

LONE STAR RAIL DISTRICT

Board Meeting Summary Friday, March 4, 2011

10:00 a.m.

San Marcos Activity
501 E. Hopkins
San Marcos, Texas

1. Call to Order

Notice was duly posted and a meeting of the Lone Star Rail District Board was held on Friday, March 4, 2011. Board Vice Chairman Tullos Wells noted a quorum was in attendance and called the meeting to order at 10:16 a.m.

Participants:

Tullos Wells, Vice Chairman
Tommy Adkisson
Gloria Arriaga
Mary Briseño
Mariano Camarillo

Sheryl Cole
Will Conley
Patty Eason
Sarah Eckhardt
Karen Huber

Kim Porterfield
Carroll Schubert
Jeff Wentworth

Other participants included Ross Milloy, Joe Black and Alison Schulze (Rail District), Bill Bingham (Rail District General Counsel), Brian Buchanan (VIA), Jennifer Moczygema (TxDOT), and John Kulpa and Darwin Desen (Jacobs Engineering).

2. Chairman and Member Comments

Vice Chairman Wells introduced and welcomed the Board's two new members: Travis County Commissioner Sarah Eckhardt representing CAMPO, and Council Member Kim Porterfield representing the City of San Marcos. There were no other comments.

3. Items for Consent

- A. Consider Approval of September 10 Board Meeting Summary**
- B. Consider Approval of December 3 Board Summary**
- C. Consider Ratification of Supplemental Agreement #2 to McGinnis Lochridge Contract for Freight Rail Negotiation Services**
- D. Consider Approval of Settlement of Billings for Interim Legal Services Related to Freight Rail Negotiations**
- E. Consider Approval of Financial Statements**

Vice Chairman Wells noted the consent items would be considered for approval by one motion, and any item could be removed from the consent agenda upon request by a Board member. There was no discussion. Upon a motion by Vice Chairman Wells and second by Board member Camarillo, the Board unanimously approved the consent agenda items. Commissioner Eckhardt and Council Member Porterfield abstained.

4. **Committee Report:**

Executive Committee Meeting February 10, 2011

Vice Chairman Tullos Wells noted the meeting, originally scheduled for February 4, was cancelled due to ice and snow and subsequently rescheduled as a teleconference meeting on February 10. The Committee discussed and/or took action on several items:

- The Committee approved issuing a request for proposals (RFP) for local government and stakeholder engagement services. Staff will present the item for Board approval under Agenda Item 8.
- The Committee authorized the Executive Director to negotiate a 1-year contract extension with Smith Dawson & Andrews for federal legislative services, for a cost not to exceed \$100,000. The Committee further encouraged the Executive Director to explore other firms and other options for adding additional expertise at the federal level, and to report his action to the Board on March 4. *[Note: Executive Director Ross Milloy reported that he is continuing his due diligence and will report to the Board at a later date.]*
- The Committee authorized the Executive Director to make an \$85,000 contribution to support the Rail Relocation Fund and ancillary legislative issues.
- The Committee discussed a proposed methodology to pre-qualify firms for indefinite deliverables/indefinite quantities contracts in order to streamline procurement of planning and engineering services. The item was tabled so that staff could address the issues raised by the Committee.
- The Committee discussed freight planning issues. Bill Bingham will present the issues to the Board under Agenda Item 12.
- The Committee approved an amendment to Jacobs' contract to roll over unspent funds from a prior amendment and to reallocate the funds to evaluate freight bypass improvements.
- The Committee recommended the Board approve an amendment to Jacobs' contract to conduct aerial mapping, surveying and engineering services on the current UP freight corridor (i.e., the proposed LSTAR passenger service corridor). The item was posted on the Board agenda, but will be pulled and presented to the Board at the next meeting.
- The Committee heard a status report on the environmental and engineering activities on the passenger rail project and how the lack of a lead agency is impacting the project schedule. Jacobs will present the issues to the Board under Agenda Item 13.
- The Committee received a status report from Bill Glavin, Director of TxDOT's Rail Division. TxDOT staff will report to the Board under Agenda Item 14.
- Staff presented a status report on State legislative issues, which they will present to the Board under Agenda Item 15.

5. **Consider Report by Brian Buchanan, VIA Vice President of Strategic Planning and Project Development, on VIA's Rail Initiatives**

Vice Chairman Wells noted that VIA and other transit authorities are critical partners in the Rail District's success because connectivity between LSTAR service and local transit service will address the "final-mile" issue—i.e., how LSTAR riders get to their final destinations.

Mr. Buchanan reported on VIA's long-range plan and rail initiatives. He presented data on VIA's service statistics, revenue sources for the current bus system ($\frac{1}{2}$ cent sales tax plus $\frac{1}{8}$ cent Advanced Transportation District tax), cost effectiveness and productivity, and noted the U.S. Census put San Antonio in the top ten in transit use nationwide. VIA's long-range comprehensive transit plan positions VIA for the future. The plan includes a range of mode choices, but the major components are bus service improvements and high-capacity transit corridors. Mr. Buchanan outlined VIA's financial strategies to implement the plan elements and where legislative action is needed. VIA's Board is expected to approve the plan in the coming months.

Board discussion followed on the impact of gas prices on bus ridership, the need for VIA to collect a full 1 cent in sales tax to be prepared for the future, and the specifics of VIA's bus rapid transit (BRT) projects. Vice Chairman Wells thanked Mr. Buchanan for educating the Board on VIA's initiatives and noted a recent public survey by VIA ranked VIA-LSTAR connectivity as high. Vice Chairman Wells reiterated Mr. Buchanan's comments that it's imperative to establish local funding commitments for annual operations and maintenance costs before the federal government will commit capital funds to a project. To that end, the Rail District has been meeting with elected and appointed officials in San Antonio and Bexar County.

6. Consider and Take Appropriate Action on Election of Board Officers

Vice Chairman Wells announced he was postponing election of Board officers until the next Board meeting so that more Board members could be present.

7. Consider and Take Appropriate Action on Appointment of Executive Committee

Alison Schulze reported the Rail District bylaws require that the Board appoint the Executive Committee. In accordance with the bylaws, the Executive Committee consists of the Board Chairman and Vice Chairman, at least two members from the northern portion of the Rail District, and at least two members from the southern portion. Ms. Schulze directed the Board's attention to the Chairman's recommendation: Council Member Eason, Board Member Camarillo, and Commissioner Eckhardt would represent the north end of the corridor; Board Member Briseño, Board Member Schubert, and Senator Wentworth would represent the south end, and Council Member Porterfield would represent the middle of the corridor. Upon a motion by Commissioner Huber and second by Board Member Arriaga, the Board unanimously approved Chairman Covington's recommendation.

Ms. Schulze directed the Board's attention to the standing committee assignments included in the agenda packet. In accordance with the bylaws, the Board Chairman appoints the members of the Rail District's standing committees. Chairman Covington revised the committee assignments to include the Board's two newest members.

8. Consider and Take Appropriate Action on Request for Proposals for Local Government and Stakeholder Engagement Services

Joe Black reported that staff originally took a request for proposals (RFP) to the Executive Committee on February 10; but, in response to comments made by TxDOT about professional services and after due diligence, staff is recommending a request for qualifications (RFQ) be issued rather than an RFP. The purpose of the RFQ is to engage local governments, businesses and community stakeholders in the area around the new freight bypass to educate them on the project's purpose, costs, and benefits; to identify risks to the project and develop strategies to manage the risks; and to conduct an economic analysis of the proposed freight bypass. The cost of the proposed services is expected to be about \$420,000, and the funding source would be the State appropriation.

The recommendation of the Executive Committee on February 10 was that the Board approve and proceed with an RFP, now an RFQ. The staff recommendation is to approve the RFQ for publication, to authorize staff to proceed with the procurement process, and to authorize the Board Chairman to execute an Interlocal Agreement with TxDOT for use of State funds on the project. Upon a motion by Commissioner Conley and second by Board Member Briseño, the Board unanimously approved the staff recommendation.

9. Consider and Take Appropriate Action on Amendments to Jacobs Contract for Planning and Preliminary Engineering-Phase 2 to Conduct Aerial Mapping of Existing Freight Corridor

Vice Chairman Wells announced Agenda Item 9 would be postponed in order to gather additional information and clarification from Jacobs Engineering.

10. Consider and Take Appropriate Action on Amendments to Advanced Funding Agreements with TxDOT

Alison Schulze described the two Advanced Funding Agreements between the Rail District and TxDOT: AFA-1 governs the use of the Rail District's general federal appropriations and AFA-2 governs the use of the Rail District's federal funds from the Capital Area Metropolitan Planning Organization. Both agreements were executed under the Rail District's old name. The purpose of the amendments is to document the Rail District's new name in each agreement. Ms. Schulze directed the Board's attention to the amendments included in the agenda packet.

Ms. Schulze briefed the Board on a recent development that would require a second amendment to AFA-2 regarding the federal funds CAMPO awarded to the Rail District. TxDOT contributed the 20% non-federal match (\$2 million) for the CAMPO funds in the form of transportation development credits (formerly known as toll credits). TxDOT recently notified the Rail District that the \$2 million match may be available in cash rather than transportation development credits (TDCs). If the credits are replaced with cash, the Rail District would need to amend AFA-2 to reflect the cash match. Amendment #2 to AFA-2 is still pending at this time.

Staff recommended the Board approve Amendment #4 to AFA-1 and Amendment #1 to AFA-2 to change the name of the Rail District in the agreements, and authorize Board Chairman Covington to execute the amendments. Staff further recommended the Board authorize the Board Chairman to negotiate and execute Amendment #2 to AFA-2 to reflect \$2 million in cash in place of \$2 million in TDCs. Board discussion followed on transportation development credits. Upon a motion by Senator Wentworth and second by Board Member Arriaga, the Board unanimously approved the staff recommendations.

11. Consider and Take Appropriate Action on Interlocal Agreement with TxDOT to Redirect State Appropriation to Current Activities and to Preserve CAMPO and Federal Funds

Alison Schulze reported that Bill Glavin, Director of TxDOT's Rail Division, notified the Executive Committee on February 10 that State legislation has been filed that would carry over to the next biennium any unspent funds in the \$8.7 million State appropriation for rail projects in the Austin-San Antonio corridor. The measure was approved by the Legislative Budget Board and added to appropriations bill; however, given the current budget climate, Mr. Glavin proposed executing an interlocal agreement with the Rail District to use the remaining, unspent funds (about \$2 million) in the State appropriation on environmental tasks in progress on the passenger rail project and/or on staff salaries, thereby preserving the Rail District's federal appropriation and CAMPO funds which don't have expiration dates. The intent of the interlocal agreement is to expedite spending the State appropriation in case the funds are withdrawn, and to use the State funds on tasks currently being funded by federal funding sources. TxDOT is drafting an agreement that it will forward to the Rail District for consideration. Staff recommended the Board authorize the Board Chairman to execute an agreement, whether it's an interlocal agreement or an advanced funding agreement, with TxDOT once the agreement is final.

Board discussion followed on the tasks the State funds would be used on. Upon a motion by Commissioner Conley and second by Commissioner Adkisson, the Board unanimously authorized

the Board Chairman to execute an agreement with TxDOT on the use of the remaining State appropriation.

12. Consider Report on Freight Planning Issues and Freight Rail Relocation Studies

Senator Wentworth noted that in recent weeks Union Pacific's leadership has indicated that one of their top priorities is to relocate the Austin-San Antonio segment of their freight rail line, which is the slowest, most inefficient segment on the UP freight system. Ross Milloy agreed and stated that a recurring comment is that Union Pacific will never move its through freight, the relocation project is too big, and UP has been in the corridor for 130 years. Mr. Milloy emphasized that UP will respond to what's in its best business interest.

Bill Bingham added that for the past year Union Pacific's top management has also expressed similar statements that the through-freight bypass between Austin and San Antonio is one of their priority projects and UP has been very cooperative in the planning efforts to date.

Mr. Bingham briefed the Committee on some of the planning issues involved in freight relocation in order to explain the complexity of the project and the progress made. First, in the mid-1980s when UP merged with Southern Pacific, the Surface Transportation Board (STB) granted rights to competing freight railroads to use the existing freight line owned by UP. In the area between San Antonio and New Braunfels there are existing joint trackage rights between Union Pacific and BNSF that the Rail District will have to consider in planning passenger rail operations and ownership of the line. There is a similar agreement on the north end of the line between Taylor and McNeil that will have to be considered. In addition to the joint trackage rights, Amtrak and local freight service will remain on the line to be used for passenger rail, and will have to be considered in planning and operations.

Second, real estate title issues will arise in exchanging 100+ miles of the mainline right-of-way with Union Pacific. The title issues are complex and include over 700 deeds—some going back to the 1880s, 4,500 agreements in the corridor, and more than 60 maps. The complexity and number of the documents will require that the Rail District contract with a title expert for a detailed review of each title and file in order to understand the real estate acquisition issues. UP is currently compiling the information and will make it available to the Rail District.

Third, there is only one rail line between San Marcos and Taylor, but in the San Antonio area there are numerous rail lines, crossings and overpasses. The Rail District needs to study as soon as possible at least two connections in Bexar County where passenger service will operate jointly with freight service to ensure there are no fatal flaws. The two areas that require additional, immediate study are the mainline track connections between the Austin and Del Rio subdivisions and an overpass of mainline 1 at tower 105. The study results could alter the Rail District's preferred plan for passenger service; so, upon approval by the Executive Committee in February, a study began to determine if solutions are available.

Finally, the Rail District needs to coordinate with the Surface Transportation Board in Washington, DC, which controls many aspects of freight and passenger railroads. Practice before the STB is very specialized, so the Executive Committee authorized Mr. Bingham to add an STB attorney to the McGinnis Lochridge & Kilgore team that is currently providing freight rail negotiation services. An attorney with significant STB experience has been added to assist the Rail District with understanding STB's issues and process. Board discussion followed on STB.

Joe Black briefed the Board on the status of the freight rail relocation alternative alignments and fatal flaw analysis. In September 2010 the Board authorized the Program Management Oversight

Committee to oversee the selection of a consultant for an alternative alignments analysis of the proposed urban freight rail bypass route. Jacobs Engineering was selected to conduct the analysis in November 2010, contract negotiations commenced soon thereafter, and the notice-to-proceed was issued on February 7. The purpose of the analysis is to identify a viable freight alignment. The project kickoff meeting was conducted on February 22, and constraints mapping is underway using Quantm, a modeling tool that considers environmental, operational, cost, and political constraints, and substantially speeds up the process. With Quantm, the analytical process is expected to take 9 months to complete. The outcome will be an alignment that is acceptable to both Union Pacific and the Rail District and can be advanced to the environmental phase. Board discussion followed on the Quantm modeling tool.

13. Consider Report on Environmental and Engineering Studies on Passenger Rail Project

Dr. John Kulpa, Jacobs' Project Manager, reported that Jacobs is continuing work on the passenger rail environmental impact statement (EIS) to the extent possible without having a lead federal agency. Federal Railroad Administration identified conditions the Rail District must meet to secure FRA as lead agency: advance the freight relocation project, determine Surface Transportation Board jurisdictional issues on freight relocation, and conduct ridership analyses and prepare a service development plan on the passenger rail project that ties in with TxDOT's rail planning in the I-35 corridor. The conditions have been met or are in progress; but the overall EIS project scheduled is delayed until a lead agency is identified.

On the passenger rail EIS, Jacobs has completed the draft documents on the existing baseline condition and the draft engineering plans for a double-track alignment. On-going tasks include ecology field work, ridership modeling, service development planning financial planning, station meetings, and engineering on the maintenance and storage facility. Dr. Kulpa outlined several tasks that will be deferred until a lead agency is secured, including identification of environmental impacts and mitigation measures, agency and public outreach, and engineering on station sites. Board discussion followed.

14. Consider Status Report by TxDOT Rail Division

Jennifer Moczygemba briefed the Board on TxDOT's I-35 corridor study, prioritizing projects in the State Rail Plan, and a research study on rail corridor preservation:

- TxDOT attended the FRA meeting in December with the Rail District. FRA didn't say no to the Rail District's request that FRA be the lead agency on the EIS; but, FRA contends that TxDOT's I-35 corridor study must be completed first in order to identify how the LSTAR passenger rail project fits into TxDOT's rail plans for the entire corridor. FRA is funding a portion of the I-35 corridor study. While TxDOT is processing the FRA grant, they are beginning to move forward on some elements of the I-35 corridor study, which stretches from Oklahoma City to South Texas. Corridor ridership studies are expected to start within the next 1-2 months depending on FRA resources. TxDOT also met with the freight railroads to inform them of the pending study.
- TxDOT is beginning a process to prioritize projects in the State Rail Plan. The plan identified general criteria for project prioritization, and Texas Transportation Institute (TTI) is conducting research to flesh out quantitative criteria to better rank projects that pursue funding from the Rail Relocation and Improvement Fund. TTI's work is expected to be complete by the end of August.
- A research study by the Center for Transportation Research (study #0-5546) looked at rail corridor preservation, State laws and government authority to preserve rail corridors. Counties can develop corridor plans and preserve highway and rail corridors through their subdivision platting process. The study would be applicable to counties along the freight bypass.

Board discussion followed on the rail corridor preservation program.

15. Consider Report on 2011 Legislative Session, Legislative Issues, Rail Relocation Fund

Ross Milloy briefed the Board on State legislative issues, including proposed changes to the Rail District's legislation, legislation that would extend the timeframe to use the \$8.7 million State appropriation for rail projects in the Austin-San Antonio corridor, and legislation on potential funding sources for the Texas Rail Relocation and Improvement Fund. The Attorney General still has not issued an opinion on previous funding appropriated for the Rail Relocation Fund.

At the federal level, Representative Mica, Chairman of the House Transportation and Infrastructure Committee, supports freight rail programs that take trucks off the highway system, and he wants to divert high-speed-rail funds to such a program. Finally, the report for the I-35 Citizens Advisory Committee was released recently and identified both the LSTAR passenger rail project and the freight rail relocation project as high-priority projects for the State that should be done in the near term.

16. Concluding Board Member Comments (no action taken)

Vice Chairman Wells announced the next Executive Committee meeting is scheduled for April 1, and the next Board meeting is scheduled for June 3 in San Marcos. There were no additional concluding comments.

17. Public Comment

There were no public comments.

18. Adjourn

Vice Chairman Wells adjourned the meeting at 12:07 p.m.