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San Mateo County Transit District Contribution to the Peninsula Corridor Joint Powers Board

Issue

Since the Grand Jury Report of 2000-2001, what efforts have been made by the San Mateo County Transit District for the repayment of the \$ 42.9 million contribution, plus accrued interest (the contribution) made on behalf of its Peninsula Corridor Joint Powers Board partners, San Francisco and Santa Clara Counties, to purchase the Southern Pacific Right of Way?

Summary

In 1991, San Mateo County Transit District, the City and County of San Francisco, and the Santa Clara County Transit District established the Peninsula Corridor Joint Powers Board to operate commuter trains using the Southern Pacific Right of Way in the three counties. The Right of Way purchase was financed in part through a bond issue with the balance of the payment allocated by the Peninsula Joint Powers Board among the three member agencies based on a mileage formula. Due to the lack of funds from San Francisco and Santa Clara Counties, San Mateo County Transit District (SamTrans) agreed to contribute Santa Clara's and San Francisco's shares for a total of \$42.9 million. All parties to the agreement understood that neither San Francisco nor Santa Clara had any legally enforceable obligation to repay the contribution.

SamTrans made no effort to seek repayment of the contribution for nine years after the purchase of the Right of Way. In 2000, the 2000-2001 Grand Jury pursued the question of repayment. The 2000-2001 Grand Jury recommended that SamTrans should reopen negotiations with San Francisco and Santa Clara, and if negotiations are unsuccessful, SamTrans should exercise its development rights outside San Mateo County.

To date, no repayment has been made on the \$42.9 million contribution, plus accrued interest, nor are there any specific plans to do so, although a non-binding understanding regarding the return of the contribution still exists among the partners. SamTrans has property rights for land adjacent to the Right of Way and is a protected and priority creditor per the Real Property Ownership Agreement. Currently the Peninsula Corridor Plan is being considered by the Peninsula Joint Powers Board and

cities along the Right Of Way corridor for commercial development of this land. However, the Grand Jury concluded that it is doubtful that SamTrans will recoup its contribution, plus accrued interest, in the foreseeable future.

The Grand Jury recommended that the Samtrans Board of Directors reopen negotiations with San Francisco and Santa Clara Counties to seek repayment of the contribution, to report annually on the status of efforts to collect repayment, and to investigate sources of grants and state and federal monies that could be used for projects that would lead to repayment. The Grand Jury also recommended that in any future project that SamTrans undertakes, advances, contributions, or loans should be sufficiently secured to assure repayment, and should be an unrestricted obligation of the borrower.



San Mateo County Transit District Contribution to the Peninsula Corridor Joint Powers Board

Issue

Since the Grand Jury Report of 2000-2001, what efforts have been made by the San Mateo County Transit District for the repayment of the \$ 42.9 million contribution, plus accrued interest (the contribution) made on behalf of its Peninsula Corridor Joint Powers Board partners, San Francisco and Santa Clara Counties, to purchase the Southern Pacific Right of Way?

Background

In December 1991, San Mateo County Transit District, the City and County of San Francisco, and the Santa Clara County Transit District (the member agencies) established the Peninsula Corridor Joint Powers Board (Joint Powers Board) to operate commuter trains using the Southern Pacific Right of Way in the three counties. The purchase price of the Right of Way was \$202 million. Through a bond issue, the State of California contributed \$120 million. Payment of the balance was allocated by the Joint Powers Board among the three member agencies based on a mileage formula. San Mateo's share was \$39.1 million (47.7 %), Santa Clara's share was \$34.6 million (42.2%), and San Francisco's share was \$8.3 million (10.1%).

Due to the lack of funds from San Francisco and Santa Clara Counties at the time the agreement was signed, San Mateo County Transit District (SamTrans) agreed to contribute Santa Clara's and San Francisco's shares in order to insure acquisition of the Right of Way. All parties to the agreement understood that neither San Francisco nor Santa Clara had any legally enforceable obligation to repay the contribution. Santa Clara and San Francisco Counties may at their election undertake good faith efforts to repay the contribution in a lump sum or through a repayment schedule.

Nine years after the purchase of the Right of Way, the 2000-2001 Grand Jury pursued the question of repayment and made three recommendations:

1. SamTrans should reopen negotiations with San Francisco and Santa Clara.
2. If negotiations are unsuccessful, SamTrans should exercise its development rights outside San Mateo County.

3. Any future projects undertaken by SamTrans under the joint power agreement that include advances, contributions or loans should set forth specific repayment terms. *

Findings

No repayment has been made on the \$42.9 million contribution, plus accrued interest, nor are there any specific plans to do so.

A non-binding understanding regarding the return of the contribution, plus accrued interest, still exists among the partners.

SamTrans made no effort to seek repayment of the \$ 42.9 million it contributed to San Francisco and Santa Clara Counties until year 2000, nine years after the funds had been contributed.

Since December 1991, when the Real Property Ownership Agreement was signed, neither San Francisco nor Santa Clara Counties has made any effort to repay SamTrans out of their transit budgets for the funds contributed.

SamTrans has property rights for land adjacent to the Right of Way. Currently a plan is being considered with the Joint Powers Board and cities along the Right Of Way corridor for commercial development of this land. This plan, the Peninsula Corridor Plan, is intended to develop the nexus between transportation and land use along El Camino for pedestrians, cyclists and shoppers, and improve access to Peninsula cities for bus and train riders.

Although unsuccessful, an effort was made by the Joint Powers Board to raise funds to repay the contribution by way of a sale and lease back transaction.

In the unlikely event of liquidation, for example the sale of the Right of Way, SamTrans is a protected and priority creditor per the Real Property Ownership Agreement to the extent that there are funds available for distribution.

**2000-2001 San Mateo County Civil Grand Jury report entitled, "San Mateo County Transit District Advances to the Peninsula Corridor Joint Powers Board".*

SamTrans has entered into agreements providing advances, contributions and loans that basically depend on the beneficiaries' good intentions for repayment. For example, SamTrans funded the purchase of the Southern Pacific Right of Way in December 1991, and in September 1999, provided BART a construction loan with repayment terms based on what appears to be unrealistic revenue and profitability estimates.

The principal purpose of SamTrans is to provide a transit system for the citizens of San Mateo County.

Conclusions

Efforts to collect the \$42.9 million contribution, plus accrued interest, have not produced any results. Footnote #8 to the SamTrans audited financial statements for the fiscal years ending June 30, 2002 and 2003 clearly stipulates that there is no legal obligation on the part of San Francisco or Santa Clara Counties to return the contribution.

A public perception exists that the contribution was actually a legal obligation to be repaid by San Francisco and Santa Clara Counties. For example, a San Mateo County Supervisor referred to the contribution as a loan in his State of the County speech on April 18, 2002.

It is doubtful that SamTrans will recoup its contribution, plus accrued interest, in the foreseeable future.

Acquisition of the Right of Way has provided a valuable transportation link for the Peninsula. To that end, use of the Right of Way is a valuable asset for SamTrans.

SamTrans' efforts have created a vision for development along the Right of Way, such as the Peninsula Corridor Plan

Recommendations

The Board of Directors of the San Mateo County Transit District should:

1. actively seek out opportunities for development of the entire Right Of Way.
2. reopen negotiations with San Francisco and Santa Clara Counties to seek repayment of the contribution, plus accrued interest, no later than November 1, 2005.

3. work with San Francisco and Santa Clara Counties and their elected representatives to investigate sources of grants and state and federal monies that could be used for projects that would lead to repayment of the contribution.
4. report annually by November 1 to the Grand Jury on the status of activities and efforts to collect repayment of the contribution, plus accrued interest.
5. insure that any future projects that SamTrans undertakes that include advances, contributions, or loans should be sufficiently secured to assure repayment, and should include specific terms of repayment at competitive interest rates, and should be an unrestricted obligation of the borrower.

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MICHAEL J. SCANLON
GENERAL MANAGER/CEO

June 27, 2005

Hon. Norman J. Gatzert
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Dear Judge Gatzert:

This is the formal response by the San Mateo County Transit District (SamTrans) to the Grand Jury report issued March 28, 2005 and titled: "SAN MATEO COUNTY TRANSIT DISTRICT CONTRIBUTION TO THE PENINSULA CORRIDOR JOINT POWERS BOARD." Under the terms prescribed in the accompanying memo, our options for response include agreement with the Grand Jury's findings or disagreement in part or in whole with the findings. Further, we are instructed to respond to each specific recommendation, indicating whether each has been implemented, and, if not, when they will be implemented or why not. We agree generally with each of the findings and, indeed, appreciate the depth of understanding the Grand Jury has brought to its report, but we do find minor areas in which we disagree with some underlying findings and recommendations. These are minor elements, however, and we find ourselves largely in agreement or in compliance with the recommendations of the Grand Jury.

Response to Findings

First Paragraph: "No repayment has been made on the \$42.9 million contribution, plus accrued interest, nor are there any specific plans to do so."

In fact, there were specific plans to repay the contribution through a financing transaction that was prohibited by Congress before we could initiate the transaction.

Second Paragraph: "A non-binding understanding regarding the return of the contribution, plus accrued interest, still exists among the partners."

In fact, a "Real Property Ownership Agreement," provided to the Grand Jury, binds our partners to make best efforts to effect repayment of the SamTrans advance. Although the advance is not a loan committing our partners to repay SamTrans out of their general funds, our partners have, indeed, signed a binding agreement recognizing the significance of the advance and pledging efforts to make sure SamTrans is repaid. Further, as the Grand Jury's report states, the funds advanced are secured by a deed of trust covering the right of way property, providing legally enforceable financial recourse to SamTrans that could serve as repayment. Our reluctance to pursue that option speaks to our desire to maintain meaningful working relationships with our partners and our confidence that they have made and will continue to make diligent efforts to seek funding or a creative solution to repay the advanced funds. Further, asserting those ownership rights would have the consequence of

threatening the future of the Joint Powers Authority partnership. Dissolution of the partnership may put SamTrans in the position of sole ownership of the Caltrain system, a financial consideration that far exceeds the money owed from the right of way. In addition, there have been benefits to San Mateo County that have accrued as a result of the purchase of the right of way, including, as acknowledged by the Grand Jury, the creation of a vision for development along the right of way.

Third Paragraph: “SamTrans made no effort to seek repayment of the \$42.9 million it contributed to San Francisco and Santa Clara counties until the year 2000, nine years after the funds had been contributed.”

While there is no disagreement of fact in this finding, it is absent any acknowledgement that there were sound reasons for not seeking repayment during the early years of the JPB’s existence, reasons that were provided in detail to the 2000-01 Grand Jury during the preparation of its report on this subject. The JPB had assumed ownership of a rail system that had been neglected by its prior private owner, Southern Pacific, in the hopes that state and federal approval could be obtained to discontinue passenger service. The State of California subsequently took over management of the rail system. It was, in turn, taken over in 1992 by a Joint Powers Authority formed by the transit agencies of the three counties, none of which had operated a heavy rail service. Management of the rail system was placed in the hands of SamTrans, which not only had to rapidly learn how to run a railroad, but manage a partnership of three counties that had a history of pursuing autonomous, independent agendas in all areas of public concern, including transit and transportation. Further, although the state provided bond funds for the purchase of the rail property and inventory, no dedicated tax or other form of customary revenue base was provided. For these understandable reasons, the first several years of the existence of the JPB were focused on ensuring the future of Caltrain by stabilizing the partnership, which faced some difficulties in obtaining necessary annual commitments from the partners merely to fund operations. Given those difficulties, as was explained to the Grand Jury in 2000-01, it was impractical to pursue repayment of the initial SamTrans contribution when such a pursuit would have threatened the existence of the partnership and, therefore, the continued existence of the passenger rail system.

Fourth Paragraph: “Since December 1991, when the Real Property Ownership Agreement was signed, neither San Francisco nor Santa Clara Counties has made any effort to repay SamTrans out of their transit budgets for the funds contributed.”

In fact, as the Real Property Agreement makes clear, repayment will be made as a result of federal or state grants or the development of new revenue sources, and not from the operating or capital budgets of the partner transit agencies.

Eighth Paragraph: “SamTrans has entered into agreements providing advances, contributions and loans that basically depend on the beneficiaries’ good intentions for repayment. For example, SamTrans funded the purchase of the Southern Pacific right of way in December 1991, and in September 1999, provided BART a construction loan with repayment terms based on what appears to be unrealistic revenue and profitability estimates.”

In fact, as has been noted in this response and in the Grand Jury report, repayment is secured ultimately by a deed of trust covering ownership rights to the right of way, and does not depend

solely on the “good intentions” of our partners. As for the BART construction loan, while the estimates of revenue and profitability have proven significantly overstated, they were made in accordance with well-recognized state and federal procedures and were subject to scrutiny by outside entities, including the Metropolitan Transportation Commission. As in the case of the advance for the Caltrain corridor, SamTrans negotiated strong incentives in its agreement with BART to effect repayment. Specifically, unless the service turns a profit, SamTrans is freed from its obligation to pay its otherwise contractually required capital buy-in to the BART system of \$133 million and the promised \$12 million in capital support for building the line. In other words, SamTrans will not be required to pay BART \$145 million unless and until the line operates profitably.

Ninth Paragraph: The principal purpose of SamTrans is to provide a transit system for the citizens of San Mateo County.”

In fact, in Section 103001 of the Public Utilities Code, the purpose is stated as being "to meet the public transit problems of the county." This is a broader vision and it is widely recognized that transit issues are of a regional nature. In fact, the Legislature made clear to provide that SamTrans may make available transit service "within or without" the boundaries of the District as support for the proposition that the District is to serve anyone who works or lives in the county, or travels through the county.

Response to Recommendations

Recommendation 1:

“The Board of Directors of the San Mateo County Transit District should actively seek out opportunities for development along the right of way.”

Response:

We agree and are doing so. SamTrans currently is reviewing proposals from well-established development firms for the design and construction of a transit-oriented development in San Carlos on right of way property. The project is intended to provide housing and retail integrated with the Caltrain station and bus service and to serve as a community gathering place for the residents of San Carlos and adjacent cities. It is our intention that this project also serve as a model for development projects along the right of way. Our formal, long-range planning calls for several similar projects on right of way properties over the next several years.

Recommendation 2:

“The Board of Directors of the San Mateo County Transit District should reopen negotiations with San Francisco and Santa Clara Counties to seek repayment of the contribution, plus accrued interest, no later than November 1, 2005.”

Response:

The issue of repayment has been the subject of continuing discussions with our partner agencies as we work together to find a means by which those funds can be generated. Specifically, we are engaged in the renewal of the Joint Powers Authority Agreement under which our partnership is governed and the issue of repayment and efforts to generate funds sufficient for repayment are key

Hon. Norman J. Gatzert

June 27, 2005

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elements of those discussions. Further, we expect to continue to raise this issue with our partner agencies and with their support seek the means by which to obtain repayment.

Recommendation 3:

“The Board of Directors of the San Mateo County Transit District should work with San Francisco and Santa Clara Counties and their elected representatives to investigate sources of grants and state and federal monies that could be used for projects that would lead to repayment of the contribution.”

Response:

We concur with this recommendation.

Recommendation 4:

Board of Directors of the San Mateo County Transit District should report annually by November 1 to the Grand Jury on the status of activities and efforts to collect repayment of the contribution, plus accrued interest.”

Response:

SamTrans will comply with this recommendation.

Recommendation 5:

“The Board of Directors of the San Mateo County Transit District should insure that any future projects that SamTrans undertakes that include advances, contributions, or loans should be sufficiently secured to assure repayment, and should include specific terms of repayment at competitive interest rates, and should be an unrestricted obligation of the borrower.”

Response:

As noted above in the Response to Findings, it has been and will continue to be the policy of SamTrans to secure any and all investments with binding guarantees that provide security against the failure of a partner entity to make repayment, either by secured real estate, waiver of comparable financial obligations accruing to SamTrans or by an enforceable repayment schedule.

We will be happy to respond to additional questions from the Grand Jury and, again, appreciate the efforts of the Grand Jury to understand the issues facing SamTrans and its relationship with the Peninsula Corridor Joint Powers Board.

Sincerely,

Michael J. Scanlon
General Manager/CEO

Cc: SamTrans Board of Directors
David Miller