC. The members of L's crew are seasonal or migrant agricultural workers. L tells his crew members in which field rows to work, monitors his crew members' work activities including their compliance with safety rules and, with the input of each crew member, records for FLC's records that member's time worked and piece-rate output. L gives some of his crew members rides to and from work in L's vehicle. No crew member is either specifically directed or requested to ride with L. Is this carpooling? If not, is L a farm labor contractor employee [FLCE] who must obtain under 29 CFR 500.40 a Farm Labor Contractor Certificate of Registration authorizing transportation activity?

DOL Response: This arrangement probably would be considered a bona fide carpool, as was the similar arrangement in Hypothetical No. 5 (where the person providing the rides is

an employee of an AGER, rather than of an FLC). It appears from the facts as stated that the FLC has no involvement in the ridesharing arrangement. As a practical matter, it would seem that such a situation would be unlikely to occur, since the FLC -- in his efforts to assure that the work crew is available at the time and place needed by the AGER -- would usually or ordinarily be involved in organizing and overseeing transportation such as ridesharing provided by crew leaders such as L. If crew leader L were providing ridesharing for workers on behalf of his employer FLC, then crew leader L would be required to comply with the FLCE registration requirements and the FLC would be responsible for all MSPA obligations concerning transportation. In an investigation with facts such as this hypothetical, the Department would seek additional information to determine, among other pertinent matters, the nature and extent of the communications between the FLC, L, and/or the workers regarding the means by which the workers will reach the site of work. In addition, in an investigation where the Department determines that the ridesharing was provided or caused by the FLC, the Department would seek further information to determine whether the AGER has met his affirmative obligation to take reasonable steps to determine that the FLC is authorized to perform each activity for which the contractor is utilized (including transportation) (29 U.S.C. 1842); this AGER responsibility would be independent of any AGER responsibility based on his own involvement in the transportation through "causing" the transportation by "specifically direct[ing] or request[ing] the arrangement (29 U.S.C. 1841). See Metzler v. Lykes Pasco, 1997 WL 420450 (S.D. Fla. Apr. 14, 1997) (the court enjoined AGER to take reasonable steps under § 1842 to insure that the FLC was engaging in authorized transportation activities, even though AGER was not directly responsible for transportation under § 1841).

I trust that this response satisfactorily addresses your concerns. If you have further questions, please feel free to have a member of your staff contact Michael Hancock, Office of Enforcement Policy, Farm Labor Team, at (202) 219-7605.

Sincerely,



Corlis L. Sellers
National Office Program Administrator

From: "Martha Guzman" <guzmanCRLAF@aol.com>
To: <rhughes@co.kings.ca.us>
Date: Wed, Oct 27, 2004 4:54 PM
Subject: FW: Update on AITS Driver Criminal Citation

Great news!

California Rural Legal Assistance Foundation
2210 K Street, Suite 210
Sacramento, CA 95816

-----Original Message-----

From: Jeff Ponting [mailto:jponting@crla.org]
Sent: Wednesday, October 27, 2004 2:18 PM
To: ALEGRIA DE LA CRUZ; MARTHA GUZMAN; MICHAEL MEUTER; JACK DANIEL
Subject: FW: Update on AITS Driver Criminal Citation

fyi

Jeffrey T. Ponting
Directing Attorney
Indigenous Farmworker Project
California Rural Legal Assistance
P.O. Box 1561
Oxnard, CA 93032

Telephone: (805) 486-1068, ext. 227
Facsimile: (805) 483-0535 (fax)

The information contained in this e-mail is attorney privileged and confidential and is intended only for the use of the individual or entity named below. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly forbidden. If you have received this communication in error, please immediately notify us by telephone at (805) 486-1068.

-----Original Message-----

From: Anne Hipshman [mailto:AHipshman@dir.ca.gov]
Sent: Wednesday, October 27, 2004 2:19 PM
To: 'Millan, Jose@Labor'; 'Mark Schacht'
Cc: 'Jeff Ponting'
Subject: RE: Update on AITS Driver Criminal Citation

I reviewed the contract. In Section 14, it states that the driver shall forward sums of money collected from riders. It also states that "[d]rivers may not collect any monies or fares in excess of the above fees established by KCAPTA and may not accept any monies from any other source (including any company or employer) for transporting workers in the vehicle covered by this Agreement."

Based on this contractual requirement, as I told Mark yesterday, the driver is not receiving a fee for transporting, but rather collecting a fare for a county transportation operation. He therefore, should not be required to be licensed as an FLC, day hauler. The only remaining question is how to communicate this information to the Kings County DA and court.

Anne Hipshman

Assistant Chief Counsel
(415) 703-4868 - Telephone
(415) 703-4806 - Facsimile

-----Original Message-----

From: Millan, Jose@Labor [mailto:Jose.Millan@labor.ca.gov]

Sent: Wednesday, October 27, 2004 1:51 PM

To: 'Mark Schacht'

Cc: 'Jeff Ponting'; Anne Hipschman

Subject: RE: Update on AITS Driver Criminal Citation

I'll ask Anne to get in touch with Jeff as soon as she's completed her review of the file.

-----Original Message-----

From: Mark Schacht [mailto:email@markschacht.com]

Sent: Wednesday, October 27, 2004 1:50 PM

To: 'Millan, Jose@Labor'

Cc: 'Jeff Ponting'

Subject: Update on AITS Driver Criminal Citation

Jose,

I'm told by counsel for Mr. Cervantes (the driver in the Kings County Area Public Transit Agency matter), that the matter WAS NOT on calendar today, but is now set for December 8th.

I spoke with Anne Hipschman yesterday, who indicated that if the driver was keeping the \$\$ he collected for driving --which he ISN'T-- then she'd find him to be a day hauler; otherwise, she believed he shouldn't have been cited. (Jeff Ponting sent her a copy of the KCAPTA contract yesterday afternoon, which should have resolved the matter, since it is clear that the driver merely collects the riders' payments and then forwards them to KCAPTA.) Hopefully, the DA will be notified of this decision as soon as it is made, so that Mr. Cervantes can be told at the earliest opportunity that he is in no legal jeopardy.

I am going on vacation tomorrow until the 15th. In the interim, could you possibly email Jeff with the results of Anne's evaluation? (He'll forward them on to Mr. Cervantes' counsel, and well as to the little group here at CRLA/F working on this issue.)

Thanks for your help on this. I'll call you when you get back (on the 22nd) and we can set something up for a meeting with us on meal/rest period issues.

Mark

Mark S. Schacht
Deputy Director
California Rural Legal Assistance Foundation
916-446-7901,x-18
510-835-2478

Ventura County Agricultural Association

916 W. VENTURA BLVD., CAMARILLO, CALIFORNIA 93010
PHONE (805) 388-2727 • FAX (805) 388-2767
www.vcaa-ag.org

VOLUNTARY PARTICIPATION IN ALTERNATIVE COMMUTE PROGRAMS

An employee who voluntarily participates in a government-mandated or government-sponsored alternative program is not considered as acting within the course and scope of his or her employment while utilizing the program, unless the employee receives wages or salary for the period of travel.

Such a program is the Kings County Area Public Transit Authority Vanpool Program (more commonly referred to as the KCAPTA Vanpool Program). The KCAPTA Vanpool Program has been in operation throughout California for a number of years servicing employers throughout the State's agricultural industry. Mr. Ron Hughes is the Executive Director of the King's County Area Public Transit Authority Vanpool Program located at P.O. Box 209, 1340 North Dr., Hanford, California 93232. The website is www.calvans.org and Mr. Hughes may be contacted at (559) 582-3211, extension 2696 or 3596. His e-mail address is ron.hughes@co.kings.ca.us. His toll-free number is (866) 655-5444.

The KCAPTA Vanpool Program is a low-cost alternative to agricultural employers and farm labor contractors alike, who have agricultural employees experiencing difficulty in getting to work because of the lack of or cost of available private or public transportation. The concept of the program is that an agricultural employee of the company agrees to serve as the driver of one of the KCAPTA Vanpool vans. Additional

BOARD OF DIRECTORS

Brian Edmonds, Chairman • Glen Hasegawa, Vice Chairman • Ben Vazquez, Secretary • David Martinez, Treasurer
Steve Gill • Susan Josue • Henry Vega

Serving Agriculture in Ventura and Santa Barbara Counties Since 1970

workers within the company (fellow employees) may obtain rides to and from work in the licensed van that is provided through the KCAPTA Vanpool Program.

Each vanpool driver is licensed and insured. All vehicles are equipped with geographic positioning systems (GPS) and first-aid kits.

Vanpool riders set the schedule. This provides workers to the worksite on a timely basis and employers know that a vanpool program results in decreased worker absence which increases overall productivity and profitability.

Vanpool riders share the cost of the ride to work. One low monthly fee covers the cost of the van use, as well as fuel, maintenance and insurance. Vanpool riders pay a modest monthly fee significantly lower than the cost of other transportation options. Volunteering their time, drivers are exempt from the monthly fee.

Participation in the Vanpool Program helps decrease traffic congestion, improves the valley's air quality, and provides additional protection to employers with respect to accidents occurring going to and coming from work. Each van has liability insurance up to \$10 million.

Enclosed is a more detailed explanation of the Program, as presented by Mr. Hughes.

Such a program is specifically recognized in California Labor Code Section 3600.8, effective January 1, 1995. According to sub-section (a) of section 3600.8:

“a. No employee who voluntarily participates in an alternative commute program that is sponsored or mandated by a government entity shall be considered to be acting within the course of his or her employment while utilizing that program to travel to and from his or her place of employment, unless he or she is paid a regular wage or salary in compensation for those periods of travel...”

Pursuant to sub-section (b):

“b. Any alternative commute program provided, sponsored, or subsidized by an employee’s employer in order to comply with any trip reduction mandates of an air quality management district or local government shall be considered a program mandated by a government entity. An employer’s reimbursement of employee expenses or subsidization of costs related to an alternative commute program shall not be considered payment of a wage or salary in compensation for the period of travel...”

Thus, there are two compelling reasons for a company’s employees to be involved in such an alternative commute program:

1. An employee traveling to and from work is not considered to be in the course of their employment, unless paid a wage or salary in compensation for the periods of travel; and

2. The employer reimbursement of employee expenses or subsidization of costs related to the alternative commute program are not considered a payment of wage or salary in compensation for the period of travel.

Revenue and Taxation Code Section 17149 specifically excludes from an employee's gross income any compensation or fair market value of any other benefit, except salary or wages, received by an employee from an employer for participation in any ride-sharing arrangement in California. These include, but are not limited to, commuting in a vanpool, carpool, or use of an alternative transportation method, other than a method otherwise specified in Section 17149(b), that reduces the use of a motor vehicle by a single occupant to travel to or from that individual's place of employment.

Under this scenario, an employer could reimburse the employee for the day-to-day cost of commuting in the KCAPTA Vanpool Program and such compensation would not be considered as wages. [See enclosed sample "Transportation Fringe Benefit Voucher".] Thus, all travel time in the alternative vanpool program going to and coming from work would not be considered to be in the course and scope of the employee's employment for workers' compensation purposes. More importantly, the same van could be used during the work day to provide transportation to different field or orchard locations. However, such transportation would be considered to be within the course of the employee's employment for workers' compensation purposes and for applicable travel time pay at no less than the California hourly minimum wage rate. An alternative to such travel required during the work day would be to have the employees report only to

one fixed location for the entire work day or to release workers to return home once work is completed at the initial worksite.

One of the caveats contained in Section 3600.8 (a) states that: "An employee who is injured while acting outside the scope of his or her employment, or his or her dependents in the event of the employee's death, shall not be barred from bringing an action at law for damages against his or her employer as a result of this section."

Furthermore, the Legislature added a declaration of intent noting that "It is the intent of the Legislature in enacting Section 1 of this act only to declare existing law and to clarify, and not to expand, limit, or otherwise alter the ability under existing law of any employee, or his or her dependent, to bring action at law for damages".

Thus, employees who are injured while participating in the KCAPTA Vanpool Program either going to and coming from their daily place of employment would retain the right of a private cause of action against the KCAPTA Vanpool Program which is insured up to \$10 million per vehicle. Presumably, such a cause of action could potentially involve either a lawsuit against the driver for negligence, as well as a third-party driver who may have caused the accident resulting in injuries suffered by a participating employee in the Vanpool Program.

It should be noted that the KCAPTA Vanpool Program has received approval from the U.S. Department of Labor as a *bona fide* carpooling arrangement between the workers themselves, thereby protecting agricultural employers, agricultural associations and

farm labor contractors from potential statutory liabilities under the **Migrant and Seasonal Worker Protection Act**, as amended [29 U.S.C. Sections 1801, et. seq.; see also 29 C.F.R. Sections 500.70(c); 500.103(c); and 500.120].

In conclusion, participation in the KCAPTA Vanpool Program serves the dual purpose of protecting employers from unnecessary workers' compensation claims arising during travel to and from a daily worksite, as well as from potential claims of unlawful transportation of agricultural workers by supervisory employees under MSPA and applicable California laws.

Transportation Vouchers and Transit Passes: A Flexible and Accountable Option for Employers

If you are looking for a way to help employees cover commute costs but want to ensure effectiveness and accountability, transportation vouchers and transit passes may be the perfect solution.

Transportation vouchers are tickets or coupons that eligible riders give to participating transportation providers in exchange for a ride. They may be applied toward fully or partially subsidized rides on public transportation or through a vanpool or carpool. The person or company providing the ride then submits the vouchers back to the employer for payment, allowing the employer to account for all vouchers provided to employees. Vouchers can be numbered for maximum accountability and can be distributed in monetary denominations, valid for one or multiple trips.

Vouchers may also be used in conjunction with Guaranteed Ride Home (GRH) programs (see Fact Sheet #13). Using vouchers eliminates the need to have cash on hand to pay for the service. Employees receive vouchers either when they first register for the program or on the day a ride home is needed. The vouchers are used to pay for the service, and the program sponsor then reimburses the service provider.

Transit passes can also be used to access public transportation or shared ride options (e.g., vanpools, carpools). These generally have a time limit (e.g., one week, one month), as opposed to a monetary or per-trip limit.

Benefits to Your Business

Like other means of contributing toward employees' commuting costs, vouchers and passes may be treated as an employee benefit and qualify a company for tax incentives through the Qualified Transportation Fringe Benefit program. Businesses can deduct up to \$230 toward the value of any passes or vouchers provided or sell them to employees directly or through a pre-tax payroll deduction and deduct the employees' costs up to that same amount. (See Fact Sheet #6 for more on these tax benefits.)

Vouchers and Passes in Action

Some employers have partnered with local transit agencies to distribute passes to employees instead of providing them directly. For example, in Louisville, Kentucky, Humana, Inc. implemented a pass program for employees as a way to reduce the company's use of limited downtown parking and respond to employees' desires to reduce vehicle emissions and save on gasoline costs. Passes are provided through a partnership with the Transit Authority of River City. Humana's costs are offset by company savings resulting from providing fewer subsidized parking spaces. Furthermore, the partnership has garnered extensive positive media coverage and enabled Humana to position itself as a leading employer in Louisville and all the markets where it does business.

The Charlotte Area Hotel Association, in partnership with the Charlotte Area Transportation System (CATS), acts as a conduit for member hotels, purchasing bulk passes from the transit agency at a discounted rate. Each member hotel then makes the passes available to workers either through payroll deductions or by reselling them

The "Transportation Toolkit for the Business Community" gives businesses the information they need now to assist their employees in achieving a timely, cost-efficient commute that promotes their productivity and job satisfaction. View other fact sheets and resources at www.ctaa.org/transportation_to_work for information on how to access transportation-related tax benefits, partner with local providers to find answers to employees' and customers' transportation needs, become part of a transportation management association, and more.

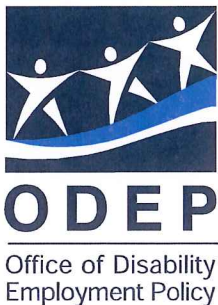
This toolkit was created by the Community Transportation Association of America's Joblinks Employment Transportation Initiative—serving communities since 1993 in solving employment transportation issues.



at the same discounted rate. Employees can purchase passes for themselves as well as family members.

Other employers have designed programs in partnership with transit agencies that accept employee IDs as passes that can be used not only for travel to work, but also to non-work-related destinations. (See the Profiles of Employer-Sponsored Transportation Programs for additional information on other innovative company initiatives.)

The Joblinks "Transportation Toolkit for the Business Community" was created with funding from the Office of Disability Employment Policy, U.S. Department of Labor, through a cooperative agreement between the Community Transportation Association of America and the Federal Transit Administration. The opinions and conclusions expressed herein are solely those of the authors and should not be construed as representing the opinions or policy of any agency of the federal government. May 2009.



Attachment H
California Vanpool Authority
1340 North Drive
Hanford, California 93230
(559) 582-3211 ext: 2696

To Whom It Concerns;

This vanpool meets the definition for a vanpool vehicle as stated in Section 668 of the California Vehicle Code.

A "vanpool vehicle" is any motor vehicle, other than a motortruck or tractor, designed for carrying more than 10 but not more than 15 persons including the driver, which is maintained and used primarily for the nonprofit work-related transportation of adults for the purpose of ridesharing.

This vehicle is not a Farm Labor Vehicle. Per Section 322 (c) (2), it is being operated under specific authority granted to a transit system by an authorized city or county agency.

The driver of this vanpool has signed an agreement with California Vanpool Authority to operate this vanpool in a nonprofit manner. The driver has a Class C license, carries proof of a Class B medical, and maintains in the vehicle a signed statement or declaration per Section 12804.9, j.

Drivers of vanpool vehicles may operate with class C license but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool, the driver shall keep in the vanpool vehicle a statement, signed under the penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or hit-and-run offense in the past five years.

This vehicle is maintained and serviced so as to meet the requirements found in AB 550 and Section 34509, a through e, of the Vehicle Code.

Vanpool vehicles, as defined in Section 668, and vanpool vehicles when used for purposes other than traveling to and from work location and transporting not more than 10 persons not including the driver, shall be exempt from the regulations adopted pursuant to Section 34501, except that the following shall apply:

- (a) The vanpool shall be equipped with an operable fire extinguisher which is of the dry chemical or carbon dioxide type and an aggregate rating of at least 4-B:C and which is securely mounted and readily accessible.
- (b) The vanpool vehicle shall be equipped with a first aid kit, conforming to the minimum requirements for school buses. First aid kits shall be readily visible, accessible, and plainly marked "First Aid Kit."
- (c) The vanpool vehicle shall be regularly and systematically inspected, maintained, and lubricated in accordance with the manufacturer's recommendations, or more often if necessary to ensure the safe operating condition of the vehicle. The maintenance shall include, as a minimum, an in-depth inspection of the vehicle's brake system, steering components, lighting system, and wheels and tires, to be performed at intervals of not more than every six months or 6,000 miles, whichever occurs first.
- (d) Operators of vanpools shall document each systematic inspection, maintenance, and lubrication, and repair performed for each vehicle under their control. Required records shall include services performed, the person performing the service, the date, and the mileage on the vehicle at the time of the repair. The record shall be maintained with the vehicle for one year, and shall be presented upon demand to any authorized representative of the California Highway Patrol.
- (e) Vanpool vehicles being operated pursuant to the exceptions specified in this section shall display, upon the rear and sides of the vehicle, a sign or placard, clearly visible and discernable for a distance of not less than 50 feet, indicating that the vehicle is being used as a vanpool vehicle.

Detail maintenance and repair records are maintained and available at the office of California Vanpool Authority. A summary of routine maintenance and inspections is kept in the vehicle.

This vehicle, driver and its occupants are covered by a \$10,000,000 insurance policy number PHPK311727, issued by:

Philadelphia Indemnity Co. / Mackey & Mackey Insurance Co., Attn: Jim Mackey, 450 Kings County Dr., Hanford, CA 93230

For question concerning the operation of this vanpool contact Ronald Hughes, Executive Director for California Vanpool Authority.