

# Caltrain Governance

JPB Special Meeting #5  
on Governance

Consolidated Presentation Slide  
Deck

September 30, 2021



# **Welcome to Special Meeting #5**

# Special Meeting #5 Agenda

- Introduction
- Objectives for Today
- Re-Cap and Refinement of Self-Directed Options
- Public Comment & Board Discussion

~ Break ~

- Approach to Developing a Governance Recommendation
- Public Comment & Board Discussion
- Next Steps

# Phase 2 - 2021 Roadmap

## Phase 2

### Goals:

- Discussion of options and financial and legal analysis towards developing the 2021 governance recommendation.
- Adoption of governance recommendation at December 2021 JPB meeting.

2021

July

August

September

October

November

December

- Staff continue **legal, financial, and qualitative analyses** in preparation for Special Meeting #4 on 8/20; brief Chair Davis on materials in August before Special Meeting #4.
- Staff facilitates discussions with member agency partners on **ROW repayment**.

 **August 20: Special Meeting #4**

#### #4 Themes:

- Summary of evaluation of governance options
- Focus on questions and clarifications to support subsequent discussion of draft proposals

 **September 30: Special Meeting #5**

#### #5 Theme:

Discussion of draft proposals for 2021 governance recommendation

 **October 22: Special Meeting #6- Revisiting Regional Discussion**

**#3 Theme:** Discuss regional (non-self directed) options; relationship to 2021 recommendation

**November JPB: Board consideration of draft Governance Recommendation**

**December JPB: Board Adoption of 2021 Governance Recommendation**

**Ongoing work to refine draft governance recommendation and to support member agencies in ROW repayment discussions as needed.**



# Objectives

# Objectives for Special Meeting #5

1. **Review** analysis presented at Special Meeting #4, address outstanding Board member questions and summarize discussion.
2. **Consider** additional variations and refinements to self-directed options presented previously.
3. **Review** legal and staff analysis regarding options and consequences if the JPB is unable to reach a recommendation by the end of 2021.
4. **Discuss** the approach to developing an end-of-year governance recommendation for the JPB.

# **Re-Cap & Refinement of Self-Directed Options**

# “Self-Directed” Options Presented at Special Meeting #4

Less Change

More Change



## Option 1

### Refined Shared Services Model & ED Relationship

Maintain the San Mateo County Transit District (SMCTD) as managing agency of Caltrain with increased JPB oversight over the Caltrain Executive Director (ED) and increased Caltrain oversight of services provided to the railroad by SMCTD through shared service agreements.

## Option 2

### New Shared Services Model & ED Relationship

Adjust the SMCTD managing agency model to provide for greatly expanded JPB oversight and authority, including direct JPB employment of the Caltrain ED and senior leadership; expansion of services provided to the railroad directly by Caltrain; and establishment of purchased service agreements for remaining services provided to the railroad by SMCTD.

## Option 3

### Independent Agency

Dissolve the managing agency model and replace with a separate, independent Caltrain agency to directly manage and administer the railroad, either through reorganizing JPA or forming a special district.



# What Staff Heard at Special Meeting #4

- Important to keep all options on the table.
- Desire to see a restated “baseline” reflecting a managing agency arrangement consistent with past practice and the text of JPA (e.g., without a separate Caltrain ED).
- Significant concerns related to costs (one-time, ongoing, and liabilities) associated with becoming a fully independent agency (“Option 3”).
- Interest in exploring further variations of Options 1 and 2.

# “Nominal” Baseline vs “2020” Baseline

The “2020” Baseline reflects the staffing of the Caltrain organization as it existed in 2020. It includes 11 fewer total positions and a combined Caltrain ED / SMCTD GM position.

The “Nominal” Baseline was presented as the baseline at Special Meeting #4.

- It reflects 11 additional positions, including both a separate ED as well as additional positions needed to operate an effective railroad and deliver electrified service.
- The added ED position is the only net new additional position supporting the structural change of having a separate ED.
- In 2021, the JPB took two procurement actions to hire an independent auditor and independent general counsel.
  - The procured cost for independent audit services is effectively the cost the JPB paid previously for shared audit services.
  - The ultimate added cost of an independent counsel will be based on actual billings and work performed and cannot yet be clearly determined.

	2020 Baseline	Nominal Baseline
SMCTD Staff Providing Direct Services to JPB	94	105
SMCTD Staff Providing Shared Services to JPB	104	104
Annual cost	\$61.6M	\$63.8M



# Revised Summary of Options Presented

Option	Annual Costs	One-Time Costs	Time to Implement*
2020 Baseline	\$61.6M	N/A	N/A
Nominal Baseline	\$63.8M	N/A	N/A
Option 1	\$63.8M	\$1.5M	6 to 18 months
Option 2	\$69.7M	\$4.6M	12 to 18 months
Option 3	\$73.0M	\$48.9M	12 to 36 months

\* Time to implement starts at execution of MOU between member agencies that contains key decisions regarding implementation of the option.

- Changes to Pension, OPEB and other liabilities are a significant additional consideration but cannot be fully known in advance as they are negotiated outcomes
- There is the potential that liability payments by Caltrain could be significantly impacted under any option that triggers a formal re-negotiation of how services are provided to the railroad
- In practical terms, liability impacts would be most significant for Option 3 given the large number of individuals changing employer in this option



# Refinement of Self-Directed Options

There is significant room for variation and refinement of any of the self-directed options previously presented around the variables shown to the right.

The options laid out to date all reflect different approaches to these issues.

## A. Caltrain Executive Director (ED):

- Does a separate Caltrain ED position exist?
- How is the ED selected?
- Who decides how ED is evaluated and compensated?
- Who has ultimate hire and fire authority over the ED?

## B. Employer of Staff:

- Who employs staff working for Caltrain?
- Does the JPB act as a direct employer?

## C. Reporting Relationships:

- Who does staff working for Caltrain report to?
- Which functions and staff report directly to the Caltrain ED vs. which functions and staff are provided through service agreements?

## D. Service Agreements:

- Which functions and employees serve Caltrain under a “service agreement” structure?
- How is this agreement detailed and structured – as a shared service with allocated costs or as a purchased service?

# ED Relationship

Is there a separate Caltrain ED?

Who hires, fires and evaluates the ED?

2020  
Baseline

## → No Separate Caltrain ED

- Caltrain ED and SMCTD GM are the same person.
- All actions related to ED hiring, evaluation, and employment at SMCTD discretion.
- Opportunities for JPB input into SMCTD hiring process (similar to multi-agency sub-committee that participated in hiring of former GM in 2015).

Option 1

## → JPB Recommends and SMCTD Approves Separate Caltrain ED

- JPB recommends ED candidate to SMCTD for approval.
- JPB sets annual goals and conducts evaluation.
- JPB recommends hiring, termination and other personnel actions to SMCTD.

### Joint Approval Required for Separate ED

- JPB selects ED candidate.
- JPB sets annual goals and conducts evaluation.
- JPB recommends hiring, termination and other personnel actions to SMCTD.
- By agreement all personnel actions related to Caltrain ED require approval of both boards.

Option 2

## → JPB Hires Separate ED Directly

Option 3

- JPB hires ED directly as employee. All actions related to hiring, evaluation and termination conducted by JPB.

# Employer of Staff

Who employs the staff that support Caltrain?

2020  
Baseline



## All Staff are Employed by SMCTD

Option 1



- All staff are SMCTD employees.
- Some serve Caltrain directly (e.g., report up to Caltrain ED and work exclusively on Caltrain issues). Others support Caltrain via shared services arrangements (e.g., provide specific services to Caltrain but report up through SMCTD GM).

## JPB Employs Key Executives

- JPB hires Caltrain ED, COS and CFO (1 to 3 positions).
- Remaining staff provided by SMCTD – with some individuals providing direct services to Caltrain and others working in a shared capacity.

Option 2



## JPB Employs Senior Staff

- JPB hires ED and senior executives directly (5 – 12 positions).
- Remaining staff provided by SMCTD – with some providing direct services and others working in a shared capacity.

Option 3



## JPB Employs All Staff

- All staff are employed directly by JPB.



# Reporting Relationships

Who does staff supporting Caltrain report to? Do they report directly to the Caltrain ED or do they provide services to the railroad under the terms of a service agreement?

**2020  
Baseline**



Staff is evenly split between “direct” reporting to the Caltrain Chief Operating Officer or Caltrain ED vs. “shared” reporting to SMCTD GM

**Option 1**



- Reporting relationships remain similar to today’s, with roughly 95 staff working on Caltrain full time and reporting directly up to Caltrain ED (or the Caltrain COO in the 2020 Baseline).

**All staff with “policy” functions report directly to Caltrain ED**

- All positions that exercise discretionary “policy” type decision-making authority report directly to Caltrain ED.
- Supporting positions are shared between railroad and SMCTD.

**Option 2**



**Majority of staff report to Caltrain ED**

- Significant majority of staff provides direct services to Caltrain and report up to Caltrain ED.
- Only a few transactional functions (accounting, etc.) remain as shared services.

**Option 3**



**All staff report to Caltrain ED**

- All staff are employed directly by JPB and report to Caltrain ED.



# Service Agreements

What is the nature of agreements governing services provided to the JPB?

## 2020 Baseline

### → Staff shared, no detailed service agreements

- Under a general agreement, SMCTD staff effort required to support the railroad is billed to Caltrain based on timesheet records and an audited allocation formula. There is no detailed agreement as to the level of service provided in specific areas.

## Option 1 → Staff shared, detailed service agreements

- Under a general agreement, SMCTD staff effort required to support the railroad is billed to Caltrain based on timesheet records and an audited allocation formula. This approach would be supplemented by the development of detailed service agreements that specify required resourcing levels and performance outcomes for individual support activities.

## Option 2 → Conversion to “purchased” service agreements

- Agreement between JPB and SMCTD would be renegotiated as a “purchased” services agreement with a more contractual structure and detailed specification of outcomes.

## Option 3 → No sharing of services assumed

- No sharing of services with SMCTD is assumed. Any sharing or purchasing of outside services would occur at the JPB’s future discretion.





# Additional Options

## Example Variation 1A

### A. Caltrain Executive Director (ED):

- Dedicated Caltrain ED.
- Joint Decision between JPB and SMCTD:
  - JPB selects ED candidate.
  - JPB sets annual goals and conducts evaluation.
  - JPB recommends hiring, termination, and other personnel actions to SMCTD.
  - By agreement all personnel actions related to Caltrain ED require approval of both JPB and SMCTD.

### B. Employer of Staff:

- SMCTD employs all staff.

### C. Reporting Relationships:

- Small expansion of direct services provided to Caltrain.
  - Direct services include policy-supportive departments such as Communications senior staff, Community Affairs, Real Estate, etc.
  - All ~132 staff who provide direct services to Caltrain report to Caltrain Executives.
- Small reduction in shared services provided to Caltrain.
  - All transactional departments remain shared services to continue efficiencies.
  - All ~85 staff (FTE equivalent) provide shared services and report to SMCTD GM.

### D. Service Agreements:

- Shared service agreements are formalized and specified at a higher level of detail but fundamentally continue as “shared” (e.g., derived on an allocation basis).



# Additional Options

## Example Variation 2A

### A. Caltrain Executive Director (ED):

- Dedicated Caltrain ED.
- JPB Decision:
  - JPB selects ED candidate.
  - JPB sets annual goals and conducts evaluation.
  - JPB makes all decisions related to hiring, termination, and other personnel actions.

### B. Employer of Staff:

- JPB directly employs small executive team.
  - 3 staff total – Executive Director, Chief of Staff, Chief Financial Officer.
- SMCTD employs all other staff.

### C. Reporting Relationships:

- Small expansion of direct services provided to Caltrain.
  - Direct services include policy-supportive departments such as Communications senior staff, Community Affairs, Real Estate, etc.
  - All ~136 staff who provide direct services to Caltrain report to Caltrain Executives.
- Small reduction in shared services provided to Caltrain.
  - All transactional departments remain shared services to continue efficiencies.
  - All ~85 staff (FTE equivalent) provide shared services and report to SMCTD GM.

### D. Service Agreements:

- Shared service agreements are formalized and specified at a higher level of detail but fundamentally continue as “shared” (e.g., derived on an allocation basis).



# Summary of Options Presented

Option	Annual Costs	One-Time Costs	Time to implement*
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Option 2	\$69.7M	\$4.6M	12 to 18 months
Option 3	\$73.0M	\$48.9M	12 to 36 months
Variation 1A	Greater than Option 1, less than Option 2	Comparable to Option 1	Comparable to Option 1
Variation 2A	Greater than Option 1, less than Option 2	Comparable to Option 2	Comparable to Option 2

\* Time to implement starts at execution of MOU between member agencies that contains key decisions regarding implementation of the option.



# Questions for the Board

- Which element of the options is of primary importance to you at this time (ED relationship, employer of staff, reporting structure, services agreements)?
- Has your thinking about any of the options for Caltrain's governance changed or evolved since the last meeting?

# Public Comment

**Break**

# **Developing a Recommendation**

# JPB Recommendation

## Overview

- The JPB has committed to adopting a governance recommendation by the end of 2021.
- Staff needs Board input on how to proceed with the development of this recommendation, including:
  1. The process for developing a draft recommendation.
  2. A core recommendation on basic governance and management structure.
  3. How best to address related governance issues like ROW repayment.



# Modifying the JPA and RPOA

- The JPB is not a party to the Joint Powers Agreement (JPA) or the Real Property Ownership Agreement (RPOA).
- The JPB may study and recommend governance changes but it does not necessarily have the ability to effectuate them.
- To go into effect, any recommended governance changes that rely on modification of the JPA or RPOA would require the consideration and approval of all three JPA Member Agencies:
  - The City and County of San Francisco
  - The San Mateo County Transit District
  - The Santa Clara Valley Transportation Authority

# Process for Modifying the JPA and RPOA

## Recommended Governance Option

- JPB adopts resolution recommending governance option to member agencies before 12/31/21.
- JPB presents proposal to member agencies.
- Member agencies consider JPB proposal.
- If they approve of proposal, member agencies authorize their staff to negotiate MOU setting forth terms of selected governance option.
- Member agencies consider MOU approval.

# Process for Modifying the JPA and RPOA

## Recommended Governance Option (continued)

- If they approve MOU, counsel will draft proposed amendments to agreements necessary to implement selected governance option (e.g., JPA, RPOA).
- Member agencies consider approval of proposed amendments to agreements.
- If all member agencies approve amended agreements, selected governance option takes effect and implementation commences.
- Amendments to JPA and RPOA require unanimity among member agencies, i.e., any member agency may prevent implementation of selected governance option.

# Use of Measure RR Revenues

## Measure RR Revenues

- Special tax – proceeds restricted to Caltrain operating and capital purposes with a priority on:
  - Expanded service, capacity, and access;
  - Leverage federal/state/local funds for capital projects; and,
  - Steady funding for electrified service.
- Use of RR revenues to repay SMCTD for its investment would be vulnerable to legal challenge because not presented to voters.
- Use of RR revenues to implement governance options likely permissible because they are a type of operating cost contemplated by Measure RR.

# What Happens if no agreement is reached?

## No Agreement on Governance Option

- Resolution No. 2020-42 continues to require super majority to approve use of Measure RR revenues in excess of \$40M.
- Member agencies could consider mediation.
- One or more member agencies could withdraw from JPB.
- State Legislature could intervene.

# Measure RR Constraints on Expenditures

## JPB Resolution No. 2020-42

- Resolution No. 2020-42 specifies that Caltrain may not spend in excess of \$40M in Measure RR revenues per FY, without the vote of 6 directors, until the JPA has been amended to modify governance structure in a manner satisfactory to member agencies.
- After that time, JPB may allocate any and all revenues for operating and capital expenditures with 5 votes.

# Member Agency Mediation

## Mediation to Resolve Impasse

- Member agencies could use mediation as a means of resolving their differences over governance and SMCTD's investment in Caltrain.
- JPA contemplates that member agencies will participate in mediation under auspices of MTC if a member seeks to withdraw.
- Although member agencies cannot agree to binding arbitration over governance solutions, mediation may be a means of narrowing their differences and reaching agreement on a path forward.

# Member Agency Withdrawal

## Withdrawal of One or More Member Agencies

- JPA authorizes member agencies to withdraw from JPB.
- Requires 1 year notice, followed by mediation under auspices of MTC.
- If 1 member withdraws, JPB continues.
- If 2 members withdraw, JPA terminates at end of FY following expiration of 1-year notice given by 2<sup>nd</sup> member to withdraw.
  - E.g., if 2<sup>nd</sup> member provides notice of withdrawal on 6/30/22, then JPA terminates 6/30/24.



# Member Agency Withdrawal

## Effects of Withdrawal of Two Member Agencies

- JPA provides that property and funds are distributed pursuant to “separate agreement” among members.
- RPOA provides that it governs disposition of ROW (real property/assets) and is the “separate agreement” referenced in JPA.
- RPOA provides that unless parties agree or law or contractual obligations require otherwise, disposition of ROW occurs only if ROW is not used by any member agency to provide a minimum of 44 trains per day for a period of 7 consecutive years.
- After 7 years without at least 44 trains per day, JPB or SMCTD must sell ROW System Option Properties.
- Assets from sale used first to pay contractual obligations and then to pay member agencies for Additional Contribution.

# State Could Intervene

## Power of State Legislature

- Legislature could pass statute to dictate JPB's governance structure or dissolve JPB and distribute its assets.
- Member agencies cannot assert Impairment of Contract Claim against State.
- Member agencies cannot assert Takings Claim against State.

# Organizational Implications

- The prospect of an protracted governance impasse or conflict is of great concern to Caltrain as an organization.
- Concurrent to these governance discussions, Caltrain is grappling with series of real and pressing challenges including:
  - Seeking funding and completing PCEP while preparing the organization to receive and operate an electrified railroad.
  - Near- and long-term COVID recovery and adaptation to a post-COVID world.
  - Engaging deliberately and constructively in ongoing regional governance discussions.
- These are not routine or easily resolved issues. Caltrain needs a focused organization and a united and engaged Board to be successful.
- Success requires cooperation to achieve a system of governance that is viewed as legitimate and supported by all parties.

# Clarifying Questions

- Are there any details or clarifications staff can provide regarding the topics discussed and presented?

# Public Comment

# Discussion

# Board Discussion

## How would the Board like to proceed with the governance process?

- Should staff continue to target a December 2021 deadline?
- Is the Board still in agreement with using the final special meeting on October 22 to focus on “regional governance”?
- Is the Board still in agreement with using the November JPB meeting to discuss a draft governance recommendation?

# Board Discussion

To what extent are we approaching JPB consensus on a governance recommendation?

- What basic governance option(s) do Board members prefer? What options could be acceptable?
- Are there specific additional governance issues, outcomes or details, such as ROW repayment or others, that must be explicitly addressed in a JPB recommendation?



# Next Steps

# Next Steps

- **Upcoming Special Meetings on Governance:**
  - Special Meeting #6: Friday, October 22, 2021, 1:00pm – 4:30pm
  - November JPB Meeting: Thursday, November 4, 2021 9:00am – 12:00pm

