

(Amended - Replaces ITEM 6)

TO: Regional Transportation Commission - Transportation Policy Workshop

FROM: Karena Pushnik, Senior Transportation Planner

RE: Response to Comments Received on the Draft Environmental Impact Report for Recreational Rail and Request for Contract Amendments

RECOMMENDATION

Staff recommends that the Regional Transportation Commission:

1. Approve a resolution (Attachment 2) adding \$18,000 in already-allocated Proposition 116 funds to the existing contract with Public Affairs Management to complete the response to comments and Final EIR for Recreational Rail Service between Capitola and Aptos; and
 2. Approve a resolution (Attachment 3) adding \$15,000 in already-allocated Proposition 16 funds to the existing contract with Miller, Owen & Trost for legal review of the response to comments and draft Final EIR.
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BACKGROUND

At the May 20 Transportation Policy Workshop, the Commission released the Draft Environmental Impact Report (DEIR) for Recreational Rail Service between Capitola and Aptos. Commissioners extended the minimum 45-day comment period to 60 days ending on July 21. A noticed public hearing was held on June 17 to hear oral testimony regarding the DEIR.

The Final Environmental Impact Report (FEIR) will consist of the DEIR plus the response to comments. Included in the staff report for the May Policy Workshop was an indication that the Recreational Rail environmental analysis contract would need to be reevaluated based on the quantity and level of detail of comments received and the remaining budget for the consultant contract.

DISCUSSION

The Regional Transportation Commission received 55 pieces of written comments on the DEIR ranging in length from ½ page to 34 pages. In addition, 12 people provided oral testimony at the June public hearing, which was transcribed for the record. Copies of all oral and written comments have been transmitted to the consultant team and are available for public review in the Commission offices.

Brief Summary of Comments

The majority of concerns expressed in comments relate to the process for determining noise impacts, the lack of completed Phase II Site Assessment information, parking demand, coordination with other projects in the corridor such as the rail trail, whether the environmental process is being

segmented, and questions about the costs, financial risks and viability of the proposed service. Questions about cost, financial risk and viability of the project do not pertain to the draft EIR, and will simply be noted.

In addition, comments were received from attorneys on behalf of residents indicating that legal actions have already been initiated and expressing a threat of litigation on the EIR.

Costs to Complete the Environmental Process

Staff has now received an estimate from Public Affairs Management (PAM), the Commissions EIR consultant, and their subconsultants of the costs to respond to comments and complete the Final EIR process (Attachment 1). PAM originally budgeted approximately \$9,300 for responding to comments and preparing the Final EIR. As noted, this budget was developed at the beginning of the EIR process as an estimate, with the intention of re-evaluating the level of effort required once the public review period was closed and the volume and complexity of comments were known.

PAM has reviewed all the comments, categorized them into topic areas, and is in the process of responding to the comments. Based on discussions with their subconsultants, PAM ascertained that that the original budgeted amount is inadequate and that the estimated cost to complete the response to comments without new substantive analysis is an additional \$17,224 (Attachment 1). **Staff recommends that the RTC approve a resolution authorizing the Executive Director to amend the existing contract with PAM to add \$18,000, for a total contract amount of \$103,000 (Attachment 2).** Already-allocated Proposition 116 funds are available and will be used for this expense.

Several of the comments received on the draft EIR were quite lengthy and others were prepared by legal counsel for residents along the proposed corridor. Given the possibility that the EIR will be the subject of litigation, staff and consultants recommend legal review of the administrative draft responses to comments and Final EIR. Staff has consulted with County Counsel, which is the RTC's contracted counsel for all matters other than the rail acquisition project, about conducting this review; County Counsel has indicated that they will not be able to provide the needed review in the timeframe desired. The RTC's rail acquisition consultant, Kirk Trost of Miller, Owen & Trost (MOT), has indicated that his firm is able to arrange for the needed review services as an add-on to the current MOT contract. Other options include requesting that PAM contract for the necessary legal review, or the RTC can itself contract with another outside counsel. Costs for legal review are estimated not to exceed \$15,000. **Staff recommends that the RTC approve a resolution authorizing the Executive Director to amend Miller Owen and Trost's existing contract to add \$15,000, for a total contract amount of \$332,000 (Attachment 3).** Already-allocated Proposition 116 funds are available and will be used for this expense.

Additional Substantive Technical Analyses

The EIR consultants have expressed confidence that the environmental analysis meets the requirements of the California Environmental Quality Act (CEQA). In light of public comments received, however, PAM has provided the Regional Transportation Commission with information on additional technical analyses that could be conducted:

Noise: Sound readings were performed at three sites in the corridor. The consultants believe this is sufficient and satisfies the CEQA requirements for noise analysis. Comments indicate that

residents desire additional noise readings. If the RTC desires to perform additional noise analysis to reevaluate the findings, the consultants indicate that an additional 3 long term and 3-5 short term noise measurements would cost an extra **\$3,000**.

Air Quality: Estimated emissions for the Budd Rail Car do not exceed the Monterey Bay Unified Air Pollution Control District standards and the preferred alternative identified in the Draft EIR is a Compressed Natural Gas or alternative fuel vehicle. Comments indicate that there is still concern about the health affects of diesel train service. If the RTC desires to perform additional analysis, a health-risk assessment could be performed to estimate whether cancer risks would be increased with this service. The consultants estimate that this health-risk assessment would cost an extra **\$6,000**.

Traffic/Ridership: The project description assumes that visitors already in the area will use the Recreational Rail service including those staying at the Seascape Resort and other lodging in the corridor, and visitors to Capitola village and New Brighton and Seacliff State Beaches. It also assumes that visitors drawn to the service will use available public parking along the corridor, including the public parking lot in Capitola Village. Comments indicate an interest in developing more detailed ridership and parking projections. If the RTC desires to perform a more detailed ridership or trip generation survey, the consultants estimate that this analysis would cost an extra **\$11,000**.

As noted above, these additional technical analyses have significant cost implications totaling an extra \$23,000. The RTC could opt to perform any, all, or none the analyses.

Schedule

Unless additional substantive technical analyses are requested, staff and PAM intend to provide the Commission with a completed FEIR for its October meeting, as noted in earlier staff reports. The RTC may want to schedule an evening public hearing for October 7. If additional studies are requested, the schedule would be impacted and consideration of the FEIR delayed.

SUMMARY

A total of 67 written and oral comments were received on the Draft Environmental Impact Report for Recreational Rail between Capitola and Aptos with an extension to Seascape. The consultants have estimated that it will cost an amount not to exceed \$18,000 to complete the environmental process including responses to substantial comments and presentations at meetings. An additional \$15,000 is also needed for legal review of the FEIR given the potential threat of litigation. If the RTC would like additional substantive analysis, additional expenditures and a delay to the schedule will be necessary.

Attachment 1: Letter from Public Affairs Management regarding a budget amendment for the FEIR

Attachment 2: Resolution to amend the contract with Public Affairs Management

Attachment 3: Resolution to amend the contract with Miller Owen & Trost