



## CITY COUNCIL RAIL COMMITTEE

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Special Meeting  
November 3, 2011

### Roll Call

Council Member Klein called the meeting to order at 8:03 a.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Burt (entered at 8:06), Klein, Price, and Shepherd

Absent: None

### 1. Public Comment

None

### Agenda Items

### 2. Approval of Minutes

**MOTION:** Council Member Price moved, seconded by Council Member Shepherd, to Approve the Minutes of September 22, 2011.

**MOTION PASSED** 3-0 Burt Absent

### 3. Initial Review of California High Speed Rail Authority (CHSRA) Report to the California Legislature Date October 11, 2011 and Revised Business Plan Due to be Issued November 1, 2011

Rob Braulik, Assistant Director of Administrative Services, stated Staff had reviewed the CHSRA Report and the executive summary of the Revised Business Plan, but had not yet had time to review the entire Business Plan document.

Chair Klein asked that copies of the Revised Business Plan be provided to the Rail Committee Members.

Richard Hackman, City Manager's Office Management Specialist, agreed.

Council Member Burt entered at 8:06 a.m.

Mr. Braulik explained that prior to the release of the Revised Business Plan the CHSRA had issued a report to the California State Legislature. The report indicated that the CHSRA did not plan to have an operating subsidy for the High Speed Rail Project and would not require any further legal analysis. They proposed that after completion of the initial construction phase, all subsequent construction phases through the central valley should be delayed until expected ridership and revenue estimates were realized. The CHSRA claimed to have already received \$6 billion in funding and introduced a new financing tool in the form of qualified tax-credit bonds. In the case of qualified tax-credit bonds, the federal government would pay all or most of the interest expense and would grant investors tax credits. Use of the bonds would require legislation, but the CHSRA felt that it would enable them to leverage three and a half times the existing funding. With both the existing federal funding and the future state bonds, the CHSRA anticipated the ability to leverage approximately \$25 billion in project funding. Total project costs were estimated at \$98 billion. The primary reason for the increased project cost was the extension of the completion date from 2020 to 2033. The CHSRA planned to fund the project using a pay as you go model, rather than attempting to fund it all at once. They indicated that it was not practical to attempt to obtain additional grant funding until the initial construction phase between Fresno and Bakersfield could demonstrate successful performance. They planned to contract with a private provider to provide service for the initial construction segment. According to the CHSRA, one of the benefits of the initial construction phase was that, once completed, it could be connected to other existing trains servicing in the Bay Area. In the executive summary to the CHSRA's Revised Business Plan, the CHSRA emphasized that the project would create jobs for years to come and proposed an average fare of \$81. They indicated that their express trains would take approximately three hours to get from Fresno to Bakersfield and provided low, medium, and high ridership estimates. Based upon their analysis, they estimated net operating profits under all ridership scenarios. He suggested that the Rail Committee consider hiring an outside consultant to conduct an independent analysis of the Revised Business Plan.

Council Member Price asked whether the City had the capability of paying for

an outside consultant analysis without an additional allocation of funds.

Mr. Braulik stated that no additional allocation would be necessary.

Council Member Price asked whether outside consulting services could be secured prior to December 31, 2011.

Mr. Braulik replied that they could be. He added that if the Committee approved, Staff would attempt to make contact with several consulting firms that day.

Council Member Burt stated the area of the Business Plan that most needed further scrutiny was the ridership data. The CHSRA had not completed a fundamental review of their ridership projections since 2007. He was doubtful that any of the consulting firms Staff contacted would have experience in that field. Most considered the independent ridership forecast completed by Californians Advocating Responsible Rail Design (CARRD) to be the strongest analysis available. He was not in favor of expending City funds to hire a consultant that would likely not possess the same level of expertise available to the City through the CARRD citizen watchdog organization. CARRD had been recognized by the CHSRA as one of the leading providers of independent analysis regarding HSR in the State. Not only did the CHSRA fail to correct flaws in the original ridership model, but those flaws were greatly exacerbated when that model was applied to the independent operating segment. He asked whether Staff had completed a preliminary analysis of the portions of the Business Plan relating to the Peninsula.

Mr. Braulik stated they had not.

Council Member Burt replied that analysis of the Peninsula portion of the Business Plan should be a top priority for Staff. He emphasized that the qualified tax-credit bonds that the CHSRA had proposed as a funding source did not yet exist. One of the most important questions was whether the initial construction segment was the initial operating segment. The law required the CHSRA to identify funding for the initial operating segment prior to the commencement of construction. Despite the fact that the funding was not yet secured, the CHSRA planned to begin work on the initial construction segment.

Chair Klein was doubtful as to the efficacy of a consultant analysis. He asked how much Staff estimated that it would cost to hire an outside consultant to perform an analysis of the Revised Business Plan.

Council Member Price stated they had budgeted between \$10,000 and \$15,000.

Chair Klein asked what the City could expect to receive for that amount.

Mr. Braulik replied that the City would receive an independent analysis of the figures included in the Revised Business Plan from an organization that specialized in economic analysis.

Chair Klein stated he would expect an in depth analysis to cost more. He felt that for \$10,000 the City could expect to receive only general comments, which would not be worth the expense.

Council Member Price agreed with the idea of hiring an outside consultant, as Staff did not possess the necessary subject area expertise. She felt the City should move forward with an outside analysis, but emphasized that the efficacy of the analysis could be greatly improved by narrowing its scope.

Mr. Braulik agreed and commented that Staff had considered contacting Economic and Planning Systems (EPS). While they did not have expertise in the area of ridership forecasting, they had reviewed a good deal of data regarding Caltrain electrification and High Speed Rail (HSR). He noted that the UC Berkeley Institute were considered ridership experts.

Council Member Price asked whether the City could partner with any other municipalities to reduce the cost of the analysis.

Mr. Braulik replied that they could.

Council Member Price asked whether Staff had any suggestions as to potential partner cities for the analysis.

Mr. Braulik stated that he had planned to contact the City of Mountain View because of the similarity in their approach to HSR and Caltrain. He also planned to contact the City of San Mateo because of Staff's relationship with them and their interest in HSR issues.

Chair Klein was skeptical about the City of San Mateo's desire to participate because of their pro-HSR position.

Mr. Braulik explained that much of their staff had completed independent

separate analysis of HSR issues.

Council Member Burt noted that the City of San Mateo had a strong engineering staff, but expressed concern that the Staff as a whole had developed initiatives explicitly designed in opposition to the Peninsula Cities Consortium. He felt that the decision of whether to engage a consultant could not be answered until they decided on the focus of the analysis. If the consultant accepted the ridership estimates, then they could draw a much different conclusion regarding the adequacy of the Business Plan. He suggested that if the consultant based their analysis on flawed information, their conclusions would be erroneous.

Council Member Shepherd was concerned that the Business Plan indicated CHSRA planned to terminate service at the Fourth and King Street Station, rather than continuing on to the Transbay Terminal. They were also considering eliminating all stops along the Peninsula in order to prevent delays. She was also concerned with talk that modernization of Caltrain would not be completed until 2033 and proposed that the City coordinate with other local municipalities to determine how the CHSRA Business Plan would affect the future of Caltrain.

Chair Klein agreed that if the City were to hire a consultant, than they would need to be very specific regarding the scope of analysis. He did not think it was necessary to a consultant to read the entire document and was not in favor of asking them to evaluate the ridership projections. He felt the scope of analysis should be limited to the Peninsula Corridor section of the Business Plan.

**MOTION:** Council Member Price moved, seconded by Council Member Klein, that the Rail Committee direct Staff to develop a refined scope of services proposal for independent review of the Caltrain Business Plan, focusing on the aspects of the Business Plan related to the Peninsula segment, and to return it to the Rail Committee for action as soon as possible.

Herb Borock asked that future agendas indentify those items with a potential financial impact. He stated that the CHSRA had planned to seek legal advice from the State Attorney General's Office regarding what constituted a useable segment. Although he was unsure as to whether that had been done, he suggested the State Attorney General's Office as a potential source of information for Staff. He noted that when discussing the blended system from San Jose to San Francisco, the Business Plan mentioned a potential connection with the Mid-Peninsula Station and connections with Caltrain,

Samtrans, and the VTA. The City had already indicated that it did not want a station and he thought that the City of Mountain View had voiced similar objections. The City of Redwood City had no connection to the VTA. If the CHSRA could not find a mid-Peninsula city with a connection to the VTA, which would be willing to accommodate a Station, then they would need to remove that reference from the Business Plan.

Council Member Price felt professional expertise could be valuable, but emphasized that it was a time sensitive matter. She suggested Staff contact some of the community groups involved with HSR issues in order to ensure that the City's analysis would complement any work already underway and to avoid redundancy.

Council Member Burt was open to the idea of evaluating the Peninsula section of the Business Plan, but was not yet convinced the section included enough information to justify an in-depth analysis. He suggested that the Committee direct Staff to complete a review of the section, with input from various community experts, prior to making a decision as to whether a consultant was needed. He added that recent CHSRA documents had abandoned all reference to a mid-Peninsula station, aside from the Millbrae Station for San Francisco International Airport. He was not clear as to whether that reflected a new change in the plans or whether it was simply a remnant from an older document.

Chair Klein agreed with Council Member Burt that he was open to the idea of commissioning an independent analysis of the Business Plan, but that it was not yet clear how much value such an analysis could offer.

Council Member Shepherd stated she would support the Motion because she wanted a better understanding of what was really going on. She suggested that Staff ask EPS to provide a better understanding of the value that they could provide through an independent analysis.

#### **MOTION PASSED 4-0**

Chair Klein announced he had participated in a conference call the previous day that was organized by the CHSRA. CHSRA representatives emphasized that they planned to pursue a phased implementation with blended operations at both ends. They gave several reasons for the dramatic increase in the cost of the project, including a decrease in available land since the initial estimates were completed in the early 2000s, an underestimation of the number of tunneling and aerial structures needed,

changes made in response to community input, an increase in the cost of raw materials due to inflation, and a 13-year extension of the construction schedule. They stated that their Business Plan assumed no federal support over the next three years. The initial Fresno to Bakersfield segment would be 130 miles. The second and third segments would be south to Los Angeles or North to the Bay Area. After the 60-day comment period, the Business Plan would be submitted to the legislature. He noted that a number of questions were asked by individuals who appeared to be very supportive of the CHSRA.

Council Member Burt stated it was interesting that the CHSRA appeared to have orchestrated the questions asked during the conference call. He suggested that there was a question as to whether the CHSRA was conducting public outreach or coordinating a public relations initiative. He noted that the Business Plan, as proposed, included elements that would not meet a speed test. He stated that for the CHSRA to equate job years with jobs was a very serious misrepresentation. Although the CHSRA claimed that its initial segment would connect passengers to other trains, it would in fact eliminate a series of local stops that currently existed on that Amtrak line. They needed to conduct further research to determine whether the proposed segment would jeopardize existing rail service in the central valley.

Council Member Shepherd stated it appeared as though the CHSRA had used modified assumptions from the first Business Plan as a basis for the Revised Business Plan. There was no inclusion of the new census data, which reflected that there had been significantly less growth than anticipated. She expressed concern with the "if we build it, they will come" attitude towards ridership displayed by the CHSRA and with the absence of accurate data from which to base those claims.

#### 4. Status on Hiring of Sacramento Representative

Rob Braulik, Assistant Director of Administrative Services, explained that Staff had received three proposals in response to the RFP for a Legislative Services Contract, including one from the incumbent Capitol Advocates. The two other proposals were received from California Strategies & Advocacy LLC and Ferguson Group LLC/Cliff Moriyama Consulting and Professional Evaluation Group/the Ochoa & Moore Law Firm. He explained that Staff had not evaluated the proposals yet because the RFP had just closed and the proposals would not be released until three o'clock that day. He stated Staff hoped to schedule interviews soon so that they could return with a recommendation at the next Rail Committee meeting.



Chair Klein agreed and recommended Staff seek opinions from Senator Simitian's and Senator Gordon's staff regarding the applicants.

Mr. Braulik agreed to do so.

5. City Attorney Review of Continuing Applicability of the California Environmental Quality Act (CEQA) to the Caltrain Electrification Project

Cara Silver, Senior Assistant City Attorney, explained that the Caltrain Electrification Draft Environmental Impact Report (EIR) was first issued in 2004. The hearing on the Final EIR was held in July 2009. At that time, many local agencies expressed concern regarding the EIR. Consequently, the EIR was never certified. The City addressed an informal complaint letter to Caltrain on September 7, 2011. The Caltrain Electrification Project was put on hold due to High Speed Rail (HSR) issues and the blended rail system proposal. The City received a response on October 6, 2011, in which Caltrain emphasized the Electrification EIR Project was still on hold. They indicated that they would continue to monitor HSR issues in order to determine whether to pursue future EIR certification. She noted that as time passed, it would become more and more difficult to rely on the information included in the 2004 EIR.

Council Member Price asked at what point the information in the EIR would be considered too outdated to certify and who would be responsible for making that determination.

Ms. Silver replied that there were no specific guidelines for determining when an EIR should be considered outdated and that the lead agency was responsible for making the decision. She felt that those types of decisions needed to be made on a case-by-case basis and would differ depending on how much the data had changed over time.

Council Member Price asked whether there was legal precedent for challenging an EIR on the grounds of inaccurate and/or outdated data.

Ms. Silver replied that the statute did not address such challenges, but that the statute anticipated an EIR would be completed within a year of filing the Notice of Preparation. That timetable was established in the 1980's, but it was now very difficult to complete an EIR within one year. Although that benchmark was no longer considered practical, it was still officially included in the statute.



Council Member Price remarked that it could not be the first time that such an issue had come up and that she expected previous case law to support a challenge of that nature. She asked whether it would be appropriate for Staff to investigate the topic from a legal perspective.

Ms. Silver explained that the statutory guideline might support a City challenge as to the accuracy of the EIR data. There were also several cases involving claims of staleness of data. She emphasized that the lead agency would ultimately be responsible for making the determination as to the applicability of the information included in the EIR.

#### 6. Rail Committee Publicity Work

Council Member Shepherd stated her request to see the Item agendaized was motivated by a desire to see the Rail Committee engage with the public. She felt it was important to counter misinformation regarding rail issues and to provide a forum for concerns specific to the community of Palo Alto. She was particularly interested in educating the community as to how the different rail projects could affect homeowners, economic development, and Peninsula connectivity. She wanted to involve the community in the discussion and to allow residents increased access to Rail Committee deliberations so that they could better understand the basis for future City positions on rail issues.

Chair Klein agreed and asked Council Member Shepherd whether she would like to propose a specific action.

Council Member Shepherd stated that she would like to see the Committee dedicate some time to discuss the Item more thoroughly.

Chair Klein, suggested that the Committee continue the Item.

Council Member Shepherd agreed and commented that she looked forward to addressing the Item more formally and more specifically.

Leannah Hunt introduced herself as a member of the Rail Corridor Task Force. She expressed concern with the lack of communication between the Rail Corridor Task Force and the Rail Committee. She noted that the Rail Corridor Task Force was currently developing recommendations for Council consideration in early 2012 and that many of their recommendations would relate to Rail Committee issues. She asked that Staff coordinate to provide

regular Rail Committee updates to the members of the Rail Corridor Task Force.

Herb Borock felt that the Rail Committee should be very clear regarding the difference in duties between Committee Members and Staff. He noted that the Committee was an advisory body and felt that Council Member Shepherd's suggestions regarding increased community outreach should come in the form of a recommendation to Council. If Council was so inclined, they could direct Staff to perform additional duties. He suggested that Staff provide the Rail Corridor Task Force with the minutes from all Rail Committee meetings.

Council Member Burt agreed that the Rail Corridor Task Force members should receive the Rail Committee minutes, and felt that Staff should periodically provide an update to the Task Force on the evolution of Rail issues. He asked whether the other Committee Members agreed.

Council Member Price indicated that she did.

Chair Klein stated that he would abstain from commenting. He felt that the problems identified by Ms. Hunt had been precisely the same concerns that had motivated the opposition to the creation of the Rail Corridor Task Force.

**MOTION:** Council Member Burt moved, seconded by Council Member Shepherd, to schedule a one hour Study Session with the Rail Corridor Task Force and to ask the Rail Corridor Task Force to determine whether to send representatives or attend as a full body.

Council Member Burt emphasized that periodic engagement with the Rail Corridor Task Force was important.

Council Member Shepherd agreed. She felt the work of the Task Force was vital. She asked that the Guiding Principles be provided to the Task Force members prior to the Study Session.

Chair Klein asked when the Guiding Principles would be presented to Council.

Rob Braulik, Assistant Director of Administrative Services, replied that the item would be placed on the December 5, 2011 Council Agenda.

Chair Klein asked why the item was not scheduled sooner.

Mr. Braulik explained that Staff planned to bring the item to Council at the same time as the update regarding reports completed for the Rail Committee by Economic & Planning Systems for the year of 2011. The December 5, 2011 Council meeting was the only meeting that EPS staff could attend. He stated Staff could reschedule the item.

Chair Klein replied that he would like Council to consider the amendments to the Guiding Principles as soon as possible.

Council Member Burt agreed.

Council Member Shepherd asked Staff to ensure that the new date of approval was noted on the Guiding Principles document.

**MOTION PASSED: 4-0**

Chair Klein observed that the Palo Alto business community had not been very vocal with regards to High Speed Rail (HSR) issues. He acknowledged that the Committee could make more of an effort to encourage business leaders to get involved.

Council Member Burt agreed and stated that the Committee also needed to engage the business community regarding the importance of supporting the long-term growth and vitality of Caltrain. He felt that, given the potential for competition for resources between Caltrain and HSR, it was very important issue. The CHSRA had gotten the Mayors from the cities of San Francisco, Sacramento, San Jose, Fresno, and Los Angeles to sign a joint statement as part of their public relations initiative. He emphasized that any efforts towards increased community engagement should include those cities which had publicly supported the HSR project from the beginning.

Chair Klein agreed with Council Member Burt. He asked Council Member Shepherd what she would like to see happen with the Item.

Council Member Shepherd replied that continuation of the Item would allow her to formulate a recommendation. She explained that she would like to see the conversation regarding HSR focus more on the importance of the City's role as station number two, ahead of San Jose.

7. Federal House of Representatives Bill 3143, Kevin McCarthy Status

Chair Klein proposed that, given the inactivity of the bill, the Committee continue the Item.

Council Member Price agreed.

## 8. Reports on Meetings

- a) High Speed Rail (HSR) – November 3, 2011

## 9. Future Meetings and Agendas

- a) Peninsula Cities Consortium (PCC) – November 4, 2011

Council Member Price inquired as to the status of the City's request to meet with representatives from the Metropolitan Transportation Commission (MTC).

Rob Braulik, Assistant Director of Administrative Services, explained Staff had extended an invitation to meet, but that they had not yet received a reply.

Council Member Price suggested that Staff follow up.

Mr. Braulik agreed.

- b) City Council Rail Committee – November 24, 2011

Chair Klein noted that the next scheduled meeting would fall on Thanksgiving Day.

Council Member Burt referred back to Council Member Price's question regarding the potential of a meeting with the MTC. The MTC had stated that they did not intend, were they to take a leadership role on the future of High Speed Rail in the Peninsula segment, to promote any special way of communication between themselves and the affected cities. He felt that while making a second request for a meeting would be appropriate, the Committee needed to consider how they would like to respond if the MTC maintained their attitude toward communication with affected cities and refused to meet.

Chair Klein suggested that the Committee should agendaize the item for the next meeting.

Council Member Burt agreed.

Council Member Price also agreed.

Council Member Klein asked Staff to schedule a special meeting the week of November 7 or November 14,, 2011. He also directed Staff to review potential dates for a special Rail Committee meeting in December. He suggested that December 8, 2011 could be a possibility.

Mr. Braulik replied that Staff would include potential December dates in the survey to Rail Committee Members.

c) California High Speed Rail Authority (CHSRA) – December 1, 2011

#### I. Adjournment

ADJOURNMENT: Meeting adjourned at 9:42 a.m.