



JPB Board of Directors  
Meeting of August 20, 2021

Correspondence as of August 19, 2021

# Subject

- 1 Caltrain Governance
- 2 Silicon Valley Leadership Group
- 3 Bay Area Council
- 4 Caltrain Governance Presentation #4

**From:** [Susan Lempert](#)  
**To:** [Board \(@caltrain.com\)](#)  
**Subject:** caltrain governance  
**Date:** Thursday, August 19, 2021 3:16:10 PM

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You don't often get email from [babalulempert@gmail.com](mailto:babalulempert@gmail.com). [Learn why this is important](#)

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before you make a decision you should remember these things:

1.

CalTrain is the only transit agency in the Bay Area which has received national kudos for being well run. You can't say that about any of the other transit agencies you represent. One of the reasons is that CalTrain was fortunate to have the services of an outstanding executive director, Mike Scanlon, who completely turned the service around. He was an experienced, highly trained transit director known nation wide. the reason CalTrain could afford him was because he also had additional salary from also directing SamTrans as well as the Transportation Authority. CalTrain alone is too small to attract that kind of talent and would never have attracted the likes of Scanlon. Scanlon replaced a weak director and a Board who didn't really care about CalTrain ( sound familiar).

2/. At a time when all government dollars, especially transit dollars are in demand, and transit fares are still in a recovery mode and with a stronger virus with us who knows how long it will take to get all regular passengers back, any choice you make which sacrifices taxpayer dollars will be a huge mistake. You will be accused of wasting money for no sound reason.

3. Any world class city such as New York, Boston, Chicago has commuter rail service, subway service and a local bus, service. All are essential for the economy of these cities to remain world class. My guess is that San Jose and San Francisco assume they are in that special group and therefore need all three, BART (subway),CalTrain,commuter rail, and VTA and Muni.

Sue Lempert

Former MTC commissioner representing the cities of San Mateo County and a non-voting member of the CalTrain Board representing MTC.



**SILICON VALLEY**  
LEADERSHIP GROUP

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August 19, 2021

Peninsula Corridor Joint Powers Board  
1250 San Carlos Ave  
San Carlos, CA 94070

## Re: Self Directed Governance Options

Dear Chair Davis and JPB Board Members:

Staff have presented three options for self-directed governance for your consideration.

We have serious concerns about the formation of a new agency, option three.

Now is not the time to spend, or take any steps towards planning to spend, nearly \$50 million and additional increased annual costs of over \$9 Million a year.

Only 9 months ago, in the middle of a pandemic, voters chose to tax themselves to support Measure RR to "save and expand Caltrain" service.

Spending nearly \$50 Million on setting up a new, 28<sup>th</sup> Bay Area transit agency would risk breaking faith with those voters and the broad coalition of riders, business, labor, environmental, disability and other advocates who worked so hard to support the outstanding rail service agency with which you have been entrusted.

We encourage you to agree in the short term on an interim advance in governance that is satisfactory, but significantly less expensive and less permanent than starting an entirely new agency. This will offer time and keep options open for broader governance discussions, on this board and regionally, over the next several months.

Thank you for your leadership and service.

Sincerely,

*Jason T. Baker*

Jason Baker  
Vice President  
Transportation, Housing & Community Development  
Silicon Valley Leadership Group



August 19, 2021

The Peninsula Corridor Joint Powers Board  
12509 San Carlos Avenue  
San Carlos, CA 94070

Re: Caltrain Governance Special Meeting #4

Dear Chair Davis and the Peninsula Corridor Joint Powers Board,

Thank you for your commitment to finding a governance solution that upholds the Caltrain Business Plan and achieves Caltrain's 2040 Service Vision by evaluating self-directed and regional options.

The Bay Area Council urges you to dismiss Option 3 and further consider Option 1 or 2. As the staff report makes clear, the costs associated with Option 3 make creating a new stand-alone agency an expensive choice for Caltrain and our region – a choice for an agency which currently lacks even minimum annual funding levels from member agencies and certainly no known member agency funding for this proposal.

The notion of using Measure RR funding to pay for a new agency should be considered unacceptable to the taxpayers who approved the dedicated funding from all three counties. Today's reality is that serious regional discussions are focused on increasing efficiency and reducing agency duplication to realize a stronger Bay Area transportation system. Furthermore, Option 3 does not get us any closer to achieving the goals of Caltrain's business plan.

Option 1 or 2 will allow Caltrain to lay the groundwork to transition to a regional entity and enable Caltrain to be an active participant in the crucial and groundbreaking conversations around network management, a network service vision, and fare integration happening now.

The Council looks forward to further discussing regional governance options in October.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Gwen Litvak', with a long horizontal flourish extending to the right.

Gwen Litvak  
Senior Vice President, Public Policy

**From:** Roland Lebrun <ccss@msn.com>  
**Sent:** Friday, August 20, 2021 3:57 AM  
**To:** Board (@caltrain.com)  
**Cc:** SFCTA Board Secretary; MTC Info; Baltao, Elaine [board.secretary@vta.org]; SFCTA CAC; cacsecretary [@caltrain.com]  
**Subject:** Caltrain Governance presentation #4  
**Attachments:** Public Comment on Caltrain Governance.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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Dear Caltrain Board,

I was delighted to read that a majority of Board members have identified option 3 as the correct Governance option but **there is nothing in Section 6.B of the 1996 agreement that mandates the complete "*abandonment of the managing agency model*"**, specifically that the Board has the option to appoint another agency to provide the administrative services currently provided by SamTrans.

#### Section 6.B. Managing Agency

*"SamTrans hereby is appointed as Managing Agency for the duration of the term, provided, however, that **the JPB may REPLACE SamTrans as the Managing Agency upon one (1) year's prior written notice given at the end of any fiscal year after SamTrans has been fully repaid monies advanced by it to cover the ROW purchase price.**"* [https://www.caltrain.com/assets/public+affairs/pdf/restated+joint+powers+agreement+peninsula+corridor+project+\(oct.+1996\).pdf](https://www.caltrain.com/assets/public+affairs/pdf/restated+joint+powers+agreement+peninsula+corridor+project+(oct.+1996).pdf) (page 6)

In other words, there does not appear to be any compelling reason why the JPB should not be able to terminate its managing agency contract with SamTrans (**just like it terminated its rail operations contract with Amtrak back in 2012**) or why a new agency responsible for Caltrain administration should not be able to rehire a subset of SamTrans employees currently providing administrative services to Caltrain (**just like TASI rehired a subset of former Amtrak employees providing rail services to Caltrain**): <https://smart-union.org/news/caltrain-pact-protects-utu-members-in-changeover/>



## Caltrain pact protects UTU members in changeover - Smart Union

In preparation for a new operator of Caltrain commuter service in Northern California, the UTU has moved to protect its members who choose to transfer from Amtrak to the new operator. Caltrain operates south from...



I hope that the entire Board will consider this solution **which keeps the JPB intact** because the only alternative is Section 12 which reads as follows...

**Section 12. WITHDRAWAL FROM AGENCY**

*"If two or more of the parties to this Agreement withdraw, then this Agreement shall terminate at the end of the fiscal year following expiration of the one-year's notice given by the second party to withdraw from the Agreement, at which time the property and funds of the JPB shall be distributed to the Member Agencies pursuant to the terms of Section 13."*

I trust that common sense will prevail and that the Board will be able to achieve consensus on the next chapter in Caltrain's success story.

Please find attached my comments on the legal and financial issues discussed in this afternoon's Governance presentation.

Sincerely,

Roland Lebrun

CC

- SFCTA Commissioners
- MTC Commissioners
- VTA Board of Directors
- VTA PAC
- SFCTA CAC
- Caltrain CAC
- VTA CAC

Dear Caltrain Board,

Here are my written comments on the current status of the discussions on Caltrain Governance

## Background

I first became interested in Caltrain as something more than a mode of transportation after hearing that its pending collapse was caused by SamTrans financial difficulties back in 2010. A root cause analysis of the issues quickly uncovered that SamTrans was nothing more than some kind of f-bomb zoo headed by a gorilla with the brain of a chipmunk. The individual in question was subsequently dismissed after an NBC investigation into questionable accounting practices (<https://www.nbcbayarea.com/news/local/former-samtrans-accountant-alleges-second-set-of-books-hid-millions/79709/>) and a disturbing pattern of retaliations against employees who had reported multiple accounting irregularities (<https://www.nbcbayarea.com/news/local/whistleblower-lawsuit-alleges-samtrans-ignored-questions-of-fraud/88519/>)

I subsequently came across the 1996 Agreement and came to the conclusion that the problem could be easily addressed pursuant to Section 6.B MANAGING AGENCY which reads as follows:

*“SamTrans hereby is appointed as Managing Agency for the duration of the term, **provided, however, that the JPB may replace SamTrans as the Managing Agency upon one (1) year's prior written notice given at the end of any fiscal year after SamTrans has been fully repaid monies advanced by it to cover the ROW purchase price.**”*

[https://www.caltrain.com/assets/\\_public+affairs/pdf/restated+joint+powers+agreement+peninsula+corridor+project+\(oct.+1996\).pdf](https://www.caltrain.com/assets/_public+affairs/pdf/restated+joint+powers+agreement+peninsula+corridor+project+(oct.+1996).pdf) (page 8)

Please note that, contrary to the staff presentation (slide 13), ***“replacing SamTrans as the Managing Agency” DOES NOT require “Dissolving the managing agency model and replacing it with a separate, independent Caltrain agency to directly manage and administer the railroad, either through reorganizing JPA or forming a special district.”***

## Special Meeting #4 presentation

### Slide 7

*“Letters have been exchanged between the partners and there is a difference of views as to the amount owed as reimbursement to SamTrans for the ROW purchase”*

It is unclear how there could be any *“difference of views as to the amount owed as reimbursement to SamTrans for the ROW purchase”* when the amounts are clearly spelt out in the 2008 AMENDMENT TO REAL PROPERTY OWNERSHIP AGREEMENT

(<https://www.caltrain.com/Assets/government+affairs/pdf/Amendment+to+Real+Property+Ownership+Agreement.PDF>)

### Slide 13 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.”*

It is unclear why it should be necessary to *“Dissolve the managing agency model and replace with a separate, independent Caltrain agency”* because **Caltrain already is an independent agency**. Specifically, **the JPB has an administration contract with SamTrans which can be terminated with one year’s notice** (1996 agreement Section 6.B), **just like Caltrain terminated its rail operations contract with Amtrak** and awarded a new 5-year contract to TASI back in 2012.

### Slide 18 Option 3 for Analysis

*“B) Employer of Staff:*

- *JPB directly employs all Caltrain staff.”*

It is unclear why the JPB should *“directly employ all Caltrain staff.”* for the same reason that the JPB does not employ any TASI staff and **the Capitol Corridor does not directly employ any of the BART staff responsible for providing administrative services to the Capitol Corridor:** <https://www.capitolcorridor.org/wp-content/uploads/2021/02/CCJPA-BFS-Report-FY2020.pdf> (page 6)

*“Option 3 would involve approximately ten currently represented staff in the Customer Service department, which would require negotiations with their bargaining unit (all other administrative staff are not currently represented). Any other large scale changes to labor representation for either Caltrain management or contractors would likely have additional cost and legal implications that would require further analysis”*

Once again, **this has nothing to do with the JPB**, specifically, the new Caltrain managing agency may or may not elect to supplement its existing customer service resources to support Caltrain **just like TASI invited former Amtrak employees to transition to TASI:** [http://www.tillier.net/stuff/caltrain/FINAL\\_UTU\\_TASI\\_agreement\\_020912.pdf](http://www.tillier.net/stuff/caltrain/FINAL_UTU_TASI_agreement_020912.pdf)

### Slide 28 Financial Operating Cost Results

- **Annual incremental costs**
  - **Option 3 = \$9.2M**

Should the JPB elect to appoint BART at its managing agency, option 3 would result in a **DECREASE in administration costs of approximately \$20M/year**. Not an increase.

- **One-time cost**
  - **Option 3 = \$48.9M - due in large part to IT system costs to support a fully independent agency**

Should the JPB elect to appoint BART at its managing agency, option 3 would enable access to vastly superior computer systems at little to no one-time costs.



### **Slide 29 Pension, OPEB and Compensated Absences Liability Results**

*“Pension, OPEB and Compensated Absences Liabilities are extremely complex issues that would require extensive negotiations between SMCTD and Caltrain.”*

As stated earlier, the JPB should start afresh and avoid *“extensive negotiations with SMCTD”*

### **Slide 38 Caltrain Obligation Estimates**

*“The cost to Caltrain of each of these liabilities is a function of a negotiation between Caltrain and SMCTD”*

As stated earlier, a smooth transition from a SamTrans to a BART administration would eliminate any of these issues by transferring a limited number of SamTrans employees to BART, just like the Amtrak employees who transferred to TASI when the Amtrak contract was terminated: ***“In preparation for a new operator of Caltrain commuter service in Northern California, the UTU has moved to protect its members who choose to transfer from Amtrak to the new operator.”***

<https://smart-union.org/news/caltrain-pact-protects-utu-members-in-changeover/>

### **Slide 50 High Level Conclusions**

*“Option 3 would likely consume the greatest amount of legal services and time because of the need to establish Caltrain as the employer for all employees.”*

As stated multiple times above, **option 3 is the simplest and most cost-effective option because it continues the managing agency model** whereby Caltrain does not directly employ any staff other than a Chief Executive and a small number of executives.

### **Conclusion**

Option 3 is clearly the ultimate option **as long as it transitions to a different managing agency instead of terminating the managing agency model entirely**. The best outcome would be for all Board members to agree on a new agency responsible for Caltrain administration (1996 agreement Section 6.B).

Should it become impossible to achieve a consensus on the selection of a new managing agency for Caltrain, the JPB would have to be dissolved pursuant to Section 12: WITHDRAWAL FROM AGENCY of the 1996 agreement:

***“If two or more of the parties to this Agreement withdraw, then this Agreement shall terminate at the end of the fiscal year following expiration of the one-year's notice given by the second party to withdraw from the Agreement, at which time the property and funds of the JPB shall be distributed to the Member Agencies pursuant to the terms of Section 13.”***

[https://www.caltrain.com/assets/public+affairs/pdf/restated+joint+powers+agreement+peninsula+corridor+project+\(oct.+1996\).pdf](https://www.caltrain.com/assets/public+affairs/pdf/restated+joint+powers+agreement+peninsula+corridor+project+(oct.+1996).pdf) (page 16)

Respectfully presented for your thoughtful consideration

Roland Lebrun