

AGENDA: March 3, 2005

TO: Regional Transportation Commission/Rail Trail Authority
FROM: Luis Mendez, Acting Deputy Director
RE: Santa Cruz Branch Rail Line Acquisition Project – AB3090 STIP Amendment,
Coastal Conservancy Reimbursable Grant Request

RECOMMENDATIONS

Staff recommends that the Regional Transportation Commission:

1. Accept an oral report from the ad hoc committee on Proposition 116 options and consider the committee's recommendations;
 2. Adopt the attached resolution (Attachment 1):
 - a. Stating that the Santa Cruz Branch Rail Line Right-of-Way Acquisition project is the region's highest priority for reimbursement among projects programmed for STIP funds in fiscal year 2008/09;
 - b. Amending the 2004 *Regional Transportation Improvement Program* and asking the California Transportation Commission (CTC) to designate the Santa Cruz Branch Rail Line Right-of-Way Acquisition project for an AB3090 Reimbursement in fiscal year 2008/09;
 3. Adopt the attached resolution (Attachment 2) requesting a \$10 million reimbursable grant to be paid back by the STIP funds programmed for the Santa Cruz Branch Rail Line Right-of-Way Acquisition project;
 4. Provide staff direction on timing, objectives and a budget for a demonstration train; and
 5. Accept status information on various elements of the Santa Cruz Branch Rail Line Acquisition Project.
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BACKGROUND

The Commission has been working on the acquisition of the Santa Cruz Branch Rail Line for four years. 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 and close escrow by September 23, 2005. At its January 06, 2005 meeting, the Commission approved a timeline to meet the closing date.

The Letter of Intent to purchase the Santa Cruz Branch Rail Line and the projected timeline list a number of reports and steps that must be completed before the Commission can make a final

decision on acquisition of the Santa Cruz Branch Rail Line. Final approval is also contingent on obtaining the necessary approvals from the corresponding funding and regulatory agencies such as the California Transportation Commission (CTC), the Coastal Conservancy (CC), Caltrans Division of Right of Way and the Surface Transportation Board.

At its January 20, 2005 Transportation Policy Workshop (TPW), the Commission designated an ad hoc committee to discuss various passenger rail service options that could be available to the RTC to qualify for the Proposition 116 funds. The ad hoc committee and staff have discussed options with California Transportation Commission (CTC) staff. Staff has also discussed an AB3090 designation and AB3090 loan with CTC staff and Coastal Conservancy staff.

At the February 3, 2005 meeting, the RTC approved preparing a draft Proposition 116 application with an operating plan for recreational rail service between Capitola and Seascapes or a recreational rail service project recommended by the ad hoc committee. The RTC also approved preparing a draft request for proposals (RFP) for a short line operator to provide both the freight and Capitola to Seascapes recreational rail service. In addition, the RTC directed staff to return with a recommendation for an AB3090 designation for the Santa Cruz Branch Rail Line Acquisition project.

DISCUSSION

Ad Hoc Committee on Proposition 116 Options

The ad hoc committee on Proposition 116 options and staff have been exploring with CTC staff the possibility that existing recreational rail service could qualify the RTC to access the Proposition 116 funds to purchase the Santa Cruz Branch Rail Line. The ad hoc committee met with CTC staff and provided information regarding the Santa Cruz Big Trees and Pacific Railway service to the Boardwalk, the RTC's desire to ensure continuation of that service and the RTC's intent to continue exploring the potential for recreational rail service in Santa Cruz County with possible special event trains. CTC staff instantly expressed a couple of potential problems, but was supportive and agreed to further analyze this possibility.

Since that initial meeting, CTC staff including CTC legal counsel has more fully analyzed the RTC's proposal. Just prior to the writing of this staff report, CTC staff informed RTC staff that they had determined that the RTC could submit a Proposition 116 application for corridor preservation, which does not require any passenger service. It should be noted that CTC staff support does not mean that the full CTC will support the project. CTC staff has advised that the RTC would need to request a waiver of the following CTC policies on Proposition 116:

9. The Commission shall not permit Passenger Rail and Clean Air Bond Act funds, based on state law (SB 2592, Kopp), or other state funds to be matched with CATIA (Proposition 116) funds.

33. In the event a rail right-of-way project does not result in rail transit service by the year 2000 and the property is no longer needed the Commission shall require that a liquidation

plan be prepared by the grant recipient by January 31, 2000 for approval by the Commission to dispose of the property.

In light of the CTC staff analysis, a draft Proposition 116 application is not included with this staff report as was planned. A special meeting of the ad hoc committee on Proposition 116 options has been scheduled to discuss the impact of this analysis on the planned Proposition 116 application and other aspects of the acquisition of the Santa Cruz Branch Rail Line. The ad hoc committee will provide an oral report of its meeting and recommendations for the RTC to consider.

Staff recommends that the RTC accept an oral report from the ad hoc committee on Proposition 116 options and consider the committee's recommendations.

AB3090 Designation

AB3090 Designation

Under AB 3090 (Statutes of 1992, Chapter 1243), project sponsors can advance a project included in the *State Transportation Improvement Program* (STIP) prior to approval of a STIP allocation by proceeding with the project using other funds. The STIP reimburses the agency in a future year. When the CTC approves an AB3090 reimbursement for a STIP project, it is required to make those cash reimbursements prior to releasing funds to any other STIP projects in the state. As a result, the regional agency (SCCRTC in this case) must explicitly find the project to be the region's highest priority among projects programmed in the reimbursement year. For each region in the state, one project can be listed as an AB3090 reimbursement per fiscal year in the STIP and there is a state wide limit of \$250 million/year for AB 3090 reimbursements.

In 2000, the Commission programmed \$10 million in State Transportation Improvement Program (STIP) funds to the Santa Cruz Branch Rail Line Acquisition project. Due to the state budget crisis and continuing loans from the transportation accounts to the State General Fund, the California Transportation Commission (CTC) shifted the Rail Right-of-Way project from FY04/05 to FY08/09 when they adopted the 2004 STIP. As STIP funds are not currently available for this and most other projects in the state, the Commission must use other funds in order to proceed with this project this year. The CTC prefers that project sponsors request a replacement project in a future year, rather than an AB3090 Reimbursement, but the Commission does not have its own funding sources to advance this project.

Coastal Conservancy

As discussed at previous meetings, Coastal Conservancy and RTC staff has been discussing obtaining \$10 million in bridge financing from the Coastal Conservancy until STIP funds are released. The Coastal Conservancy calls this a reimbursable grant.

Before a reimbursable grant can be approved by the Coastal Conservancy a number of issues and concerns will need to be resolved including: Coastal Conservancy staff review of the appraisals

and the Phase II Environmental Site Assessment, securing an AB3090 designation in the STIP from the California Transportation Commission, and potential delay in AB3090 reimbursement from FY08/09 to FY 10/11. Coastal Conservancy staff expressed some concern about the potential delay in AB3090 reimbursement beyond FY 10/11 and is interested in exploring the possibility of a partial repayment from other sources if AB3090 reimbursement is delayed further than FY 10/11. Staff will return to the RTC with a plan to resolve the various issues and present the project to the Coastal Conservancy board. The Coastal Conservancy does not have a formal application process but Coastal Conservancy staff requested that a resolution be adopted and submitted with a request letter.

Staff recommends that the Commission adopt the attached resolution (Attachment 1) amending the 2004 RTIP to designate this project as an AB3090 Reimbursement in FY08/09 and designate this project as its highest priority for reimbursement among projects programmed for STIP funds that year. Staff also recommends that the Commission adopt the attached resolution (Attachment 2) to request a \$10 million reimbursable grant from the Coastal Conservancy to front the STIP funds programmed for this project.

Possible AB3090 Reimbursement for MetroBase

At your February 3, 2005 meeting, the Commission decided to ask the Santa Cruz Metropolitan Transit District (SCMTD) Board of Directors to report whether it would like to request an AB3090 Reimbursement for the MetroBase project. This issue will be discussed by the SCMTD Board at its February meetings. If the SCMTD Board decides to proceed with an AB3090 reimbursement, consideration of an AB3090 designation and STIP amendment for MetroBase will be brought to a future RTC meeting. As the CTC can list one project per county as an AB3090 reimbursement for each fiscal year of the STIP, this would not conflict with the recommended AB3090 Reimbursement amendment for the Rail Right-of-Way Acquisition project.

Demonstration Train

SCCRTC's lead negotiator, Kirk Trost of Miller, Owen and Trost, reported at the February 17, 2005 Transportation Policy Workshop (TPW) that he expects Union Pacific to grant permission to operate a demonstration train. Kirk Trost added that there may be issues with the availability of the equipment previously considered (the Lewis and Clark Bicentennial Train). The Budd cars used for the Lewis and Clark Bicentennial Train in Oregon are in need of some repair and they are needed back in Oregon in June. Therefore, it may be difficult to use these cars. Working with a consultant, Kirk Trost identified other potential Budd cars which are in a very remote location and would be significantly more expensive to ship. Kirk Trost will provide an oral update of further developments.

In light of CTC staff analysis that a Proposition 116 application need only be for corridor preservation, the RTC should consider whether it still wants to host a demonstration train this year and whether that demonstration train should operate between Capitola and Seascapes as previously directed by the RTC. If so, the Commission should consider the following options:

- Timing – have the demonstration train before the comment period on the revised draft EIR for the proposed recreational rail service ends or before the close of escrow on the acquisition;
- Service – one round trip or several trips;
- Passengers – should the demonstration train include passengers and should seats be available to the general public;
- Segment – should the demonstration train operate on the Capitola to Seascape segment and/or a different segment; and
- Budget – the RTC set aside \$5,250 for a demonstration train but the cost is estimated to be between \$15,000 and \$20,000.

If the RTC determines that there is no need to run a demonstration train in the next few months but is still interested in running a demonstration train in the future, staff can return to a future meeting with further information and recommendations. **Staff recommends that the RTC provide staff with direction regarding the timing, objectives and budget for a demonstration train.**

Status of Other Santa Cruz Branch Rail Line Acquisition Tasks

Overall Schedule and Financial Plan

At its February 17, Transportation Policy Workshop (TPW) meeting, staff said that a correction would be made to the draft financial plan after one Commissioner pointed out an error. Other revisions are needed based on the CTC staff information that a recreational rail service project is not needed to obtain the Proposition 116 funds. The timeline approved by the RTC in January will also need to be updated based on the fact that the right of entry agreement has not yet been signed and the effects that this delay will have on other work products. Staff will provide an updated timeline and financial plan at the RTC's next meeting.

Right of Entry Agreement and Phase II Environmental Site Assessment (ESA)

At its February 17, 2005 Transportation Policy Workshop (TPW), the RTC authorized an amendment for the Phase II ESA contract to expand the scope of work and add funds. The Phase II ESA will now include a systematic sampling in addition to the targeted sampling. The RTC also approved entering into a right of entry agreement with Union Pacific to start the Phase II ESA work. It is expected that the right of entry agreement will be signed by the end of February. Once the right of entry agreement is signed, Geomatrix will begin its work.

The timeline approved by the RTC in January assumed that the right of entry agreement would be signed in January and the field work would begin in February. This part of the timeline is now about one month behind. The Phase II ESA now includes more sampling than originally planned and will take a little longer to complete. This will have an effect on the timeline.

Title Work

The title work has been initiated by First American Title Company and it is expected that a preliminary title report will be ready soon.

Structures Assessment

At its February 3, 2005 meeting, the RTC approved shifting funds within the Miller, Owen and Trost contract to make \$80,000 available for a structures assessment. Kirk Trost will provide an oral update on the status of the structures assessment.

Insurance

Over the past two months, Commission staff and RTC technical consultant Bob Scott have been investigating obtaining property and general liability insurance coverage that the RTC will need as new owners of the Santa Cruz Branch Rail Line. Issues related to hazardous materials are also being explored.

In late January, a meeting was held with County Risk Manager, Janet McKinley, and the County and Commission's current insurance broker, Driver Alliant Insurance Services, to discuss the parameters of the coverage the Commission is seeking and to identify the information that would be needed in order to obtain reliable quotes from insurance carriers.

From this meeting, it appears that coverage would be available to the Commission as owner of the rail line, but with significant variables related to the limits of liability desired, deductible levels, risk factors and cost. Coverage may be available either as an individual entity (such as the RTC currently has for its SAFE and FSP Programs) or as a participant in a public sector insurance pool. Specific insurance pools are available for other types of public agencies in addition to those which are specifically designed to meet the needs of cities and counties. Driver Alliant has arranged similar insurance coverage for Transportation Agency of Monterey County's newly acquired rail right-of-way.

An extremely extensive Application for Comprehensive Railroad Liability Insurance, and an additional page of supplemental questions, has been prepared by staff and the consultant and is in the process of being reviewed by the County Risk Manager prior to submittal to Driver Alliant Insurance Services.

It is anticipated that the application will be submitted in the next two weeks. Following review by our broker, Driver Alliant, the RTC's application will be presented to the specific insurance carriers that focus on these markets. Layered coverage involving several insurance companies is a likely scenario. Quotations should take 5-6 weeks once our completed application is accepted by the broker. This timeline is in keeping with the current ROW Acquisition Schedule. Commissioners Keogh and Johnson will be apprised of progress on this topic as information becomes available.

Project Development Team

The Santa Cruz Branch Rail Line Acquisition Project Development Team (PDT) held a meeting

on February 15, 2005. Participants discussed the Phase II ESA and the right of entry agreement. The PDT discussed that the right of entry agreement allows Judy Downer of the Caltrans ROW Division and Jack Judkins of the Coastal Conservancy access to the Phase II ESA report. The next meeting of the PDT will be held on March 15, 2005.

Meeting with RMC Pacific Materials

On Thursday, February 17, 2005, staff, the RTC technical consultant, Bob Scott, and RTC negotiations consultant, Kirk Trost, met with representatives of RMC Pacific Materials to discuss RMC's concerns regarding the Santa Cruz Branch Rail Line Acquisition project. At the February 3, 2005 meeting, Ken Kannegaard presented a draft paper (Attachment 3) on RMC's position regarding the Santa Cruz Branch Rail Line Acquisition and potential recreational rail service. As stated in the draft paper, RMC is concerned about continuing fairly priced and reliable freight service to the Davenport Cement Plant. The meeting went well. RMC reiterated its concerns the RTC representatives assured the RMC representatives that the RTC intends to continue freight service and wants to ensure that the freight service continues to serve the shippers well. Follow up meetings will be scheduled to maintain communication.

Next Meetings

Staff expects to return to the RTC's March 17, 2005 Transportation Policy Workshop with a draft Proposition 116 application, an updated schedule, a corrected financial plan, and a draft request for proposals for a short line operator. In the evening of March 17, 2005, the RTC will hold a public hearing to receive comments on the revised draft environmental impact report (EIR) for recreational rail service between Capitola and Aptos with an extension to Seascape.

SUMMARY

Staff recommends adopting the attached resolution for an AB3090 designation of the Santa Cruz Branch Rail Line project and requesting a loan from the Coastal Conservancy. Staff also recommends considering recommendations from the ad hoc committee on Proposition 116 options and providing direction on a demonstration train.

Attachment 1: Resolution amending the 2004 RTIP for an AB3090 Designation of the Santa Cruz Branch Rail Line Acquisition project

Attachment 2: Resolution requesting a \$10 million reimbursable grant from the Coastal Conservancy for the Santa Cruz Branch Rail Line Acquisition project

Attachment 3: Draft RMC Position Paper on Acquisition of the Santa Cruz Branch Rail Line