

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

**MINUTES OF AUGUST 20, 2021
SPECIAL MEETING #4 - GOVERNANCE**

MEMBERS PRESENT: C. Chavez, D. Davis (Chair), J. Gee, G. Hendricks, S. Heminger (Vice Chair), D. Pine, C. Stone, M. Zmuda

MEMBERS ABSENT: S. Walton

STAFF PRESENT: M. Bouchard, D. Hansel, S. Petty, J. Harrison, C. Fromson, S. Petty, H. Husain, H. Permut, M. Jones, K. Miller, R. Macias, D. Seamans, S. Wong

1. CALL TO ORDER/ROLL CALL

Chair Dev Davis called the meeting to order at 1:01 pm.

District Secretary Dora Seamans called the roll and a quorum was confirmed.

2. CALTRAIN GOVERNANCE SPECIAL MEETING #4 (INCLUDING GOVERNANCE PROCESS UPDATES; OVERVIEW OF SELF DIRECTED GOVERNANCE OPTIONS AND EVALUATION APPROACH; FINANCIAL AND LEGAL ANALYSES; BOARD AND LEADERSHIP PERSPECTIVES ON OPTIONS; AND NEXT STEPS)

Chair Davis introduced the purpose of the meeting to a) hear the results of the governance options and b) review the results of the legal and financial analyses and qualitative interviews and c) discuss those findings. She requested members ask questions only and save discussion for the end and noted an additional Special Meeting to be scheduled in September, regional discussion in October, and a recommendation in December.

Sebastian Petty walked through a presentation, which included the following:

- Previous JPB Governance 2021 Roadmap
- Status update & discussion on ROW (right-of-way) repayment
- Meeting objectives to confirm understanding, review analyses, consider interviews, and summarize findings

The Board members discussed what they hoped to learn today:

- Understanding the financial analysis and the practicality and feasibility of each option
- How much of the problem each option individually solves, especially in light of farebox recovery and where the financial backing would come from
- Possibly narrowing the range of options to analyze and consider
- Being nimble and having realistic timelines for implementing each option including legal work

Howard Permut, Governance Consultant, provided an overview of the three options, which included the following:

- Three Board self-directed options (refined shared services model, new shared services model, independent agency)
- How the options differ from the governance situation today (dedicated executive director, accountability, staffing, and processes)
- Staffing assumptions (including total number of employees needed per option)

The Board members had questions on the overview, and staff provided further clarification which included the following:

- Access to the background materials used to compare full time equivalent (FTE) number versus the number of people needed for full time work
- Difference between Option 1 and the baseline
- Purchase services between Option 1 and Option 2 and whether that could be achieved in Option 1
- Whether the purchase services clarity would be possible under Option 1
- Consider how each option would impact retention, recruitment, and morale of staff
- Difference between Option 1 and the baseline on hiring, firing, and setting the compensation for the Executive Director
- Question on conflict of employees reporting to Executive Director but continuing to be employees of the district
- Under Option 2, would shared services be provided by SamTrans, or could purchased services be provided from another entity
- How shared services from another entity could logistically work

Mr. Permut discussed resource and transition considerations, which included the following:

- Financial analysis (annual cost, one-time costs, and pension/retirement liabilities)
- Legal analysis (modification of agreements and transition support)
- Caltrain liability estimates and hypothetical scenarios (pension and other unfunded benefits)
- Summary of key issues and results

The Board members had questions on resource and transition considerations and staff provided further clarifications which included the following:

- Pension Unfunded Accrued Liability (UAL) assumptions and how many people are working, retired, and the number of employees currently providing shared services
- Would these numbers vary based on the CalPERS (California Public Employee Retirement System) rate and does CalPERS allow an entity to withdraw
- Whether SMCTD (San Mateo County Transit District) could ask for the lump sum of accrued liability funds up front (for Option 3) and what the annual payments could be thereafter
- Whether there could be a line item for each option indicating one-time cost, annual cost, pension costs, medical costs, and so on to compare the cost of each option on one page
- Option 2 is starting a new company which includes a lot of hidden costs, such as what are the assumptions for 230 staff moving over
- What are the core assumptions and bandwidth of risk is in each category
- Assumed increased costs due to fixed costs that are currently shared but cannot be separated and there are other SamTrans property interests utilized by Caltrain

James Harrison, JPB Legal Counsel, spoke about the legal analysis, estimated cost and time for each option, which included the following:

- Legal analysis assumptions including a draft Memorandum of Understanding (MOU) and the estimated time and cost for each option
- All three options are legally feasible and review

The Board members had a discussion on the legal analysis, which included the following:

- Would Option 3 require Board meetings two to three times a month to address additional issues
- Are the timelines indicating the months needed to implement options and requirements for approval
- For Option 3, how the Board members would be chosen, and what is the scope of the Legislature's authority versus the three parties' approved JPA (Joint Powers Authority)
- Timeline for the analysis of the impairment of contract clause and including analysis of any financial impacts that may occur
- Denote where there are options for negotiation
- Considered risks to services, projects in motion, and to providing quality product to customers
- Requested more information before the next meeting in September: (1) what are the options' variables that can be negotiated, (2) more analysis the JPA's authority, and (3) clarify the calculations on pension and other obligations

The meeting recessed at 2:50 pm and reconvened at 3:00 pm.

James Harrison, Legal Counsel, noted all members were present with the exception of Director Walton.

Howard Permut, Governance Consultant, presented Board member & Leadership Perspectives on Options; this included:

- Themes that emerged from Board member interviews included divergent views stemming from a variety of options and approaches that could be used and a number are waiting for completed analyses
- Issues that are important to Board members included resolving this process, repayment, updating the JPB, Board composition and terms, and RR expenditure
- Themes from the General Managers' Interviews were similar to Board members by county, but they also highlighted repayment to SamTrans for its investment and the importance of resolving these issues, which detract from the operation and management of the railroad

Sebastian Petty, Deputy Chief of Planning, provided summary synthesis & discussion, which included the following:

- Resolution on Caltrain Governance is urgent and synthesizing views on governance
- Option 1 – refining the current structure
- Reasoning for option 3 and creating a new structure
- Reasoning for option 2 and evolving the current structure
- Financial and Legal Analysis Summary

The Board members had a discussion on member perspectives and summary synthesis, and staff provided further clarification in response to the Board questions regarding the following:

- Why the baseline is not codified
- The exact value added for 2, 3, or 4 (on slide 63) being dependent on the people in place
- Do different options include risks in providing continual service, disruption to ongoing projects, and so on
- Whether the “frequency of ratings by subject area” & “percent of all criteria met by each option” were the same
- How has governance conversation affected federal and state funding
- How does this line up with the regional conversation
- How is Option 3 financially sustainable as Measure RR currently covers operations and not capital in the current state
- If Caltrain is unable to afford what they are doing right now, how would creating an independent agency help with that affordability
- Where would the extra money come from if Caltrain cannot afford to pay its way right now

Public Comment

Vaughn Wolffe, Pleasanton, commented on whether changing governance would benefit ridership or emissions.

Roland Lebrun, San Jose, commented on replacing the agency.

Aleta Dupree, Oakland, commented on building a structurally sound railroad.

Adina Levin, Friends of Caltrain, commented on Measure RR inspirations, having a connected service, Option 3 taking large quantities of Measure RR from delivering services to IT services, and Option 2 increasing accountability.

Don Cecil, San Mateo County Economic Development Agency (SAMCEDA), commented on using Measure RR to maintain services and developing equity.

Jonathan Kass, San Francisco Bay Area Planning and Urban Research Association (SPUR), transportation manager, commented on delivering the best option for customers, with Option 3 being expensive and disruptive, while Option 2 allows continued vision and service.

Director Chavez left at 3:16 pm

The Board members had a robust discussion, which included the following:

- Studying governance has financially stressed the organization, the cost has gone over budget
- The amount of time to do Option 3 would preclude Caltrain's discussions at the regional level

- Transition costs need to include retaining the experienced staff to keep the trains and organization running
- Caltrain needs its own staff for some tasks
- There is currently efficiency but not accountability, and accountability is not ensured in any of the options
- Dropping Option 1 due to lack of distinction from the baseline
- Coming up with Option 2a, and Option 2b, including discussion negotiable issues such as right of way (ROW) transaction and doing justice to the advance of SamTrans financial contribution that benefited all
- Risk benefit ratios, likelihood of achievable and collective success for each option
- Revise Option 2 to look at governance issues such as term limits and shared services
- Reviewed concerns for each option, included increased cost, not being financially sustainable, counter to Measure RR supporters' goals and equity goals, concerns on no gains in equity or equality, minimizing disruptions and retaining employees who made this system the 7th largest in the country
- Options and consequences for changing the December 31st deadline and the self-imposed consequence of not meeting the deadline (constrain Measure RR revenues at \$40 million without concurrence of six JPB members until this is resolved)
- Concerns about not meeting the December 31st deadline included having enough money for the electrification project, having a seat at regional governance discussions, and focusing resources on getting new riders on Caltrain
- The discussion on governance has affected the organization's ability to find revenue for grants for electrification and new projects
- Perceived unanimity that Option 3 would not work and tendency towards Option 2 as the middle ground but its costs and disruptions are significant, including how and when SamTrans needs to be paid back a considerable amount of money, when Measure RR money cannot be used for this
- Current additional costs for the independent auditor and legal counsel
- JPB resources as possible repayment for the right of way purchase and how voters would feel about moving money around to use Measure RR funds
- Determine what the Metropolitan Transportation Commission (MTC) role could be in repayment process
- Option 1 and 2 need further flushing out, Option 2 could have a b, c, d branch
- Member agencies themselves can decide whether to contribute to Caltrain annually
- Board members to think about the best alternative and recommendation by the end of December

BOARD MEMBER REQUESTS

Director Chavez requested access to the background materials showing full time equivalents (FTE) by option.

Director Hendricks requested a line item for each option indicating one-time cost, annual cost, pension costs, medical costs, and so on to compare the cost of each option on one page.

Director Stone requested the figures regarding how much was spent on this governance process and a codified baseline for Option 1.

Director Gee requested an equitable and more detailed presentation with evaluations on Option 1 and what would be the consequences of not meeting the December 31st deadline.

Director Hendricks requested the September Governance meeting be scheduled soon.

Chair Davis requested flushing out Option 1 and 2 (with Option 2 having three further branches).

3. ADJOURN

The meeting adjourned at 4:50pm.

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.