

REGIONAL TRANSPORTATION COMMISSION

Transportation Policy Workshop

MINUTES

Thursday, November 20, 2003

9:00 am

SCCRTC Conference Room

Santa Cruz, CA 95060

Members Present:

Jan Beautz

Ellen Pirie

Tony Campos

Richard De La Paz

Tim Fitzmaurice

Dennis Norton

Pat Spence

Randy Johnson

Mardi Wormhoudt

Mike Keogh

Mark Stone

Emily Reilly

Staff Present:

Linda Wilshusen

Pat Dellin

Karena Pushnik

Kim Shultz

Luis Mendez

Gini Pineda

1. Introductions

Introductions were made. Vice Chair Johnson welcomed Mark Stone, recently appointed as the 5th District Supervisor replacing Jeff Almquist, to the Commission.

2. Oral Communications

Neil McElwee distributed an article from the *Sentinel* regarding the recreational rail, asking that it be put on the record that the Commissioners were in receipt of the article.

3. Additions/Deletions to the Agenda

Executive Director Linda Wilshusen handed out an email from Kathie Jacobs, California Transportation Commission to add to Item 7.

CLOSED SESSION

4. Conference with Real Property Negotiator for Acquisition of the Santa Cruz Branch Rail Line
 - Property: Santa Cruz Branch Rail Line from Watsonville Junction to Davenport
 - Agency Negotiator: Kirk Trost, Miller, Owen & Trost
 - Negotiation Parties: SCCRTC, Union Pacific
 - Under Negotiation: All terms

OPEN SESSION**CONSENT AGENDA** (Pirie/Fitzmaurice)

5. Accepted Minutes of October 16, 2003 Transportation Policy Workshop Meeting
Commissioners Wormhoudt, Campos, Johnson and Stone abstained.
6. Accepted Status Report on Highway 1 Projects

Executive Director Linda Wilshusen noted that there would be a presentation by Caltrans on GARVEE bonds at the December Regional Transportation Commission meeting.

REGULAR AGENDA

7. Letter from the California Transportation Commission (CTC) Regarding Use of Proposition 116 Funds

Executive Director Linda Wilshusen said that in addition to the response letter to Commissioner Beautz from the California Transportation Commission (CTC), an email from CTC Assistant Deputy Director Kathie Jacobs had been received, to further clarify the CTC's position regarding repayment of Proposition 116 funds.

Commissioner Beautz said that there was nothing new in the email and that it clearly stated that to avoid repayment, in the event that the original project failed, the Regional Transportation Commission would have to come up with an alternative operating plan or a new project, which she was concerned would be paid for by public funds.

Executive Director Wilshusen said that the CTC's email pointed out that there had been only one payback situation and the agency affected had chosen to do so.

Commissioner Beautz stated that she was not willing to say that there would be no public subsidy for a project, which if it failed, could possibly require public funds.

Commissioner Wormhoudt noted that in the event that the private operator failed, the Commission would have the option to liquidate assets, to go ahead with another plan or to take over operations, and that it was too far in the future to decide what options might be considered appropriate.

Commissioner Norton said that while he agreed with Commissioner Beautz in that it may not be accurate to say that no public funds would ever be spent in conjunction with the project, it should be remembered that by spending \$9 of the \$11 million of Proposition 116 funds to purchase the rail corridor, the Commission will be filling a long term transportation goal and that the CTC would accept this as a legitimate use of the funds.

Commissioner Pirie agreed that the email did not preclude the possibility of repayment and expressed concern that the decisions about what alternate projects might qualify for Proposition 116 funding would be made by the CTC and not at the local level. Ms. Pirie said she had thought Proposition 116 funding was “free money” but in fact the Commission could be mortgaging future transportation funds. She questioned the wisdom of using Proposition 116 money even for the pre-purchase activities.

Commissioner De La Paz asked that if the Commission wanted to proceed with passenger rail service on the entire corridor, would there be a problem with the recreational rail service and would it effect the business plan. He noted that if the Pajaro station is built by the Transportation Agency for Monterey County, passenger rail service could become viable in the foreseeable future.

Director Wilshusen said that the Commission would not be precluded from developing passenger rail service in the future.

Bill Comfort said that the MTIS found that passenger service would be extremely expensive to operate and little used.

Commissioner Campos said that if paying back Proposition 116 money was a concern, the Commission could consider folding the rail line acquisition into the upcoming local tax measure Expenditure Plan and using the funds generated by the local sales tax for the purchase.

Commissioner Reilly pointed out that the Commission’s purpose was to use public funds to subsidize transportation projects and that it was important to stay focused on the project at hand. Ms. Reilly said that while protecting the ability to fund projects in the future was important, the Commission should not be afraid to act now.

Commissioner Spence expressed concern that the money would have to be paid back and said she would oppose dipping into Transportation Development Act or State Transportation Improvement Program funds. Ms. Spence asked if there was any way to trade the Proposition 116 funds with another county for hard cash.

Director Wilshusen said that the last time that option was looked at, there was no county that had money to trade that still had Proposition 16 funds of its own, but that this option was still open for exploration.

Commissioner Keogh said he supports buying the rail corridor but has reservations about the source of funds and would rather pursue funding without the Proposition 116 restrictions.

Commissioner Spence added that Commissioner Beautz did an excellent job moderating the workshop of the Initial Study.

8. Contracts for Appraisals for the Santa Cruz Branch Rail Line

Senior Planner Luis Mendez gave the staff report saying that this item had been continued from the November 6, 2003 Regional Transportation Commission meeting. He summarized that the Commission had released Request for Proposals for the four types of appraisals required by Caltrans, selected a committee including Commissioners to review the proposals and that the committee had made recommendation to the Commission.

Mr. Mendez mentioned the concerns of a member of the public regarding a potential conflict of interest with the Woodside Group and Wilbur Smith Associates. A question had also been raised about the procedure for including minority firms in the selection process.

Specifically, Mr. Mendez said that Alan DeMoss, Woodside Consulting Group, had retired from Southern Pacific railroad after 42 years of service and drew a pension for that service. Union Pacific purchased Southern Pacific in 1997 and currently administers Mr. DeMoss's pension. Union Pacific cannot change the amount or terms of the pension and therefore cannot exercise influence over Mr. DeMoss and his current consulting services.

Mr. Mendez said that Justin Fox, Wilbur Smith Associates, maintains associations with Union Pacific executives and says that this access creates a working environment conducive to cooperation and does not affect his objectivity.

In addition, Mr. Mendez referenced the proposed appraisal scopes of work, which specify that appraisals are reviewed by a review appraiser and ultimately by Caltrans to make sure the appraisals are in accordance with current state and federal requirements and economic market values.

Lastly, Mr. Mendez explained that Proposition 209 prohibits the use of racial preferences in public employment, public education and public housing. He stated that the Commission did send RFP's to a list of consultants from the RTC database, the TAMC's database and posted it on the SCCRTC website. The RFP was also picked up by a consultant information service.

Mr. Mendez asked that the Commission proceed with approving the review committee recommendations.

Andrew Horne, Aptos resident, said that as a general concept, everyone was "super ethical" and will do a great job, but that this selection process is a classic example of an "old boys network" and that the real estate negotiations with Union Pacific were done in secret. He questioned why Alan DeMoss was included since his proposal called for the least number of hours but was the most expensive. Mr. Horne also questioned the suitability of Wilbur Smith Associates and suggested that "new blood" regarding the real estate appraisal might be more appropriate than contracting with Arthur Gimmy International, which had performed the appraisal for the Commission in 1995.

Regarding the use of minority owned businesses, Mr. Horne said when he worked for Price Waterhouse in New York, the Metro Transit Authority had a policy to include disadvantaged businesses in contract bidding. He suggested that Diaz, Diaz and Boyd, whose names suggest minority ownership, and who have two women partners in the firm, would probably be willing to drop their price in order to be more competitive with Arthur Gimmy. Mr. Horne also said that Thomas Ryland had formerly worked for Caltrans. He said that the Committee may not have taken these issues into account when selecting the consultants and asked that the Commission re-evaluate at least one of the recommendations.

Vice Chair Johnson said that real estate negotiations are always done in private and that regarding an "old boys network", he believes that the Commissioners do their homework and are capable of making educated decisions.

Commissioner Beautz said that she had sat on the Committee and agreed with some of these points herself.

Commissioner Fitzmaurice said that there was a process question: that either the Commission should change the membership of the committee or go back to them and ask them to reevaluate their recommendations, but to reevaluate in public was not appropriate. Mr. Fitzmaurice suggested either accepting the recommendations or going back to the Committee.

Commissioner Campos said the important issue is not how many hours a consultant puts into a job, but the quality of the end result. Mr. Campos said that it is unprofessional to ask a potential client to reduce their bid once they have submitted bids for a selection process and said that all the firms considered were qualified.

Commissioner Campos said that the consultant who had done the previous real estate appraisal no longer worked for Arthur Gimmy International and that it could have been beneficial if he were still with the firm, since an upgrade to the original appraisal could have saved time and money. Mr. Campos also made the point that it was important that the appraisers were familiar with the Santa Cruz area so that the real estate prices were competitive and appropriate. He said that although he had questioned Justin Fox's relationship with Union Pacific himself, as a businessman he understood that good working relationships help everyone. He concluded by saying that the Committee had put in a lot of time on the selection process and advised moving ahead and letting the consultants know about the reservations under discussion.

Commissioner Campos moved to approve the Appraisal Consultants Review Team and staff recommendations that the Regional Transportation Commission:

1. Select Thomas W. Ryland to prepare the review appraisal, Arthur Gimmy International to prepare the real estate appraisal, the Woodside Consulting Group to prepare the valuation of rail assets and Wilbur Smith Associates to prepare the going concern valuation;
2. Adopt the resolution authorizing the Executive Director to negotiate and enter into agreements with the selected consultants as follows:
 - a. Thomas W. Ryland – not to exceed \$21,000
 - b. Arthur Gimmy International – not to exceed \$55,000
 - c. The Woodside Consulting Group – not to exceed \$20,000
 - d. Wilbur Smith Associates – not to exceed \$25,000

Commissioner Fitzmaurice seconded the motion.

Commissioner Pirie said it might be more important to decide if the Commission is going to use Proposition 116 money for the project before spending Proposition 116 funding on pre-acquisition activities and it may be better to postpone a decision regarding the appraisers to the December Commission meeting.

Director Wilshusen clarified that pre-acquisition funds are free and clear grant funds, which do not have to be repaid even if the Commission does not move forward with the project.

Neil McElwee, resident, suggested discussing a first right of refusal with Union Pacific as a less expensive option than an appraisal.

Commissioner Johnson asked for a point of clarification that the pre-acquisition Proposition 116 funds were unencumbered. Director Wilshusen affirmed they were.

Commissioner Norton said that the Environmental Impact Report is a public process and welcomed public comment adding that if the environmental report indicates that the recreational rail project is not acceptable, the Commission will have to look at other options.

Commissioner Keogh said he did not approve of Arthur Gimmy because of the across-the-fence methodology described to assign value to pieces of adjacent real estate.

Kirk Trost, legal counsel for the rail line acquisition, replied that the methodology is required by Caltrans and agreed with Commissioner Keogh that different values had to be assigned to various pieces of property in accordance to their independent utility and that the Caltrans guidelines require that adjustments to net-liquidated value are made accordingly.

Commissioner Wormhoudt spoke in support of the motion saying that the Commission has been given assurance that the Proposition 116 money for the appraisals will not have to be paid back if the Commission decides to not go ahead with the project and that the appraisals are an independent planning expenditure and the decision to go ahead is a separate issue.

Commissioner Johnson called the question and asked for a vote on the motion.

Commissioner Campos amended his motion, and Commissioner Fitzmaurice agreed, to direct staff and Mr. Trost to ensure that the net-liquidated value of each evaluated parcel is correctly reflected in the appraisal

The motion passed with Commissioners Beautz, Pirie and Keogh voting "no".

9. Next Meetings / Adjournment

The meeting adjourned at 11:05 a.m.

The next regular RTC meeting will be held Thursday, December 4, 2003 at 9:00 a.m. at the Board of Supervisors Chambers, 701 Ocean Street, Santa Cruz, CA.

The next Transportation Policy Workshop will be held Thursday, December 18, 2003 at 9:00 a.m. at the RTC Office, 1523 Pacific Avenue, Santa Cruz, CA.

Respectfully submitted,

Gini Pineda, Staff

ATTENDEES

Michael & Janet Singer

Bill Comfort

Les White

Bob Scott

Paul Elerick

Rahn Garcia

Bob Scott

Cliff Walters

Richard Crocker

Bonnie Morr

Andrew Horne

Ken Kannegaard

Jeff North

Edenilson Quintanilla

Neil McElwee

SCMTD

SCCRTC Technical Advisor

CFST

County Counsel

Santa Cruz Big Trees & Roaring Camp RR

UTU 23

RMC Lonestar

UTU 23

Santa Cruz County