

AGENDA: September 4, 2008

TO: Regional Transportation Commission
FROM: Luis Mendez, Deputy Director
RE: Santa Cruz Branch Rail Line Acquisition - Freight Railroad Consulting Services and Coastal Conservancy Reimbursable Grant

RECOMMENDATIONS

Staff recommends that the Regional Transportation Commission (RTC) approve the attached resolution (Attachment 1) authorizing the Executive Director to enter into agreements with Renaissance Rail Group and Egan Consulting Group for freight railroad consulting services and carrying over funds from the fiscal year (FY) 07-08 budget to the FY 08-09 budget for this work.

BACKGROUND

The Regional Transportation Commission (RTC) has been working on the acquisition of the Santa Cruz Branch Rail Line (Branch Line) since 2001. On August 7, 2008, the RTC announced an agreement in principle to purchase the Branch Line for \$14.2 million. Although the RTC has done much of the work necessary in connection with the acquisition of the Branch Line, a number of due diligence investigations still must be completed before the RTC can make a final decision. One of these is a comprehensive analysis of the freight service including all costs, revenues and liability connected with the freight service. In addition, the RTC must still negotiate a number of terms and conditions with Union Pacific (UP).

At the August 21, 2008 Transportation Policy Workshop (TPW) meeting, some Commissioners expressed questions and comments regarding the reimbursable grant agreement with the Coastal Conservancy and it was requested that a copy of the agreement be included in a staff report. Also at that meeting there were a number of questions from Commissioners and the public regarding acquisition of the Branch Line.

DISCUSSION

Freight Railroad Consulting Services

To obtain a consultant team who can assist the RTC with the analysis of the freight operation on the Branch Line, establishment of a shortline freight service, UP negotiations connected with the freight service and production of a comprehensive business and management plan, staff issued a request for qualifications (RFQ) for freight railroad consulting services (Attachment 2). On August 22, 2008, RTC staff and the RTC negotiating consultant interviewed consultants and

sub-consultants who responded to the RFQ. After interviewing the four consultants and checking references, the RTC staff and the negotiating consultant recommend that the RTC hire Renaissance Rail Group and Egan Consulting Group for freight railroad consulting services. The proposal information provided by Renaissance Rail and Egan Consulting are included as Attachments 3 and 4 respectively.

As shown in Attachment 3, Timothy Eklund of Renaissance Rail has experience analyzing, establishing and implementing shortline operations. Mr. Eklund has produced freight rail business plans for rail operations for investors and public agencies. He has the analysis tools, experience and skills to analyze all aspects of a shortline operation and determine whether and how they can be viable businesses. One of the references for Mr. Eklund stated that Mr. Eklund is an excellent computer jockey who produces superb analyses. Mr. Eklund has also negotiated rates with class 1 railroads for shortline operations. Together with investment partners, Renaissance Rail Group could be a bidder for shortline freight service on the Santa Cruz Branch Rail Line but will forego that opportunity, if hired by the RTC as a consultant to analyze the freight operation and potential of the Branch Line.

As shown in Attachment 4, Tom Egan of Egan Consulting was director of shortline relations with CSX Corporation and was responsible for contracting with and managing shortline operators. Mr. Egan has experience analyzing freight operations for public agencies and business firms. Mr. Egan also has extensive experience negotiating with both class 1 railroads and shortline operators for rates and agreements. In addition, Mr. Egan produces requests for proposals, agreements with class 1 railroads and contracts with shortline operators. One of the references for Mr. Egan stated that Mr. Egan must have a large database of agreements, RFPs and contracts because he produces them very quickly and all of the details are well addressed.

The shortline railroad experience and business analysis skills of Tim Eklund are a good complement to Tom Egan's class 1 railroad experience and negotiating expertise. Tim Eklund and Tom Egan have worked together numerous times and work well together. Therefore, **staff and the RTC negotiating consultant recommend that the RTC approve the attached resolution authorizing the Executive Director to enter into agreements with Renaissance Rail Group and Egan Consulting Group for freight railroad consulting services.**

The freight railroad consultant team will need information from UP and it will be necessary to negotiate with UP for the information and to establish the shortline operation making it uncertain exactly how much time will be required to produce the necessary work. Therefore, the contracts would be based on hourly rates and reimbursable costs. Mr. Eklund's hourly rate is \$175.00 per hour and Mr. Egan's hourly rate is \$150.00 per hour. The fiscal year (FY) 07-08 budget included \$20,000 for business plan update; \$43,000 for shortline RFP, selection, negotiations and contracts; and \$53,768 for technical assistance for rail service negotiations. The work to be produced by this consultant team would fall under the three budget line items. The funds in these three budget lines were not used in FY 07-08 and have not yet been carried over to FY 08-09. Therefore, **staff recommends that the budget amounts for the categories specified above be carried over to FY 08-09.**

Coastal Conservancy Reimbursable Grant

At the August 21, 2008 TPW meeting, some Commissioners expressed questions and comments regarding the reimbursable grant agreement with the Coastal Conservancy. Staff and negotiating consultants worked with the Rail Acquisition Task Force (RATF) to negotiate the most significant elements of the agreement (the restrictive covenants and the payback language) with the Coastal Conservancy. At its October 20, 2005 TPW meeting, the RTC approved the payback language and the restrictive covenants. The staff report along with the attachments provided to the RTC are included here as Attachment 5. At the October 20, 2005 TPW meeting, the RTC amended the restrictive covenants (Attachment 2 of the October 20, 2005 staff report) to delete Clause #11 because the Coastal Conservancy did not agree to it. In December of 2005, the Coastal Conservancy approved the \$10 million reimbursable grant agreement. At its June 1, 2006 meeting, the RTC reviewed and approved the reimbursable grant agreement after some revisions had been previously negotiated in cooperation with the RATF (Attachment 6).

Since the reimbursable grant agreement was approved by the RTC in June 2006, the state funding situation has changed. If Proposition 42 is suspended and no Prop 42 funds are available, Caltrans has stated that there would only be Prop 1B funds for State Transportation Improvement Program (STIP) projects and that those funds are not available to make AB3090 reimbursements. However, that should only impact projects for a maximum of one year, since Prop 1A only allows suspension to occur twice in ten consecutive fiscal years and no suspension could occur unless prior suspensions (excluding those made prior to 2007-08) have been repaid in full. Additionally Prop 1A requires that the loan be repaid in full, including interest, within three years of suspension.

When the repayment language for the reimbursable grant agreement was negotiated, the STIP funds for the Branch Line acquisition were programmed in FY 10/11. Therefore the agreement requires that payback begin in FY 10/11. Currently, the STIP funds for the Branch Line acquisition are programmed in FY 09/10. Therefore, if Prop 42 funds are suspended and AB3090's are delayed for one year, as stated in the previous paragraph, the STIP funds through an AB3090 would be available in FY 10/11 for repayment to the Coastal Conservancy.

The fact that the RTC has a reimbursable grant agreement with the Coastal Conservancy does not obligate the RTC to use Coastal Conservancy funds to acquire the Branch Line. However, it does provide the RTC with more flexibility for acquiring the Branch Line. The RTC could negotiate an agreement with UP that makes it unnecessary to use the Coastal Conservancy funds.

SUMMARY

The RTC has an agreement in principle to purchase the Branch Line from UP for \$14.2 million. The RTC will ensure continuation of freight rail service through a contract with a shortline operator. RTC staff recommends hiring Renaissance Rail Group and Egan Consulting Group for freight railroad consulting services to analyze the freight service on the Branch Line, assist in negotiations with UP and produce a comprehensive business and management plan. Some RTC members expressed comments and questions regarding the Coastal Conservancy reimbursable

grant agreement. Attached are a copy of the agreement and a staff report from October 2005 regarding this agreement.

Attachment 1: Resolution Authorizing the Executive Director to Enter into Agreements with Renaissance Rail Group and Egan Consulting Group for Freight Railroad Consulting Services

Attachment 2: Request for Qualifications (FRQ) for Freight Railroad Consulting Services

Attachment 3: Proposal from Renaissance Rail Group for Freight Railroad Consulting Services

Attachment 4: Proposal from Egan Consulting Group for Freight Railroad Consulting Services

Attachment 5: October 20, 2005 Staff Report to the RTC Regarding the Coastal Conservancy Reimbursable Grant

Attachment 6: Reimbursable Grant Agreement with the Coastal Conservancy

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