

# Draft Recommendation on Caltrain Governance

January 6, 2022



# Agenda for Today

1. **Review Governance Process**
2. **Overview of Revised Proposal**
  1. Wording Changes and Additions
  2. Option Language
  3. ROW Repayment
3. **Board Discussion and Potential Action**

# 2021 Governance Roadmap

## Phase 1

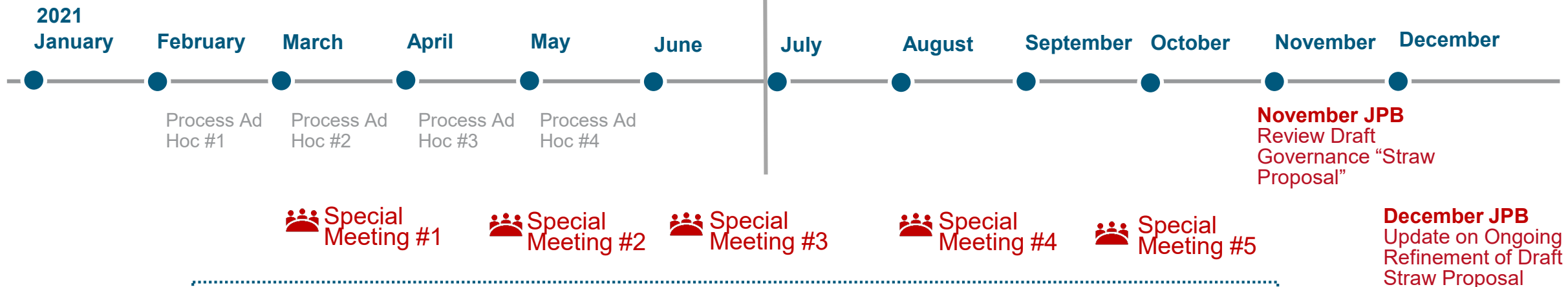
### Goals:

- Exploration and education about the JPB's range of structural governance paths.
- Selection of governance options and key issues to focus on in Phase 2.

## Phase 2

### Goals:

- Discussion of selected option(s) and financial and legal analysis towards developing the 2021 governance recommendation.
- Adoption of governance recommendation at December 2021 JPB meeting.



<p><b>#1 Outcomes:</b></p> <ul style="list-style-type: none"> <li>• Motion to accept 2021 gov. roadmap</li> <li>• Motion to accept 2021 gov process objectives</li> <li>• Discussion of interview themes and structural paths</li> </ul>	<p><b>#2 Outcomes:</b></p> <ul style="list-style-type: none"> <li>• Discussion of three self-directed governance options</li> <li>• Discussion of evaluation process</li> </ul>	<p><b>#3 Outcomes:</b></p> <p>NA</p>	<p><b>#4 Outcomes:</b></p> <p>Summary of evaluation of governance options</p>	<p><b>#5 Outcomes:</b></p> <p>Discussion of Regional Options</p>
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# Staff Activities Since November

At the November JPB meeting, staff presented a draft governance recommendation “straw proposal” for Board discussion

Since the November meeting, staff has worked to solicit further individual feedback and input from individual Board members and partner agencies and provided a brief update at the December JPB meeting.

## Soliciting Feedback on Straw Proposal

- Individual interviews with board members regarding further feedback on the draft governance recommendation “Straw Proposal”
  - Initial requests for feedback to Directors in mid-November with follow up request from Chair in late November
  - Final request at December 2 Board meeting (with requested deadline of December 8)
  - 6 out of 9 interviewed
- Weekly meetings between Acting Caltrain ED and JPA Partner GMs
- Multiple rounds of discussion with MTC staff

# Staff Activities Since November

## Soliciting Feedback on Straw Proposal

- Proposal and discussion are complex and involve multiple public agencies (Caltrain, CCSF, SMCTD, VTA and MTC)
- Revised proposal reflects staff's best attempt to synthesize individual feedback received
- At this time Board discussion is required to reach resolution on a number of issues

# Revised Proposal

The proposal is substantially similar to the “Straw Proposal” presented in November but has been updated and adjusted in a number of areas

- **Attachment A** in the packet is a clean version of the proposal
- **Attachment B** shows redline changes relative to what was presented to the Board in November

## Key Changes

- **Wording Changes and Additions:** Areas where language has been added or adjusted based on feedback received from one or more Board members - and where changes appeared to be non-controversial or did not appear to be in conflict with views expressed by other members.
- **Option Language:** Areas where Board may not be in agreement and where new or alternative language was suggested that could be controversial and requires Board discussion
- **ROW Repayment Language:** Describes an example process for the Board to reach resolution on this issue

# Public Comment

# **Board Discussion**



# Part A: Affirmations & Statements

1. **Affirmation of Intent to Address Resolution 2020-42:** Resolution 2020-42 contemplated that the JPB would recommend governance changes by December 31, 2021, including enabling a majority of the JPB to appoint its own Executive Director and providing for the reimbursement of SMCTD for its investment in Caltrain. The resolution further provided that the expenditure of more than \$40 million annually from Measure RR revenues would be subject to a supermajority vote until such time as the JPA has been amended to modify the JPB's governance structure in a manner satisfactory to the three member agencies. The proposed recommendation represents a step forward by authorizing the JPB to appoint its own Executive Director and providing a mechanism for the repayment of the outstanding principal owed to SMCTD under the 2008 amendment to the Real Property Ownership Agreement, together with interest, and it provides the member agencies with the opportunity to evaluate whether these structural changes are satisfactory before considering an amendment of the JPA.

# Part A: Affirmations & Statements

2. **Affirmation of SMCTD as the Managing Agency for Caltrain.** The San Mateo County Transit District (SMCTD) will remain as the managing agency for Caltrain.
3. **Affirmation of JPB Appointment of General Counsel and Auditor.** As of 2021, the JPB has appointed, and will maintain, both its own general counsel and auditor separate from those of any of the Joint Powers Agreement (JPA) Member Agencies.
4. **Affirmation of Rail Service Provider Contract.** The following recommendation does not alter the ongoing contractual relationship between the JPB and its selected Rail Service Provider whereby the contractor maintains responsibility for providing the JPB with rail operations, maintenance and support services that include administration/safety; operations and dispatch; maintenance of equipment, track, communications and signals, and stations; construction support; and state of good repair.
5. **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~~ establish a leadership role in such processes and should seek to vigorously assert the interests of the railroad, its customers and its corridor.
  - **OPTION LANGUAGE (A-5):** Further, the JPB commits to expeditiously evaluate any regional governance recommendations and commits to doing so by January of 2023 assuming such a recommendation is ripe for consideration.

# Part B: Basic Recommendation

## 1. Caltrain Executive Director

- a) SMCTD will designate a separate, permanent Caltrain Executive Director position (“Caltrain ED”). Although this position, who will remain as an SMCTD employee. ~~., This position the Caltrain ED~~ will exclusively report to, and take direction from, the JPB.
- b) SMCTD will delegate authority over the selection, hiring, annual goal setting, performance review, compensation, and termination of the Caltrain ED position to the JPB, ~~subject to the following conditions:~~
- ~~c) 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.~~
- ~~d) 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.~~

### OPTION LANGUAGE

1) The decision to hire and fire the Caltrain Executive Director shall be subject to a supermajority vote of seven members of the JPB.

-OR-

2) The decision to hire and fire the Caltrain Executive Director shall be subject to a simple majority vote of five members of the JPB.

# Part B: Basic Recommendation

## 2. Staff Reporting

- a) As the managing agency, SMCTD will ~~provide employ~~ all staff ~~support to supporting~~ the JPB. ~~This Staff~~ 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 reports to~~ 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, capital program delivery, engineering, and quality assurance/ quality control)
      - e) The PCEP (CalMod) Program
    - 2) Additional direct support will be provided through dedicated staff in the following areas:
      - a) Executive administration (eg chief of staff)
      - ~~b) Financial Planning and Budgets-Finance (eg finance director supported by shared services staff)~~
      - c) Communications, government and external affairs (eg communications director supported by shared services staff)
      - d) Grants
      - e) Real Estate
      - f) ~~Government and External Affairs~~

**OPTION LANGUAGE:** Other functions determined by the JPB Board necessary to avoid a conflict-of-interest between SMCTD and Caltrain

# Part B: Basic Recommendation

## 2. Staff Reporting (Cont.)

- ii. 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. This agreement will be developed pursuant to the process described in Part D of this recommendation and will be periodically revisited, evaluated, and adjusted as mutually agreed to by both SMCTD and the JPB.

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) ~~Communication~~s, 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, and will be in full satisfaction of the 2008 amendment to the Real Property Ownership Agreement (RPOA).
- b) SMCTD will be repaid the principal amount owed under the terms of the 2008 amendment to the Real Property Ownership Agreement (RPOA) - \$19.8 million- in full by within January 1, 2023 ~~12 months after execution of an agreement between JPB and SMCTD (as described in section D-1).~~ Specifically and pursuant to the terms of the 2008 amendment to the RPOA, repayment will be made as shown:
  - 1) \$0.2 million will be repaid by the City and County of San Francisco
  - 2) \$19.6 million will be repaid by the Metropolitan Transportation Commission
- c) Additionally, in consideration of the time elapsed since 2008 and the willingness of SMCTD to consider changes to the management of the JPB outside of the terms of either the JPA and the RPOA, SMCTD will be paid interest-compensated an additional sum. (to be calculated based on the principal from 2008 through the date of repayment) in full by January 1, 2024. The final method and details of this compensation including amount, methodology and schedule of payment will be negotiated by a JPB Ad Hoc Committee prior to SMCTD's consideration of this recommendation.

# Part C: Right Of Way Repayment & Reversion

## 2) Reversion

If the repayment of both the principal and interest owed has not occurred in full by the final negotiated schedule of 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 Chair would appoint an Ad Hoc Committee to negotiate the details of additional compensation to SMCTD as described in section C-1-c
- b) The JPB would ~~then first~~ adopt a resolution on governance that outlines the details of its recommendation at its February 3, 2022 meeting 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.
- c) The SMCTD Board would consider the JPB adopted recommendation, and provided that it agrees, would, acting as the managing agency, 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

## 1) Form of Agreements (continued)

- d) 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
- e) 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.
- f) Its is understood that the JPA member agencies will consider any needed actions to effectuate repayment as negotiated and recommended by the JPB Ad Hoc Committee

## 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 a final schedule of negotiated dates, 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.

