

AGENDA: January 6, 2005

TO: Regional Transportation Commission/Rail Trail Authority
FROM: Pat Dellin, Acting Executive Director
RE: Santa Cruz Branch Rail Line Acquisition Project

RECOMMENDATIONS

Staff recommends that the Regional Transportation Commission:

1. Approve the attached draft Projected Timeline (Attachment 2 – enclosed separately) for the Santa Cruz Branch Rail Line Acquisition Project and direct staff to implement the tasks;
 2. Approve the attached draft updated Financial Plan (Attachment 4 – enclosed separately) for the rail acquisition project;
 3. Approve the attached resolution (Attachment 5) authorizing the Executive Director to amend the Miller, Owen and Trost contract to include an additional \$82,000 to cover the \$142,000 estimated cost of the necessary title review for the rail acquisition project;
 4. Direct staff to return to the Commission in February with an AB3090 State Transportation Improvement Program (STIP) amendment request, AB3090 loan request to the Coastal Conservancy, proposed concepts for the Proposition 116 application, proposed concepts for the Request for Proposals (RFP) for a shortline operator, and other steps necessary to implement the financial plan;
 5. Direct staff to return to the Commission in March with a draft Proposition 116 application, a draft purchase agreement, an update on liability insurance, and a draft RFP for a shortline operator;
 6. Schedule three public hearings: one for the Draft Environmental Impact Report on the Recreational Rail Project (March 17th at 7:00 pm), the second to consider the Purchase Agreement (currently scheduled for April), and the third for the final decision to purchase (currently scheduled for August); and
 7. Direct staff to include in each regular RTC and Transportation Policy Workshop (TPW) meeting packet a status report on reports and analyses for the branch line acquisition.
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BACKGROUND

In 1999, the Santa Cruz County Regional Transportation Commission concluded a four-year *Major Transportation Investment Study* of the Watsonville-Santa Cruz-UCSC corridor with a

15-year program of projects which included purchase of the Santa Cruz Branch Rail Line right-of-way for future transportation uses. The Commission, with the aid of the law firm of Miller, Owen and Trost, has been in active negotiations with Union Pacific since the Spring of 2001. Kirk Trost of Miller, Owen and Trost keeps the Commission apprised of the status of negotiations and obtains Commission direction through public and closed sessions.

In 2000, the Commission programmed \$10 million in Regional Share State Transportation Improvement Program (STIP) funds for acquisition of the Santa Cruz Branch Rail Line. In 2003, Congressman Sam Farr obtained a \$1.5 million federal earmark for the project. In May 2003, following an evening public hearing, the Commission decided to develop an application for Proposition 116 funds with an operating plan for recreational rail service between Capitola and Aptos with an extension to Seascapes in order to qualify for \$11 million in Proposition 116 funds available exclusively to Santa Cruz County, and to initiate an EIR for the recreational rail service consistent with RTC policy (the status of the Draft EIR is discussed in a separate staff report). In August 2003, the California Transportation Commission (CTC) approved \$300,000 in Proposition 116 funds for pre-acquisition activities, setting the stage for using the additional \$10.7 million in Proposition 116 funds to purchase the rail line and construct the facilities needed for the proposed recreational rail service.

In April 2002, the Commission completed environmental review for the rail line acquisition with a negative declaration to satisfy the California Environmental Quality Act (CEQA) and a categorical exemption to satisfy the National Environmental Policy Act (NEPA). In August 2004, the Commission released a draft *Business Plan* for the Santa Cruz Branch Rail Line. The draft *Business Plan* will be updated as more information becomes available from Union Pacific and other sources. At its December 2, 2004 meeting, the Commission approved entering into a non-binding Letter of Intent with Union Pacific to purchase the Santa Cruz Branch Rail Line for \$19 million (Attachment 1).

The Projected Timeline by Task (Attachment 2 – enclosed separately) includes key decisions by the RTC and rail-related reports completed over the last year and a half.

DISCUSSION

The Letter of Intent to purchase the Santa Cruz Branch Rail Line states that Union Pacific will accept the Regional Transportation Commission's (RTC) offer of \$19 million, and outlines responsibilities and contingencies for both Union Pacific and the RTC. Before making a final decision on acquisition of the Santa Cruz Branch Rail Line, the RTC will perform its due diligence and have several reports completed including three appraisals, a Phase II Environmental Site Assessment (ESA), a structures assessment, a lease investigation and a title report. Final approval is also contingent on obtaining the necessary approvals from the corresponding funding and regulatory agencies such as the California Transportation Commission (CTC) and the federal Surface Transportation Board (STB).

Proposed Timeline

The attached draft projected timeline (Attachment 2 – enclosed separately) lists the tasks and reports that need to be completed before the RTC's final approval of the acquisition. Attachment 3 is the Projected Timeline by Month, showing when reports are expected to be completed and when major decisions by the Commission will be made. The timeline is a projection based on the target of concluding the purchase by September 2005, as shown in the Letter of Intent, and on currently available information as to how long it will take to complete each analysis or report. The timeline is ambitious and it may become necessary to adjust the timeline as the process progresses. Staff will keep the Commission apprised of the status of reports and analyses in a written status report for each Commission meeting.

The projected timeline shows that much of the work will be done over the next few months and the Commission will be considering portions of the project at several meetings. The proposed timeline includes a public hearing in March for the Recreational Rail Revised Draft Environmental Impact Report. Staff proposes two additional public hearings: one when the Commission will consider the final Purchase Agreement (currently scheduled for April) and the third public hearing when the Commission will make its final decision to purchase the branch line (currently scheduled for August). As requested by one RTC Commissioner, reports of studies will be provided to Commissioners with at least three weeks time for review whenever possible.

Staff recommends that the Commission review and approve the draft Projected Timeline (Attachment 2) for the Santa Cruz Branch Rail Line Acquisition Project and direct staff to implement the tasks. Further information on the tasks and reports follows.

Funding and Regulatory Approval Tasks

STIP AB3090 Amendment

As the Regional Transportation Commission (RTC) knows, the \$10 million in State Transportation Improvement Program (STIP) funds programmed for the acquisition project are not currently available due to the State's funding crisis. However, utilizing the provisions of AB 3090 (Statutes of 1992, Chapter 1243), the RTC could proceed with the project now using its own funds or funds obtained through a loan, then receive cash reimbursement from the State Transportation Improvement Program (STIP) in a later year. It is expected that the California Transportation Commission (CTC) would make a \$10 million STIP AB3090 reimbursement available to the RTC in fiscal year (FY) 08/09. The CTC considers AB3090 reimbursements and GARVEE bond debt service payments its highest priority and is obligated to repay the funds in the year specified before releasing funds for any other STIP projects in the state. For that reason, the region requesting an AB3090 Reimbursement Amendment for a given project must also designate that project as its highest priority for programming for that fiscal year. (This AB3090 request will not conflict with STIP funding for SCMTD's MetroBase project, which the CTC is due to program for a regular STIP allocation in FY06/07.)

Coastal Conservancy Loan

Although the STIP AB3090 process allows the RTC to receive the \$10 million in STIP funds for this project at a later date, the RTC needs to have \$10 million in bridge financing in the meantime. The RTC does not have the funds to loan to the acquisition project. Therefore, the RTC directed staff in December 2002 to submit a funding request to the Coastal Conservancy to provide the necessary \$10 million in bridge financing. Coastal Conservancy staff is interested in seeing the RTC purchase the Santa Cruz Branch Rail Line because the proposed Coastal Rail Trail would be an integral part of the California Coastal Trail. Coastal Conservancy staff recently informed RTC staff that although there have been a great number of requests for Coastal Conservancy resources, they support this project and will recommend a \$10 million interest-free loan to their board for this project, with repayment in FY 08/09.

In order to secure this \$10 million loan from the Coastal Conservancy, the Coastal Conservancy will want a plan to be paid back by FY08/09. As discussed in the last section, the AB3090 Reimbursement will provide the payback. An AB3090 Reimbursement is considered a STIP amendment by the CTC and requires two CTC meetings to complete. In addition, CTC staff requires a two-month lead time for any item that will be included in a CTC meeting agenda. Therefore, the RTC needs to consider the AB3090 request at its meeting in February so that it can be submitted to the CTC in March and considered by the CTC in May.

Proposition 116 Application

In August 2003, the Regional Transportation Commission submitted a Proposition 116 application for pre-acquisition activities and was successful in securing \$300,000. An amended Proposition 116 application requesting the remaining \$10.7 million will be required to access the funds and purchase the Santa Cruz Branch Rail Line. The AB3090 reimbursement and the approved Coastal Conservancy loan approval will be required for the Proposition 116 application to show that the RTC has a sound financial plan to acquire the Santa Cruz Branch Rail Line and later provide some level of passenger service on the rail line.

The August 2003 Proposition 116 application estimated that recreational rail service would begin in 2006. This estimate is no longer realistic and must be adjusted. Consistent with Proposition 116 guidelines, the RTC will have 10 years from the date of acquisition to initiate recreational rail service. Therefore, the RTC could aim for recreational service to start by 2014, or could choose an earlier date.

The RTC will address this timing issue at its February meeting, when it discusses concepts for the Proposition 116 application. The Projected Timeline ([Attachment 2](#)) has the RTC considering the draft Proposition 116 application at its March meeting.

Updated Financial Plan

As the draft Projected Timeline illustrates, there are a number of reports and tasks to complete and a lot of work to be done before the RTC can decide to close a purchase transaction with Union Pacific by the September 23, 2005 deadline, as stated in the Letter of Intent. The

completion of those tasks is dependent on a sound financial plan that can be accepted by the CTC and that covers the costs of the work to be done, the acquisition, and the establishment of eventual recreational rail service.

The RTC last approved the Financial Plan for the rail line acquisition in August 2003 as part of the Proposition 116 application for pre-acquisition activities. Staff has revised the Financial Plan (Attachment 4 – enclosed separately) to include the Coastal Conservancy loan with the AB3090 reimbursement, the purchase price for the rail line, the costs shown in the draft *Business Plan*, actual costs of completed acquisition activities, and estimated costs for acquisition activities yet to be completed.

Staff recommends that the Regional Transportation Commission review and approve the attached updated Financial Plan (Attachment 4– enclosed separately).

Surface Transportation Board (STB) Approval

The Surface Transportation Board (STB), the federal regulatory agency for railroads, will have to approve the purchase transaction. Similar transactions with similar arrangements have occurred in the past in California and other parts of the country, so it is expected that the STB will approve this transaction. The Projected Timeline calls for the STB application to be submitted in April.

Due Diligence/Purchase Documentation Tasks

Appraisals

The Regional Transportation Commission has contracts with four separate consultants for the three required appraisal documents and a review of the appraisal documents. The three appraisal documents are: Net Liquidation Valuation (NLV) of the tracks structures and other improvements, Going Concern Valuation of the freight business, and Land and Overall appraisal. Taken together, these appraisal documents will give the RTC, the CTC and Caltrans documentation of the fair value of the property. The appraisals are also required by the CTC and Caltrans before a railroad right-of-way can be cleared for purchase with state and/or federal funds.

The status of the appraisal documents are as follows:

1. The Net Liquidation Valuation (NLV) of the tracks, structures and other equipment being produced by the Woodside Consulting Group is nearly complete and awaiting final review by the review appraiser.
2. The final draft of the Going Concern Valuation (GCV) of the freight business on the rail line being produced by Wilbur Smith Associates (WSA) is currently being completed and will be reviewed by the review appraiser.
3. The draft of the Land and Overall appraisal being produced by Arthur Gimmy International (AGI) is currently being completed.
4. The review appraiser (Thomas J. Ryland) will review the Land and Overall appraisal. It

may need to be redrafted after this review.

It is expected that the appraisal documents will be ready for RTC review and acceptance in March and/or April.

Final Purchase Agreement

The acquisition tasks on the timeline include continued negotiations with UP for various components of the property ownership and freight service transition, which will be part of the Purchase Agreement. The RTC will be apprised of the negotiations in closed session. It is estimated that a final Purchase Agreement will be ready for RTC approval in April. Approval of the final Purchase Agreement will be done in public session. As noted earlier, staff proposes a public hearing before the RTC decides on the final Purchase Agreement.

Structures and Historical Assessments

In addition to any information that UP provides on the rail line structures, an independent structures assessment will be prepared. Miller, Owen and Trost is currently seeking proposals for that work. It is expected that an historical site investigation will not be required because the property acquisition will not disturb any structures.

Title Work

Miller, Owen and Trost is preparing to engage a subconsultant to initiate the necessary title work. In March 2004, the RTC authorized adding \$60,000 to the Miller, Owen and Trost contract to produce the necessary title work. At that time it was unknown how many parcels would be included in the rail line purchase and it was expected that Proposition 116 funds secured with the August 2003 application would be used for the title work. The Proposition 116 funds secured for pre-acquisition activities have nearly been exhausted now by the work on the draft *Business Plan*, the appraisals and the recreational rail service EIR. Current estimates indicate that 142 parcels will be included and it is estimated that the title company will charge \$1,000 per parcel. The total cost for the necessary title work is now estimated at \$142,000. This is shown in the draft proposed Financial Plan (Attachment 5) and is included in the SCCRTC's approved fiscal FY 04/05 budget.

Staff recommends approval of the attached resolution (Attachment 5) authorizing that an additional \$82,000 be included in the Miller, Owen and Trost contract to cover the full \$142,000 cost of the necessary title work and that the federal appropriation funds be used for the title work, consistent with the SCCRTC approved FY04-05 budget.

Phase II Environmental Site Assessment (ESA)

The RTC has a contract with Geomatrix Consultants to prepare the Phase II Environmental Site Assessment (ESA). UP is drafting the Right of Entry Agreement necessary for Geomatrix to enter the UP property and conduct the necessary soil samples and water well monitoring for hazardous materials analysis. It is expected that the Right of Entry Agreement will be completed

soon. Geomatrix prepared a draft work plan, which was submitted to the County Environmental Health Department and to the RTC for comment in the Spring of 2004.

The Phase II ESA will be conducted under a confidentiality agreement with UP and the results will be shared with the RTC in closed session. Regardless of the confidentiality agreement, once the report is produced any disclosures required by law will be made available to the appropriate regulatory agencies. Kirk Tost is negotiating an arrangement with UP, which will allow the results to be available to the public prior to the RTC's final decision on acquisition.

Operations Tasks

The recreational rail service draft environmental impact report (EIR) continues to move forward and its status is discussed in the following agenda item. As shown in the Projected Timeline, a public hearing to receive comments on the Draft EIR is scheduled for March.

Insurance

Staff and consultants will continue to investigate the necessary insurance policies and coverage. Staff will request the assistance of the Santa Cruz County Risk Manager as necessary in the insurance investigation. Some Commissioners have expressed concern over potential liability and insurance policies to protect against the potential liability. The draft *Business Plan* provided some analysis on this issue. Next month, staff will return to the RTC with more information on the insurance investigations. Later in the process, the Commission will consider entering into the necessary insurance policies.

Lease Investigation

UP is gathering its current lease information to provide to the RTC. In addition, a lease investigation will be conducted to determine the potential for existing and future leases. On a nearly 13 mile long rail line, the Transportation Agency for Monterey County (TAMC) inherited about \$40,000 in annual lease revenue from UP. TAMC expects to soon be realizing over \$200,000 in annual lease revenue after upgrading inherited leases and securing new leases. TAMC is also discussing the possibility of a lifetime lease for a pipeline with the proposed Moss Landing desalination plant. The lease could net TAMC a one time payment of \$5 million, which is more than 50% of the purchase price of its rail line. The Timeline calls for information on the lease investigation being presented to the RTC in April.

RFP for Short Line Operator

Kirk Trost is seeking the services of a subconsultant to draft the technical aspects of a request for proposals (RFP) for the short line freight service and potential future recreational rail service. Kirk Trost and staff expect to present concepts for the RFP to the RTC in February and the recommended RFP for Commission approval in March. A committee which could include Commissioners will review the submitted proposals, interview the highest ranked proposers, and make a recommendation to the Commission. RTC approval of the shortline operator is currently

scheduled for the June Commission meeting.

Business Plan Update

The draft *Business Plan* will be refined based on the analyses and reports which will become available over the next several months. The Timeline shows all reports and the Business Plan update to be ready for the Commission in time for its final decision to purchase the rail line, following a public hearing, in August.

Project Development Team

Staff is organizing a Santa Cruz Branch Rail Line Acquisition Project Development Team (PDT) that will meet monthly. The PDT will be modeled after PDT's for major highway projects. The PDT includes CTC staff, Coastal Conservancy staff, Caltrans Division of Right-of-Way staff, Caltrans Division of Mass Transportation staff, RTC Santa Cruz Branch Rail Line acquisition negotiations consultants, RTC technical consultants and RTC staff. The PDT will help staff and the Commission to implement the various aspects of the project in accordance with the Commission's approved timeline and financial plan. PDT meetings allow the various staff and consultant members to communicate and collaborate efficiently and effectively, thus helping to ensure that the project proceeds as quickly and as smoothly as possible. The first meeting of the group is expected to take place in late January 2005.

Status Reports to the Regional Transportation Commission

As shown in Attachment 2 and discussed in the staff report, much work will be done over the next nine months to analyze the elements of the project, consult with the grant and regulatory agencies and present information to the RTC and the public. Staff plans to provide a status report to the Commission at each of its meetings on the key elements of the project, similar to the Highway 1 status reports.

SUMMARY

The Regional Transportation Commission (RTC) entered into a non-binding Letter of Intent with Union Pacific (UP) to purchase the Santa Cruz Branch Rail Line and close escrow on September 23, 2005. Staff recommends approving the attached Projected Timeline (Attachment 2 – enclosed separately) for the work that must be completed for the RTC to make a final decision on closing escrow. Staff also recommends approving the attached updated Financial Plan (Attachment 4) which will ensure that the costs of acquiring the rail line are covered. In addition, staff recommends approval of the attached resolution (Attachment 5) authorizing the use of budgeted funds to cover the full cost of the necessary title work. As illustrated in the draft Projected Timeline and discussed above there will be many more decision points for the Regional Transportation Commission, including three proposed public hearings. The decisions made by the RTC today will allow the RTC to go to the next step in the process, with final approval to purchase the rail line scheduled for August, 2005.

Attachment 1: Approved Letter of Intent

Attachment 2: Draft Projected Timeline by Task (enclosed separately)

Attachment 3: Draft Projected Timeline by Month (enclosed separately)

Attachment 4: Draft Updated Financial Plan

Attachment 5: Resolution Amending the Miller, Owen and Trost Contract for the Title Review
Work

Prepared by Luis Pavel Mendez

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