Tab 24

RTC
SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION
1523 Pacific Ave., Santa Cruz, CA 95060-3911 · (831) 460-3200 FAX (831) 460-3215 EMAIL info@sccrtc.org

August 6, 2010

Bimla G. Rhinehart, Executive Director
California Transportation Commission
1120 N Street, MS-52
Sacramento, CA 94273

RE: Santa Cruz Branch Rail Line Acquisition Project CTC Conditions

Dear Ms. Rhinehart,

I am pleased to inform you that the Santa Cruz County Regional Transportation Commission (SCCRTC) has met most of the conditions establishedby the California Transportation Commission (CTC) for the purchase of the Santa Cruz Branch Rail Line (Branch Line).

Enclosed are two resolutions in which the SCCRTC makes the commitments desired by the CTC. The resolution adopted on August 5, 2010 makes the commitments desired by the CTC (Resolution PA-10-06) to (i) initiate recreational passenger rail service (Condition 2.1.3), (ii) be responsible for continuing freight rail service as long as required by the Surface Transportation Board (STB) (Condition 2.1.4) and (iii) reimburse the state if the SCCRTC ceases to utilize the Branch Line for the original purpose approved by the CTC (Condition 2.2). The resolution adopted by the SCCRTC on May 6, 2010 indemnifies the state for any hazardous waste clean-up liabilities and commits SCCRTC to take responsibility for such clean-up (Condition 2.1.5).

Regarding CTC Condition 2.1.2 of the Proposition 116 application approval, yesterday afternoon, SCCRTC staff and consultants held a conference call with staff from the Caltrans Division of Right-of-Way to discuss the appraisals of the Branch Line. Caltrans Division of Right-of-Way staff stated that based on all of the information provided by SCCRTC staff and consultants, including a letter from Eric Hocky of Thorp Reed and Armstrong dated June 2, 2010, they now agree that Net Liquidation Value (NLV) is the appropriate methodology for arriving at a fair market value for the Branch Line.[1] Enclosed is previous correspondence explaining the NLV methodology and appraisals.

The appraisers hired by the SCCRTC have extensive experience appraising the value of property including railroad rights-of-way. The appraisers exercised due diligence in the performance of their work and, where information was unavailable or incomplete, took that into account very conservatively to reduce the value of the property. This includes:

1. Assigning no value whatsoever to over two thirds of the property due to incomplete, inexistent, inconclusive or otherwise problematic title issues. Of the 301.53 acres composing this property only 93.09 acres were assigned any value.

[1] Caltrans staff still has questions concerning the conclusions of the appraisals, but the valuation methodology is no longer in dispute

2. The value of the parcels which were assigned some value was then reduced for a variety of reasons including access, drainage, shape, planning risks, topography and land use restrictions.

3. After arriving at a gross NLV the appraisers further reduced the value of the property by taking into consideration the cost and time required to sell the individual parcels including administrative and overhead, taxes, settlement and closing, legal, accounting and marketing. These also include discounts for cost of capital and net present value.

The appraisers also considered the rights retained by Union Pacific for four transverse easements for sewage, water and drain pipes and the conclusions of the hazardous materials assessment. The retained rights are very limited and do not impact the use of the property and therefore, did not require a discount in value. This was discussed with the Caltrans Division of Right-of-Way staff during yesterday's teleconference. The only location requiring clean-up for hazardous materials is being addressed by the responsible party, Granite Construction, and the current owner, Union Pacific. Regulatory agencies are also involved to ensure that the required clean-up is completed; therefore, a discount for hazardous materials clean-up is not necessary.

After the conservative approach to value for the Branch Line, the final review appraisal arrived at a range in value for the Branch Line of $9,095,000 to $16,630,000 with a reconciliated value of $12,275,000 and the following conclusion:

> "As mentioned in Mr. Anglemyer's report and as reiterated to me in a subsequent conversation, he estimates the total ATF value of the Santa Cruz Branch Line at $144,700,000. His concluded net liquidation value of $14,300,000 represents 9.9% of his ATF value; my reconciliation figure of $12,275,000 is the equivalent of 8.5% of his ATF value. These percentages are far below what he and I have seen rail corridors sell for and further substantiates our opinion that at either $14,300,000 or $12,275,000 the Santa Cruz Branch Line is a bargain for the general public while meeting the requirement of 'fair and reasonable' price to be paid the railroad."

With the attached resolution and the explanations of the net liquidation value methodology approach to this project and the resulting value, the SCCRTC is very pleased to meet all but one of the CTC conditions. The SCCRTC has not yet finalized negotiations and executed an agreement with the operator (CTC Condition 2.1.1), due to an additional piece of due diligence work required by Caltrans, a bond counsel opinion which could affect that agreement. The SCCRTC did not learn of this requirement until June 30, 2010, following the CTC's conditional approval of the rail line purchase. The SCCRTC anticipates receiving the opinion very soon and can then proceed with completion and execution of the agreement with the operator.

As expressed before, this is a very important project to the Santa Cruz County community and the SCCRTC very much appreciates the CTC's conditional approval and the assistance of CTC staff in ensuring complete due diligence for the project. The SCCRTC requests that with this additional information and conditions met, the CTC allocate the Proposition 116 and State

Transportation Improvement Program (STIP) funds programmed to this project at its September meeting. If you need additional information, please contact me at 831-460-3202 or gedondero@sccrtc.org or Luis Mendez at 831-460-3212 or lmendez@sccrtc.org.

Sincerely,

George Dondero
Executive Director

enclosures

cc: Senator Joe Simitian
Commissioner Carl Guardino
Commissioner Jim Ghilmetti
Tony Tavares, Chief, Division of Right of Way and Land Surveys

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RESOLUTION NO. 04-11

Adopted by the Santa Cruz County Regional Transportation Commission
on the date of August 5, 2010
on the motion of Commissioner Leopold
duly seconded by Commissioner Rivas

A RESOLUTION TO COMPLY WITH CALIFORNIA TRANSPORTATION COMMISSION CONDITIONS FOR SANTA CRUZ BRANCH RAIL LINE ACQUISITION PROJECT

WHEREAS, the Regional Transportation Commission (RTC) has been working to acquire the Santa Cruz Branch Rail Line using State Proposition 116 and State Transportation Improvement Program (STIP) funds requiring approval by the California Transportation Commission (CTC); and

WHEREAS, on June 30, 2010, the CTC approved the RTC's Uniform Transit Application to purchase the Santa Cruz Branch Rail Line for the purpose of preserving the rail corridor for future multi-modal uses, subject to certain conditions for the benefit of the State of California to be satisfied by this RTC resolution; and

WHEREAS, the RTC plans to provide for the continuation of existing freight rail service and the institution of new recreational rail service through an agreement with a rail service provider (Sierra Northern Railway); and

WHEREAS, the RTC previously satisfied one of the CTC's conditions by adopting Resolution No. 29-10 on May 6, 2010, which Resolution committed the RTC to cause any necessary hazardous waste clean-up on the Santa Cruz Branch Rail Line without seeking State transportation funds for any clean-up costs and to indemnify the State from both present and future hazardous waste clean-up liabilities arising out of the Santa Cruz Branch Rail Line.

BE IT RESOLVED BY THE SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION:

1. The RTC shall be responsible for the continuation of freight rail service on the Santa Cruz Branch Rail Line through a freight rail carrier for as long as, and to the extent, freight rail service is required by the Surface Transportation Board (STB); and

2. The RTC shall be responsible for the initiation of recreational passenger rail service on the Santa Cruz Branch Rail Line through one or more passenger rail carriers in accordance with PUC Section 99640; and

3. If the Santa Cruz Branch Rail Line is no longer utilized for the original purpose approved by the CTC, the RTC shall reimburse the State in accordance with the Master Agreement made by and between the RTC and the State of California, Department of Transportation, effective August 14, 2003.

AYES: COMMISSIONERS Bustichi, Campos, Coonerty, Graves, Lane, Leopold, Nicol, Pirie, Rivas, Stone, Tavantzis

NOES: COMMISSIONERS

ABSTAIN: COMMISSIONERS

ABSENT: COMMISSIONERS Johnson

Mark Stone, Vice-Chair

ATTEST:

George Dondero, Secretary

Distribution: CTC, RTC Fiscal

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RESOLUTION NO. 29-10

Adopted by the Santa Cruz County Regional Transportation Commission
on the date of May 6, 2010
on the motion of Commissioner Lane
duly seconded by Commissioner Rivas

A RESOLUTION TO COMPLY WITH CALIFORNIA TRANSPORTATION COMMISSION POLICY G-91-2 REGARDING HAZARDOUS WASTE IDENTIFICATION AND CLEAN UP FOR RAIL RIGHT-OF-WAY

WHEREAS, the Regional Transportation Commission (RTC) has been working to acquire the Santa Cruz Branch Rail Line using State Proposition 116 and State Transportation Improvement Program (STIP) funds requiring approval by the California Transportation Commission (CTC); and

WHEREAS, the CTC adopted Resolution G-91-2 regarding Hazardous Waste Identification and Cleanup for Rail Right-of-Way; and

WHEREAS, the consultants hired by RTC completed investigations to identify hazardous waste on the Santa Cruz Branch Rail Line including Phase I and Phase II Environmental Site Assessments; and

WHEREAS, Union Pacific is working with the corresponding neighbor to the Santa Cruz Branch Rail Line regarding contaminants that were discovered and the RTC will produce a site management plan as recommended in the Phase II Environmental Site Assessment;

BE IT RESOLVED BY THE SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION:

1. All reasonable steps have been completed to assure full due diligence in the discovery of hazardous waste during the acquisition of the Santa Cruz Branch Rail Line; and

2. The RTC will indemnify, defend and hold harmless the State, the California Transportation Commission and the California Department of Transportation from cleanup liability or damage both present and future; and

3. The RTC will not seek additional State funding, for cleanup, damages, or liability costs associate with hazardous wastes on or below the acquired property's surface

AYES: COMMISSIONERS Bustichi, Campos, Coonerty, Graves, Johnson, Nicol, Pirie, Lane, Leopold, Rivas, Stone, Tavantzis

NOES: COMMISSIONERS

ABSTAIN: COMMISSIONERS

ABSENT: COMMISSIONERS

Randy Johnson, Chair

ATTEST:

George Dondero, Secretary

Distribution: CTC , RTC Fiscal

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Tab 24

"Bill Comfort"
<w.comfort@att.net>
08/10/2010 10:07 AM

To "Juan Guzman" <juan.guzman@dot.ca.gov>
cc
bcc
Subject Report on the SCCRTC meeting of 08/05/10

Dear Mr. Guzman,

The most recent RTC meeting on 08/05/10 included the vote on the Board Resolution required by the CTC as one of the elements in obtaining funding to purchase the Santa Cruz Branch Line.

During public comment on item 28 of the agenda (http://www.sccrtc.org/packet/2010/1008/TCAgenda1008.html) for the 08/05/10 RTC meeting which considered the CTC resolution, I made a brief presentation from the PowerPoint notes attached. I had also submitted the letter, attached.

Staff made several claims in explaining item 28 and answering Commissioner's questions which seem inconsistent with what I understand based on reading the CTC requirements and your answers to questions I have asked of you. I will send (by mail) a DVD of the meeting from which you can hear the specific wordings they used. Item 28 begins at approximately 33 minutes from the beginning of the recording.

The information presented by staff that seemed to be a misunderstanding of CTC requirements are as follows (again, the specific wording will be on the DVD):

- Reimbursement of the CTC was represented by staff in terms of a *proportionate* share as specified by the RTC Master Agreement for State Funded Transit Projects: http://www.sccrtc.org/packet/2010/1008/1008-28e.pdf. The answer was, at least, unclear. The wording of the resolution (item 3, page 28-9) http://www.sccrtc.org/packet/2010/1008/1008-28d.pdf makes no mention of the CTC requirement of reimbursing the "greater of either the amount allocated or the then present fair market value as determined by the State".
- Reimbursement triggered by the CTC requirement: "...in the case where the SCCRTC ceases to utilize the Branch Line for the original purpose as approved by the Commission...". The "original purpose" was suggested to be the CTC-approved *Project Purpose* from page 4 of the 02/18/10 Proposition 116 funding application http://www.sccrtc.org/pdf/RAIL%20ACQUISITION/FundApps/Prop116App_02-10.pdf : "Acquisition of the Santa Cruz Branch Line and improvements for preservation for transportation purposes, including continuation of existing freight and recreational rail service, implementation of recreational passenger rail service from Santa Cruz to Davenport and potential bicycle and pedestrian path adjacent to the rail line where feasible". Emphasis was placed on "preservation for transportation purposes". No mention was made of the "original purpose" stated in item 1.8 (b) from the CTC Resolution PA-10-06: "other rail projects within Santa Cruz County which facilitate recreational, commuter, intercity and

intercounty travel" (which comes directly from Proposition 116).

Staff also indicated that they had submitted all the documents associated with the valuation and had not heard back the CTC. Just prior to the meeting while waiting for the closed session to be completed, I had spoken with David Murray, the representative from Caltrans for District 5, who mentioned that no documents had been received.

Following the meeting I had a conversation with a Commissioner (who is an attorney) regarding the apparent misinformation by staff. I had provided a link to the exact CTC wording and pointed out its meaning. The Commissioner commented that engineers (me) want specifics, lawyers prefer ambiguity.

I want you to have this information for upcoming deliberations so that you will be completely informed.

Sincerely,

Bill Comfort

RTC 080510 a Comments.pdf RTCLetter080110.pdf

Juan Guzman/HQ/Caltrans/CAGov
08/10/2010 08:34 AM

To Bimla Rhinehart/HQ/Caltrans/CAGov,
cc Annette Gilbertson/HQ/Caltrans/CAGov,
bcc
Subject Fw: Santa Cruz County-UPRR

Juan Guzman
California Transportation Commission
(916) 653-2072
----- Forwarded by Juan Guzman/HQ/Caltrans/CAGov on 08/10/2010 08:34 AM -----

"m-jkeogh" <m-jkeogh@comcast.net>
08/09/2010 05:36 PM

To <juan.guzman@dot.ca.gov>
cc <bilma.rinehart@dot.ca.gov>
Subject Santa Cruz County-UPRR

August 9, 2010

Mr. James Earp
Chair, CA Transportation Commission
928 Second Street, Suite 200
Sacramento, CA 95814

Re: Item 24 of the August 11 CTC agenda: Update on Conditions of Approval – Santa Cruz Branch Line Proposition 116 Project Application Approved under Resolution PA-10-06

Dear Sir:

I am greatly concerned about a vote recently taken by our Regional Transportation Commission. On Thursday, August 5, 2010, the RTC voted (Item 28) to accept the California Transportation Commission's conditions for the awarding of Prop 116 funds and STIP funds for purchase of the rail Right of Way.

This was based on staff explanations of the pay back provision and operation condition. Staff asserted as follows:

1. The pay back requirement was limited to a return of only the State's proportional share of the funding. When quizzed about the possibility that the sale would be at a loss, staff reasserted that the RTC was only obligated to return to the State their proportional share of the proceeds of the sale, not speaking to the potential large loss. The fact that the CTC requirement is for the "greater of either the amount allocated or then present fair market value as determined by the State" was not clarified.

2. The only requirement was to initiate passenger rail and there was no obligation to continue it in perpetuity. They based this on the 02/18/10 CTC approved RTC 116 application which indicated that the project purpose is "acquisition of the Santa Cruz

Branch Rail Line for preservation and improvements for transportation purposes....".

I am aware that you are not responsible for the local interpretation of your conditions and subsequent votes. However, it would be a travesty if some votes of well meaning local commissioners were swayed by the misinterpretation.

I would ask for transparency and full disclosure. Could you postpone any vote on the county's access to these funds until your staff has a chance to verify if the Santa Cruz Regional Transportation Commission fully understands your conditions? You do not need to rely on my memory; there is a video tape of the proceedings available at our local community television station (831-425-8848).

I am very aware that this situation is strange, but I feel compelled to ask for your intervention. Your attention to this request is greatly appreciated.

Michael W. Keogh
Former Regional Transportation Commissioner

c.c. Bilma Rinehart
Juan Guzman