

**Peninsula Corridor Joint Powers Board
Board of Directors Meeting
1250 San Carlos Avenue, San Carlos CA**

MINUTES OF JULY 9, 2020

MEMBERS PRESENT: D. Pine (Chair), C. Chavez, D. Davis, J. Bruins, R. Collins, S. Heminger, C. Stone, S. Walton, M. Zmuda

MEMBERS ABSENT: None

STAFF PRESENT: J. Hartnett, C. Mau, J. Cassman, M. Bouchard, J. Funghi, C. Gayotin, D. Hansel, S. Murphy, M. Jones, L. Leung, S. Petty, D. Seamans, S. Wong

1. CALL TO ORDER / PLEDGE OF ALLEGIANCE

Chair Dave Pine called the meeting to order at 8:30 am.

2. ROLL CALL

District Secretary Seamans confirmed for the record that all Board Members were in attendance.

3. GENERAL COUNSEL REPORT

a. Closed Session: Conference with Legal Counsel – Anticipated Litigation. Initiation of litigation pursuant to Government Code Section 54956.9(d)(4): One potential case

Joan Cassman, General Counsel, explained that the Board would convene in Closed Session for a matter of anticipated litigation.

Public Comment

Roland LeBrun, San Jose, commented on procedures for adjourning to closed session, Brown Act violations, Wabtec, and Parson's Transportation Group. He also commented on separating gate warning time contracts from electrification contracts.

The meeting adjourned to closed session at 9:07 a.m.

The meeting reconvened into open session at 10:29 a.m.

3. GENERAL COUNSEL REPORT, CONTINUED

b. Report from Closed Session during Part I of Meeting

Ms. Cassman reported that the Board received an update and no action was taken.

Chair Pine announced that the Governance Update (Item 11) would follow the SB 797 update (Item 9).

4. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

Roland Lebrun, San Jose, commented on meeting schedules, Granicus, adjourning to closed session and the location of Special Counsel Report on the agenda.

Jeff Carter, Millbrae, commented on the 70-train schedule, excessive padding, asymmetrical trains, and saving time and money.

Adrian Brandt, San Mateo County, commented on the constant warning times for grade crossings and opined that the gate down time would increase for trains not going full speed due to current the CBOSS (Communications Based Overlay) signal system. He stated there should be outreach to Local Policy Maker Group (LPMG) and the Board as this would affect PCEP (Peninsula Corridor Electrification Project) adversely.

Aleta Dupree, Oakland, stated that Clipper START would begin July 15, commented on moving away from paper tickets, and Caltrain being a lifeline.

Raymond Chang, San Francisco, commented on reducing excessive idling at the Fourth and King station for the past three months.

5. CONSENT CALENDAR

- a. Approve Meeting Minutes of June 4, 2020**
- b. Receive Key Caltrain Performance Statistics – May 2020**
- c. Receive State and Federal Legislative Update**
- d. Accept Statement of Revenues and Expenditures for May 2020**
- e. Award of Contract for Caltrain Naming Rights and Sponsorship Consulting Services**
- f. Authorize Amendment to Contract to Operate the San Francisco Caltrain Bicycle Parking Facility**
- g. Authorize Execution of Funding Agreement with the Metropolitan Transportation Commission for Clipper START, the Regional Means-Based Fare Pilot Program**
- h. Authorize Execution of Amendment 2 of the Amended and Restated Clipper Memorandum of Understanding**
- i. Approve and Ratify Fiscal Year 2021 Insurance Program**
- j. Approval of Amended and Restated Cooperative Agreement for Participation in Phase II of the San Jose Diridon Integrated Station Concept Plan**
- k. Call for Public Hearing on August 6, 2020 on Potential Closure of the Atherton Station and Related Service Changes**

Public Comment

Roland LeBrun, San Jose, commented on Naming Rights percentage increases, and expressed concern for Diridon station.

Motion/Second: Bruins/Davis moved approval of the Consent Calendar

Ayes: Bruins, Chavez, Collins, Heminger, Stone, Zmuda, Davis, Pine

Noes: None

Absent: Walton

Director Walton arrived at 9:51 am.

6.. REPORT OF THE CHAIR

Chair Pine commended staff during these difficult times.

a. Local Policy Maker Group (LPMG)

Director Bruins stated the group met June 25 with 17 of 19 members present via Zoom. She provided updates regarding Caltrain, COVID-19 work, financial impacts, tranche 2 federal funding, Caltrain Electrification Project, high speed rail business plan, San Francisco Environmental Impact Report (EIR) released July 10 (available for 45 day

public comment period), and for letters of concern for Millbrae to be shared with LPMG members.

7. REPORT OF THE EXECUTIVE DIRECTOR

Jim Hartnett, Executive Director, commented on the PTC and PCEP updates.

a. Caltrain Positive Train Control (PTC) Project Update – June 2020

Ms. Bouchard reported the submittal of the safety plan and said she believed there will be certification by the deadline. She reported working on the maintenance and service agreements to be brought to the Board in August.

b. Monthly Peninsula Corridor Electrification Project (PCEP) Report

John Funghi, CalMod, provided an update, which included the following: Balfour Beatty began platforms and duct bank installations; compliance with social distancing compliance; the completion of May catenary foundations and 1,276 remaining foundations. He reported work on traction power stations and stated that Burlingame City Council's current approval allowed completion of last the paralleling station. In regards to electrification, Stadler continues to work a split shift schedule; operational tests are on hold due to international flight restrictions, and train assemblies have been delayed due to COVID-19 and supply chain issues.

Public Comment

Roland LeBrun, San Jose, commented on the LPMG providing direct input to the Board, constant warning times for grade crossings, and how Federal Transit Administration (FTA) oversight reports were not posted on the website (June report).

Aleta Dupree, Oakland, commented on the foundation completion schedule, supply chain efficiencies, keeping on schedule and constant warning times.

8. Report of the Citizens Advisory Committee (CAC)

Brian Shaw, CAC Chair, provided an update. He stated that three positions would be expiring soon and need to be renewed or replaced. Mr. Shaw reported public comments on station-to-station fares, the delay to end zone fare systems, posting correspondence weekly, and moving away from paper tickets. The committee discussed the an article debunking health safety risks while riding transit, social distancing on transit, 70-train skip stop schedule, skipping Redwood City and Mountain View, shutdown due to the lack of funds, rapid bus lines, and integrated fares to transit. The CAC is next scheduled to meet July 15.

Public Comment

Aleta Dupree, Oakland, commented on accessible CAC meetings through Zoom, and keeping the committee fully staffed.

9. SB 797 Update

Chair Pine stated that Caltrain was the only transit agency in the Bay Area with no dedicated source of funding, relying on high fare box returns and the member agencies.

Sara LaBatt, EMC Research, provided the presentation summarizing the poll. She stated the poll was conducted between June 11- June 18 with 1,255 likely voters and a margin error of plus or minus 2.76 percentage points. Ms. LaBatt said that with the potential

ballot question, the support is just shy of two-thirds at 65.6 percent with undecided voters leaning towards yes. She compared this year's support with last year's support, which indicated consistency. Ms. LaBatt stated that the top components were to prevent and ease traffic, reduce air pollution with quieter trains, and support local jobs. She pointed out that support for a potential measure can be driven in both directions by providing additional information (both positive and opposition), indicating a volatile measure. Ms. LaBatt concluded that a one-eighth cent sales tax is not currently supported by two-thirds of likely voters, but this can be impacted by additional information provided about the measure.

Michelle Bouchard, Chief Rail Operating Officer, outlined the financial consequences of COVID-19. She stated that Caltrain received \$49 million in tranche 1 of the CARES Act, enough to sustain current operations into September. She stated the \$15 million distribution for tranche 2, would pose substantial challenges to Caltrain, as it would need an optimistic 30 percent of pre-COVID ridership levels to persist through the end of the calendar year. Ms. Bouchard stated that they have reduced overtime and increased capital operations. She explained that CARES Act funding precludes lay-offs, and options analyzed included providing higher levels of service, absolute minimum service, and full shutdown. Ms. Bouchard detailed potential approaches could include continued advocacy for federal funds, expansion of member agency contribution, monetization of assets and seeking out partners. She stated that the dedicated funds (SB 797) are critical to longer-term financial viability.

Seamus Murphy, Chief Communications Officer, outlined current member contributions and the contributions needed if ridership were 50 percent or 30 percent. He recommended the Board approve of the measure in August for the November ballot and reiterated that the external funding is critical to maintaining Caltrain operations. Mr. Murphy stated that stakeholder coalition support was strong and listed the authorizations needed in July and August.

Board members had a discussion and staff provided further clarification in response to the Board comments and questions. Board discussion included when the Board would vote on the item, when other agencies would vote on the item, public sector campaign support, two-thirds vote encompassing all three counties, and ballot costs.

Public Comment

Carl Guardino, Silicon Valley Leadership Group, agreed with the poll. He stated that in normal times, Caltrain member agencies would cover the needs of the system, but now they are facing their own deficits and to make Caltrain independent, it would need its own dedicated funding. Mr. Guardino pointed out that this sales tax would relieve member agencies to focus on their own agencies at a time when they need financial relief the most.

Roland LeBrun, San Jose, commented on schedule changes, member agency contributions, and rail service franchise agreements.

Jeff Carter, Millbrae, commented on high polling numbers, member agency contributions, and putting this measure on the ballot in the future.

Aleta Dupree, Oakland, stated that this railroad needs a dedicated source of funding, that 1/8 of a cent is not much compared to most tax systems, and most historic rail services have a dedicated source of funding. She said to run a rail service reliably, there must be a dedicated source of funding and dedicated funding would make Caltrain fully ADA compliant.

Adina Levin, Friends of Caltrain, commented on positive poll results, stable funding accessible to all, preventing gridlock, and solidifying contributions.

Andy Chow, Redwood City, commented on the 2008 ballot, a possible change in federal aid with a change in presidency and expressed support for the measure.

Vaughn Wolffe, Sunnyvale, expressed support for the tax for a minimal level of funding, other transportation networks, running longer trains with more scheduling.

Don Cecil, San Mateo Economic Development Association, commented on the CARES Act being a life preserver while SB 797 is building your own lifeboat, and expressed support for the measure. He said Caltrain is essential to economic recovery and the stations that exist create cities within cities. Mr. Cecil said the business community will support Caltrain and wants to see this Board express the desire to save itself.

Board Members expressed strong support for the measure, commented on the CARES Act as a temporary Band-Aid, the timing of the measure, climate benefits, riding Caltrain as opposed to single occupancy vehicles, dedicated funding moving from "nice to have" to the "have to have" category immediately, and a steep hill to climb for the ballot in August and November.

10. Update – Draft Equity, Connectivity, Recovery & Growth

This item was deferred to the next JPB meeting.

11. Governance Update – Report of the Special Counsel

Chair Pine thanked Director Chavez and Director Walton for their work on the Governance Ad Hoc Committee. He outlined the Committee's work, which included a workshop in November 2019, followed by a Board discussion in December 2019. Chair Pine stated an agreement on 1) hiring a special counsel to advise the Board on these matters 2) gathering facts on JPB financial, real estate, foundational documents, and 3) accountability of the Executive Director (evaluating goals, hiring and firing).

Robin Johansen, Olson Remcho LLP, provided a presentation delving into JPB's organizational documents and its findings. It included the history, key agreements, and issues raised. She outlined the Peninsula Corridor's history, including the three key agreements with the Board - the Joint Powers Agreement (JPA), the sale with Southern Pacific, and real property ownership. Ms. Johansen stated that the 1991 JPA designated Samtrans as the managing agency subject to the Board's authority to change the managing agency after SamTrans was reimbursed for the funds advanced.

James Harrison, Olson Remcho LLP, summarized the purchase sale and option agreement. He stated that Samtrans agreed to advance \$82 million in order for the purchase of the railroad to move forward, which allowed three main rights (between San Francisco and Lick, trackage rights from Lick to Gilroy, and options to purchase). He outlined the Real Property Ownership Agreement (RPOA) which described ownership rights and gave Samtrans ownership rights until full reimbursement or full participation occurs. Mr. Harrison stated that by 2007, no repayments were made and there was growing compound interest. He outlined issues covered by the report, including property ownership, right-of-way, reimbursement for SamTrans, Caltrain management, Gilroy service, allocation of costs for Mainline, and parties' rights to revise or terminate the Joint Powers Agreement (JPA).

Tom Willis, Olson Remcho LLP, addressed the issue of repayments, which were reset in the 2008 RPOA. He said VTA has paid Samtrans \$8 million; San Francisco has paid all but \$200,000. Mr. Willis noted that MTC has paid \$23.7 million of the \$43.3 million owed. He noted that the MTC is authorized to identify alternate sources of non-local funds for reimbursement, but no funds were identified. Mr. Willis explained that SamTrans has the right to serve as managing agency as long as it wishes and the JPB may delegate responsibility for the management of certain operational and non-operational assets to another member agency.

Ms. Johansen outlined terms for amending or terminating the JPA.

Public Comment

Roland LeBrun, San Jose, commented on the Lick-Gilroy purchase, sales tax and repayment.

Aleta Dupree, Oakland, commented on Caltrain becoming its own transportation district, buying out long-term leases, having full ownership over facilities and acquiring commuter railroads as this agency matures.

Vaughn Wolffe, Sunnyvale, commented on expenditures, linking to the East Bay, and needing a full regional modern railroad.

Adina Levin, Friends of Caltrain, commented on regional system fragmentation, instability in parts of Caltrain, service integration and Caltrain as a stand-alone system.

Jeff Carter, Millbrae, commented on addressing this as a regional issue and merging with the Ace and Capital Corridor rail system.

Director Chavez left at 11:27am and returned at 12:01pm.

Board members had a robust discussion and staff provided further clarification in response to the Board comments and questions. Topics discussed included the following:

- A memorandum of understanding (MOU) separating Caltrain from SamTrans
- Defining operational assets
- Whether other counties could not or would not cover the purchase price of the railroad
- Differentiating between Caltrain and the JPB Board making policy
- The price to make SamTrans whole if this agreement was not entered into
- Why the 2008 agreement came about
- Continuing governance discussions
- Costs associated with separating Caltrain from SamTrans (creating two agencies instead of one)
- Not tying the sales tax measure to governance discussions
- Accountability to voters to restructure governance
- Business plan comparison to potential governance MOUs (Memorandums of Understanding)
- Changing governance before the ballot measure deadline may be difficult to impossible to do
- SamTrans management rights and repayment
- Caltrain being a major asset that needs its governance prioritized

- The time it takes for multiple agencies to sign something versus an internal agreement

Director Walton recommended amending the 1991 and 1996 agreements to cross-reference as a whole document. He also recommended separating Caltrain from SamTrans for equitable decision-making and to ensure the Caltrain and SamTrans CEO are not the same person.

Chair Pine recommended the Governance ad-hoc committee complete its work on accountability measures, which were CEO goals, hiring and dismissing.

Director Walton left at 1:23 p.m.

12. Report of the Finance Committee

a. Award of Contract for Marin and Napoleon Street Bridge Replacement Project for \$8,907,901

Director Heminger said this contract came in over 30 percent of estimate, the bridge needs to be completed before electrification, but there are budget holes. He requested staff to look at the capital projects to see if any projects could be deferred and to convert capital funds into operating dollars to help tide the budget over to the next year.

Motion/Second: Heminger/Davis moved approval of the award.

Ayes: Bruins, Chavez Collins, Heminger, Stone, Zmuda, Davis, Pine

Noes: None

Absent: Walton

Public Comment

Roland LeBrun, San Jose, commented the urgency of the matter and berm versus bridges.

Dyon Zaratian, Disney Construction, commented on the bidding process, price differentiations between Disney and Proven, Caltrain budget, and saving money with competitive bids.

13. Report of the Work Program-Legislative-Planning (WPLP) Committee

This item was deferred to the next meeting.

14. CORRESPONDENCE

Correspondence was available online.

15. BOARD MEMBER REQUESTS

Director Stone requested a complete survey of non-operational assets when given the opportunity.

Director Heminger requested a look at projects to see if there were any funds that could be either converted from capital to operating purposes or capital projects that could be deferred.

16. GENERAL COUNSEL REPORT

Ms. Cassman noted there was no report.

17. DATE/TIME OF NEXT REGULAR MEETING: Thursday, Thursday, August 6, 2020 at 9:00 am via Zoom

18. ADJOURN

The meeting adjourned at 1:47 pm.

An audio/video recording of this meeting is available online at www.caltrain.com. Questions may be referred to the Board Secretary's office by phone at 650.508.6242 or by email to board@caltrain.com.