



Citizens' Oversight Committee Meeting Minutes

Meeting No. 4 – Scheduled Meeting	Meeting Date September 13, 2007			
Meeting Time 4:30 – 6:25 p.m.	Recorded By A. Charles			
Attendees: <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;"> Members: B. Barksdale R. Jee G. Miller C. Paul </td> <td style="width: 33%; vertical-align: top;"> Alternates: H. Franklin </td> <td style="width: 33%; vertical-align: top;"> Staff: R. Avery A. Charles D. Cummins T. Green T. Horton K. Mayo S. Ng </td> </tr> </table>		Members: B. Barksdale R. Jee G. Miller C. Paul	Alternates: H. Franklin	Staff: R. Avery A. Charles D. Cummins T. Green T. Horton K. Mayo S. Ng
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Agenda Item	Action Taken			
<i>Welcome & Introduction</i>	Introduction of Members, Alternates, and Staff present.			
<i>Public Comment</i>	No comments.			
<i>Review of Administrative Matters:</i> <i>Review and Approval of June 8th Meeting Minutes</i>	COC members voted unanimously to formally adopt the minutes from the February 13 th meeting.			
<i>Overview of Internal Auditing & Grant Compliance</i>	T. Green provided an overview of the Internal Audit Department. The Internal Audit Department Manger is under the Executive Manager of Transit System Compliance. The internal audit department manager reports to the BART General Manager and is independent of the project activity. This office performs financial and performance audits, using the government auditing standards established by the Government Accountably Office (GAO). They also provide liaison support for independent audits other than those performed by the single auditor or by the state board of equalization. The department prepares and annual audit plan based on assessment of risk, existence of other oversight and past experience. They also respond			



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to requests for audit support by executive staff and department managers. There are required audits, such as the annual audit of use of BART property by the BART Board of Directors and contract support audits.

The audits that have been performed for the earthquake safety program have been primarily to meet funding agency contracting requirements and to support cost for price analysis. They also advise on contract language to help comply with funding agency requirements and to get auditable business provisions in BART's contracts.

Audit liaison is a significant part of the departments workload related to capitol projects. BART is audited frequently by funding agencies such as the Federal Transit Administration (FTA), the Department of Homeland Security (DHS), Caltrans and the Metropolitan Transportation Commission (MTC). These audits are done to verify BART compliance with the provisions of the funding agency grant agreements and the accuracy of costs used to get reimbursement. BART pays project costs and uses those costs as justification to draw down the funding sources. Currently there are five audits underway by outside agencies: DHS, Lawrence Livermore Laboratory, MTC RM2 funds (additional \$1 from bridge tolls), Caltrans, and the MTC tri-annual performance audit required by the State of California. The department also responds to whistle-blower types of allegations from BART Employees, contractors and the public.

R. Avery provided an overview of the Grant Compliance. Grant Compliance is responsible for oversight of the spending to ensure that the funds are spent consistent with the requirements of the funding source.

Each funding source is segregated in BART's financial management



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system and is assigned a stand alone fund number. This is a record that is recorded from the subsidiary ledger to the capital sub ledger, tying into the general ledger system with the assistant controller's office. Once source documents are received by Grant Compliance giving BART the authority to recognize the new funding source, transactions are set up by grant compliance and the assistant controller's office to provide checks and balances for the transactions. The assistant controller's office associates the fund number with the various cost centers and accounts that are entitled to charge against the funding source. After that a summary cost estimate is received from the project side. There are 10 different types of budget categories describing the type or nature of the work done by the project. The budget categories are used to set up the control records in the capitol sub ledger reports.

The project then can begin to initiate labor and non labor project activity on the account. Non labor activity includes purchase requisitions and check requests. Labor activity necessitates a request to set up a charge number for staff to charge against. Grant Compliance is the only group that has the authority to set up, open or close capitol work orders. After a contract is awarded, Grant Compliance receives the conforming contract documents. Invoices related to any non labor procurement activities are reviewed by Grant Compliance after the project has verified that the work has been performed satisfactorily. Grant Compliance back checks that the use of the funds is appropriate for the funding source. Each item is reviewed from a pre encumbrance side when the work order is initially set up and signing off on purchase requisitions and after the encumbrance to review the invoices before they go to accounts payable.



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The Capital Subsidiary Ledger (CPR 200) report document is a key document for the assistant controller's office. It is viewed as a fundamental back up document to support BART's reimbursement requests to local, state, regional and federal agencies. The information on this report goes to the work order level and is fairly detailed.

COC Members asked for clarification on the name of the report. The name of the report is the CPR 200. A consistent account reference would be a subsidiary ledger or capital sub ledger.

The CPS 200 is always sorted by the fund number, so every thing related to a specific fund would be in one location.

COC Members asked how the CPR 200 would work for this project. For the GO Bond there is a fund number set up to capture all of the monies for the bond and underlying projects. As the project initiates activity, each activity is reviewed to ensure that it is consistent with the use of the fund source then an approved work order is signed and sent to the purchasing department. In the controller's office, the accounts payable department records expenditure posting, which serves as another check and balance.

COC Members asked when Grant Compliance reviews the invoices, what do they do to assure that the request is inline for the request for payment. There is a dedicated analyst that reviews the requests from the project to ensure that it has the correct authorizing signature. Back up document associated with the request for action is reviewed as well.

COC Members asked who is responsible for ensuring that the invoice reflects the amount of progress that has happened on the job. The project team is responsible for determining that. The authorizing signature on the invoice tells Grant Compliance that the project has



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reviewed the charges and determined that the invoice reflects the work done. The COC Members asked if there was any qualitative review of what the invoice represents done by Grant Compliance. As far as substantiating that the work was done satisfactorily, that is the project's job. The Grant Compliance department reviews the detailed documentation to ensure that no inappropriate charges are included. As work orders are completed they are closed out to maintain commitment control of the project. This is done in conjunction with the project team. There are month end reports done at the end of each accounting cycle where the Grant Compliance department reviews all of the work orders to confirm that all charges are valid and that there are no aberrations that need to be addressed.

The way that BART runs its business on the capital side is that there are many checks and balances with the project serving their role, Grant Compliance serving as an intermediary between the project and the assistant controller, and procurement handling the pre-award. K. Mayo added that each group is under a separate executive office. T. Horton added that all of these measures are in addition to what the funding agencies require.

The COC Members asked if any audits had occurred by the funding groups to date. At the previous meeting S. Schraeder had discussed the single audit, which is a key audit for BART. Even though it is driven by the federal and state funding agreements it tests our internal systems and process are sound.

The COC Members asked if there are audit procedures and check lists that are used when auditing the projects. The Grant Compliance department creates an audit program which reflects the scope, nature and purpose of the audit and results in a check list.

The COC Members asked the representatives from Grant Compliance



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and Internal Audit to summarize their responsibility as the auditors for the program.

The work that Internal Audit department has done for Earthquake Safety Program to date includes contract audits to ensure that the contracts meet the funding agency requirements They have also assisted with cost for price analysis to make sure what BART is paying is fair and reasonable. This analysis uses the FAR cost principals.

The COC Members asked if the Internal Auditing or Grant Compliance departments had reviewed the minutes from the COC meetings, and if so what did they think of the suggestions and comments that had been made so far to fulfill their goals and responsibilities. Neither department has reviewed the minutes. The COC members clarified that while they think they know what they are doing it might be helpful to have an objective eye on what they've done so far. K. Mayo indicated that the project had not asked internal audit to review the COC minutes but we could certainly ask them to do that. The COC members concurred that it would be a good idea. K. Mayo clarified that what the COC was asking for was to have Internal Audit review the COC's charge and to have them review the minutes of the meetings to make some assessments. COC members asked to have internal audit review the materials for an assessment on if they are following their responsibilities as directed by the charter, if the suggestions they've made are worthwhile and that they are aimed at the objectives of the project. They also asked for information on if there are any areas where the audit team feels they are deficient. The COC members commented that they have an idea of what they're charged with doing and that they are attempting to get a nuts and bolts understanding of the project in order to do that. The issue of using an audit came up in a previous meeting, and they asked for a



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presentation by the controller. After that they asked for a presentation from the internal audit department to determine how they can tap into the resources available to satisfy them that they are really doing their job in oversight by relying on what internal audit is doing. If there was an issue that they felt they needed to delve into the COC members wanted to know how they would go about doing that and how they could they get their concerns addressed in the ongoing audits or a specific audit? From this presentation today it is clear that there is a lot of internal audit and internal control activity going on for the project. If the COC could get some visibility on internal audit and grant compliance's findings in relation to this project that might satisfy some of their concerns and help with completing their duties. For example, a number of audits were mentioned today and a number of controls that are in place for this project. Are there audit reports written or something the COC could get access to or get a verbal report on these audits. To date, the COC has been in the planning stage, and as we move forward the COC's interest internal audit activity will be much greater as much more of the bond money will be expended. Internal audit suggested that the COC continue to work with BART staff to communicate their needs and to clarify what the scope of an audit would be to present what would be most useful to the COC. K. Mayo indicated that the funds that have been spent to date have been BART labor and consultants doing the environmental and design work. Internal audit work has been primarily on doing preaward audits. K. Mayo indicated that she gets a report on all of the audits that internal audit performs for the project. If the COC would like to see what those look like we can provide sample copies to the members. COC members asked how many audit reports there would be, if there would be one for each of the contractors. T. Horton



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indicated that smaller firms don't need to be audited, and if a firm has recently had an audit that complies they don't need to be re-audited. Internal Audit indicated that there are two types of contracts: service contracts and construction contracts. Service contracts are for firms such as architecture and engineering, which do work on a cost reimbursement basis. At the beginning of the contract internal audit reviews the rates and at the end of the project they go back in and determine what the actual rates and costs are. Construction contracts are awarded on a fixed price basis. Internal audit only gets involved if there is a large claim or change order to be negotiated and for cost for price analysis. The COC members asked if the construction contracts were firm fixed price or unit priced contracts. T. Horton indicated that there are some unit price line items in the contracts, but over all the contracts are firm fixed price. The COC members indicated that in retrofit work it is sometimes difficult to tie down what the unit prices are tied to. K. Mayo indicated that there will be allowances for the conditions. Internal audit explained that audit work in those areas is more systemic and process oriented. COC members asked if internal audit is using BIM (Business Information Management), a system to prepare a 3D or 2D plan view/estimate. The estimate can then be used to monitor and track work on the project. BART does not use this system. The COC members asked about the cost reimbursement contracts and if they are not to exceed. Internal audit indicated that they are. The COC members commented that they feel pretty good about the process and the checks and balances that BART has in place. The COC members asked if there would be a report or if it would be put in the minutes that they are comfortable with the information presented. R. Avery explained that in the triannual annual audit there is a section called technical capacity which looks at the



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	<p>internal control structure. T. Horton added that on the contracts side, they do a fairly exhaustive review. T. Green added that the single auditor uses the Government Auditing Standards, which requires them to evaluate BART's compliance with the funding agreements and the internal reporting structure. These two items are reported on separately as part of the overall single audit package. COC Members R. Barksdale and R. Jee asked to see a copy of the triannual audit and the last single audit. In the future the COC might want to see an audit of one of the contracts impacting the project.</p>
<p><i>Discussion of presentation to BART Board of Directors</i></p>	<p>In June the Chairman R. Barksdale provided a presentation to the BART Board of Directors on the Committee's findings to date. An electronic copy of the report was provided to all COC members after the presentation. R. Barksdale commented that the presentation seemed to be well received and that the BART Board made comments in appreciation of the COC members' efforts. K. Mayo added that the BART Board members are very appreciative of all the work that the COC members have done.</p>
<p><i>Discussion Regarding 2008 – 2010 COC Board Recruitment</i></p>	<p>Project staff provided an overview of the plan to recruit COC members for the 2006 – 2008 term. All of the COC members and alternates are eligible to reapply. The COC members and alternate present were given an application package. Additionally, project staff will be opening up the application process to previous applicants who were not selected for a seat, as well as the chambers of commerce, local universities, professional services organizations and the local public libraries. Chairman R. Barksdale commented that he believes that we should be able to get interest from professional organizations such as the Project Management Institute and the ASCE. Applications are due November 16, 2007. More applications are available on the BART</p>



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	<p>website. K. Mayo commented that it would be nice to have some continuity on the board and encouraged the current members to reapply.</p>
<p><i>Project Update: Completed Activities</i></p>	<p>Project Staff provided an update on the project activities. Completed activities include completion of the environmental clearance. COC Members commented that it appears that on the schedule that item was to have been completed earlier. Project staff that there was a delay to clearance. The project has received and is reviewing the 100% design of the Ferry Plaza area. The 95% design of the Transbay Tube, however the scope is still not finalized as we might be able to reduce the scope of the retrofit. On September 21 a centrifuge test is scheduled at UC Davis to test the liquefaction and will tell if there are some areas that might not need to be retrofit. The COC member asked if this is a scale model. Project staff added that there would be additional testing done in October, and once completed will give a good idea of what the conditions are along tube. The 95% design assumes retrofits to the entire length of the tube, and the project staff will simply remove the portions of the design that do not need to be retrofit based on the results of the testing.</p> <p>Final design of the Aerial Guideways in Segment 1 has been completed. This contract has been split into two contracts; one contract for major portions and another for the Port of Oakland UP Trackwork. The Port of Oakland work is going to be time consuming. The project has received the 65% design submittal for the Rockridge and West Oakland Stations. Preliminary Engineering for the rest of the system is nearly complete. COC Member asked if there were any surprises. Project staff indicated that there were not many. For the most part there have been reductions, but primarily the areas that need additional retrofit are the aerial stations.</p>



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	<p>The LMA Dismantling project has constructed a radio tower to relocate antennas from the top of the former BART headquarters. Additionally, that project has completed 30% design submittal of the hazardous materials abatement plan for the building and dismantling plan. COC member asked if the building has been vacated. Project staff indicated that the above ground floors have been vacated and the building is fenced off.</p>
<p><i>Project Update: Current Activities</i></p>	<p>The project team is wrapping up preliminary design for everything outside of segment one. The project is receiving strategy reports for preliminary engineering of the stations retrofits for stations outside of segment one. The LMA project team is working on the 60% design submittal for the hazardous materials abatement and the dismantling plan. Most of the segment one elements are in final design. The project team hopes to advertise some of the contracts before the end of the year. The COC Members asked about the retrofit for the Ferry Plaza and if the number of piles had been reduced. Project staff that there are currently no piles and that all of the work is inside the tube. The project will be placing thrust blocks inside the joint so that as the joint closes it will close in a controlled manner and spread the force around the joint instead of hitting hard points. The COC members asked if there was a better foundation than they thought. Project staff commented that the soils were considerably better than the project anticipated. K. Mayo added that it took some specific site testing to determine this, and some fancy analysis. She added that the project team impressed upon the design consultants that they should look for opportunities to save money. Therefore the project has spent more time on the design, but it is paying off in savings. K. Mayo pointed out that on the schedule there are some things that are slipping but the point to be made is that we are taking a little more time and refining</p>



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the scope. COC members asked about tsunamis and how high water would have to be to get into the tube on the Oakland side. The project staff reported that they consulted with the team who had done tsunami modeling in the bay and given the position of the portal and the walls around it the height of the water will not overtop the wall. There may be a possibility of water getting into the transition structure. The tsunami that is most likely is in the Seattle area. The COC members asked about getting a chance to review of retrofit of the Transbay Tube and the terminal joint. The project staff informed the COC members that the joint is a security sensitive item. If the COC members are interested in coming in to get a presentation and review the documents project staff can arrange that, however they cannot take the reports with them. The COC members indicated that this would be fine. Project staff will set up a time for the COC members to come in to review the materials. Project staff reported that the challenges with the contract now are mostly with scheduling work time and access. The spec designer is working on determining how it can be assembled onsite with smaller pieces due to the constricted space.

The project team has negotiated with all of the section designers for final design. Initially teams were only brought on for preliminary engineering because there were several options for the retrofits. Now that options have been chosen the project team has negotiated final design. The team has also finished negotiating the procurement of construction management consultants. The last two contracts are scheduled to go to the BART Board in October. The project will then begin staffing up the construction management function and begin advertising construction contracts this winter. Once this happens the team will be releasing construction contracts until 2009. The LMA



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	<p>team has awarded the contract for the design of the dismantling of the Lake Merritt Administration Building. The LMA team also advertised an elevator contract; however they did not get any responsive bids. The team is working on repackaging the contracts and re-releasing. The COC members asked if the elevator contract was to redo the elevators in the station. Project staff explained that the contract is to modify the freight elevator, which currently goes from the street to the below ground floors of the LMA building, to serve as a passenger elevator for BART employees. Once the building is dismantled the internal elevators will go away. The COC members asked if the problem with the contracts was that they couldn't get anyone to do the elevator work. The project team responded that there were clauses in the contract the bidders were unable to meet some of the requirements. The contract also included isolating some of the utilities such as HVAC so that the air supply to the lower levels is separated from that of the main building. The COC members asked what would be put on the plaza after building is removed. The project staff replied that nothing would be put there and that it will be restored to a flat plaza. The project team has no plans for that space after dismantling. K. Mayo added that BART will work with the City for development of the area in the future.</p> <p>There is no construction currently. The project team anticipates that there will be construction activity in 2008.</p>
<i>Financial Report Review</i>	<p>The project staff reviewed the financial report for the Bond Funds. The current expended amount is \$65 million, compared to \$39 million in February. The project is spending money at a fairly rapid pace and as the project moves into construction it will go even faster. The project team has expended the first \$100 million tranch. The second</p>



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traunch for \$400 million was issued in last month, for a total of \$500 of bonds issued of the \$980 million the project is authorized. Recently the FHWA did a cost verification of the program costs. This was a three-day exercise where the FHWA determined that the budget is reasonable. The COC members asked how long the \$400 million traunch would fund the project. The project team estimated that those funds would last approximately 3 years. The COC members asked if the FHWA cost verification exercise was just for the bond funds or for the entire project. Project staff replied that the FHWA looked at the full \$1.3 billion budget for the entire program. The project staff explained that the exercise was similar to a risk analysis. They reviewed specific risks by contract or activity and asked what the minimum and maximum costs would be, run a simulation, and compare that to the budget.

The project team pointed out several items on the financial report.

- The Transbay Tube San Francisco Ferry Plaza is now budgeted at \$0 in bond funds. This will now be funded by RM 2. The COC members asked why the project was being funded from this source. Project staff explained that RM 2 money can only be spent on the tube, so it was better for the project to spend the RM 2 money for that retrofit and to save the bond fund for the entire system. COC members asked if the other funds for the project are being borrowed or if they are grants from different agencies. The project staff responded that RM 2 is the bridge toll money, and that the MTC might have to bond for some of the money. COC members asked how much money was forecast for the Ferry Plaza. Project staff responded that the current dollar value is about \$15 million.
- The Transbay Tube Uplift retrofit has increased to \$101 million.

The project team is looking at ways to reduce the cost of the retrofit so the number could likely be reduced.

- The third party agreements, consultant, staff and miscellaneous expenses estimate has increased to \$174 million. Anytime there is a reduction in the cost of an item the amount is moved to the management reserve line item, which is currently about \$50 million. The management reserve is included in the third party agreements, consultant, staff and miscellaneous expenses line item. The COC members indicated this was consistent with a comment at a previous meeting about maintaining a contingency fund as a "bank account" of reserve funding. K. Mayo indicated that the project team has been building up the account with funding saved during the design process. She also reminded the COC members that there is construction contingency based on the amount of risk, 6% escalation, and on top of this the project team is building a management reserve. T. Horton added that the FHWA noted this and feel that BART is using good practices. BART typically starts out with a pretty high contingency percentage and then it is reduced as the project progresses.

The COC members asked what the plan would be for the last traunch of funds. Currently it looks like BART is under running. Will BART estimate how much under they will be and then issue the bonds for only that amount? T. Horton indicated that in three years when the next traunch would need to be issued most of the contracts will be issued so the project will have a pretty clear idea of how much money will be needed.



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There are slippages on the schedule for various reasons. The tube slippage has occurred due to continuing efforts to analyze the design, which has resulted in lowered costs. The Ferry Plaza schedule will be shorter as the scope has been reduced. The Transbay Tube Uplift retrofit scope may also be reduced, which will reduce the duration of the contract. The result is that many of these contracts will end within the baseline schedule. The main delay on the West Oakland and North Oakland Aerial Structures is the approval from Caltrans and FHWA of construction funding. The design for these two contracts is not on the critical path, however the Right of Way Certification is and it cannot begin without approval of that funding. The COC members asked if any of the ROW would require demolition of any property. T. Horton responded that no, these are all temporary easements. K. Mayo indicated that the process is evolving and has become something of a moving target. New regulations are being added that BART has to react to and comply with as they are put in place by Caltrans and FHWA. For the other aerial guideways the delays shown are due to the environmental process taking longer than anticipated. In some cases, the work will not take as long as originally estimated. The project schedule is still firm at this point, with completion date in 2013.

The aerial stations portion has seen slippage, but will not impact the over all schedule. The yards and shops schedule has lengthened as well, as there are more buildings that need work than previously anticipated. Also, there is the added complication of having to work around the active railroad. The systems and secondary structures slippage is due to the time needed to do a through walk down of the 15,000 individual items included. The



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duration has not changed, only the start date. A number of things that have been found so far are not retrofit issues but procedural issues. Those issues are turned over to the maintenance team. The COC members asked how the project team would address the communications. If there is a problem on one end of the tube how is that communicated to the rest of the system. The project team does not get involved with emergency response; that is part of a separate effort that is part of a Bay Area wide effort. However the project team will make sure that the communications systems are maintained. T. Horton reminded the COC members that the retrofit is for operability for the core portion of the system. The COC members asked if derailing was part of the analysis. T. Horton indicated that the trains have a very low center of gravity so they will not pitch over the edge. There is a design element in the cars that will not allow for a jack knife of the cars. The critical condition for the structures is without the trains.

Notable items from the Construction Contracting Status Report is that the Oakland Vent structure is complete. Construction managers for a number of the contracts have been selected. The COC members commented about the purchase of Washington Group by URS. They asked if that could lead to a problem for the project. T. Horton indicated that it could only be a problem

The COC members asked if the contracts require a dispute resolution board. K. Mayo indicated that BART has been more successful with medication. R. Barksdale indicated that he would like another copy of the Work Breakdown Structure and that he would like to share that with the other members. He also



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	<p>commented that the engineering costs are about 15% of the total estimated costs. T. Horton indicated that this is a little higher than they'd like, but because of the costs savings that have been achieved it has been worth it. The COC members asked about the organization chart from 2006. T. Horton indicated that there is an updated version.</p>
<i>Selection of Future Meeting Time and Date</i>	<p>The COC members discussed having an additional meeting before the end of the term. T. Horton indicated that between now and February 2008 there will not be a lot of major activity. R. Barksdale asked if the majority of the group would like to come together to view the transbay tube information. The best date would be in the middle of 2008, as a number of contracts will be let by then. C. Paul asked about the transition to the new committee. The committee discussed having the next meeting as a transition meeting with the new members, possibly in mid-2008. T. Horton suggested scheduling a session on the tube work, then scheduling a transition meeting in 2008. The COC members selected May 29, 2008 for the transition meeting. R. Jee suggested that the new board might need to have an orientation meeting before the transition meeting. The COC members asked for clarification on what the internal audit team would be doing for their review of the COC's minutes and reports. R. Barskdale suggested that he would like to know that someone has overseen what the COC is doing and that what they've suggested are constructive comments toward meeting their goals.</p>
<i>Request to Add Items to Future Meeting Agenda</i>	<ul style="list-style-type: none">□ Transition to new board members.
<i>Public Comment</i>	No comments.
<i>Adjournment</i>	Meeting was adjourned at approximately 6:25 p.m.



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