

AGENDA: March 17, 2005

TO: Regional Transportation Commission/Rail Trail Authority
FROM: Luis Pavel Mendez, Acting Deputy Director
RE: Santa Cruz Branch Rail Line Acquisition Project – Projected Timeline

RECOMMENDATIONS

The Rail Acquisition Task Force and staff recommend that the Regional Transportation Commission

1. Approve the attached draft updated Projected Timeline (Attachment 2 – enclosed separately on blue paper) for the Santa Cruz Branch Rail Line Acquisition Project; and
 2. Consider any new information on timing of the AB 3090 designation request by the Santa Cruz Metropolitan Transit District (Santa Cruz Metro).
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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 projected timeline (Attachment 1) 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. Producing some of these reports requires a right of entry agreement with Union Pacific. 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 (STB).

At its March 3, 2005 meeting, the RTC adopted two resolutions: one to designate the Santa Cruz Branch Rail Line Acquisition project as the highest priority for reimbursement in FY 08/09 and to request an AB 3090 designation for the project, and the other to request a \$10 million reimbursable grant from the Coastal Conservancy. The RTC also approved drafting a Proposition 116 application for corridor preservation only, suspending pursuit of a demonstration train, and drafting a request for proposals (RFP) for a short line operator only for freight service.

DISCUSSION

Right of Entry Agreement

Production of some of the due diligence reports especially the Phase II Environmental Site Assessment (ESA) requires a right of entry agreement with Union Pacific. The projected timeline approved by the RTC in January ([Attachment 1](#)) assumed that the right of entry agreement would be signed at the end of January. The right of entry agreement is currently being signed, the required additional insurance will be purchased and the agreement should be in effect by the date of this meeting. Finalizing the right of entry agreement took longer than expected for the following two reasons:

- **Confidentiality Agreement:** Union Pacific's standard right of entry agreement for work that includes a Phase II ESA includes a confidentiality agreement that does not allow release of the information until a potential sale is finalized. The RTC is committed to the public process and wanted the Phase II ESA to be available for public comment prior to the close of escrow. Kirk Trost of Miller, Owen, and Trost, the RTC lead negotiator, negotiated language that allows public disclosure prior to the close of escrow.
- **Insurance Requirements:** Union Pacific has excessive insurance requirements for right of entry agreements. Kirk Trost negotiated lesser insurance requirements. However, Union Pacific would not withdraw a requirement for rail road protective liability insurance due to the invasive nature of the Phase II ESA work. The RTC purchased the necessary policy to cover that insurance requirement.

This part of the projected timeline is now just over one month behind. The Phase II ESA now includes more sampling than originally planned and will take a little longer to complete. This also affects the timeline.

Draft Updated Timeline

Staff worked with the Rail Acquisition Task Force to update the timeline to reflect the current status and interaction of reports and approvals ([Attachment 2](#) – enclosed separately on blue paper). The asterisks indicate line items that have been updated or added. [Attachment 3](#) is a timeline by month. The timeline continues to be a projection based on the target of concluding the purchase by September 23, 2005, as shown in the Letter of Intent. The delayed right of entry agreement and longer Phase II ESA work affect the approval dates of the various funding and regulatory agencies. The projected timeline shows that much of the work will be done over the next few months and the Commission will be considering various aspects of the project at several meetings. It is an ambitious timeline. The Rail Acquisition Task Force and staff will continue to monitor the timeline and recommend adjustments as the project progresses. Staff will continue to keep the Commission apprised of the status of reports and analyses in a written status report for each Commission meeting.

Staff recommends that the Commission review and approve the draft Projected Timeline

(Attachment 2) for the Santa Cruz Branch Rail Line Acquisition Project. Further information on the tasks and reports follows.

Funding and Regulatory Approval Tasks

STIP AB3090 Amendment

At its March 3, 2005, the RTC approved designating the Santa Cruz Branch Rail Line Acquisition project as its highest priority project for AB3090 reimbursement in FY 08/09 and approved requesting a State Transportation Improvement Program (STIP) amendment to that effect. The Santa Cruz Metropolitan Transit District (SCMTD) has also decided to request an AB3090 designation for FY 07/08 (this is discussed in a separate staff report). Staff was directed to work with the SCMTD on the timing of the AB3090 requests to avoid any perceived conflicts.

The Rail Acquisition Task Force discussed the timing of both requests at its last meeting. As discussed in the MetroBase staff report, CTC staff has told RTC staff that the MetroBase and Rail Line Acquisition AB3090 requests should not overlap. Each AB3090 request takes two CTC meetings. The pairs of CTC meetings available are May-July and August-September. For the May-July pair, paperwork is due to CTC staff by March 21st. When SCMTD and RTC choose the pair of CTC meetings for the MetroBase AB3090 designation, the RTC can plan for the Rail Acquisition AB3090 designation for the other pair of meetings. SCMTD staff is consulting with CTC and SCCRTC staff to determine the most appropriate timing strategy to present the request to CTC. SCMTD staff will give an oral update at the RTC meeting under the previous item.

Proposition 116 Application

At its March 3, 2005 meeting, the RTC decided to submit a Proposition 116 application for preservation of the transportation corridor. RTC staff is developing a draft Proposition 116 application and will work with the Rail Acquisition Task Force on the application development. It is expected that a draft Proposition 116 application will be presented to the RTC at its April 7, 2005 meeting and the final application in May. The draft Proposition 116 application will include a draft updated financial plan and will be submitted to CTC staff for comment and refinement.

Surface Transportation Board (STB) Approval

The draft updated timeline adjusts the submittal of the Surface Transportation Board (STB) application one month from April to May.

Due Diligence/Purchase Documentation Tasks

Phase II Environmental Site Assessment (ESA)

In 2001, the RTC entered into a contract with Geomatrix Consultants to produce a Phase II ESA using a targeted sampling approach based on the findings of the Phase I Preliminary Site Assessment completed in 1997. At its February 17, 2005 Transportation Policy Workshop (TPW) meeting, the RTC approved additional systematic soil sampling and analysis to ensure a more thorough environmental investigation of the Santa Cruz Branch Rail Line right-of-way.

Geomatrix is currently working on scheduling the site reconnaissance and soil sampling. During the site reconnaissance phase of the work, Geomatrix will consider information provided by Commissioners and the public regarding potential hazardous materials on the right-of-way. The findings of the site reconnaissance may require an adjustment to the work plan and could potentially add soil sampling locations. Geomatrix estimates that it will take 13 weeks to produce the report and should be ready in June.

Title Work

First American Title Company was hired by Miller, Owen and Trost to produce the title work and a draft preliminary title report is expected very soon. Staff expects to present the preliminary title report to the RTC in April. Information from the title report will affect the final appraisal conclusions.

Appraisals

The RTC hired consultants to prepare four appraisal documents: Net Liquidation Valuation (NLV) of the tracks structures and other improvements, Going Concern Valuation of the freight business, Land and Overall appraisal, and review appraisal. Taken together, these appraisal documents will give the RTC, the CTC, Caltrans and the Coastal Conservancy 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.

Preliminary drafts of all the appraisal documents were recently completed. RTC staff and Caltrans Division of Right-of-Way staff are reviewing the preliminary drafts. The appraisal documents will need to consider the results of the title report and Phase II ESA; therefore, it is now expected that the appraisal documents will be ready for RTC review and acceptance in June.

Structures Assessment

In addition to bridge inspection reports and any other information that UP provides on the rail line structures, an independent structures assessment will be prepared. Miller, Owen and Trost received several proposals for that work. The RTC approved spending \$80,000 to produce the structures assessment. It is expected that the structures assessment will be completed and presented to the RTC in June.

Historical Site Investigation

At its January 6, 2005 meeting, the RTC directed staff to do further research into whether there

are historical structures on the rail line and whether a full site investigation is needed. Staff is conducting that research and plans to report to the RTC in April.

Operations Tasks

The recreational rail service draft environmental impact report (EIR) continues to move forward and a public hearing on the revised draft EIR will be held this evening at 7:00 pm at the County Board of Supervisors Chambers. At its March 3, 2005 meeting, the RTC was presented with a recommendation to complete the draft the final EIR but wait on certifying the EIR until there is resolution on the noise and traffic mitigations.

Insurance

Staff and consultants continue to investigate the appropriate levels and potential costs of insurance needs for the RTC as owner of the Santa Cruz Branch Rail Line. A draft application has been prepared and submitted to the broker. This will assist the broker in obtaining insurance quotes. Staff will return to the RTC with the information once it is provided by potential carriers, probably in June.

Lease Investigation

Kirk Trost and staff expect to receive information soon from Union Pacific on leases along the Santa Cruz Branch Rail Line. This information will be used in the preparation of a lease investigation. The lease investigation will analyze the potential for lease revenue from the Santa Cruz Branch Rail Line based on existing lease revenues, current market forces and potential for additional leases. Staff expects to have the lease investigation to be completed in May.

RFP for Short Line Operator

At its March 3, 2005 meeting, the RTC approved producing a draft request for proposals (RFP) only for the potential short line freight service on the Santa Cruz Branch Rail Line. Kirk Trost and staff are preparing the draft RFP and expect that a draft will be presented to the RTC at its April 7, 2005 meeting.

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 continue to be apprised of the negotiations in closed session. It is now estimated that a final Purchase Agreement will be ready for RTC approval in June. Approval of the final Purchase Agreement will be done in public session.

Rail Acquisition Task Force

The Rail Acquisition Task Force met to discuss the timeline, the AB3090 designation and other issues relating to the rail acquisition project. The Task Force supports the recommendations in

this staff report.

Project Development Team

Rail Line Acquisition project development team (PDT) continues to meet once per month to ensure that the project proceeds as smoothly as possible. Staff from the funding and approval agencies use these meetings to coordinate details.

Public Hearing on Final Purchase Agreement

In January the RTC approved three public hearings for the project: March 17th for the Revised Draft Environmental Impact Report for the proposed recreational rail project, April for the purchase agreement and August for the final decision on purchasing the Santa Cruz Branch Rail Line. The public hearing for the purchase agreement now needs to be rescheduled for June. The proposed timeline for your approval includes this change. Staff recommends that the public hearing be held in the evening but does not recommend scheduling a specific date at this time because the timing may change.

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. In January the RTC approved a timeline for the rail acquisition project. The timeline needs to be updated. The Rail Acquisition Task Force and staff recommend approval of the draft updated timeline. A report on the current status of approvals and pending reports is provided.

Attachment 1: January 6, 2005 Projected Timeline (enclosed separately)

Attachment 2: Draft Updated Projected Timeline by Task (enclosed separately on blue paper)

Attachment 3: Draft Projected Timeline by Month

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