

**Peninsula Corridor Joint Powers Board
Board of Directors Meeting
1250 San Carlos Avenue, San Carlos CA 94070**

**Minutes
September 3, 2009**

MEMBERS PRESENT: M. Church, J. Cisneros, S. Elsbernd, N. Ford, D. Gage (Chair),
J. Hartnett, A. Kalra, A. Lloyd, K. Yeager

MEMBERS ABSENT: None

MTC LIAISON ABSENT: S. Lempert

STAFF PRESENT: T. Bartholomew, J. Cassman, C. Cavitt, A. Chan, B. Doty,
G. Harrington, C. Harvey, R. Haskin, R. Lake, M. Lee,
M. Martinez, N. McKenna, D. Miller, S. Murphy, M. Scanlon,
M. Simon

PUBLIC COMMENT

Jeff Carter, Burlingame, said last week a High Speed Rail (HSR) town hall meeting was held by Congresswoman Anna Eshoo. He complimented Executive Director Michael Scanlon and Peninsula Rail Program Director Bob Doty on their efforts on this issue.

Director Ken Yeager arrived at 10:08 a.m.

Vaughn Wolfe asked if the legislative matrix could emphasize “this bill would” in bold in the text so the position the JPB is taking stands out.

Ed DeLanoy, San Carlos, said Deutsche Bank does not have a good reputation for fuel hedging.

CONSENT CALENDAR

The Board approved the following items:

- a) Approval of Minutes of August 6, 2009
- b) Acceptance of Statement of Revenues and Expenses for July 2009

CHAIRPERSON’S REPORT

Appointment of Citizens Advisory Committee Member Representing Santa Clara County
Chair Gage said the Santa Clara representatives recommend Brian Wilfley for reappointment to the CAC.

A motion (Church/Lloyd) to appoint Brian Wilfley was approved unanimously.

MTC LIAISON REPORT

MTC Liaison Sue Lempert was not in attendance.

REPORT OF THE CITIZENS ADVISORY COMMITTEE (CAC)

Chair Gerald Graham reported there was no meeting in August.

REPORT OF THE EXECUTIVE DIRECTOR

Mr. Scanlon reported the following:

- Congratulated Mr. Wilfley on his reappointment to the CAC.
- Monthly Performance Statistics – July 2009
 - a. Total Ridership was 1,098,953, a decrease of 11.8 percent.
 - b. Average Weekday Ridership was 40,846, a decrease of 11.6 percent.
 - c. Total Revenue was \$3,889,9476, a decrease of 7.3 percent.
 - d. On-time Performance was 94.3 percent, an increase of 1.4 percent.
 - e. Caltrain Shuttle Ridership was 5,443, a decrease of 11. percent.
- The July 2009 declining performance is against record ridership numbers from July 2008.
- On August 31, eight mid-day trains were cut from the schedule and pricing on the GO Pass and parking were increased.
- Forty percent of revenues come from the partner agencies and 45 percent comes from the riders. The real problem is all three partner agencies are dealing with severe financial problems, largely the result of the economy, significantly decreased sales tax revenues and the elimination of the State Transit Assistance (STA) for at least the next four years.
- Next week staff will be recommending to the SamTrans Board a service cut of 7.5 percent and a fare increase later in the year.
- Caltrain's survival is dependent on electrification and modernization. The partners can not do electrification without HSR.

Peninsula Rail Program Update

Mr. Scanlon said Congresswoman Anna Eshoo held a well-attended HSR town hall meeting last week that included a panel of California High Speed Rail Authority (CHSRA) Executive Director Mehdi Morshed, Mr. Doty and himself. Remarks at the town hall meeting focused on what is fact and what is fiction. There is a lot of misinformation that has gotten out to the public. There was a lot of discussion on how to build HSR right so Caltrain is seen as a good neighbor and represents the step forward that needs to be taken. There was a judgment filed by a Sacramento court judge in a lawsuit filed against CHSRA. While the JPB is not a defendant or party in the lawsuit the future of Caltrain could rest in the outcome of the lawsuit that was filed by Atherton, Menlo Park and a host of other groups.

Legal Counsel David Miller offered up an analysis of the lawsuit judgment, while cautioning that the JPB is not a party in this lawsuit and is not involved in strategizing in respect to what transpires and that he has no detailed insights to what the judge ultimately will do. Mr. Miller said the challenge to the Environmental Impact Report (EIR) is by two municipalities and two private groups and challenges the adequacy of the environmental document prepared under the California Environmental Quality Act (CEQA). Mr. Miller said Judge Michael Kenny issued a ruling last week that found two flaws in the program EIR document. The project description, as contained in the environmental document, was inadequate in regards to the actual use of Union Pacific's (UP) rail corridor, most notably between San Jose and Gilroy, which is owned by the Union Pacific (UP). Mr. Miller said the flaw the judge enunciated stems from the fact that UP, last fall, sent a letter to the CHSRA indicating under no circumstances would it condone the shared use of its rail corridor. The judge found the environmental document did not adequately

describe a corridor that would be available for use. In the second component of the decision, which was found to be non-compliant with CEQA, the judge found there were some inconsistent statements in the document as to the capacity to mitigate vibration impacts. In one place the environmental document states it is uncertain whether vibration can be mitigated below significant levels. Mr. Miller said elsewhere in the document it states that mitigation will reduce vibrations to a less than significant level. This inconsistency was viewed to be a flaw.

Director Ash Kalra arrived at 10:26 a.m.

Mr. Miller said the court did not state what the remedy would be for these deficiencies. The JPB will prepare a proposed form of judgment and the CHSRA will have the ability and right to raise questions as to what the appropriate remedy should be. The judge addressed a number of other claimed irregularities by the petitioners and notably ruled that the environmental document was adequate in all other respects. For example, the discussion of the operational and environmental issues related to the Altamont Pass alternatives are legally sufficient. This was a core issue with the case. Also, the judge ruled that the HSR decision to exclude further detail study of the Highway 101 and Highway 280 alternatives was adequate in all respects.

Mr. Scanlon introduced Mr. Doty for a report on the Peninsula Rail Program (PRP):

- Staff has had discussions with key members of the Federal Railroad Administration (FRA) over the last few weeks concerning continuing efforts to obtain approval for installation of a new Positive Train Control (PTC) system that allows mixed traffic. Significant progress is being made.
- Staff had a joint meeting with the FRA and the California Public Utilities Commission (CPUC). The two agencies have decided who is the lead in particular areas and this helps a great deal.
- Staff has been developing an addendum to the current Memorandum of Understanding (MOU) that solidifies HSR's commitment to the budget and organization. This has been through multiple reviews and is in final draft form and will be presented to the CHSRA board at its October meeting. This agreement will be retroactive to July 1.
- There will be a presentation of the alternative analysis coming out this month. The first cut is what cannot be built. There are several places along the right-of-way where there are physical constraints that preclude options.
- On Saturday, September 12, there will be a public meeting on HSR in Palo Alto and PRP staff will participate.
- CHSRA is looking at the American Recovery Reinvestment Act (ARRA) package today for funding and it includes the full electrification of the system, grade separation for the entire right-of-way and the approach to San Francisco.

Mr. Scanlon continued with his report:

- Ridership on Giants service is up 33 percent over August 2008.
- Amtrak has completed the conversion of all bike cars for the bikes on-board project. Three additional Bombardier cars are being converted and should be completed by October. Two bike cars are on all train sets 96.9 percent of the time.
- Locomotive air horns continue to be of great concern. As of August 31 all cars have had horns calibrated.

- The Reading File contains a HSR frequently asked question sheet, two articles on suicide prevention and the July Safety and Security report.
- The Transit Police were commended for saving two individuals on the train. An infant had a medical emergency and a 16-year old was suffering from alcohol poisoning.
- On August 21, a 13-year old girl who was entering Gunn High School this year committed suicide.

Director Jim Hartnett said he appreciates the work Mr. Doty is doing and said staff needs to contact the cities to offer updates at their council meetings and/or public meetings. He read the decision by the judge and said for a project this massive it is remarkable that so little was found inadequate in the EIR.

Director Harnett said within minutes of the decision the CHSRA should have been on record as declaring victory. The significance is that additional information has to be developed and circulated. Director Hartnett said this does not derail the project, but time can.

Director Art Lloyd said he agrees with Director Hartnett. He said the media likes to play up the negatives and not the positives. Director Lloyd asked about the geographical area between Bayshore to San Francisco/4th and King. He asked what consideration is there for the tunnels.

Mr. Doty said staff is looking at an operating pattern for the area and then will look at geographical area.

Suicide Prevention/Outreach Update

Executive Officer Public Affairs Mark Simon said on August 24 a news conference was held to brief the media on efforts being taken on this issue. Mr. Simon said staff emphasized that the community needs to begin addressing openly and frankly the issues of mental health, depression and death by suicide. He said the stigma needs to be lifted that prevents people from talking about these issues and seeking help.

Mr. Simon said Chief of Protective Services Dave Triolo participated and reviewed the work the Transit Police are doing in the High Intensity Safety Enforcement Program (HISEP), a program that Mr. Triolo started to target areas where a high level of police presence is needed. Mr. Triolo has also had the Transit Police trained in crisis intervention, which has had a direct result on the number of interventions.

Mr. Simon said Dr. Shashank Joshi, a child and adolescent psychiatrist at Stanford Hospital, also participated in the news conference. Dr. Joshi informed the media about issues related to death by suicide, contributing factors and the role the media plays.

Over the summer Mr. Simon has been in contact with individuals, organizations, governmental entities, the Palo Alto Unified School District, Foothill/DeAnza Community College, California PUC and mental health agencies from both counties.

Mr. Simon said staff has learned they need to start collecting better data and analyzing it more effectively. He said there isn't a lot of national data.

Mr. Simon said staff wants to be transparent and open to discussions. Staff wants people to realize that this is an important issue to Caltrain and that we are engaged in it. He said there is a wide range of organizations and individuals interested in this problem, locally, regionally and around the country. Staff already has a list of over 45 organizations that want to participate in this effort. He said the most effective role that staff can play is that of a convener of these interests. Mr. Simon said staff is committed to playing an active role in educating the community and the impact of suicides throughout the region.

Director Mark Church thanked Mr. Simon for assembling the group of key stakeholders. He spoke to the director of behavioral health for the county and the county is committed to assisting staff with their efforts.

Director Lloyd said Operation Lifesaver is working with staff on this issue.

DESIGNATION OF SEPTEMBER AS “RAILROAD SAFETY MONTH”

Public Information Specialist Tasha Bartholomew said Staff Coordinating Council is asking the Board to adopt a proclamation designating September as “Railroad Safety Month” in conjunction with Operation Lifesaver, an internationally renowned program promoting rail safety. She said the proclamation for Railroad Safety Month is a reaffirmation of the Peninsula Corridor Joint Powers Board commitment to provide safe and efficient train service. Ms. Bartholomew said this also is an opportunity to highlight the promotion and advancement of safety on the right-of-way through enhanced safety measures and increased public awareness.

Director Lloyd presented the proclamation to California Operation Lifesaver President Cameron Beach. He said Mr. Beach is a big supporter of Caltrain and someone staff can always depend on.

Mr. Beach thanked the Board for the proclamation honoring Operation Lifesaver. He said this is an organization founded by crew members who were tired of seeing all of the accidents that occurred on their right-of-way. Mr. Beach said Operation Lifesaver has grown to an international organization focused on both motor vehicle and trespasser deaths on the railroad. He thanked the JPB for the focus on this issue and looks forward to continue working together on this issue.

A motion (Lloyd/Ford) to approve the proclamation to designate September as “Railroad Safety Month” was approved unanimously.

AUTHORIZE AMENDING AND INCREASING THE FISCAL YEAR 2010 CAPITAL BUDGET BY \$1,200,000 FROM \$82,336,042 TO \$83,536,042

Director of Budgets and Grants April Chan said Staff Coordinating Council recommends approval of this item. The \$1.2 million will provide funding to continue staff and consultant support required for the PTC project. Ms. Chan said the \$1.2 million will be coming from Proposition 1B money that Caltrain is slated to receive.

A motion (Ford/Lloyd) to amend the Fiscal Year 2010 capital budget was approved unanimously by roll call.

AUTHORIZE THE USE OF COMPETITIVE NEGOTIATION PROCUREMENT PROCESS TO PROCURE A HIGH TECHNOLOGY CALTRAIN-SPECIFIC POSITIVE TRAIN CONTROL (PTC) SYSTEM

Director of Contracts and Procurement Cheryl Cavitt said Staff Coordinating Council recommends approval to use a competitive negotiation procurement process in lieu of sealed bid process as it will allow more flexibility to evaluate important details in addition to price.

Public Comment

Norman Rolfe, San Francisco, asked if the present block signal system will be retained as a back-up in case the other system fails.

Mr. Doty said the current system will stay in place and the new system will be an overlay.

A motion (Lloyd/Hartnett) to authorize the use of competitive negotiation procurement to procure a high technology Caltrain-specific Positive Train Control (PTC) system to be called "CBOSS" (Communications Based Vital Overlay Signal System) was approved unanimously by roll call.

AUTHORIZE AWARD OF CONTRACTS TO LM COMMUNICATIONS, LTK ENGINEERING SERVICES, AURIGA CORPORATION AND MODIS, INC. FOR INFORMATION TECHNOLOGY ON-CALL CONSULTANT SUPPORT SERVICES FOR AN AGGREGATE NOT-TO-EXCEED AMOUNT OF \$1,000,000

Ms. Cavitt said Staff Coordinating Council recommends approval of award of contract to these four firms for on-call no guarantee IT support for the JPB's needs.

A motion (Church/Hartnett) to authorize award of contracts to LM Communications, LTK Engineering Services, Auriga Corporation and Modis, Inc. for Information Technology On-call Consultant Support Services was approved unanimously by roll call.

STATE AND FEDERAL LEGISLATIVE UPDATE

Government Affairs Manager Seamus Murphy made the following report:

- The current legislative session at the state level is scheduled to expire at the end of next week. There are bills moving out of the Legislature every day.
- AB116 is a contracting streamlining bill sponsored by SamTrans and the Valley Transportation Authority (VTA). This bill passed the Legislature and is expected to be signed by the governor next week.
- AB1072 is a bill that would extend the existing Proposition 1B allocation formula through the future of the bond. This bill also passed and is awaiting the governor's signature.
- SB729 is a bill that would extend transit operators' design-build authority from the current expiration date of 2011 until 2015.
- Immediately following the current legislative session the governor has called a special session to review a series of proposals from the Tax Commission. Staff has not seen any specific bill language about what the proposals will include, but have heard it will probably include reduction or elimination of the state's Sales and Business Tax, some flattening of the State Income Tax, establishment of a new Business Net Receipts Tax to replace the elimination of the Sales and Business Taxes and a potential new Pollution Tax

which would be an 18-cent per gallon increase on the sale of gasoline. This new tax would be indexed to the Consumer Price Index (CPI) and also would be subjected to a 7-cent annual increase after the initial 18-cent increase. This would generate about \$3.5 billion statewide and it is proposed that \$2 billion would be split between Caltrans and local government for maintenance.

- When Congress returns from recess next week they will be renewing dialogue about health care. Before the end of this month Congress needs to approve the Fiscal Year 2010 Appropriations package. This package includes \$1.5 million for PTC for Caltrain, \$50 million nationwide for PTC and between \$1 billion and \$4 billion for nationwide HSR.
- Congress needs to approve reauthorization of the Surface Transportation Bill. It is unclear whether it will be a full six-year reauthorization or an extension of the program for a period of 18 months or shorter.

QUARTERLY CAPITAL PROGRESS REPORT

No discussion.

Public Comment

Doris Maez, San Bruno, said she has a concern with the accelerated timeline for the San Bruno Grade Separation project. She said in 2006 the project was put on hold and now the project is only at 35 percent design. Ms. Maez asked if it is really feasible that 100 percent design will be achieved by the end of 2009. She is worried that in the haste to meet deadlines key issues important to the citizens of San Bruno, including elevators at the station, will be overlooked or modified for the sake of expediency and the net result will be a project that nobody likes.

Mr. Scanlon said what is driving the urgency of this project is that if a contract is not awarded by June 2010 the JPB would lose \$30 million. He said the funding and commitments were made through the San Mateo County Transportation Authority. Mr. Scanlon said 65 percent design should be completed by this month.

Deputy CEO Chuck Harvey said 35 percent design has been completed and is currently in a design review with the City of San Bruno. At the same time, on a parallel path, staff has begun the preliminary work on 65 percent design. Mr. Harvey said staff is trying to accommodate many of the design concerns of San Bruno citizens. He said if a mutual consent cannot be reached on the design of the station, this project could go back on the back shelf, but if a consensus can be reached 100 percent design can be completed by the end of the year. Mr. Harvey said the delay was a direct result of HSR. He said that no HSR money can be used for design work on an environmental clearance for this project. Mr. Harvey said this project required an EIR clearance.

CORRESPONDENCE

None.

BOARD MEMBER REQUESTS

None.

DATE/TIME/PLACE OF NEXT MEETING

Thursday, October 1, 2009, 10 a.m. at San Mateo County Transit District Administrative Building, Bacciocco Auditorium, 2nd Floor, 1250 San Carlos Avenue, San Carlos, CA 94070

GENERAL COUNSEL REPORT

Mr. Miller said he had a productive meeting last week with the City & County of San Francisco dealing with the crossing near the Mission Bay project and Common Street. Mr. Miller said if an agreement is reached both the Board of Supervisors and the Port of San Francisco will have to take an action over the next couple of months that would convey property interests to the Joint Powers Board. Mr. Scanlon has given the go ahead that an agreement would be signed allowing the Common Street crossing to open as soon as the CPUC authorizes it.

- a. Closed Session: Significant Exposure to Litigation Pursuant to Government Code Section 54956.9 (a) Russell J. Peterson vs. Peninsula Corridor Joint Powers Board, et al.

Mr. Miller said the purpose of the closed session is to discuss a matter of litigation which relates to the Joint Powers Board and the Joint Powers Board as a party. He said yesterday an amended complaint that adds, as a plaintiff, Halstead Nursery Incorporated was received.

Adjourned to closed session at 11:30 a.m.

Reconvened to open session at 11:39 a.m.

Chair Gage said there is nothing to report from the closed session.

ADJOURNED

Adjourned at 11:40a.m.