



# THE FARMWORKER'S Roadway to Employment



The History of the Agricultural Industries Transportation Services

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# The Farmworker's Roadway to Employment

## Introduction

Just as the sun peaks over the horizon to dimly light the fields of California's Central Valley, as many as 400,000 men and women have already begun their day. They most likely traveled in darkness dozens of miles from their homes to reach their destination. California's rich agricultural industry depends on the ability of these workers to safely and consistently arrive on time as often as six days a week. Fertile fields of various crops and orchards span miles and miles of area not serviced by any form of public transportation. Working hard, but earning little, few farmworkers operate their own vehicle. How then will they get to work?

*"Kings County introduced the Valley's first vanpool program Wednesday that will ultimately serve more than 100,000 farmworkers, enabling them to ride safely to and from work in certified vans."*

So began the article appearing in the Business Section of the Thursday, April 25, 2002 edition of The Fresno Bee. In reporting the Kick-off Celebration, which introduced the Agricultural Industries Transportation Services (AITS) program to the public, the article quoted Assembly Member Dean Florez, who said, "You're not going to find these buses and vans anywhere else in California, or in Florida, or Texas or Arizona, where they also have farmworkers."

Seven years after its official launch, AITS has yet to be replicated on a grand scale because of the legal and logistical hurdles encountered along the way by Ron Hughes, Executive Director for Kings County Area Public Transit Agency. (KCAPTA) "We need to document the history and practices of the program," said Hughes as the AITS project began its sixth year, "and educate others on how to develop and operate their own."

The need for safe and affordable farmworker transportation remains a major concern in many agricultural communities, and yet the remedy already exists. The consistently reliable and fiscally responsible AITS program successfully addresses these previously unmet transportation needs in Central California, and can serve as a model for the entire nation.





## The Vision for AITS

### A Need Identified

As with many brilliant ideas, a heralding event sparked the vision for AITS, but the concept took time to ignite. In the morning light of August 9, 1999 near the town of Five Points, thirteen farmworkers died in a tragic accident involving an unsafe van with wooden benches in place of factory-installed seats. At that time, farm labor vehicles were often modified in this way to accommodate as many riders as possible. The state legislature responded immediately to these unsafe conditions. On September 28, 1999, AB 1165 and AB 555 were enacted to remove unsafe vehicles from California roadways: AB 1165 required seat belts in all vehicles used to transport farmworkers, and AB 555 established a registry of farm labor vehicles and increased penalties for safety violations. The California Highway Patrol did not wait for this legislation to act. Just ten days after the Five Points fatalities, officers inspected 166 vehicles carrying farmworkers. They found 101 dangerous vehicles and ordered 36 off the roadways immediately. Then on September 1, 1999 an additional 31 non-compliant vans were sidelined.

“The California Highway Patrol did an excellent job of fining vehicles and taking unsafe cars and vans off the road, but the problem was that folks still had to get to work, and they were still riding around in unsafe conditions,” Hughes said, calling attention to the need for alternative transportation.

Following the accident in Five Points, the California State Department of Transportation convened a large public Hearing in Fresno to gather information from as many sources as possible to determine a strategy for preventing future accidents. At the time KCAPTA was operating a bus for farmworkers traveling

between the city of Avenal and Paramount Farms, and was seeking to establish a vanpool between Avenal and Keenan Farms, a pistachio farm located about 20 miles northwest of Avenal. Caltrans was aware of the success of KCAPTA’s bus program, and invited Ron Hughes to speak at the Hearing about his experience in providing farmworker transportation. Following the Hearing, Hughes received a letter from the State DOL explaining that the vanpool he sought to establish was illegal. Hughes’ proposed vanpool program violated labor laws governing farmworker transportation. Simply put, workers were prevented from paying any money—even to reimburse the driver for fuel—unless the driver was a registered Farm Labor Contractor. Unlike the average commuter, farmworkers were prevented from forming vanpools due to both State and Federal DOL laws governing how farmworkers may travel to work.

Following the Hearing, a number of public meetings were convened to gather information on how to legally provide safe transportation for farmworkers. At each of these meetings, Hughes suggested the State fund a vanpool project that would push the existing envelope, potentially creating new methods of farmworker transportation. Soon after, Caltrans approached Hughes suggesting his idea for a vanpool project be incorporated into a pilot vanpool project funded through both State and Federal governments.

As early as December 1999, the Governor’s office approached KCAPTA staff and requested assistance in finding an effective solution for farmworker transportation. By the end of March 2000, the Caltrans Division of Mass Transportation set out to prepare and submit a grant application for funds to establish a pilot vanpool project. The spark had begun to smolder, but a full two years would elapse before AITS would fan into flame.

In May of 2001 KCAPTA received a letter to confirm the intent of Caltrans to provide the appropriated and fully authorized funds from the Federal Transit Administration Job Access and Reverse Commute program with matching funds from California’s Public Transportation Account. By Summer 2001, these agencies had contacted the State and Federal DOL for their input.

Funds were received in November, followed by hiring necessary staff and purchasing vehicles. Everything

for the AITS pilot project was in place for their April 2002 project roll out. Four buses and 48 fifteen-passenger vans were purchased and outfitted. Drivers were recruited and trained. Potential riders were targeted and informed. And government approval was sought. But red tape threatened to shut down the pilot program even before it began to roll. Just days prior to the official kick-off, Hughes received a phone call from the Federal Department of Labor requesting a meeting to discuss the AITS project.

## The Birth of AITS

The AITS project had the simple goal of providing qualified farmworkers with the means to transport themselves and others to work in a shared ride vanpool vehicle.

In its infancy, AITS consisted of two elements. The first centered on providing (via a lease agreement) properly insured and fully maintained vans to qualified drivers who would offer rides to other farmworkers for a predetermined amount. The second involved employing farmworkers as part time drivers to drive buses between large agricultural centers, where they were already employed, and neighboring communities. Any abuse would be reported and result in the driver losing use of the van or the job as a bus driver.

The van driver would have collected a fee comparable to the one commonly paid by most San Joaquin Valley farmworkers traveling to the fields. He would have paid the monthly lease payment for the van out of the fees collected, and would have earned the difference as compensation for becoming a certified driver, keeping the van clean and fueled, and taking on the responsibility of picking up and delivering his fellow farmworkers on time. The lease agreement between the driver and AITS would have prohibited the driver from forcing his riders to purchase additional products from him, such as food or sodas at an inflated price, and from requiring riders to cash their checks at a market charging high fees and then sharing proceeds with the driver.

“Our goal is to establish a safe transportation system for farmworkers and achieve self-sufficiency,” said Hughes in an early press release. “If it can generate enough money to pay for the administration, maintenance and replacement costs, we’ll be able to continue indefinitely and produce a model that can be used in other communities.”

As early as September 2000, David Cabrera, Program Manager for Caltrans, submitted a letter to the Department of Labor detailing the project and asking for a prompt response. In the months leading up to the project start date in April 2002, AITS and Caltrans representatives contacted Al Weaver, the State Deputy Labor Commissioner and Tony Perrou, District Director, U.S. Department of Labor, Wage and Hour Division. AITS representatives sent a project outline and scope of work to both agencies and requested input in an effort to avoid any problems. Each gentleman stated his support for the project, but neither could address specifics at that time.

Then in April 2002 as AITS staff prepared for their official kick-off, Perrou contacted Hughes requesting a meeting. After having discussed the project with his counterparts, Perrou remained supportive. However, he indicated the primary element of the farm labor van project was illegal, and therefore impossible to implement. According to





federal law, a farm labor van driver may only charge for his expenses. He may not profit in any way. In addition, if the riders earn minimum wage, federal law prevents them from paying any money for their ride. Thus the driver may not only be prevented from collecting money to cover his expenses, but would have to provide a free ride. This law made sense back in the late 1930's when it was written. At that time the farmers, who paid the minimum wages, operated the vans charging the fees. They benefited by employing their farmworkers for even less than the minimum wage. Today, other laws are in place to keep the farmer from profiting by providing his laborers with rides to his fields. This has resulted in a farmworker transportation system that operates contrary to DOL requirements, because no one is willing to give a free ride. Interestingly enough, if most existing laws governing farm labor transportation were actually enforced, a large number of vehicles carrying farmworkers would be in violation.

The DOL and AITS representatives eventually settled on a way to move forward. They agreed the farm labor van traveling to the fields could be classified as a carpool vehicle if the driver did not receive a profit and if he—together with his riders—paid an equal share of the expenses. They also agreed the driver—in addition to being certified and insured as originally planned—would have to classify his van as a farm labor vehicle and would therefore be required to obtain certification as a Farm Labor Contractor under California Department of Labor Laws. However, with vans traveling to agricultural packinghouses or processing plants, the driver would not be required to pay a share of the expenses, nor be classified as a farm labor vehicle.

Regarding AITS' second element, the bus operation,

the DOL was concerned about clearly defining the bus driver's employer. If the packinghouse dictated hours of operation and the bus planned its arrival and departure times accordingly, the packinghouse could easily be mistaken as the employer. AITS agreed to establish a regular route to the packinghouses. Whenever a packinghouse adjusted its hours, their representative would contact the transit dispatcher, who would then direct the bus driver to make alterations to the route. This method of communicating properly identified AITS as the actual employer of the bus driver.

The meeting between the DOL and AITS representatives certainly settled legalities. But while it may have provided solutions for transportation to the packinghouses, the expectations and expenses required of drivers traveling to the fields remained cost prohibitive. Finding drivers willing to put in the extra time to undergo a medical exam and background check, pick up fellow workers, fill the fuel tank and wash the van while making the same financial contribution as the riders proved both unappealing and difficult. But finding one willing to pay the exorbitant fee to become a Farm Labor Contractor, when he is merely interested in safe and reliable transportation, proved impossible.

Fortunately AITS found a loophole. Under the Federal definition of a carpool, all riders take turns driving their own cars. Additionally, each rider—including the driver—contributes money to cover expenses. However, the law does not prevent one person from driving all the time. In fact, it allows one person to drive a 15-passenger carpool. In the end, the same people would receive transportation to work in the fields, and the fees collected would cover operational costs with no profit for the driver. But proceeding along this path proved unstable. Few agricultural employees trusted such a vague classification. Especially since drivers of AITS vanpools were not required to contribute any money. KCAPTA permitted this one exception to the law because they considered driving, collecting payments, and keeping the van clean as contribution enough. (KCAPTA waited six years for the FDOL to affirm this position.)

To make matters worse, the Federal Department of Labor was not the only government agency to interject glitches into the AITS project. Existing California law also came into play.

“When this all started,” said Glenn Bailey of the Division of Mass Transportation for Caltrans, “we were unaware of some of the labor codes that were imposed upon us.”

California Labor Code section 1682.3 states the term “farm labor contractor” includes any day hauler. “A day hauler means any person employed by a farm labor contractor to transport, or who for a fee transports, by motor vehicle, workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person.”

Because the AITS driver would collect fees from riders—even though the money merely covered operational expenses and did not profit the driver in any way—the loosely classified “vanpool” under federal standards must once again be defined as a farm labor vehicle under California law. Nevertheless, AITS believed they found another loophole. According to Section 322. (a) of the California Vehicle Code, “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.”

AITS Staff believed vans traveling to the field transporting *less than* nine riders including the driver, would no longer be considered farm labor vehicles under California law, but rather shared ride vanpools. The AITS vans were immediately modified to comply with the state’s definition of a vanpool. And yet, with tens of thousands of farmworkers in need of safe and reliable transportation, the practice of pulling perfectly good seats out of fifteen-passenger vans hardly seemed sensible.

Reflecting on the early days of attempting to develop this totally new area of transportation, Bailey said, “If it hadn’t been for the political pressure from the governor’s office on through the Business, Transportation and Housing Agency, the effort never would’ve gotten underway.”

The force of new legislation regulating farm labor vehicles and the support of the Central Division of the California Highway Patrol in removing unsafe vehicles from the road magnified the ongoing need for safe and reliable transportation for farmworkers. Even as Bailey worked with internal Caltrans staff to research federal grants to develop a farm labor transportation program, Ron Hughes and his team grew more and more determined to bring the advantages offered by the AITS project to the farming community they call home. Providing transportation to farmworkers produces benefits reaching far beyond the boundaries of vegetable fields and fruit orchards. For every dollar in revenue produced on the farms, another \$3 is generated in spin-off industries in the Central Valley.

“We live in one of the nation’s top agricultural producing valleys,” Ron Hughes said during the development phase of the AITS project. “And if we’re going to keep the economy healthy here, we need a viable workforce to work in the fields. And to do that we have to respond to farmworkers’ needs for safe and reliable transportation.”

Hughes and Bailey met in early 2001 and began working together to achieve their common goal.

“I’ve been in state government for over 27 years,” said Bailey. “And Mr. Hughes is one of the few people I’ve met, who cared so much about the safety and well-being of these workers, that he had the tenacity and perseverance to push through and get this project going.”





## The Implementation of AITS

With a semblance of state support and nothing more than silence from the federal government, the AITS project idled forward. As the first of its kind in the nation, this vanpool program—targeted exclusively at farmworkers and administrated by a public agency—learned much through trial and error.

### Moving Forward

With a degree of anticipation and a greater measure of determination, Ron Hughes and his new, specially assigned AITS staff stepped up their marketing efforts. They explored a variety of methods to get the word out about the program. Some were more effective than others. Tracking response from advertisements placed on Spanish radio and television proved difficult. The expense to produce and broadcast commercials could not be justified, so this method of advertising was abandoned early on.

In 2003 KCAPTA developed a video to promote the program specifically to employers and companies involved in the farming industry. Over time KCAPTA sent representatives to as many as fifty of the larger growers in the area. Visits to packing sheds and even field locations provided opportunities to speak with workers during meal breaks or at the end of the workday.

The most efficient means of recruiting new drivers and informing potential riders turned out to be through the face to face contact initiated at flea markets. AITS staff set up a booth on a regular basis at outdoor markets in rural communities, and distributed information in both Spanish and English.

As with any new idea, trust in the program was earned over time. Farmworkers were reluctant to drive because of the time-consuming driver's license requirements and the lack of compensation. Packinghouses and growers shied away from promoting AITS, afraid their recommendation may subject them to exceptions under the "Going and Coming Rule"<sup>1</sup> and a host of other liabilities.

The biggest stumbling block continued to be the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), which was enacted to "provide for the protection of migrant and seasonal

### Legal Challenges

With the complexities of complying with federal and state laws and vehicle codes, Hughes retained the services of Spencer H. Hipp, labor attorney for Littler Mendelson of Fresno, California. After a thorough investigation, Hipp wrote in December 2002, "The lack of federal and state case law in the areas of interest to the AITS project also tends to inhibit the bold and innovative steps envisioned by the AITS project."

With the legality of the entire program in question, the attorney concluded, "...my recommendation is that the Kings County Area Public Transit Agency seriously consider requesting a formal opinion from the Secretary of Labor (U.S. Department of Labor) and from the California Division of Labor Standards Enforcement/California Attorney General's Office."

Letters were drawn up and sent, but the USDOL failed to respond. In an email dated November 24, 2003 to Debbie Mah, Division Chief and Jim Conant, Senior Transportation Planner, Division of Mass Transportation, California Department of Transportation, Glenn Bailey requested assistance in extracting a response from USDOL and wrote, "More and more agricultural growers and processors are not only now aware of the AITS project, but are also openly supportive. The one caveat or concern they voice is—where does the USDOL stand on this issue of transportation services being provided by a public or non-profit entity? Ron Hughes deserves an answer from USDOL so that the AITS project can move forward without fear of repercussion or sanction from USDOL over potential farmworker labor law violation(s)."

<sup>1</sup> The Going and Coming Rule protects an employer from liability for injuries that may occur while an employee is in route to or from the employer's job site. An exception is made to this rule if the employer provides transportation and / or a company vehicle.

agricultural workers and for the registration of contractors of migrant and seasonal agricultural labor and for other purposes.” While stifling the growth of an innovative transportation program for farmworkers was never intended as one of the “other purposes” of MSPA, the AITS program was forced to operate without documented approval from the U.S. Department of Labor.

AITS also forged ahead in spite of the gray area surrounding portions of the California Labor Code, until an unfortunate citation brought about a positive outcome. On August 31, 2004 the State Division of Labor Standards (DSLE) issued a citation to an AITS vanpool driver at a roadside inspection. Mr. Cervantes, an AITS driver for two years, was traveling from his home in Madera to a farm in southern Kings County, where he worked as a tractor driver, when he encountered the roadside inspection. The DSLE informed Mr. Cervantes they were conducting a survey. They asked if he was traveling to work at a farm and if he was collecting any money. Mr. Cervantes responded affirmatively, and identified himself as a driver for the AITS vanpool project. He explained he collected only the money specified by KCAPTA and sent it in as required.

The California Highway Patrol officers conducting the inspection were familiar with and supportive of the AITS program. Secretary Sunne Wright McPeak of the Business, Transportation and Housing Agency would later write in a Governor’s Action Request, “Victoria Bradshaw, Secretary of Labor & Workforce Development Agency, as well as other state Department of Industrial Relations staff and federal Department of Labor staff, were present at the roadside inspection. Lt. Ray Madrigal of the CHP SAFE Unit informed KCAPTA that he pleaded with Secretary Bradshaw not to issue the citation, informing her that the AITS van was a legitimate operation actively supported by the CHP.”

Mr. Cervantes later reported to KCAPTA staff that he could have easily avoided the roadside inspection. Most of the vans on the roadway that day knew of the inspection and turned off at the intersection preceding the inspection site. Mr. Cervantes approached the inspection with confidence, assuming his status as an AITS van driver met with State approval.

Even with Mr. Cervantes’ explanation and the CHP’s validation, Secretary Bradshaw of the DSLE did cite the AITS vanpool driver, because he readily admitted collecting \$5 per day from his riders. Referencing section 1683 of the Labor Code, the citation mentioned an “unlicensed day hauler transporting farm laborers to work for a fee.” Bradshaw gave Mr. Cervantes a one-inch thick packet of documents, and told him he was in violation of the State farm labor laws and would have to come into compliance.

At the time KCAPTA understood AITS vans were considered shared ride vanpools *not* day haulers because they transported fewer than nine workers. (Mr. Cervantes van contained only nine seats.)

Mr. Cervantes contacted KCAPTA, who discovered their driver had been directed to court in Kerman. KCAPTA asked State DOL representatives to explain why Mr. Cervantes’ 9-passenger van had been cited. When the State responded that the number of seats did not matter, KCAPTA framed a hypothetical question: Would a motorcycle with a sidecar be considered a day hauler if the driver collected gas money from the rider? The State responded affirmatively. The motorcycle driver would be required to register as a Farm labor Contractor to receive any money for





providing farm labor transportation to the rider in his sidecar. At this point the State suggested KCAPTA attempt changing the law if they wanted to move forward.

With representation by a volunteer from California Rural Legal Assistance (CRLA,) Mr. Cervantes went to court. Given the uncertainty of the situation, the item was continued for a later date. Representatives of CRLA worked diligently to build a case to defend Mr. Cervantes.

Eventually Secretary Sunne Wright McPeak of the Business, Transportation and Housing Agency became involved. Her Summary statement to the Governor's Action Request (GAR) mentioned earlier concluded with, "If the court finds the driver guilty, the vanpool service will be shut down and the farmworker community will be left with unsafe and unpredictable transportation." The GAR also pointed out the AITS project was initiated by a \$3 million federal grant and \$3 million in matching funds from the State Public Transportation Account. If the state went forward with assessing the \$1500 fine, the AITS program would be terminated and a \$6 million investment would be wasted.

The state turned to legal counsel who, upon reviewing the contractual agreement between KCAPTA and their vanpool drivers, established a precedent completely releasing AITS from "day hauler" status.

Attorney for the State of California Industrial Relations Labor Standards Enforcement Division, Anne Hipsham, wrote on October 27, 2004 in an email to California Rural Legal Assistance Directing Attorney, Jeff Ponting, "Based on this contractual agreement... 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 case against the AITS driver was thrown out when the District Attorney and the court agreed that the driver was not collecting a "fee" for profit, but a "fare" on behalf of a public transit authority. This decision delivered an unexpected benefit: the number of seats was not a determining factor in the case. KCAPTA gladly and rapidly reinstalled the missing seats, and drivers began filling their vans with more riders.

## More Obstacles

In its first year, just one AITS bus was transporting farm labor commuters from Avenal to Paramount Farms each day, and nine of the original 48 fifteen-passenger vans purchased with the government grants were in operation. Together they provided 140 workers with rides to packinghouses and agricultural fields throughout Kings County. By the end of 2004—with all fifteen seats intact and the purchase of an additional 75 vans—over 1100 farm laborers safely arrived via AITS vans to agricultural employment sites all over the fertile San Joaquin Valley. Thirty-one vans were operating in Fresno County, 21 in Tulare County, 6 in Madera County, 2 traveled to Wasco, and the original nine vans in Kings County had multiplied to 23, making a total of 83 AITS vans in operation.

With the increased level of support from the state of California, word began to spread about the success of this innovative pilot program. In 2002, AITS vans shuttled commuters to and from work in Kings and Tulare Counties. Within a year vanpools were operating in Fresno County as well. Kern County came on board in 2006, and AITS expanded into Madera County in May 2007. More recently, KCAPTA was asked to expand and set up operation in Ventura County and in the Salinas Valley from Gilroy to Greenfield.

"It helps employees get to work much quicker," said Maria G. Flores, employee relations coordinator for Paramount Farms in Bakersfield. "Many employees were having transportation issues. Now, employees pay a smaller fee to use the vanpool. It's easier for them and it helps improve morale since they don't have to worry so much about the financial hardships of getting to work."

Even with this growth and success, issues large and small continued to plague this young and “first-of-its-kind” program. The greatest concern—AITS still lacked federal approval from the DOL.

In an email dated December 23, 2003, Glenn Bailey of Caltrans wrote a summary of a meeting he attended with Ron Hughes of KCAPTA, Leslie Rogers, Regional Administrator for the United States Department of Transportation (USDOT) Federal Transit Administration (FTA), and Paul Page, Community Planner for the USDOT FTA. In it Bailey referenced the “barrier AITS still encounters due to USDOL’s stance on the applicability of MSPA.” The email pointed out that farm owners, the Nisei Farmers League and the Western Growers Association were “aware and supportive of the AITS project but want USDOL (Washington, D.C.) clearance (i.e., AITS is legal, not subject to MSPA) which KCAPTA cannot provide at this time. Their ultimate fear is that without such specific clearance USDOL can/will fine the farm owner for allowing AITS vans to transport farmworkers to their fields.”

Bailey also noted “Paul reported that he had recently conferred with John Leben of USDOL in Washington, D.C. regarding the July 15, 2003 letter drafted by Spencer Hipp (labor attorney), and co-signed by Jay Norvell and Ron Hughes. Mr. Leben indicated that he had just received the letter on 12/4/03 and had 2-3 weeks to draft a response which would then be subject to review by management.”

The letter to Mary Ziegler of the Office of Enforcement Policy, Farm Labor Team, USDOL posed three questions regarding the legality of AITS. First, KCAPTA and Caltrans noted that the DOL’s position regarding a carpool or vanpool designation hinged on the nature of the arrangement between the participants. Therefore the letter queried, “To the extent that the van is provided to a packing shed employee or to a farm worker employee (not an employee of KCAPTA or CALTRANS), would it change the D.O.L.’s analysis if there were a written agreement between KCAPTA and the individual van driver?”

In other words, KCAPTA wanted to know if the agreement signed between them and their drivers separated the driver from his/her role as an employee of the farmer and any responsibilities as a Farm Labor Contractor (FLC).

Second, the letter clarified the role of the van driver, who would collect a fee from each rider and turn over all receipts to KCAPTA, ensuring the AITS program would be self-sustaining. The question was posed whether this action would be considered a farm labor contracting activity. KCAPTA needed clarification on whether or not the transit agency and/or its volunteer drivers would be required to register as an FLC.

And third, the USDOL was asked to consider releasing the driver from any obligation to pay his/her portion of the monthly fee due to the in-kind services provided as an AITS volunteer.

Additionally, the letter confirmed only existing employees would join the vanpool and asked the USDOL to acknowledge that AITS does not meet the definition of a “day-haul operation.” According to the USDOL, a “day-haul operation” provides an assembly of workers *waiting* to be hired with transportation to a *potential* job site.

Since AITS vanpools only transport *existing employees*, this important





distinction needed to be made.

A Santa Barbara News article written by Melinda Burns and Camilla Cohee on February 29, 2004 reported on the absence of and the need for farmworker transportation in agricultural communities such as theirs. They mentioned AITS, the only program of its kind, and its struggles to gain momentum. “It is funded with state and federal grants and hampered by a tangle of red tape.”

The authors quoted Glenn Bailey of Caltrans regarding the ongoing difficulties with obtaining a go-ahead from the federal government. “It’s absurd and complicated,” Mr. Bailey said. “The growers know the heart-wrenching situation that’s out there in the field. But it’s been a very slow process in getting the Department of Labor to respond. It should not have come down to the situation we’re in now.”

Ron Hughes, Executive Director for Kings County and innovator of AITS, diligently assembled an ever-thickening file folder of email correspondence, meeting memos, photocopies of letters to various government officials, and status reports. But a response from the USDOL would not be added to that file until January 2007.

The long-awaited formal opinion arrived in a positive letter from Paul DeCamp, Administrator for the USDOL Wage and Hour Division. Highlights of his letter include the pronouncement that “neither KCAPTA nor its employees are covered by MSPA’s transportation standards.”

The letter also stated, “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 arrangements designed to provide safe and efficient

transportation.”

The DOL Administrator concluded his letter with, “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.”

When this letter was finally received, AITS had been in operation for close to five years, slowly building a fleet of certified vans and filling them with satisfied farmworkers. Nearly 6 1/2 years had passed since David Cabrera, Program Manager for Caltrans, first submitted his letter to the Department of Labor detailing the project and asking for a prompt response. At long last—with approval and support from both state and federal government—AITS could confidently market this program directly to agricultural employers, who would no longer hesitate recommending this program to their employees.







## The Operation of AITS

government-owned van, and the responsibility of driving would belong to a contractually bound, KCAPTA-approved driver.

### Logistics and Monitoring

As mentioned previously, the AITS program was made possible with funds from state and federal government grants. However, this money was never intended to cover the cost of continuing the program. To succeed over time, AITS had to be both self-sustaining and affordable. Fares were established based on total miles driven each week, and posted in all vans to ensure adherence.

Each driver is required to collect the predetermined amount directly from his/her riders and remit all payments to the AITS office on a weekly basis. Operators of vanpools fill out an “AITS Weekly Payments” report and include it with their payments. They record their name and van number at the top along with the date. The report form provides spaces for drivers to list each passenger’s name, and place a check by each day they received a ride that week, followed by the amount the driver collected from them.

AITS drivers learn that the consequences of straying from the established fee schedule could not only lead to losing the privilege of operating a vanpool, but could also make them liable for noncompliance with the provisions set forth in MSPA and subject them to stiff fines.

Each driver understands and agrees to:

- *Not* charge (or collect from) any vanpool riders any monies or fares greater than the fee established by KCAPTA.
- *Not* be paid by or accept any monies from any employer or company for transporting workers in an AITS vehicle.
- *Not* require any workers, as a condition of employment anywhere, to ride in a vanpool vehicle.
- *Not* offer any inducement(s) to, or receive any inducement(s) from any vanpool riders for transporting the vanpool riders in a vehicle covered by the KCAPTA agreement.

### The Start of Something New

According to a February 2006 report prepared by Martha Guzman of the California Rural Legal Assistance Foundation, AITS success is largely due to its unconventional nature.

“Unlike most conventional county transit programs, but much like other vanpool programs,” the report begins, “AITS drivers are not county employees, they are agricultural workers. This is one of the significant factors that has made AITS efficient and successful in meeting the transit needs of agricultural workers. Having agricultural workers provide their own transit routes facilitates meeting unconventional schedules, location pick-ups and destinations, and many other unique transit parameters for the agricultural worker.”

The AITS vanpool program truly is unconventional. Its vehicles are *not* farm labor vehicles as defined in Section 322, c, 2, of the California Vehicle Code. A farm labor vehicle does not include “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.”

Instead, AITS vans meet the definition for a vanpool vehicle as stated in Section 668. “A vanpool vehicle is any motor vehicle, other than a motor-truck 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.”

Unlike typical ridesharing arrangements—where all riders take turns driving their own vehicles—the riding would occur in a specially assigned

The mileage categories are as follows:

Miles Traveled Each Week	Weekly Fee
Less than 300 Miles	\$25.00
Between 301 and 500 Miles	\$30.00
Between 501 and 600 Miles	\$35.00
Between 601 and 700 Miles	\$40.00
Between 701 and 800 Miles	\$45.00
Between 801 and 900 Miles	\$50.00
Between 901 and 1,000 Miles	\$55.00
Between 1,001 and 1,100 Miles	\$60.00

Each driver is responsible for filling his/her vanpool with a minimum of eight riders plus one driver to remain self-sustaining. Fees for each category range from \$25 to \$60 weekly. With an average of 11 riders, vanpools generate between \$1,100 and \$1,800 per month. This amount consistently covers maintenance and operational overhead.

AITs provides vanpool operators with a credit card for purchasing fuel. A detailed Vehicle Analysis Report for each van holds drivers accountable for their van's fuel consumption. The driver's name and the van's odometer reading are recorded with the date, time and location of every fill-up. The report also documents the type of product purchased (unleaded) as well as the number of gallons, cost per gallon, total transaction cost, cost per mile and even the miles per gallon achieved.

Pursuant to Section 34501 of the vehicle code regulating vanpools, AITs vehicles are regularly and systematically inspected, maintained, and lubricated in accordance with the manufacturer's recommendations, or more often if necessary to ensure the safe and efficient operating condition of the vehicle. The maintenance includes, 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. On behalf of its vanpool operators, KCAPTA documents each systematic inspection, maintenance, and lubrication, as well as all repairs performed for each vehicle under their control. Documentation must include the services performed, the person performing the services, the date the services were performed and the vehicle's mileage at the time of the repair or regularly scheduled maintenance. These records are kept with the vehicle for one year so they are available to present to any authorized representative of the California Highway Patrol upon request.



Driver Josefina Mora enjoys the reliability and affordability of her van. "With the AITs van, I don't have to [take the van in for] service. They do everything: oil change, any imperfections, parts. Plus they give me a card to [pay for] gas. I don't have to put any cent from my purse to use the van."

All AITs vans are equipped with GPS monitoring equipment to track speed, location and mileage. The GPS system allows KCAPTA to go back in time and see where a particular van or bus was in the past, which makes unexpected site inspections at the workplace possible.

AITs staff routinely carry out unannounced ride-alongs to make sure the number of riders in the vans line up with what the drivers are reporting.



KCAPTA staff will show up at the beginning of any given workday at the work site and ride in the Agency provided van. KCAPTA staff counts 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. Riders have been quite open and honest during these ride-alongs, which has led to a comfortable level of trust.

AITS vans are also fitted with radio communication devices. Radios not only serve well for monitoring activity and reporting emergencies, but they also provide an extremely useful tool for drivers to relay information about the availability and location of work in the constantly changing environment of farm labor.

As the popularity of AITS has grown, KCAPTA has developed an extremely efficient method of publicizing established vanpool routes and connecting vanpool operators with passengers. Both drivers looking for riders, and farmworkers looking for transportation can log onto the vanpool website at [www.southvalleyrideshare.com](http://www.southvalleyrideshare.com) to post availability and requests for routes. This resource has been especially helpful to Kings County Job Training Office (JTO,) who teaches their clients in the farming industry that if they have a ride, they have a job. JTO contacted KCAPTA asking how to connect their clients with AITS vanpools. At KCAPTA's suggestion, JTO immediately began printing out data sheets containing detailed vanpooling information from the [www.southvalleyrideshare.com](http://www.southvalleyrideshare.com) website and giving them to their clients. The site will be expanded in the future to allow employers to post employment opportunities, and for farmworkers to post their availability. The goal is to provide a point where vanpool groups can find employers, and employers can find vanpool groups.

## Safety and Comfort

From the very beginning, Ron Hughes of KCAPTA knew of the safety requirements for farm labor vehicles. All AITS vans meet the requirements found in AB 550 and Section 34509 of the California Vehicle Code. In addition to including factory-installed seat belts and properly functioning headlamps, all vans are equipped with flares and a securely mounted, easily accessible and operable fire extinguisher of the dry chemical or carbon dioxide type with an aggregate rating of at least 4-B:C. All vehicles also contain a clearly marked First Aid kit conforming to the minimum requirements for school buses. Vans also display upon the rear and sides of each vehicle, colorful signage, clearly visible and discernable for a distance of not less than 50 feet, which identify them as vanpool vehicles.

AITS vans comply with Section 31407 of the Vehicle Code, which states, "All cutting tools or tools with sharp edges carried in the passenger compartment of a farm labor vehicle shall be placed in securely latched containers that are firmly attached to the vehicle. All other tools, equipment, or materials carried in the passenger compartment shall be secured to the body of the vehicle to prevent their movement while the vehicle is in motion. Under no circumstances shall those tools, equipment, or materials obstruct an aisle or an emergency exit."

KCAPTA fabricated and securely installed a custom-made, enclosed toolbox accessible from the rear of the vehicle to safely hold all hoes, shovels, pruning shears, knives and other farm tools.

State labor law requires each vehicle come equipped with an adequate supply of drinking water, available for use during work hours and kept off the ground. Additionally, the water container must be secured in a manner safe for transport. To accomplish this KCAPTA designed a one-of-a-kind bracket and mounted it to the front of the van. With this safe and convenient modification, a water cooler is always provided as part of the vanpool package.

It's important to note that a farm labor vehicle (FLV) is subject to annual inspection and certification by the California Highway Patrol. For reasons already detailed in this document, AITS vanpools are *not* classified as FLV's because they are operated by a public transit agency collecting

a fare for transportation services. Therefore AITS vans are *not* subject to inspection, nor do they require certification. However, AITS vans *voluntarily* comply with most of the certification requirements.

AITS vans are not only outfitted for safety, but also for durability. Before assigning a new van to the field, all carpeting is removed and replaced with a vinyl-lined surface for easy cleaning and longer life.

Regular servicing (oil change, fluid level checks and lubrication) is conducted on site, and vans requiring repairs are rotated out. This ensures all vans are maintained to the same level, and any abuse can be caught early and dealt with promptly.

## The AITS Driver

Every driver must maintain in his/her vehicle a signed statement or declaration per Section 12804.9, j. of the Vehicle Code, which states, “Drivers of vanpool vehicles 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, 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 any hit-and-run offense in the past five years. “

In addition to meeting these requirements, AITS drivers must sign a five-page contractual agreement with KCAPTA. This agreement defines an authorized driver as one who: 1) has a valid drivers license; 2) has five years licensed driving experience; 3) is at least twenty-one years of age; 4) has successfully passed a required physical; and 5) has been approved, in writing by KCAPTA, to operate vehicles provided by KCAPTA.

All AITS drivers are subject to monthly monitoring of their driving records. KCAPTA queries the DMV on a monthly basis to determine if AITS drivers have done anything to affect their driver’s licenses.

The in-kind services rendered by the driver not only include transporting fellow farmworkers to and from their worksite each day, but the driver also must keep the vehicle clean—inside and out—and must purchase gasoline for the vehicle at major name brand service stations using the fuel card provided by KCAPTA. The driver must agree to obtain KCAPTA’s authorization prior to having any maintenance or repairs performed.

One of the most important parts of the agreement binds the driver to operate his/her vanpool in a nonprofit manner, and explains provisions of the Migrant and Seasonal Agricultural Workers’ Protection Act and the California Labor Code. This nonprofit status applies to more than adhering to the fee schedule dictated by KCAPTA. The driver must not require riders to purchase any product, including food and beverages, or transact any kind of business as a condition of riding in an AITS vehicle.

While drivers are not allowed to participate in certain named activities, such as transacting business, they are permitted to receive a non-monetary benefit and still be considered volunteers. Another important precedent not previously mentioned came out of the formal opinion from the USDOL that validated the AITS program. KCAPTA asked the USDOL to clarify the difference between a *valuable consideration*, which is not allowed in a *bona fide* carpool, and a *reasonable benefit*, which is permitted. Under the Agreement drafted by KCAPTA, “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.”

The USDOL opinion written by Paul DeCamp states, “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. [Fair Labor Standards Act] 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.”

The opinion continues, “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.”

Drivers must follow all the rules detailed in the Agreement with KCAPTA. However, they set their own rules for their passengers regarding pick-up/drop-off locations and times, conduct on board, and use of the AM/FM radio.

## Driver Training

Keenly aware of the licensing requirements for farm labor vehicle drivers, Ron Hughes prepared for the implementation of the AITS project by setting up the first driver training class in November 2001. Nearly a dozen individuals attended that training in Avenal, which was required by the state to include 10 hours of classroom education and 10 hours of one-on-one behind the wheel training. Five class members completed the course and passed physicals and drug screening in December 2001; three more members would eventually follow.

By June 2002 the status of those eight participants was as follows:

- 1 driving a bus between Avenal and Paramount Farms
- 3 driving their own vans for a profit
- 1 nearing completion of certification requirements and planning to drive a second bus to Paramount Farms
- 1 completing last test
- 1 waiting to be called into service to operate a nonprofit vanpool to the fields
- 1 unemployed, but considering driving nonprofit vanpool to a packinghouse

One month later the status of the original eight drivers was as follows:

- 1 driving a bus between Avenal and Paramount Farms
- 3 driving their own vans for a profit
- 3 driving AITS vans to Paramount
- 1 waiting to be called into service to operate yet another van to Paramount

A second class took place in Orosi and another was taught in Avenal. Additional instruction was later provided in Reedley, Huron and Mendota, but the expense of these classes was becoming hard to justify due to limited enrollment. It was originally thought that conducting classes in the evening in the communities where the participants live would increase attendance. Farmworkers typically work long hours, six days a week, necessitating the scheduling of classes in the evenings or on Sundays. However, investing 20 hours of their precious few

hours off work to become certified to drive a van that would not earn them additional income required a huge sacrifice. (This explains in part why three of the original attendees abandoned the AITS program and drove their own vehicles for a profit, contrary to DOL regulations.)

The ongoing presence of “classes in the park” finally led Hughes to cancel his training program.

A number of trainees in one of KCAPTA’s properly structured classes pointed out that most drivers get their farm labor certification by going to one of two parks on a Sunday. A licensed instructor illegally provides attendees with actual tests from the Department of Motor Vehicles (DMV) for a fee of \$20 to \$40. The fee allows “students” to take each test, have it graded and then study it for an hour. After taking all the tests they pay a second person approximately \$200 to drive them around town for 6 hours before presenting them with proof of completion. These “students” can then attempt both the written and driving tests at the DMV.

The DMV has commented on the high number of applicants failing the tests because they have not received adequate training. Unfortunately, a great number of farm labor vehicle drivers are ill prepared and unsafe behind the wheel. Even if their vehicles pass a random CHP roadside inspection, the licenses they carry in no way represent their ability to *drive* safely. One participant in KCAPTA’s class admitted he had received his certification in this manner, but learned nothing and therefore chose to attend the class provided by AITS so he could become a safe driver.

The state of California needs to hold instructors—like the one in Mendota Park—accountable. Until that issue is addressed, drivers will choose the easier, cheaper, faster route and not invest the required amount of time to be properly equipped to drive safely.

With the final determination that drivers of farmlabor vanpools do not need a special license, AITS has dropped its attempts at formal training. These have been replaced by one day training sessions held in the farmworker community where drivers are given a mock driving and written test to determine their driving ability. Classroom training and proper vehicle inspection is also provided.

## Insurance

An informational hearing for farmworker transportation held on March 22, 2000 by the Technology/Transportation Subcommittee, chaired by Assembly Member Dean Flores included representatives from the CHP, DMV, DOL, USDOL, State Department of Industrial Relations, Department of Insurance, and Pan American Underwriters. Mr. Flores asked representatives of the DOL and the Department of Insurance how many farm labor vans were being operated in California. They responded with a figure in excess of 2,000. Mr. Flores then asked how many of those vehicles were actually registered as “farm labor” vehicles or maintained the required insurance. They replied that less than 15 were both registered and insured.

Most farm labor drivers expressed a desire to insure their vans for replacement value. However, this personal coverage does not provide benefits to the passengers. California law requires insurance coverage of \$100,000 per seat in all FLV’s. Compliance with this law is extremely rare.





In June of 2002, KCAPTA commissioned a survey of all the insurance carriers in the Kings County area. Each company was asked if they would insure a fifteen-passenger farm labor van for the required \$1,500,000. After four days of phone calls, not a single company agreed to provide the coverage, nor could they recommend anyone who would.

KCAPTA turned to Lancer Insurance, the company who wrote the policy for their transit buses. Lancer agreed to provide \$2 million in coverage per van for a trial period of one year. But the premium was costly. Years of accident-free driving records have significantly reduced the cost, and have piqued the interest of other carriers, who are now actively competing with Lancer for the AITS policy.

KCAPTA earned Lancer's 2004 Safety Excellence Award in recognition of the outstanding safety record achieved by the well-trained and conscientious drivers of AITS vans. This honor has been repeated in subsequent years. This exemplary track record caused KCAPTA's insurance premiums to plummet from \$4,200 per year to less than \$900 per year. KCAPTA has recently signed a policy with \$10 million in coverage, which includes \$1 million in uninsured motorist and \$5,000 in medical insurance for each rider for less than \$1,500 per year.

## Ongoing Obstacles

Even with the slow and steady growth of the AITS program, the majority of farm labor transportation in the Central Valley and throughout the state of California, and, in fact, across the nation, falls far short of the standards set forth by law. Often vehicles actually do meet the safety and certification requirements, but the drivers are guilty of breaking other statutes. These drivers, known as *raiteros*,

charge a fee and make a profit, even though this practice violates state and federal law. *Raitero* means "ride provider," and derives from the Spanish phonetic approximation of the English word "ride." These independent "entrepreneurs" have learned to travel "under the radar" by transporting farmworkers in well-maintained, smaller passenger vans (minivans.) They carry proof of insurance that does not include coverage for their passengers. Oftentimes, the insurance policy has lapsed. CHP have no way of knowing whether or not the insurance policy is valid. *Raiteros* are rarely properly trained and certified. They often make riding with them a condition of employment, and coerce passengers to purchase products and services at horribly inflated prices.

The February 2006 report on AITS prepared by Martha Guzman points out that "the success of AITS has largely depended on the critical decision made by drivers to give up the opportunity to personally benefit from charging riders."

AITS drivers, by law, can receive nothing more than a *reasonable benefit*. And while there is *some* value in sparing your own vehicle from the wear and tear of traveling hundreds of miles in the course of a six-day workweek, and in saving the money you would ordinarily spend to fill the gas tank, and in making limited incidental stops to and from work, Guzman's report puts these benefits in the proper perspective. After highlighting what federal law allows, Guzman writes, "However, it is important to recognize that these advantages are not a net gain for most drivers and that there is in fact a certain amount of altruism within each AITS driver, because they are often the last to return home and the first to wake, the ones responsible for picking everyone up on time, and most notably have all walked away from their ability to be mainstream *raiteros*. In essence, the AITS drivers have forgone an opportunity to charge a fee for their transportation services. This opportunity exists as a result of the limited supply of license-eligible drivers within the agricultural workforce."

Guzman's observation proved the challenges Ron Hughes had presented as far back as July 31, 2004 continue to cloud the farm labor transportation landscape. In his *Final Report for Agricultural Industries Transportation Project* Hughes wrote:

The following must be addressed if safe, affordable transportation is to be provided while not disrupting the model that is presently out there and for the most part works.

1. Establish a clearinghouse for verifying insurance records on farm labor vans as a condition of getting and maintaining their farm labor certification. The CHP could access this information at the time of their certifications or roadside inspections. If they find that insurance has lapsed they can decertify the van as a farm labor vehicle. As a part of this effort an insurance pool where insurance can be obtained at a reasonable rate needs to be established. This will require some cooperation between insurance carriers.
2. The law as defined by the Department of Labor may have been appropriate in the 1940's when the farmer provided the bulk of the transportation. Individuals who do it as a means to recover the cost of providing transportation are now actually providing the bulk of the transportation needs. Every other sector of our economy pays to get to work, minimum wage or not. The market place is now determining what is being paid to get to work, not the inspection efforts of the Department of Labor. The focus needs to be shifted towards recognizing the need for change and dealing with it in a supportive way.
3. Farmworkers seeking to get their farm labor certification have a difficult time attending a traditional class. They generally have to work 6 days per week until 6 or 7 in the evening. Classes need to be established that allow those seeking to drive a safe van to get proper certification. Enforcement of the existing training programs needs to be beefed up to





prevent the type of “training in the park” certification occurring now.

To support this assessment, Hughes cited statistics in his 2004 *Final Report* garnered from a survey of farmworkers in Kings, Tulare and Fresno Counties. Here are the responses:

Average hourly pay - \$7.08

Percent that pays for a ride - 74%

Average cost of ride - \$5.97

Average number in vehicle - 10

Percent CHP certified - 77%

Percent contacted by Dept of Labor - 7%

Percent of drivers with insurance - 18%

On the bright side, 77 out of 100 vans have been certified, and therefore provide seat belts, headlamps, toolboxes and other safety features. This represents significant improvement from the days of the Five Points accident, when so many dangerous vans traveled Central California’s rural roads. However, the irresponsible and often unscrupulous behavior of *raiteros* continues because of the desperate situation so many farmworkers find themselves trapped in. The illegal activity must be shut down before AITS can realize its true potential. The commitment of law-abiding AITS drivers should be compensated with the opportunity to earn a stipend. And the market place should determine the price for safe and reliable transportation.

Economics prove a greater supply of licensed drivers will increase competition for rides and drive down the cost of that transportation. There’s no easy answer here. More than three out of 4 farmworkers are not eligible for a California driver’s license. Could allowing AITS drivers to operate vehicles with a foreign driver’s license help solve this problem? What about when illegal immigration crackdowns result in the mass exodus of farmworkers into Mexico? Should a Guest Worker program include provisions for a foreign worker to cross the border with an AITS van? These questions must be addressed immediately to ensure the agricultural communities up and down this Golden State continue to thrive.





## The Reproduction of AITS

grants. Funds for planning grants were set aside for agencies in the earliest stages, and no matching funds were required.

Slow to get started, this program has resulted in planning or operation projects being initiated in 16 agencies outside of the original three counties where the AITS project began. Each of the projects faces its own challenges, but is never the less moving the AITS model farther down the field. All 16 agencies will need broad support to succeed.

It is hoped this document will serve as a resource to public agencies throughout California and the nation, so that every agricultural community in the United States will understand the process, secure the funding, and implement a coordinated vanpool program to meet the transportation needs of the farm laborers in their communities.

Joe Neves, Chairman of the Board that oversees the policy and procedure of the AITS program, knows full well how a program like AITS benefits his community. As a member of the Kings County Board of Supervisors, Neves has witnessed firsthand the difference made by a solid transportation program designed especially for farmworkers.

“We’re a very poor community,” said Neves. “If we can’t create the jobs here, we have to get the people to where the jobs are so we don’t lose the population. AITS gave us the ability to get our people with a different kind of skill level to work.”

The flexibility inherent in a vanpool program such as AITS provides a huge benefit to the unique transportation needs of farmworkers. Belonging to the fourth generation of a farming family that came to Kings County in 1913, Neves is a politician who understands his constituents and their fluctuating transportation requirements.

“You have a vanpool that is mobile,” remarked Neves. “They need to be mobile because their jobsite is mobile... They can migrate from the west side where the lettuce, carrots, cantaloupe are—the fruit and nut side of the world—and get to the east side where the oranges and citrus are, so they keep employed year round. They may have to travel an hour, an hour and a half, but they stay employed.”

This mobility is one of the primary reasons KCAPTA

## Future Possibilities

Looking forward with purpose must encompass remembering the lessons of the past. Administrators of the AITS project have learned a great deal through trial and error. For this reason, Caltrans looked to AITS when establishing California’s new transportation program for farmworkers. According to the Caltrans website:

SB 1135, Statutes of 2006, section 99320 of the Public Utilities Code, requires the Department of Transportation to establish the Agricultural Worker Transportation Program (AWTP), effective January 1, 2007. The intent of the AWTP is to provide safe, efficient, reliable and affordable transportation services, utilizing vans and buses, to agricultural workers commuting to/from worksites in rural areas statewide. The emphasis of the AWTP will be to implement vanpool operations *similar to the successful Agricultural Industries Transportation Services (AITS) program* ongoing in Southern San Joaquin Valley, transporting agricultural workers to regional employment sites. (*emphasis added*)

The need has been documented. Addressing that need has been mandated. The model to follow and funding to proceed are close at hand.

California’s Budget Act of 2006 contained a one-time appropriation of \$20 million from the Public Transportation Account, which funded the Agricultural Worker Transportation Program. Public agencies were invited to submit grant applications for both planning grants and service implementation

abandoned buses in favor of vanpools. The expense of operating buses, which by nature couldn't adapt to the erratic flow of workers to and from varying jobsites, led to discontinuing that aspect of the program. However, the adaptability of a vanpool program has help seasonal workers remain employed more months out of the year.

According to Neves, one of the best features of the AITS program is its ability to get workers working. "We have taken people that have had seasonal jobs, and sure, they might have three or four or five W2 forms this year, but they work steady."

Even poor communities in California can now establish self-sustaining farmworker transportation services. They simply need to follow the course charted by AITS. A great deal of research has already been compiled and is available to anyone interested in gaining a greater understanding of the transportation industry.

Caltrans published the *Agricultural Worker Transportation Needs Assessment Final Report* in May 2003. A copy of this report is available for download at:

<http://www.dot.ca.gov/hq/MassTrans/Docs-Pdfs/STATE-Aits-Final-Rpt.pdf>

A report entitled *Meeting the Transit Needs of Rural Californians* was published in February 2006 through an Environmental Justice Planning Grant of the California Department of Transportation and the City of Orange Cove. A copy can be obtained by contacting the California Rural Legal Assistance Foundation at (916) 446-7904.

In July 2007, KCAPTA published the *Southern San Joaquin Valley Rural Vanpool and Rideshare Assessment*. Contact Ron Hughes at (559) 582-3211, Extension 2696 for information on acquiring the text of that regional report.

## First Steps

The AITS vanpool project and its sister program, Kings Area Rural Transit (KART) vanpool program, are currently operating over 350 vanpools, which represent some fairly amazing statistics over the course of a year:

- Over 2.4 million trips provided
- \$7500 in savings to riders
- 404,000 vehicle trips eliminated due to shared rides
- 66 million miles of travel eliminated
- 101 injuries or fatalities prevented saving \$22 million
- Indirect savings of \$59 million generated
- 551 tons of ROG, NOX, PM10 and CO2 eliminated

But these impressive numbers came from humble beginnings. An article appearing in the Visalia Times-Delta on June 12, 2002 began with the news, "Millions of dollars have been committed to the nation's first farmworker commuter program, but most vehicles are sitting idle because organizers simply can't find enough drivers."

The very first driver training class held in Avenal used KCAPTA funds to properly train and certify at least three drivers who chose to drive their own vehicles rather than AITS vans. The one and only reason for their decision was the bottom line. The drivers wanted to be compensated.





This is the accepted or common practice in transporting others to work in the fields. But federal law prohibits payment of any kind for farm labor transportation. AITS abides by the law and enforces its drivers to do the same. But with most of the Farm Labor Vehicles on Central California roadways never even coming into contact with a representative of the USDOL, *railer*os continue to run an extremely lucrative—though illegal—business. Until this problem is addressed, legitimate farmworker transportation programs like AITS will face a harder sell when recruiting drivers.

Establishing a program like AITS is *not* impossible. However, it *does* require hard work and a lot of patience. The success of AITS proves future investment of time and resources will pay off. A September 22, 2003 article published in *The Fresno Bee*, quoted Ron Hughes. “It took a long time for people to accept it as a viable project,” he said. “But, now we’re getting a steady stream of calls.”

The article continued:

At Del Monte Foods in Hanford, five van pools transport about 60 employees to and from work every day, covering the tomato processing plant’s three shifts.

Company officials expect to have another five van pools operating within the next few months. And by next year, the number of van pools is expected to increase to 20.

“Our employees welcomed this with open arms,” said Doug Vandenakker, the area human resources manager for Del Monte Foods. “Most of them do a lot of our seasonal work and they don’t have reliable transportation.”

Before the van pools started, company officials said, there were problems with employee absences because cars would frequently break down or rides would fall through.

But in the month since the company has used the van pools, they’ve seen a major improvement in employee attendance.

Fortunately the benefits outweigh the barriers, and developing a self-sustaining vanpool program can be done.

So far this document has highlighted vanpooling’s obvious benefits, such as safe, reliable and affordable transportation for passengers, and higher productivity with lower absenteeism for employers. But one positive aspect of vanpooling has yet to be discussed: improving air quality. Because of its pollution-retaining bowl shape and weather conditions, the San Joaquin Valley frequently struggles with poor air quality. A study conducted in February 2006 (contained in a report assembled by Martha Guzman and published by Caltrans) revealed that AITS yields an estimated reduction of between 2,174.52 to 2,871 pounds of Greenhouse Gas Emissions annually.

These reductions occur not only because one van can replace 8 to 10 cars, but also because AITS vans are serviced every 6000 miles. AITS vans run cleaner than many of the poorly maintained, older vehicles currently serving as FLV’s. These measurable statistics can lead to air pollution credits, one viable source of funding.

## Funding Sources

As touched on near the beginning of this document, the AITS project became possible through a \$3 million grant from the federal government’s Job Access Reverse Commute (JARC) funds with a matching \$3 million grant from the state of California. JARC funds became available after President Bush signed the Safe, Accountable, Flexible and Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU) on August 10, 2005. This formula-driven program provides funds for planning, capital and operating costs. While up to 80% of JARC grants can be applied to capital projects, not more

than 50% may support operations.

Caltrans has posted online that AWTP funds are strictly for public agencies statewide “seeking to provide transit services specifically for farmworkers.” And according to the FTA website, “The goal of the Job Access and Reverse Commute program (JARC) is to improve access to transportation services to employment and employment related activities for welfare recipients and eligible low-income individuals and to transport residents of urbanized areas and nonurbanized areas to suburban employment opportunities. Toward this goal, the Federal Transit Administration provides financial assistance for transportation services planned, designed, and carried out to meet the transportation needs of eligible low-income individuals, and of reverse commuters regardless of income.”

The initial JARC and Caltrans grant monies were essential to purchase the vans and buses, and for setting up the administration of AITS. However, grants were never intended to subsidize the program’s ongoing expenses. Currently, 100% of the operation—including maintenance, insurance, and replacement cost—is covered by passenger fares. The break-even point is eleven persons per vehicle. If the passenger-count falls below eight, the van is reassigned.

In addition to JARC monies and the newly allocated AWTP resources described above, California transit agencies can also explore assistance available through Caltrans. The Transportation Development Act provides funding from sales tax revenues through two sources: the Local Transportation Fund (LTF) and the State Transit Assistance Fund (STA). Though KCAPTA has not used TDA funding due to AITS self-sustainability, Caltrans officials have indicated a program like AITS would qualify for TDA funds because the population it serves has “unmet needs.” According to the Caltrans website TDA funds “are for the development and support of public transportation needs that exist in California and are allocated to areas of each county based on population, taxable sales and transit performance.”

If county leaders throughout California recognized farmworker transportation as an eligible service for TDA funding, they could propose establishing such a program during their Unmet Needs hearings.

The Federal Highway Administration and the Federal Transit Administration jointly administer the Congestion Mitigation and Air Quality (CMAQ) Improvement Program. In 1991 Congress enacted a law that authorized CMAQ and provided \$6 billion in funding for surface transportation and other related projects that contribute to air quality improvements and reduce congestion. Reauthorized in 2005, CMAQ now provides over \$8.6 billion to State government and public transit agencies to invest in projects like AITS.

Government grants provide the large sums of money required to establish a new program, but they are not the only source out there. Many creative funding opportunities exist, which can help reduce the price of daily fares.

For example, employers in the farming industry may participate in the federal government’s “Transit Commute Benefits Program.” This program allows employers to provide incentives for their employees to take some form of public transit in order to reduce the number of cars on the roadway and improve air quality. Vanpool programs like AITS





qualify as a form of public transit. The maximum benefit per month per employee is \$120. Employers could simply give their employee a check made out to the public transit agency sponsoring the vanpool program. Or if they prefer, employers may provide vouchers, which the employee would give to their vanpool driver as payment. The sponsoring public transit agency would then bill the employer for the amount of the voucher.

Fresno County has a new program available to commuters through Measure C, which provides vouchers of \$10 per week to passengers in vanpools. Other counties may offer similar programs.

The San Joaquin Valley Air Pollution Control District sponsors the Reduce Motor Vehicle Emissions (REMOVE) program, which utilizes a portion of a \$4 motor vehicle registration surcharge fee. The REMOVE program allocates funds for projects that will reduce motor vehicle emissions within the San Joaquin Valley. Other Air Districts may issue these state funds in their jurisdictions as well. They may also provide credits for reducing emissions through vanpooling.

AITs sister program, KART, provides vans for employees of ten different correctional facilities. Over 20% of employees at the 10 sites now use the KART program to get to work. Correctional officers qualify for state employee credits when they participate in a conventional vanpool program.

All of these federal, state and regional agencies can help turn an idea on paper into a safe, reliable and affordable vanpool program for farmworkers.

## Expanding to other Vanpools

Developing a program as extensive as AITS may seem like an enormous undertaking for any transit agency. But multiplying the success of a farm labor vanpool program by spinning off into a more conventional vanpool program doesn't double the workload. In fact, it provides important benefits.

Laws and vehicle codes may have provided major roadblocks to getting AITS up and running, but the path to developing the Kings Area Rural Transit (KART) Vanpool Program was fairly easy to travel.

KART's Vanpool Program began after KCAPTA received a request for transportation from employees of a nearby prison. The correctional officers asked for assistance in maintaining their vanpool when the vehicle Caltrans had provided them was being withdrawn. KCAPTA soon discovered that the KART Vanpool Program served as a second, stronger leg, which made AITS more viable and stable. And now, what began as a farm labor vanpool program has grown into an amazing network, linking commuters from a wide variety of working environments to an efficient, affordable means of transportation.

Industries besides Agricultural and Correctional that would potentially benefit from a vanpool program include:

- Construction
- Casinos
- Education
- Energy
- Government
- Healthcare
- Manufacturing
- Military

Unlike AITS, there are no mileage categories for KART riders. The cost to ride is based on actual mileage. The riders simply divide the total number of miles traveled between them.

## Best Practices

AITS has developed a binder containing a Best Practices Toolkit. This binder is given to everyone attending a ride along, which can be arranged by contacting the AITS office at (559) 582-3211, Extension 2696.

The AITS Orientation Binder includes copies of the following operations-related elements:

Global Positioning System (GPS): Location/Tracking/  
Monitoring of Speeds

Driver Orientation: Driver Agreement/Van Use Guidelines

Driver File Management: Driver's License/DMV Class B  
Physical/Contact Information

Van File Management: Insurance/Servicing/Maintenance/  
CHP Inspections

Fuel: Gas Card/Fuel Usage and Monitoring

Fare Collection: Receipting/Depositing/Payment Monitoring

Daily Activity: Van Washing and Detail/Remote/Incident  
Support

Website Information: SouthValleyRideShare.com Features and  
Examples of Use

AITS History: AITS Power Point Presentation

Any agency interested in developing a farmworker vanpool program such as AITS is encouraged to attend a ride-along and familiarize themselves with the contents of the Orientation Binder.

Additionally, Executive Director of KCAPTA, Ron Hughes, is available to conduct presentations on the success of AITS and answer any questions relating to planning, establishing and implementing a similar farmworker transportation program.



## Conclusion

The original goal stated by Ron Hughes in an early press release to “establish a safe transportation system for farmworkers and achieve self-sufficiency” has been realized. Hughes now desires to see this model duplicated on a grand scale throughout the state of California and across the nation. The consistently reliable and fiscally responsible AITS program successfully addresses the ongoing need for farmworker transportation in Central California. May it provide the information and motivation for similar vanpools to take root and grow strong all across the agricultural communities we call home.

