

Draft Governance Recommendation

For Discussion

November 4, 2021



Objectives for Today

At the direction of the Board, staff has spent the last month developing the straw proposal included in Attachment A for consideration by the JPB.

This is an item for discussion and staff is not expecting a Board decision or action at this time.

Staff is hoping to receive guidance from the Board as to how to proceed.

1. **Review** draft “straw” proposal developed by staff
2. **Provide** feedback on proposal including suggested changes or areas of concern
3. **Direct** staff how to proceed, including either or both;
 - a. Providing direction to continue with refinement of current proposal based on feedback received
 - b. Providing guidance to staff regarding the development of an alternative proposal(s) for Board consideration
 - c. Providing direction to do both a. and b.

Staff Approach

This straw proposal is a compromise. It has been developed to respond to the wide range of divergent JPB member perspectives and concerns that have been expressed throughout 2021.

Working Within Constraints

- There is a high procedural barrier to making major governance changes
 - Modification of the JPA requires a unanimous consensus among the member agencies
 - Additionally, the 2008 RPOA (signed by JPB, VTA, CCSF and SMCTD) grants SamTrans the right to act as the managing agency for as long as it chooses to do so
- Discussion at JPB over the course of 2021 has significant differences of opinion among the JPA members as to the best approach.
- It appears that there is not consensus to modify the JPA at this time

Staff Approach

The straw proposal addresses many of the specific concerns that have been discussed at the JPB.

This proposal could initially be implemented and trialed as a binding agreement between Caltrain and SamTrans - without requiring modification of the JPA.

Conversely, the proposal contemplates regular reviews of governance beginning as early as 2024- with potential formalization through amendment to the JPA if all parties are in agreement.

It also does not preclude any changes to governance that may be considered and pursued at the regional scale.

Outcomes for Caltrain

- Creates an organizational structure that is directly responsive and accountable to a single Board- the JPB
- Provides the JPB with full authority to select, hire, evaluate and fire the Caltrain ED
- Provides Caltrain ED with full and direct authority over rail staff and key business areas
- Provides additional financial and organizational transparency through formalization of shared services agreement
- Allows for engagement with regional governance discussions and for future adjustment and evolution of governance model
- Can be implemented expediently with a small number of procedural steps and at an achievable cost



Managing Agency Role

During the course of the governance process, a number of questions have been raised regarding the exact definition and role of the “managing agency”

The JPA describes role of the Managing Agency as follows:

- Implement the JPB’s policy decisions
- Maintain and manage the ROW
- Seek and administer grants
- Implement the capital program approved by the JPB
- Implement marketing programs
- Submit financial reports to the JPB
- Recommend changes in fare structure to the JPB
- Recommend changes in scheduling/levels of service to the JPB
- Implement JPB-approved changes
- Prepare capital and operating budgets for the JPB’s approval
- Inform member agencies and the JPB regarding Caltrain issues

Overview of Straw Proposal

The draft straw proposal is structured in a manner that follows the basic form that would ultimately need to be detailed in any enacting resolutions and agreements

Over the following slides, staff will walk through the language included in the draft straw proposal, explaining meaning and responding to any clarifying questions from the Board

- A. Affirmations & Statements**
- B. Basic Recommendation**
- C. Right Of Way Repayment and Reversion**
- D. Implementation**

Part A: Affirmations & Statements

- 1) Affirmation of SMCTD as the Managing Agency for Caltrain.** The San Mateo County Transit District (SMCTD) will remain as the managing agency for Caltrain.
- 2) Affirmation of JPB Appointment of General Counsel and Auditor.** The JPB has appointed, and will maintain, its own general counsel and auditor separate from those of the Joint Powers Agreement (JPA) Member Agencies.
- 3) Statement Related to Regional Governance.** The following recommendation does not preclude Caltrain's ongoing participation in processes related to potential regional governance changes. Rather, Caltrain and its staff should strive to constructively participate in such processes and should seek to vigorously assert the interests of the railroad, its customers and its corridor.

Part B: Basic Recommendation

1) Caltrain Executive Director

- a) SMCTD will designate a separate, permanent Caltrain Executive Director position (“Caltrain ED”), who will remain an SMCTD employee. This position will exclusively report to, and take direction from, the JPB.
- b) SMCTD will delegate authority over the hiring, annual goal setting, performance review, compensation, and termination of the Caltrain ED position to the JPB, subject to the following conditions:
 - i) The general managers of SFMTA, VTA, SMCTD will participate in the selection process for the Caltrain ED position along with members of the JPB and will offer their technical expertise, but will not participate in the vote to hire the Caltrain ED.
 - ii) The decision to hire and fire the Caltrain Executive Director shall be subject to a supermajority vote of six members of the JPB, including at least one member appointed from each county.

Part B: Basic Recommendation (continued)

2) Staff Reporting

- a) As the managing agency, SMCTD will provide all staff support to the JPB. This support will come in two forms;
 - i. Direct Support will include SMCTD staff who work exclusively on Caltrain and who have a reporting relationship that ultimately runs through the Caltrain ED. The Caltrain ED will have full authority over these staff within the parameters set by SMCTD employment policy – including the ability to hire, fire or modify positions. The following functions will be provided as direct support through dedicated staff.
 1. All functions and staff already providing direct support within the existing “Rail Division” including;
 - a) Rail Operations and Maintenance
 - b) Rail Planning
 - c) Rail Contracts and Budgets
 - d) Rail Development (capital program management / delivery, engineering, quality assurance/ control)
 - e) The PCEP (CalMod) Program
 2. Additional direct support will be provided through dedicated staff in the following areas
 - a) Financial Planning and Budgets
 - b) Grants
 - c) Real Estate
 - d) Government and External Affairs

Part B: Basic Recommendation (continued)

2) Staff Reporting (continued)

- a) As the managing agency, SMCTD will provide all staff support to the JPB. This support will come in two forms;
 - i. Shared Services will include SMCTD staff who support the railroad under the terms of a service agreement to be negotiated between SMCTD and the JPB whereby a portion of their time is allocated to Caltrain. Staff working under this arrangement will report through the SMCTD General Manager. The following functions will be included in the shared services category.
 - 1. Human Resources
 - 2. Contracts and Procurement
 - 3. Information Technology
 - 4. Civil Rights
 - 5. Communications, Marketing and Customer Service
 - 6. Accounting and Treasury

Part C: Right Of Way Repayment & Reversion

1) Right of Way Repayment

The above recommendation and the continued effectiveness of any enacting agreements will be contingent on the repayment to SMCTD of monies advanced for the purchase of the Caltrain right of way (ROW) in a full and timely manner. Repayment discussions are ongoing with the JPA Member Agencies and the Metropolitan Transportation Commission (MTC). Once agreed to, repayment shall occur as described below.

- a) All repayment of both principal and interest to SMCTD will be from non-San Mateo County sources.
- b) SMCTD will be repaid the principal amount owed under the terms of the 2008 Real Property Ownership Agreement (RPOA) - \$19.8 million- in full by January 1, 2023.
- c) SMCTD will be paid interest (to be calculated based on the principal from 2008 through the date of repayment) in full by January 1, 2024.

2) Reversion

If the repayment of both the principal and interest owed has not occurred in full by the dates specified, the above recommendation and any enacting agreements will be void and the managing agency arrangement will revert to the written terms of the Joint Powers Agreement and the 1991 Real Property Ownership Agreement, as amended in 2008. Critically, this includes having the SMCTD General Manager serve as Executive Director of Caltrain with full authority over the appointment and organization of all staff supporting the railroad.

Part D: Implementation

1) Form of Agreements

Should the JPB reach agreement on a governance recommendation similar to the one described above, implementation would occur through a series of actions and agreements.

- a) The JPB would first adopt a resolution on governance that outlines the details of its recommendation before January 1, 2022 and would delegate to the Acting Executive Director the authority to negotiate a detailed Memorandum of Understanding (MOU) with SMCTD that enacts the recommended changes to the management structure of Caltrain.
- b) The SMCTD Board would consider the JPB adopted recommendation, and provided that it agrees, would delegate to its Acting General Manager the authority to negotiate the MOU with the Caltrain Acting ED. The MOU, which would be completed no more than six months from delegation to the Acting General Manager, would address:
 - i. The process and procedures related to the appointment, evaluation and termination of the Caltrain ED position
 - ii. The reporting structure and details of the revised direct and shared services staffing arrangements for those areas of the organization supporting Caltrain
 - iii. The negotiation of a shared services agreement in which shared services provided to Caltrain by SMCTD would be defined, periodically evaluated, and adjusted as agreed.
 - iv. A timeline and process whereby both the assets of the JPB and the provision of shared services would be documented for the JPB and the JPA member agencies

Part D: Implementation (continued)

1) Form of Agreements (continued)

Should the JPB reach agreement on a governance recommendation similar to the one described above, implementation would occur through a series of actions and agreements.

- c) In consideration of these changes, the JPB would agree to;
 - i. Secure the repayment of the principal and interest owed to SMCTD in accordance with the amounts and timeframes described in Part 2
 - ii. Acknowledge that should this repayment not occur as agreed to that the management of Caltrain would revert to original arrangement as described in the JPA
- d) The JPB and SMCTD would enter into a shared services agreement to define the types and levels of services to be provided by SMCTD to the JPB, cost allocation for shared employees, performance metrics, and rates.

2) Timeframe and Evaluation:

It is contemplated that the term of the agreement between SMCTD and the JPB described above would run through January 1, 2024, when all monies owed to SMCTD including both principal and interest will have been repaid. At that time, the JPB and JPA members would reconvene to consider whether to either modify the terms of the agreement, including whether to proceed with formal modifications to the JPA and RPOA. If the parties do not reach agreement with respect to changes to the agreement, the agreement would automatically be extended for another five-year period. This re-evaluation would occur every five years.

Board Discussion

Board Discussion

Is the basic framework of the straw proposal (summarized to the right) workable from your perspective?

Summary of Straw Proposal

- Affirmations & Statements
- Dedicated Caltrain ED selected, hired, evaluated and fired by JPB
- Expanded dedicated staff reporting directly to ED
- Shared service agreements
- SMCTD is repaid outstanding ROW debt as well as interest since 2008
- Reversion of agreement if repayment does not occur
- Agreement effectuated as an MOU between JPB and SamTrans
- Planned review and option to consider formalizing as part of JPA in 2024 and regularly thereafter

Board Discussion

How would you like staff to proceed?

Options to Move Forward

- a) Staff can develop a refined version of the current straw proposal based on feedback received today
- b) Staff can receive input on a different framework to develop an alternative straw proposal
- c) Staff can do both a & b

