

TO: Regional Transportation Commission
FROM: Linda Wilshusen, Executive Director
RE: Recreational Rail DEIR and Proposed Revised DEIR with New Alternative

RECOMMENDATION:

Staff recommends that the Regional Transportation Commission:

1. Direct staff and consultants to revise the DEIR to add a new alternative which conforms to the recreational rail service operating plan suggested in the draft *Business Plan*;
 2. Direct staff to return to the RTC in January with a proposed description of this new alternative, including the general level of service and station locations;
 3. Direct staff to return to the RTC in January with a proposed schedule for the Revised DEIR;
 4. Agree to circulate the Revised DEIR when completed [date TBD] for a 45-day review period; and
 5. Approve the attached resolution (Attachment 1) authorizing the Executive Director to amend the RTC's contract with Public Affairs Management by adding \$30,000 to produce the Revised DEIR, and authorizing the Executive Director to amend the RTC's contract with Miller, Owen & Trost by adding \$20,000 to allow for additional legal review by Jim Moose of the Revised DEIR and response to comments, with funds to be allocated from RTC reserve funds (Transportation Development Act funds).
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BACKGROUND

In May 2004, the Regional Transportation Commission released the Draft Environmental Impact Report for Recreational Rail between Capitola and Aptos with an Extension to Seascape. 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.

At the August Transportation Policy Workshop, the RTC received copies of the comments and received a status report about the plan to develop the Final Environmental Impact Report (FEIR). At that meeting the RTC approved \$15,000 in already-allocated Proposition 116 funds for a contract with Jim Moose of Remy, Thomas, Moose and Manley for legal review of the FEIR preparation based on comments received from legal counsel on behalf of residents and the possibility that the FEIR will be subject to litigation. At that same meeting, the RTC approved \$18,000 to augment the \$85,000 contract with Public Affairs Management (PAM) to reply to the large volume of detailed comments. At the September Policy Workshop, the RTC approved \$7,000 in additional funds for PAM to perform additional technical studies on noise impacts and to perform a risk assessment for air quality impacts.

Subsequent to the close of the comment period on the draft Recreational Rail EIR, the draft *Business Plan* for the Santa Cruz Branch Rail Line was released to the public and accepted by the RTC at the September 16, 2004 Transportation Policy Workshop. This draft *Business Plan* includes

a suggested recreational rail operating plan showing that, given the maximum acceptable speeds as determined by the Federal Railroad Administration's (FRA) track classification, the "project" as defined in the current Recreational Rail DEIR is almost twice the level of service than what can actually be provided without major track upgrades. The draft *Business Plan* also addresses many of the operational and economic concerns expressed by commentors on the Draft EIR.

DISCUSSION

Since August, staff and consultants have been diligently working to respond adequately to the high volume of comments on the draft EIR, including conducting additional air quality risk assessments and noise studies with actual rail diesel cars (RDCs) - the BUDD cars owned and operated by the Oregon Department of Transportation – including noise studies at additional locations along the proposed recreational rail service segment between Capitola and Aptos/Seascape. Due to the threat of litigation on the project, the RTC authorized conducting legal review of the draft FEIR by Jim Moose of Remy, Thomas, Moose and Manley under contract to Miller, Owen & Trost.

At the November RTC meeting, staff informed the Commission that the expected schedule for public release of the response to comments & Final EIR was concurrent with the January RTC agenda packet, in order to allow time for public RTC and public review prior to a February public hearing.

It will now not be possible to meet this anticipated schedule. Legal review of the draft response to comments has highlighted a possible significant noise impact associated with horn noise at rail crossings which may not be able to be mitigated, since implementation of the mitigation proposed in the DEIR (establishment of a "Quiet Zone") is not fully under the jurisdiction of the RTC. This issue alone may require recirculation of the DEIR. Staff and the environmental consultants have initiated preliminary discussions with Public Utilities Commission staff regarding the potential for securing Quiet Zone status for four private street crossings within the project corridor, but the process to determine this is lengthy and not yet resolved.

In addition, staff and consultants have discussed that it may make sense at this time to revise the DEIR to accommodate the suggested recreational rail service plan included in the draft *Business Plan* as a new alternative in the DEIR. This recommended service plan proposes approximately 50% of the level of service originally proposed in the *Recreational Rail Preliminary Project Report* and an even lower percentage of train-hours, and would therefore have presumably fewer potential impacts than the project as currently defined in the DEIR.

If the RTC agrees to this proposal to revise the DEIR to add an alternative which is consistent with the draft *Business Plan*, a Revised DEIR would be drafted, incorporating issues raised by comments on the original DEIR; then the Revised DEIR would be circulated for comments and a final EIR prepared. Comments submitted on the Revised DEIR would be responded to as part of the Final EIR. Comments received on the original DEIR would be considered in drafting the Revised DEIR, but there is no legal standard requiring a direct response to comments on the original DEIR. CEQA Section 15088.5(f)(1) states that when an entire revised draft EIR is re-circulated, the lead agency can include a statement in the administrative record to the effect that comments on the original DEIR have been considered in the Revised EIR; also, new comments must be submitted for the

revised EIR. The RTC must directly notify each agency, person and organization that commented on the prior draft EIR of this requirement.

A memo from Public Affairs Management outlining the steps and additional funds necessary to draft the Revised DEIR is attached (Attachment 2).

Representatives from Public Affairs Management will be present at this meeting to respond to questions the Commission may have about this proposal. Jim Moose is available for the December 16th Policy Workshop, if the RTC determines that it would like to confer with him in closed session at this time regarding his analysis of the risks of potential litigation on the current DEIR. However, if the RTC agrees with the proposal to revise the DEIR as discussed above, it would not be necessary to meet with Mr. Moose until the Revised DEIR is completed.

Therefore, staff, PAM and the RTC's legal advisors recommend the following:

1. Revise the DEIR to add a new alternative which conforms to the recreational rail service operating plan suggested in the draft *Business Plan*;
2. Return to the RTC in January with a proposed description of this new alternative, including the general level of service and station locations;
3. Return to the RTC in January with a proposed schedule for the Revised DEIR;
4. Draft and circulate the revised DEIR when completed [date TBD], for a 45-day review period; and.
5. Approve the attached resolution (Attachment 2) authorizing the Executive Director to amend the RTC's contract with Public Affairs Management by adding \$30,000 to produce the revised DEIR, and to amend the RTC's contract with Miller, Owen & Trost by adding \$20,000 to allow for additional legal review by Jim Moose of the revised DEIR and response to comments, with funds to be allocated from RTC reserve funds (Transportation Development Act funds).

A budget for the preparation of the Final Revised EIR would be prepared following the 45-day comment period, once the number and complexity of new comments is known.

SUMMARY

Public Affairs Management, staff, and consultants have been working diligently to respond to the high volume of comments on the recreational rail DEIR. In light of the recent RTC acceptance of the draft *Business Plan* and in light of potential recirculation requirements related to potentially significant noise impacts at RR crossings, it is recommended that a Revised DEIR be drafted and circulated which includes a new alternative consistent with the recreational rail service operating plan suggested in the draft *Business Plan*.

Attachment 1: Draft Resolution
Attachment 2: Memo from Public Affairs Management dated 11/23/04