

# ***LONE STAR RAIL DISTRICT***

## **Board Meeting Summary Friday, December 2, 2011**

10:00 a.m.

San Marcos Activity Center  
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, December 2, 2011. Board Chairman Sid Covington noted a quorum was present and called the meeting to order at 10:09 a.m.

#### **Participants:**

Sid Covington, Chairman  
Tullos Wells, Vice Chairman  
Tommy Adkisson  
Mary Briseño  
Mariano Camarillo

Sheryl Cole  
Will Conley  
Dean Danos  
Patty Eason  
Sarah Eckhardt

Karen Huber  
Debbie Ingalsbe  
John Langmore  
Kim Porterfield

Other participants included Schertz Mayor Pro Tem Jim Fowler (for Mayor Hal Baldwin, as a non-voting participant), Joe Black and Alison Schulze (Rail District), Bill Bingham (Rail District General Counsel), Jennifer Moczygamba (TxDOT Rail Division), and Brad Davis and Darwin Desen (Jacobs Engineering).

### **2. Chairman and Member Comments**

Chairman Covington welcomed Dean Danos to the Rail District Board. Mr. Danos is Executive Director of Alamo Area Council of Governments and was recently appointed by Bexar County to represent Alamo Regional Transit on the Rail District Board, replacing former Board member Gloria Arriaga. Chairman Covington also welcomed Schertz Mayor Pro Tem Jim Fowler, attending as a non-voting member for Mayor Hal Baldwin.

Chairman Covington briefed the Board on his recent meeting with TxDOT's new Executive Director Phil Wilson, Vice Chairman Tullos Wells, Ross Milloy, and Bill Bingham. They came away from the meeting impressed and energized by Mr. Wilson's support. Not long after the meeting, Mr. Wilson demonstrated his commitment by his responsiveness to the Rail District's request for letters to the Congressional delegation. Chairman Covington noted he's very encouraged by the new leadership at TxDOT and looks forward to working closely with Mr. Wilson.

Chairman Covington reported the Capital Area Metropolitan Planning Organization (CAMPO) awarded the Rail District \$8 million on November 14 for the freight bypass. He praised the efforts of Commissioner Eckhardt, Commissioner Conley, Mayor Pro Tem Cole, and Commissioner Huber in the Rail District's success and noted San Marcos Mayor Guerrero and former Mayor Narvaiz also provided key support and assistance. Vice Chairman Wells applauded the team effort and especially the Chairman's leadership and engagement throughout the process.

Chairman Covington announced the Rail District will address Georgetown City Council at a workshop on December 13. He also announced that Darwin Desen, Jacobs Engineering's Project Manager on the current freight and passenger rail projects, is leaving the firm for a new business opportunity. Rob Maxwell will take over Mr. Desen's duties as Project Manager. There were no other comments.

### **3. Items for Consent**

- A. Consider Approval of September 9, 2011 Board Meeting Summary**
- B. Consider Ratification of Resolution Assigning Executive Director's Procurement Duties to Rail Operations Manager**
- C. Consider Authorizing Executive Director to Execute Amendment to Interlocal Agreement with City of Austin upon Approval by City of Austin**
- D. Consider Approval of Financial Statement**

Chairman Covington noted the four consent items would be considered for approval by one motion, and any item could be removed from the consent agenda upon request. Upon a motion by Vice Chairman Tullos Wells and second by Commissioner Karen Huber, the Board unanimously approved the consent agenda items.

### **4. Committee Reports**

#### **A. Executive Committee Meeting October 7, 2011**

Chairman Covington directed the Board's attention to the meeting summary included in the agenda packet and briefly reviewed the items considered at the Executive Committee meeting:

- The Committee approved a resolution assigning the Executive Director's procurement duties to the Rail Operations Manager. The action formally delegates the duties to keep the process transparent and to ensure there is no conflict of interest since Mr. Milloy serves as President of the Austin San Antonio Corridor Council as well as Executive Director of Rail District.
- The Committee approved amendments to the McGinnis Lochridge & Kilgore contract on freight rail negotiations. The amendments added \$100,000 in federal funds to continue services provided by Bill Bingham and McGinnis Lochridge, and added \$100,000 in state funds, as an interim measure, for Harkins Cunningham, a subconsultant to McGinnis Lochridge. Additional funds for Harkins Cunningham will be considered under Agenda Item 8.
- The Committee authorized the Board Chair to enter into agreements with TxDOT to use state funds for staff salaries, consultant contracts, and match funds for the CAMPO award. The action allowed staff to proceed with contracting documents in advance of the December Board meeting.
- The Committee approved an operations policy on fare collection for passenger service. Joe Black explained the fare collection policy feeds into the operations and maintenance (O&M) cost model—that is, how much the system will cost to operate on an annual basis—since labor is one of the biggest cost drivers. The Committee approved a proof-of-payment method that will be a self-service, barrier-free fare collection system using ticket machines with proof of payment fare verification.
- The Committee approved an amendment to the Jacobs passenger rail contract to add \$50,000 for subconsultant Knudson LP, for additional meetings with member jurisdictions on financial planning, viable funding sources for annual O&M costs, and tax-increment financing (TIF) agreements. Joe Lessard has made real progress on local funding discussions with the jurisdictions and his numerous one-on-one meetings are one of the primary reasons for the progress to date.

## **B. Executive Committee Meeting November 4, 2011**

Chairman Covington directed the Board's attention to the meeting summary included in the agenda packet and reviewed the items discussed by the Executive Committee. He reiterated that all Board members are invited and encouraged to attend Executive Committee meetings as their schedules allow.

- The Committee discussed a proposed administrative memorandum of understanding (MOU) between CAMPO, the City of Austin, Capital Metro, and the Rail District on cooperative rail planning and an integrated rail management approach. The Board will consider action on the MOU under Agenda Item 6.
- The Committee discussed a strategy to capture the value of rail infrastructure in order to reduce the public share of the cost. Staff will brief the Board on the strategy under Agenda Item 9.
- The Committee heard a report on the status of the freight bypass alternative alignments analysis. Staff will brief the Board under Agenda Item 12.
- The Committee heard a report on the status of the passenger rail environmental studies. Work is continuing on a few discrete technical tasks such as ridership modeling, development of the O&M cost model and service development plans, and financial planning. Staff will report on the project's status under Agenda Item 13.
- Bill Glavin, Director of TxDOT's Rail Division, is organizing a webinar in January between the Rail District, TxDOT, and the federal transportation agencies on the Rail District's lead agency issue.

### **5. Consider Executive Director's Report**

Chairman Covington postponed the Executive Director's report until the next meeting because Mr. Milloy is out of town. The key issues to be presented will be covered under other Board agenda items.

### **6. Consider and Take Appropriate Action on Cooperative Rail Planning and Integrated Rail Management Approach between Capital Area Metropolitan Planning Organization, City of Austin, Capital Metro, and Lone Star Rail District**

Joe Black briefed the Board on the background of the cooperative agreement. Rail District staff has been meeting for two years with City of Austin staff on cooperative rail planning issues in order to develop a seamless high-capacity transit system. Several agencies are responsible for the different networks that will make up the system, and staff discussions have focused on fare policies, schedule coordination, and other components of a seamless system. Capital Metro, the Austin area transit authority, joined the discussions six months ago as did CAMPO, the Austin MPO. The intent of the proposed administrative memorandum of understanding (MOU) is to publicly formalize the process. The MOU commits the Rail District to cooperate with the other transit agencies in Central Texas on a seamless, integrated, high-capacity transit system concept, which also includes CAMPO's recently reconstituted Transit Working Group and Project Connect. The MOU could also provide a template for a similar effort in South Texas with VIA, the City of San Antonio, and the San Antonio MPO. Staff recommended that the Board authorize the Executive Director to execute the administrative MOU to formalize the cooperative relationship between Lone Star Rail District, the City of Austin, Capital Metro, and CAMPO.

Board discussion followed on the importance of the initiative and the Rail District's involvement since Lone Star Rail will expand the high-capacity transit market, on the role of rural transit providers in the process, and that the MOU complements the MOU between the Rail District and North Central Texas COG. Upon a motion by Board Member John Langmore and second by Commissioner Karen Huber, the Board unanimously approved authorizing the Executive Director to execute an administrative MOU with the Rail District's planning partners.

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**7. Consider and Take Appropriate Action on Outreach along Freight Rail Relocation Alignment**

Chairman Covington introduced the item by noting his displeasure that the contracts for local government and stakeholder engagement, which should have been executed in May, have not yet been approved by TxDOT. Chairman Covington asked Jennifer Moczygamba, TxDOT Rail Division, to urge her colleagues at TxDOT's contracts division to work with the Rail District with all due haste to get the work underway. The delay had a real and significant impact on the CAMPO application for funding and nearly cost the Rail District its \$8 million award in November.

Joe Black reported that the contract itself has been approved by TxDOT, but TxDOT's approval of the associated interlocal agreement that allows the Rail District to use a portion of its state appropriation on the contract is still pending. The purpose of contract is to engage local governments and regional stakeholders in an educational outreach effort on the benefits and purpose of the proposed freight bypass. The intent is to include the counties and other stakeholders along the alignment early and often in the planning process. Mr. Black directed the Board's attention to the contract's scope of services and deliverables included in the agenda packet.

Board discussion followed on the need to inform our partners, colleagues and constituents in Bastrop and Caldwell counties as soon as possible on the proposed alignment and the freight relocation project. If the delay persists, staff should arrange informal meetings between a committee of Board members and affected elected officials and/or phone calls to begin informal discussions and education outreach.

**8. Consider and Take Appropriate Action on Amendment to McGinnis Lochridge & Kilgore Contract on Freight Rail Negotiation Services and Legal Services Related to Rail System Funding**

Alison Schulze briefed the Board on the existing contract with McGinnis Lochridge & Kilgore for freight rail negotiation services. A key subconsultant on the McGinnis Lochridge team is Paul Cunningham, a partner in the firm Harkins Cunningham, based in Washington, DC. Mr. Cunningham's original scope of work was to assist the Rail District with jurisdictional issues related to Surface Transportation Board (STB), the federal agency that oversees freight rail projects. Mr. Cunningham has brought considerable value to the project; as a result, staff has proposed expanding his scope of work with additional services to be performed over several years. The estimated cost for the additional services is \$250,000. Ms. Schulze directed the Board's attention to the memo in the agenda packet that identifies the additional services and deliverables, which include developing an approach to the various federal railroad regulation authorities, identifying strategies on freight rail regulatory issues, and assisting with development of a business plan and public-private funding partnerships.

On October 7, the Executive Committee approved adding \$100,000 for Harkins Cunningham as an interim measure to allow the work to continue, with the express understanding that staff would present the item to the Board and ask for approval of the remaining \$150,000. Staff recommended that the Board approve adding \$150,000 in state funds for additional legal services to be provided by Harkins Cunningham LLP, for a total amount not to exceed \$250,000, and authorize the Board Chair to execute the contract amendment and the associated interlocal agreement with TxDOT to use state funds on the contract.

Board discussion followed on the complex legal and regulatory issues surrounding freight relocation, the anticipated timeframe for the additional services (2 years), Mr. Cunningham's demonstrated value on the contract to date and potential cost savings resulting from the additional services,

consideration of long-term legal costs to the Rail District rather than case-by-case and budgeting for the costs, and the scope of the business plan. Board Member Langmore suggested, as a friendly amendment to the staff recommendation, that the contract state it is anticipated the expenditure will take place over a two-year period, since the contract is authorized on a year-by-year basis. Upon a motion by Vice Chairman Wells and second by Board Member Briseño, the Board unanimously approved the staff recommendation as amended by Board Member Langmore.

**9. Consider and Take Appropriate Action on Authorizing Procurement Process for Real Estate Development Analysis and Strategy**

Bill Bingham reported he's received thousands of real estate documents on Union Pacific's existing rail line between Taylor and San Antonio, which the Rail District will eventually acquire. Mr. Bingham is in the process of contracting with a land person, in accordance with the Board's direction and approval, to conduct a high-level review of the right-of-way and easement documents, though not a title review at this time. Union Pacific has been extremely cooperative in providing the documents.

Joe Black noted the real estate development analysis is one piece of the Rail District's overall long-term development and value-capture strategy. Ross Milloy has taken the lead on the public-private partnerships along with Vice Chairman Wells, and is identifying the Rail District's needs for a real estate development strategist. Mr. Bingham reported staff would be ready to start the procurement process in the next few months.

**10. Consider and Take Appropriate Action on Entering into Advanced Funding Agreement with TxDOT for CAMPO STP-MM Funds**

Alison Schulze described the process for receiving CAMPO's recently awarded Surface Transportation Program-Metropolitan Mobility (STP-MM) funds. To access the federal funds, the Rail District must enter into an Advanced Funding Agreement (AFA) with TxDOT. A Board resolution approving the action is required as an attachment to the AFA. Staff is working with CAMPO and TxDOT staff on details to be incorporated in the resolution, including the funding schedule and source of the 20% match. Staff recommended that the Board approve entering into an Advanced Funding Agreement with TxDOT for CAMPO FY12 - FY14 STP-MM funds, and authorize the Board Chair to execute the resolution approving the action. Staff suggested the Board take action now in case the resolution and AFA are ready to be executed before the March Board meeting. There was no discussion. Upon a motion by Commissioner Sarah Eckhardt and second by Commissioner Will Conley, the Board unanimously approved the staff recommendation.

**11. Consider Report by Brad Davis on Overview of Passenger and Freight Rail Issues**

Brad Davis reported that important activities are occurring on both projects. On the passenger rail project, Jacobs is providing support to TxDOT's leadership for the January webinar with the federal transportation agencies. Otherwise, Jacobs is focused on preserving the budget and only moving forward on discrete technical tasks. On the freight relocation project, the project team is meeting with Union Pacific on the alternative alignments analysis—Darwin Desen will present more detailed information under the next agenda item. Mr. Davis introduced Rob Maxwell to the Board. As the Chairman mentioned, Mr. Desen is leaving the firm and Rob Maxwell has been assigned as Jacob's project manager on both projects; the rest of the project team remains intact. Vice Chairman Wells and Chairman Covington praised Mr. Desen's passion for the projects and his many years of service to the Rail District.

## **12. Consider and Take Appropriate Action on Freight Planning Issues**

Joe Black reported that the alternatives analysis on the freight relocation is nearing completion. Rail District staff and consultants are working with Union Pacific to narrow the field of alternatives to three alignments that the Rail District will then take into the environmental process. The next meeting with Union Pacific is scheduled for December 15. Rail District and Jacobs staff also continue to work with Union Pacific's operations staff to learn more about the local freight operations that will remain on the existing rail line.

Darwin Desen briefed the Board on the status of the alternatives analysis. On November 7, Jacobs submitted the third iteration of the alignments analysis to UP. UP is reviewing the analysis and is scheduled to meet with Rail District staff in January to identify the final three alignments. The next step will be to prepare the final report on the alternative alignments analysis.

Board discussion followed on the limits of the bypass analysis (Taylor to Seguin), the differences between the final alignments under consideration, the overall project development process (alternatives analysis followed by the formal environmental process), opportunities for public involvement in the environmental process, and identifying the benefits of the freight relocation for local communities and stakeholders. Board members requested a briefing at the next meeting on the freight bypass alternatives once Union Pacific concurs with the final three alignments.

## **13. Consider and Take Appropriate Action on Report on Status of Environmental and Engineering Issues on Passenger Rail Project**

Joe Black briefed the Board on the passenger rail project. Rail District and Jacobs staff met with Union Pacific operations staff on November 29 to review service development plans; UP senior staff also attended. The purpose of the meeting was to identify levels of passenger service in the existing rail corridor so that UP can identify the infrastructure improvements required to support joint operation of passenger and local freight service. The Rail District will operate passenger vehicles that fully comply with Federal Railroad Administration regulations—that is, vehicles that can intermix and operate alongside freight vehicles, since UP will continue to provide service to its local freight customers in the corridor. The status of UP's rail traffic control (RTC) modeling was also discussed at the meeting. RTC models identify on-time performance, delays and congestion points; but UP said they may not require RTC modeling of the existing corridor, which indicates confidence in the Rail District's studies.

The Hays County Work Group has been established by County Judge Cobb to address local funding of annual operations and maintenance (O&M) costs. The purpose of the Work Group is to assemble all affected County jurisdictions to address local funding issues as a group instead of individually, and to identify methods to make the local share of the cost affordable for the smaller jurisdictions.

Staff has developed a preliminary O&M cost model and preliminary ridership estimates, and plans to present the data to the Executive Committee in February and to the Board in March. The new numbers update and refine previously developed estimates, and are based on six operating scenarios from initial service to full buildout.

Darwin Desen reported that in terms of the environmental studies, work is continuing on four technical tasks: ridership analysis, financial planning with local jurisdictions, completion of the service development plans, and preparing for the multi-agency webinar initiated by TxDOT and scheduled for January. Mr. Black noted that one of the objectives of the webinar is to create a Compliance Action Plan (CAP) that outlines the Rail District's approach to comply with federal environmental regulations. The strategy is to create a conservative CAP based on the strictest

guidelines from each of the federal agencies so that the Rail District can progress the environmental studies; then, when a lead agency is identified, the Rail District will have used the most conservative assumptions in preparing each element of the environmental document, which reduces the risk of having to redo any of the elements later in the process.

Board discussion followed on the webinar, the status of a lead agency on the passenger rail project, the timeline for obtaining a lead agency, and the process for moving forward if there are multiple lead agencies or cooperating joint-lead agencies. Staff will report the outcome of the webinar at the February Executive Committee meeting and at the March Board meeting. Chairman Covington praised TxDOT for its leadership on the multi-agency webinar.

**14. Consider Report on 2012 Appointments to Rail District Board**

Alison Schulze briefed the Board on the upcoming Board appointments. Board terms are staggered so that one-half of the members' terms expire each year in February. Nine members must be reappointed by February 2012—Ms. Schulze directed the Board's attention to the memo in the agenda packet that lists the nine members scheduled for reappointment. All Board members are eligible to serve another 2-year term and all Board members remain on the Board until they or another representative is appointed. Staff will notify each jurisdiction of the appointments to be made, but requested that each member coordinate with his/her appointing jurisdiction on their willingness to serve another term and to ensure the appointment is made in timely manner.

**15. Consider Status Report by TxDOT Rail Division**

Jennifer Moczygemba, TxDOT Rail Division, briefed the Board on the Division's recent activities:

- Ms. Moczygemba committed to work with Rail District staff to resolve the outstanding issues on the local government and stakeholder engagement contracts as soon as possible.
- TxDOT is leading the effort on the webinar with federal transportation agencies tentatively set for January 18. The location is yet to be determined. Meetings to review the draft presentation are scheduled for next week and again in early January.
- TxDOT will start the procurement process for the Oklahoma City-South Texas Corridor Study. It will be important for TxDOT and the Rail District to work closely together on the public involvement element so that the public understands the different projects.

**16. Consider Report on Legislative Issues,**

Bill Bingham reported that there has been no movement on the \$182 million appropriation (2009) for the Rail Relocation Fund or the Comptroller's certification of the fund. There was also a \$50 million appropriation in the last legislative session (2011) for state matching funds to leverage federal funds, and that fund is also uncertain. There is a lot of activity in Washington D.C. on the transportation bill, but a draft bill is unlikely before January. The Rail District is working with its partners in D.C on language to include in the bill to expedite federal approval on rail projects. Board discussion followed on the Comptroller's delay in certifying the Rail Relocation Fund.

**17. Concluding Board Member Comments (no action taken)**

Chairman Covington reported there would be no Executive Committee meeting in January, and announced that the next Executive Committee meeting will be February 3, 2012 at the San Marcos Activity Center. All Board members are invited and encouraged to attend Executive Committee meetings. The next Board meeting will be March 2, 2012 at the San Marcos Activity Center. There were no additional comments.

18. **Public Comment**

There were no public comments.

19. **Adjourn**

Chairman Covington adjourned the meeting at 11:59 a.m.