



JPB Board of Directors
Meeting of August 5, 2021

Correspondence as of August 4, 2021

Subject

1 Baby Bullet

2 SMCTA & VTA Response to SamTrans Letter re Caltrain ROW Acquisition

From: [Wyahoo](#)
To: [Board \(@caltrain.com\)](mailto:Board (@caltrain.com))
Subject: Baby bullet?
Date: Monday, August 2, 2021 9:21:54 AM

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders.

Good morning

Is there a date in August when you will restore service for the baby bullet? I am sure you understand the paradox of no bullet = lower ridership. The drive to SF from SJ is about 1 hour and 15 and train commute is 1 hour 55 with the walk to the office so tough argument to chose train but would prefer it.

I looked on your website but could not find a date. Glad to see BART is restoring service today.

Sent from my iPhone

From: [Roland Lebrun](#)
To: [Board \(@caltrain.com\)](#)
Cc: [Baltao, Elaine \[board.secretary@vta.org\]](#); [SFCTA CAC](#); [cacsecretary \[@caltrain.com\]](#)
Subject: SMCTA & VTA response to SamTrans letter re Caltrain ROW acquisition
Date: Wednesday, August 4, 2021 2:58:02 AM
Attachments: [SMCTA & VTA response to SamTrans letter.pdf](#)

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders.

Dear Caltrain Board,

Please find attached a July 26, 2021, SMCTA/VTA joint response to a SamTrans letter dated June 22, 2021, related to the reimbursement of the Additional Compensation under the 2008 Amendment to the Real Property Ownership Agreement.

Sincerely,

Roland Lebrun

CC

VTA Board
VTA PAC
SFCTA CAC
VTA CAC

From: [Simpliciano, Sophia M](#)
To: [Mau, Carter](#)
Cc: [Board \(@samtrans.com\)](#); [Hendricks, Glenn \[HendricksCouncil@sunnyvale.ca.gov\]](#); [Baltao, Elaine \[board.secretary@vta.org\]](#); [MTABoard](#); [district6@sanjoseca.gov](#); [alfredo.pedroza@countyofnapa.org](#); [Elsbernd, Sean \(MYR\)](#); [Calvillo, Angela \(BOS\)](#); [wagstaffe@wvbrlaw.com](#); [tilly.chang@sfcta.org](#); [Evelynn.Tran@vta.org](#); [CLEVELAND-KNOWLES, SUSAN \(CAT\)](#); [REITZES, ROBIN \(CAT\)](#); [RUSSI, BRAD \(CAT\)](#); [Walton, Shamann \[shamann.walton@sfgov.org\]](#); [Gonot, Carolyn](#); [Gee, Natalie \[natalie.gee@sfgov.org\]](#); [Burch, Percy \(BOS\)](#); [Ledezma, Paola](#); [michelle.garza@vta.org](#)
Subject: CCSF VTA response_reimbursement of additional contributions
Date: Friday, July 30, 2021 3:10:48 PM
Attachments: [image001.png](#)
[image005.png](#)
[CCSF VTA 21.0726 SMCTD Reimbursement of Additional Contributions.pdf](#)
[Olsen Remch ppt.pdf](#)
[2020-42 JPB Resolution on Governance.pdf](#)

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders.

Good afternoon.

Please note the attached letter and attachments from the City and County of San Francisco and Santa Clara VTA

Sophia Simpliciano

Executive Assistant to the Director of Transportation

jeffrey.tumlin@sfmta.com 415-646-2522

sophia.simpliciano@sfmta.com 415-646-2546

SFMTA reception 415-701-5600



San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th floor
San Francisco, CA 94103





July 26, 2021

Carter Mau
Acting General Manager/CEO
San Mateo County Transit District
1250 San Carlos Ave. – P.O. Box 3006
San Carlos, CA 94070-1306

Re: Reimbursement of Additional Contribution

Dear Mr. Mau:

We are in receipt of your letters to the City and County of San Francisco (“San Francisco”) and the Santa Clara Valley Transportation Authority (“VTA”), both dated June 22, 2021, related to the reimbursement of the Additional Compensation under the 2008 Amendment to the Real Property Ownership Agreement. We provide the following response.

As you and the San Mateo County Transit District (“SamTrans”) members of the Peninsula Corridor Joint Powers Board (“JPB”) are likely aware, following its November 2019 governance workshop, the JPB directed staff to hire special counsel to do a forensic review of the various historical documents related to Caltrain governance, including the agreements related to the Right-of-Way (“ROW”) transaction – the 1991 Real Property Ownership Agreement and the 2008 Amendment to the Real Property Ownership Agreement (“2008 RPOA”). The JPB retained the Olson Remcho firm to perform this work. Olson Remcho presented its report to the JPB in July 2020 and again in April 2021.

In April 2021, Olson Remcho reported to the JPB on the very issues you raise in your letter. For your convenience, please find attached the PowerPoint summary of the report on the Caltrain historical documents related to governance and the ROW transaction. The report summarized the 2008 RPOA under which the three Caltrain member agencies agreed to resolve the issue of reimbursing SamTrans for its initial advance of funds (the “Additional Contribution”) on behalf of San Francisco and VTA for purchasing the ROW – with the Metropolitan Transportation Commission (“MTC”) facilitating the reimbursement.

The report confirmed that under the 2008 RPOA, the total amount of the Additional Contribution owed to SamTrans was \$53.3 million, to be paid partly by San Francisco (\$2 million) and VTA (\$8 million) and partly by MTC (\$43.3 million) on behalf of San Francisco and VTA, using primarily funds from state fuel taxes. The parties also stated in the 2008 RPOA

that SamTrans could serve as managing agency as long as it chose to do so (presumably in exchange for forgiving \$38.2 million in debt from the ROW transaction).

The report further found that VTA has paid SamTrans in full, San Francisco has paid all but \$200,000 of its obligation, and MTC has paid \$23.7 million, leaving a remaining balance of \$19.8 million as yet unpaid.

As a result, there should be no question as to the amount owed SamTrans for its advance of funds to purchase the ROW. Yet in the last several weeks, SamTrans officials and advocates have been reported in the press asserting that \$82 million is still owed and even questioning whether the true amount exceeds \$100 million.

There also should be no question as to the commitment of San Francisco and VTA to reimburse the rightful amount owed to SamTrans. This commitment has been most recently memorialized by JPB Resolution No. 2020-42, which was adopted in August 2020 by a vote of 8-1 with Director Stone dissenting. That resolution states, in pertinent part, that "the JPB will initiate efforts to reimburse the SMCTD for its investment in Caltrain, including by engaging with MTC and other funding partners and, if the Caltrain sales tax measure is approved, by prioritizing the payment of the SMCTD investment by the JPB." Please find the Resolution attached.

To avoid any doubt, San Francisco re-affirms its commitment to comply with the terms of the 2008 RPOA, complete its outstanding payment of \$200,000 (or provide documentation that it has been paid directly or through a funds transfer or similar mechanism, which we are currently researching), and work with MTC to identify a source of funds for the \$19.8 million balance owed SamTrans as soon as possible.

We also want to remind you that in 2016, San Francisco, through the SFMTA Board and the Board of Supervisors, demonstrated its commitment to the future of the Caltrain ROW by approving an agreement authorizing a disbursement of up to \$39 million from the sale of current and future General Obligation bonds to fund the Communications-Based Overlay Signal System Positive Train Control Project and the Peninsula Corridor Electrification Project.

The voters of Santa Clara County and VTA substantially increased their commitment to Caltrain by devoting over \$1 billion in 2016 Measure B sales tax funding to system improvements. Since the funding became available in 2018, the VTA Board has allocated almost \$41 million.

San Francisco and VTA remain fully committed to the Caltrain governance review that is outlined in the same JPB resolution. Recent actions and statements by SamTrans call into question whether you share our view.

We hope this resolves your concern and look forward to further productive discussions regarding the future of Caltrain.

Sincerely,



Mayor London N. Breed
City and County of San Francisco



Supervisor Shamann Walton
President, San Francisco Board of Supervisors



Carolyn M. Gonot
General Manager/CEO
Santa Clara Valley Transportation Authority



Jeffrey P. Tumlin
Director of Transportation
San Francisco Municipal Transportation Agency

Enclosures: Olson Remcho powerpoint
JPB Resolution No. 2020-42

cc: SamTrans Board of Directors
Peninsula Corridor Joint Powers Board
SFMTA Board of Directors
Alfredo Pedroza, Board Chair, Metropolitan Transportation Commission
Sean Elsbernd, Chief of Staff, Office of the Mayor, City and County of San Francisco
Angela Calvillo, Clerk of the Board, San Francisco Board of Supervisors
Jim Wagstaffe, Partner, Wagstaffe, von Loewenfeldt, Bush & Radwick LLP
Tilly Chang, Executive Director, San Francisco County Transportation Authority
Evelynn Tran, Santa Clara VTA General Counsel
Susan Cleveland-Knowles, SFMTA General Counsel
Robin Reitzes, Deputy City Attorney, City and County of San Francisco
Brad Russi, Deputy City Attorney, City and County of San Francisco

Report on Member Agencies' Rights and Obligations Under JPB Governing Documents

Peninsula Corridor Joint Powers Board

Presentation by Olson | Remcho

April 1, 2021

Presentation Overview

1. History
2. Key Agreements
3. Detail on Key Agreements
4. Issues Covered in Report
5. Questions

Section 1: Corridor History

- 1863 – San Francisco and San Jose Railroad Company begins passenger service on the Peninsula
- 1870 – Southern Pacific Railway purchases railway
- 1970s – rail commuter business unprofitable and Southern Pacific wants out
- 1980 – State decides to subsidize Southern Pacific to keep operating passenger rail service
- 1988 – State ends subsidies and the three counties join together to save the railroad
- 1991 – the 3 counties form the Peninsula Corridor Joint Powers Authority and purchase the right-of-way, using Prop. 116 funds and funds advanced by SamTrans

Section 2: Overview of Key Agreements

- Joint Powers Agreement
 - Establishes the Joint Powers Authority and names the Joint Powers Board as the governing body.
- Purchase and Sale Agreement with SP
 - Describes the property purchased by the JPA as well as options that could be exercised either by the JPA or a member agency.
- Real Property Ownership Agreement
 - Governs use and distribution of property owned by the JPA and partner agencies.
 - Establishes two alternate methods for reimbursing SamTrans for advancing funds to purchase the right of way (“ROW”).

Section 3 – The Joint Powers Agreement (JPA)

- The basic governing document that establishes the JPA that:
 - Describes its purpose, membership, powers and authority;
 - Manner of allocating operating and capital costs among the member agencies;
 - Designates SamTrans as managing agency; and
 - Created in 1991 and amended in 1994 and 1996.

1991 JPA

- First JPA established the Joint Powers Board.
- Had a 10-year term after which JPA would be in force on year to year basis until 2 or more member agencies withdraw.
- Designated SamTrans as managing agency subject to Board's authority to change designation of managing agency after SamTrans is reimbursed for funds it advanced for purchase of the right of way.

1994 JPA

- Amended allocation of capital and administrative costs among the member agencies.
- Provided for mediation by Metropolitan Transportation Commission if a party wished to withdraw.
- Addressed late payments from member agencies.

1996 JPA (Current Agreement)

- Made changes that VTA requested regarding appointment of its representatives to the JPB;
- Provides for appointment of members of the JPB, powers and duties of the JPB, allocation of operating and capital costs;
- Designated SamTrans as managing agency subject to the Board's authority to change designation of managing agency after SamTrans is reimbursed for funds it advanced for the purchase of the right of way.

Purchase Sale and Option Agreement – 1991

- Purchase of ROW Main Line
 - \$212M – \$120M from Prop. 116; \$82M from SamTrans; \$10M credit for construction of maintenance facility.
 - SamTrans as Tenant in Common to ROW in San Mateo County until reimbursed.
 - SP maintained right to operate freight service on Main Line.
- Purchase of Trackage Rights from Lick to Gilroy
 - \$8M (\$4M from Prop. 116; \$4M from VTA).
- Options to Purchase:
 - One half of the Lick-Gilroy Line – \$20M, with credit for \$8M paid for purchase.
 - Parking Lots and Grade Separations.
 - Dumbarton Branch, Vasona Branch I and II, San Bruno Branch, and Moffett Drill Track.

Real Property Ownership Agreement (RPOA) – 1991

- Describes ownership rights of the JPB and member agencies over Caltrain property
- Provides two methods to repay SamTrans' additional contribution to purchase of the ROW:
 - **Full reimbursement:** members use best efforts to find non-local funds to reimburse SamTrans for full amount of additional contribution (\$82 million), plus compound interest;
 - **Full participation:** VTA and SF may elect to use their own assets to pay their share of additional contribution, plus compound interest, based on mileage formula (VTA = \$34.7; SF = \$8.3 million; does not include interest).
- Gives SamTrans ownership rights over certain property until full reimbursement or full participation occurs

The RPOA Describes Four Kinds of Caltrain Property

- **ROW:** the Main Line from San Francisco to Lick, trackage rights for the Gilroy service, and other assets acquired pursuant to Purchase Agreement, except local option properties.
- **Local Option Property:** properties identified in the purchase and sale agreement with SP. Not directly tied to operation of the corridor service but were of interest to particular member agencies.
- **System Option Property:** properties to be acquired pursuant to the options established in the Purchase Agreement other than local option properties.
- **State Transferred Properties:** real property and other assets transferred from Caltrans to the JPB, including stations, facilities, equipment and inventory.

Real Property Ownership Agreement – Amended 2008

- By 2007, no payments had been made under the 1991 agreement to repay SamTrans.
- MTC conditioned release of certain State revenues on the member agencies coming to agreement that would provide for repayment.
- Because of compound interest, the amount needed for VTA and SF to repay SamTrans under the 1991 agreement had grown to \$91.5M.

Real Property Ownership Agreement – Amended 2008, Continued

- The parties agreed to reset the amount of the additional contribution attributable to VTA and San Francisco at \$53.3 million, to be paid partly by San Francisco (\$2 million) and VTA (\$8 million) and partly by MTC (\$43.3 million), using primarily funds from State gas taxes.
- The parties agreed that if repayment did not occur within 10 years, MTC would be authorized to identify other non-local funds to use as source of repayment.
- The parties also agreed that SamTrans could serve as managing agency for as long as it chose to do so in exchange for forgiving \$38.2M in debt.

Section 4 – Specific Issues Covered by the Report

- A. Property ownership
- B. ROW and reimbursement of SamTrans
- C. Caltrain management
- D. Gilroy service
- E. Allocation of operating and capital costs for Mainline
- F. Parties' rights to revise or terminate the JPA

A. Property Ownership

- JPB has title to:
 - ROW
 - Trackage rights between Lick and Gilroy
 - State Transferred Properties
 - Certain Parking Lots and Grade Separations
- VTA owns:
 - The Moffett Drill Track
 - The Vasona I and II branches

A. Property Ownership – Continued

- SamTrans shares title:
 - As tenant in common with JPB to ROW in San Mateo County until Full Reimbursement or Full Participation occur.
- SamTrans owns:
 - The Dumbarton and San Bruno branches.
 - Some parking lots and grade separations acquired pursuant to Purchase Agreement.

A. Property Ownership, Continued – SamTrans Equity Conversion Right

- SamTrans has right to convert Additional Contribution into ownership interest in all or part of ROW.
- If conversion occurs, VTA and SF have participation rights in management and development decisions based on their payment towards Additional Contribution.
- If conversion occurs, SamTrans required to license ROW to JPB at no cost.
- SamTrans has right to lease or encumber property as necessary or desirable to develop nonoperational assets without the approval of the JPB (with respect to property outside SM, right is limited to specified nonoperational assets in Mountain View, Sunnyvale, and Santa Clara).

A. Property Ownership, Continued – Other SamTrans Property Rights

- SamTrans has right to net revenue from nonoperational assets and State transferred properties until Full Reimbursement or Full Participation occur.
- SamTrans has right to veto sale of ROW, system option properties, and State transferred properties.

B. Repayments

- VTA has paid SamTrans \$8 million, as required by the 2008 RPOA.
- San Francisco has paid all but \$200,000 of the \$2 million to SamTrans as required by the 2008 RPOA.
- MTC has paid \$23.7 million of the \$43.3 million it was to pay SamTrans through population-based “spillover” funds.
- As a result, a total of \$19,788,913 has not been paid under the 2008 RPOA, \$19,588,913 of which was to come from MTC and \$200,000 of which was to come from San Francisco.
 - Full Reimbursement of the Additional Contribution has not occurred
- Under section 3.4, VTA and San Francisco have no legal obligation to participate in the Additional Contribution, but they may, “at their election,” undertake good faith efforts to pay an amount to SamTrans sufficient to achieve full participation.
 - To date, this has not occurred.
- Because SamTrans has not received all funds within 10 years, MTC is authorized to identify alternate sources of non-local funds to effect full reimbursement, but no funds have been identified.

C. Managing Agency

- SamTrans has right to serve as managing agency as long as it wishes, regardless of whether it is repaid for advancing funds for ROW purchase.
- Under 1996 JPA, the managing agency's General Manager shall be the Executive Director of the JPB, and its Finance Director shall serve as treasurer and controller of the JPB.
- Under 1996 JPA, JPB shall designate legal counsel and independent auditors.
- SamTrans is responsible for managing the operational and nonoperational assets; the JPB may delegate responsibility for the management of certain operational and nonoperational assets to another member agency.

D. Gilroy Service

- Operating costs: The 1996 JPA states that VTA shall be responsible for the net operating costs of the Gilroy Service. However, since 2001 the member agencies have shared those costs in the same manner as they share operating costs for the service between San Francisco and San Jose (no revised codification has been made in the JPA).
- Capital costs: Under the 1996 JPA, VTA is responsible for obtaining funding for all Gilroy Service capital projects.

E. Allocation of Operating Costs for the Mainline

- Under the 1996 JPA: member agencies must subsidize operating costs in an amount equal to the a.m. boarding formula.
- The members' current practice: member agencies subsidize operating costs based on the all-day, mid-week boarding formula (no revised codification has been made in the JPA).
- JPB administrative costs are included in operating costs and shared in same manner.

E. Allocation of Capital Costs for the Mainline

- Current practice is consistent with 1996 JPA.
- To the extent other funds cannot be secured, member agencies share equally the costs of capital projects that replace or enhance existing service while costs for expansion projects are determined on a case-by-case basis.
- Capital contingency fund: member agencies shall contribute in equal amounts.

F. Amending or Terminating the JPA

- 1996 JPA can be amended any time by agreement of all parties.
- The JPA terminates if 2 or more parties withdraw.
- Disposition of property upon termination of the JPA will depend on whether SamTrans has been repaid for the funds it contributed to purchase of the right of way in 1991.

Questions

1 **RESOLUTION NO. 2020-42**

2 **BOARD OF DIRECTORS, PENINSULA CORRIDOR JOINT POWERS BOARD STATE OF CALIFORNIA**

3 **WHEREAS**, the Peninsula Corridor Joint Powers Board (JPB) is a joint exercise
4 of powers authority duly formed pursuant to the October 18, 1991 joint powers
5 agreement, as amended, between the City and County of San Francisco (CCSF), the
6 San Mateo County Transit District (SMCTD), and the Santa Clara Valley Transportation
7 Authority (VTA) (together, the "Member Agencies"); and

8 **WHEREAS**, the JPB operates the Caltrain passenger rail service between San
9 Francisco, California and Gilroy, California, currently serving 32 stations along the 77-
10 mile corridor; and

11 **WHEREAS**, the Joint Powers Agreement, as amended and restated on October
12 3, 1996 (1996 JPA) states in section 8[D] that "no action shall be taken by the JPB
13 except upon the affirmative vote of five or more of its members," but does not expressly
14 prohibit any higher voting threshold for Board action; and

15 **WHEREAS**, the 1996 JPA states in section 9 that the "The JPB shall have the
16 power to adopt such bylaws that it, in its sole discretion, may deem necessary or
17 desirable for the conduct of its business," and

18 **WHEREAS**, by a separate resolution, a regional measure ("Caltrain tax
19 measure") may be placed on the November 3, 2020, ballot in Santa Clara, San Mateo
20 and San Francisco Counties to impose a one-eighth of one percent (0.125%) retail
21 transactions and use tax for a period of thirty (30) years, throughout the three Counties
22 to enable Caltrain (or its successor agency) to fund operating and capital expenses of
23 the Caltrain rail service and support the operating and capital needs required to
24 implement the Service Vision adopted by the JPB on October 3, 2019, as part of the
25 Caltrain Business Plan; and,

26 **NOW, THEREFORE BE IT RESOLVED**, that JPB shall establish the following
27 rules or bylaws for its future conduct of business as follows:

- 1 a) That in each fiscal year beginning on July 1, 2021 the JPB may approve the
2 expenditure of up to \$40 million of revenue from the Caltrain tax measure for
3 operations or capital repair of Caltrain, with the approval of at least five (5)
4 members of the JPB;
- 5 b) That the JPB may expend an amount in excess of \$40 million of revenue from the
6 Caltrain tax measure in any fiscal year with the approval of at least six (6)
7 members of the JPB;
- 8 c) That the JPB shall be subject to the conditions described in (a) and (b), until such
9 time as the Joint Powers Agreement (JPA) has been amended to modify its
10 governance structure or procedures so that they are satisfactory to the three
11 Member Agencies. After that time, the JPB Board may allocate any and all sales
12 tax revenues for operating or capital expenditures with the approval of at least (5)
13 members of the JPB;
- 14 d) That it is the desire of the JPB that the modification of "governance structure or
15 procedures," described above, will include amendments that enable the majority
16 of the JPB or successor governing board (or, if a larger regional rail authority is
17 created that includes Caltrain, a majority of that agency's board), to appoint an
18 Executive Director to operate Caltrain provided that the parties have reached an
19 agreement to reimburse SMCTD for its investment in Caltrain.
- 20 e) That the JPB will recommend a governance structure or procedures to the three
21 Member Agencies no later than December 31, 2021.
- 22 f) That the JPB will initiate efforts to reimburse the SMCTD for its investment in
23 Caltrain, including by engaging with Metropolitan Transportation Commission and
24 other funding partners and, if the Caltrain sales tax measure is approved, by
25 prioritizing the payment of the SMCTD investment by the JPB.
- 26 g) That the JPB Board shall appoint an independent counsel (and shall not have the
27 same counsel as any member agency) by January 31, 2021 to represent the

1 JPB, and until such time the law firm of Olson Remcho LLP shall be available to
2 the Board for consultation upon request;

3 h) That the JPB Board shall appoint an auditor (and shall not have the same auditor
4 as SMCTD) by January 15, 2021.

5 i) On any agenda for a regularly scheduled meeting of the full JPB, with at least 7
6 calendar days prior notice in advance of the meeting, any item may be placed on
7 that board agenda for consideration by the JPB Board by the request of 2 or
8 more of the JPB members to the JPB Chair and General Manager.

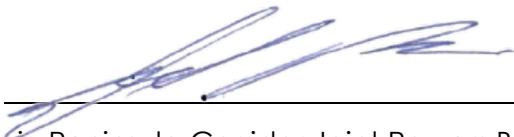
9

10 Regularly passed and adopted this 6th day of August, 2020 by the following
11 vote:

12 AYES: Bruins, Chavez, Collins, Heminger, Walton, Zmuda, Davis, Pine

13 NOES: Stone

14 ABSENT: None



Chair, Peninsula Corridor Joint Powers Board

ATTEST:



JPB Secretary