Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
8	09/12/11	Open	Action	09/07/11

Subject: Project Labor Agreement (PLA) for South Sacramento Corridor Phase 2 Light Rail Extension Project

ISSUE

Whether to Modify the Board Action Taken on December 14, 2009 Authorizing the General Manager/CEO to Negotiate and Execute a Project Labor Agreement for Use in the Construction of the South Sacramento Corridor Phase 2 Light Rail Extension Project.

RECOMMENDED ACTION

A. No Action; or

B. Motion: To Rescind Resolution No. 09-12-0206, Authorizing the General Manager/CEO to Negotiate and Execute a Project Labor Agreement for Use in the Construction of the South Sacramento Corridor Phase 2 Light Rail Extension Project; or

C. Motion: To Amend Resolution No. 09-12-0206, Authorizing the General Manager/CEO to Negotiate and Execute a Project Labor Agreement for Use in the Construction of the South Sacramento Corridor Phase 2 Light Rail Extension Project

FISCAL IMPACT

There is no discernable fiscal impact if the Board elects to take no action. However, if the Board elects to rescind or modify the action taken on December 14, 2009, such action could result in the loss of $4.3 million in STIP Funding for the construction of an aerial structure at Morrison Creek.

DISCUSSION

On December 14, 2009, the Sacramento Regional Transit Board ("RT Board") authorized the General Manager/CEO to negotiate and execute a Project Labor Agreement ("PLA") that would apply to the construction of RT's South Sacramento Corridor Phase 2 Light Rail Extension Project ("SSCP2"). RT staff, including its Legal Division, have been working on a PLA, however, to date, a PLA has not been executed between RT and the local trade unions. At the August 22, 2011 RT Board meeting, the issue of the PLA was raised by Board Directors and the Board asked whether or not the Board could reconsider its December 14, 2009 vote. In response to that question, RT's Chief Legal Counsel prepared a memorandum directed to the Board members explaining the Board's options for revisiting the action taken on December 14, 2009. A summary of Counsel's opinion is included below. In order to provide the Board with the opportunity to revisit the issue, staff has included this item for consideration.

Approved: Presented:

Final 9/7/11

General Manager/CEO **Chief Counsel**

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
8	09/12/11	Open	Action	09/07/11

Subject: Project Labor Agreement (PLA) for South Sacramento Corridor Phase 2 Light Rail Extension Project

BACKGROUND

The Blue Line to Cosumnes River College project ("Project"), also known as the SSCP2 project, will extend RT's light rail service from its existing terminus at Meadowview Road south and east 4.3 miles to Cosumnes River College ("CRC"). The extension will link the South Corridor, the fastest growing portion of Sacramento County, with Downtown, the northeast Sacramento corridor and Rancho Cordova or Folsom in the east corridor. The Project includes four stations located at Morrison Creek, Franklin Boulevard, Center Parkway, and CRC.

The Project received an overall "Medium" rating in the FY12 New Starts Report, allowing RT to apply for entry into Final Design. Prior to submitting a request to enter into Final Design, RT must complete additional environmental work to address proposed Project modifications.

The Project was originally evaluated by FTA and RT in a Supplemental Final Environmental Impact Statement/Subsequent Final Environmental Impact Report (SFEIS/SFEIR). The SFEIS/SFEIR was approved in December 2008 through the issuance of a Record of Decision by FTA and the filing of a Notice of Determination with the State of California by RT.

Since approval of the SFEIS/SFEIR in 2008, a number of needed modifications to the Project's design have been identified by RT. Because these modifications were not evaluated in the SFEIS/SFEIR, the proposed modifications require further environmental evaluation in compliance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). A joint Initial Study/Environmental Assessment (IS/EA) has been prepared to analyze the potential impacts associated with the proposed modifications. The Initial Study (IS) addresses CEQA requirements, while the Environmental Assessment addresses NEPA requirements.

The IS was distributed on August 2, 2011 for public comment. The Notice of Availability ("NOA") of the Draft IS was sent to federal, state, regional and local agencies, elected officials, affected property owners and tenants and the County Clerk. Certain public agencies also received copies of the IS via the State Clearinghouse. In addition, approximately 15,000 notices announcing the availability of the Draft IS were mailed to all property owners and tenants of record in the vicinity of the Project area and the NOA was published in newspapers of general circulation.

The NOA and/or IS that was distributed did not include a Notice of Intent ("NOI") to adopt a Mitigated Negative Declaration ("MND"). These documents would typically be included in the Initial Study, but were inadvertently not included with the initial submittal. To ensure that RT fully met the requirements of CEQA, the NOI to adopt a MND and the MND were circulated for public review using the same outreach approach used for the NOA and Draft IS. The public comment period for the IS and MND was extended, and will end on Wednesday, September 22, 2011.

Staff will bring the IS and MND to the Board for consideration at the September 26, 2011 Board Meeting. Staff will recommend that the Board approve a MND and an Addendum to the Mitigation Monitoring and Reporting Plan for the Blue Line to Cosumnes River College Light Rail Extension Project. Prior to approving the IS, the Board must consider the MND, together with any comments

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
8	09/12/11	Open	Action	09/07/11

Subject: Project Labor Agreement (PLA) for South Sacramento Corridor Phase 2 Light Rail Extension Project

received during the public review process. The Board will be able to adopt the MND only if there is no substantial evidence that the Project will have a significant environmental effect on the environment and that the MND reflects the lead agency's independent judgment and analysis.

If the Board determines that there are no significant environmental effects, a MND will be adopted indicating that the IS satisfies the requirements of CEQA. The Board will also adopt an addendum to the SSCP2 Mitigation Monitoring and Reporting Plan to include any additional mitigation measures prescribed in the IS. If the Board adopts the MND, RT will file a Notice of Determination within five working days of this approval. The Notice of Determination will be available for a period of 30-days per CEQA guidelines.

On July 11, 2011, RT staff submitted a request for a Letter of No Prejudice ("LONP") for the parking structure at the Cosumnes River College Station that the Los Rios Community College District will construct as part of the overall Project. The LONP would allow RT to use non-New Starts funds to fund the work described in the LONP, while preserving RT's ability to claim these monies as matching funds once the Full Funding Grant Agreement ("FFGA") has been approved. Approval of the LONP could eventually lead to cost savings of about $6 million to the Project. Staff also plans to submit a LONP for the construction of two aerial structures for the Project; one at Morrison Creek and one at Cosumnes River Boulevard. Staff has been working with the FTA in providing them with supplemental information they have requested. During the last discussion with FTA regarding this issue, the FTA indicated that RT should receive a response by mid-September.

Receipt of a LONP for the aerial structures will allow RT to take full advantage of the 2012 construction season for the Morrison Creek Bridge. The construction of the Morrison Creek Bridge is limited to the window between May through October due to the presence of the Giant Garter snake habitat within close proximity to the construction zone. Missing the 2012 window will result in construction of the bridge extending until Fall 2013. A LONP to bid both structures at the same time will result in an estimated cost savings of $1 million to the Project.

Based upon the anticipated completion of the activities associated with the IS and the FTA approval process, staff has re-evaluated the Project schedule. Based upon the current information, the FFGA is now expected to slip to July 2012. However, any delays associated with receiving approval for entry into Final Design and the approval of the FFGA could further impact the revenue operations date which is currently forecasted to be June 2015.

Staff is currently finalizing the General Conditions that will be included in the Invitation to Bid ("ITB") that will construct the bridge structures. RT was granted $4.3 million in STIP funding for the construction of the Morrison Creek Bridge. Staff anticipates going to the Board in October to request authorization to advertise the ITB. Staff needs the PLA to be complete before then so that it can be included in the ITB. Consequently, a delay in negotiating a PLA with the local trade unions will delay the issuance of the ITB and jeopardizes the funding. Staff plans to issue the ITB even if the FTA has not approved the LONP because the $4.3 million in STIP funds must be

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
8	09/12/11	Open	Action	09/07/11

Subject: Project Labor Agreement (PLA) for South Sacramento Corridor Phase 2 Light Rail Extension Project

obligated by mid-December 2011 or they will be lost. The ITB will have a bid due deadline of late November 2011. The Contract will be brought to the Board for award in December 2011.

Staff solicited bids from consultants to assist RT in negotiating a PLA with the Building Trades Council. The contract consideration falls within the General Manager/CEO's contracting authority and staff plans on issuing the contract within a week or so of this writing. Under the terms of that contract, the PLA must be finalized prior to the October Board meeting so that the PLA can be included in the ITB for construction of the Morrison Creek Bridge.

Staff anticipates entering into a FFGA in June or July of 2012 at which time the larger construction contract will be advanced for construction.

PROJECT LABOR AGREEMENT

As noted above, the Board authorized the General Manager/CEO to enter into a PLA for the South Sacramento Corridor Phase 2 Light Rail Extension Project on December 14, 2009. The Resolution required that the PLA substantially incorporated a number of deal points that were included as an exhibit to the resolution.

PLAs are pre-hire agreements between an owner, contractor or subcontractor, whether union or nonunion, and the union(s) that set work rules for a specific project or contract. Although generally restricted by the National Labor Relations Act, pre-hire agreements are permitted in the construction industry based on its unique circumstances, where construction projects are temporary in nature and construction industry employers frequently hire a new work force for each project. Accordingly, the National Labor Relations Act permits PLAs under which the owner or general contractor executes an agreement with the unions representing the crafts/trades necessary for the project before the work force is hired. The PLA governs the terms and conditions of employment for those employees. A PLA would require prime contractors to execute a single project agreement with a consortium of unions as a condition precedent to the award of the contract by the RT Board.

The use of PLAs on federally funded construction projects has varied over the past decade. In 2009, President Obama issued Executive Order 13502, encouraging Federal agencies to use PLAs on federal projects where the total cost to the Government is $25 million or more. The Executive Order also repealed a 2001 order that barred the use of PLAs on federally assisted construction contracts carried out by states and local governments. The cost and benefits associated with PLAs have been debated. Those who oppose PLAs argue that PLAs require additional administrative costs and increase labor costs for benefits and other terms and conditions of employment that might not otherwise have been provided by contractors. Supporters of PLAs argue that PLAs advance Government's interest in achieving economy and efficiency in federal procurements, producing labor-management stability and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards and other matters.

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
8	09/12/11	Open	Action	09/07/11

Subject:	Project Labor Agreement (PLA) for South Sacramento Corridor Phase 2 Light Rail Extension Project

The Constitutionality of PLAs was recently reviewed by the Federal 9th Circuit Court of Appeals in *Johnson v. Rancho Santiago Community College District*, 623 F.3d 1011 (2010). In that case, the Rancho Santiago Community College District entered into a PLA with the Los Angeles and Orange Counties Building and Construction Trades Council that set out the terms and conditions under which individuals could perform work on projects for the Community College District. Several non-union apprentices filed suit challenging the PLA as preempting the National Labor Relations Act (NLRA) and the Employee Retirement Income Security Act ("ERISA"). They also asserted that the PLA violated their rights to substantive and procedural due process and to equal protection. The 9th Circuit held that entering into the PLA constituted market participation not subject to preemption by the NLRA or ERISA and that the agreement did not violate the plaintiffs' rights to substantive and procedural due process or to equal protection.

Can the Action Taken on December 14, 2009 be Reconsidered?

As noted above, at the Board's August 22, 2011 Board meeting, the Board asked whether the action taken on December 14, 2009 authorizing the General Manager/CEO to negotiate and enter into a PLA could be reconsidered by the Board. In response, RT's Chief Counsel provided the Board with a memorandum on August 24, 2011 explaining the potential procedures available to the Board to revisit previously addressed issues.

Generally, the Board has three procedural options to revisit a previously addressed issue. The Board can:

a. Adopt a Motion for Reconsideration;
b. Adopt a Motion to Rescind; or
c. Adopt a Motion to Amend Something Previously Adopted

Of the three procedures, the Motion for Reconsideration is available only at the same meeting during which the action for which reconsideration is being sought was taken. The other two options relate to actions taken at a previous meeting and must be placed on a properly-posted meeting agenda to be discussed or acted upon by the Board.

The procedures governing the RT Board are established by Title III of RT's Administrative Code (hereinafter "RT Code"). The RT Code provides that all rules of order not provided for in the RT Code will be determined in accordance with *Robert's Rules of Order.* Of course, these procedures must also be consistent with state law, including the Brown Act (CA. Gov't. Code Sec. 54950 et seq.), RT's Enabling Act (Public Utilities Code Sec. 102105 and 102121), and any other applicable state laws. Because the Motion to Reconsider is not available to the Board given the present facts, this staff report will only address the procedures related to the Motion to Rescind and the Motion to Amend Something Previously Adopted.

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
8	09/12/11	Open	Action	09/07/11

Subject: Project Labor Agreement (PLA) for South Sacramento Corridor Phase 2 Light Rail Extension Project

Motion to Rescind & Motion to Amend Something Previously Adopted

Section 3.1.9.3 of the RT Code effectively incorporates *Robert's Rules of Order* into the Board's procedures; it provides,

"All rules of order not herein provided for shall be determined in accordance with '*Robert's Rules of Order*'".

Robert's Rules of Order includes two other basic procedures for bringing back a question to the body: the Motion to Rescind and the Motion to Amend Something Previously Adopted.

Under RT's enabling legislation, the Board of Directors is the legislative body of the District. (Public Utilities Code Sec. 102120). As such, the Board is expressly charged with the authority to determine all questions of District policy. It is also authorized to adopt ordinances, an administrative code, and specified rules and regulations.

It is a fundamental tenet of our system of state and federal government that the legislative branch embrace the power to determine policy. Absent constitutionally impermissible considerations, a legislative body is granted broad discretion to weigh circumstances and craft appropriate policy. As a rule, in the absence of a limiting statute or rule, legislative power includes the power to repeal or rescind a previous act while proceedings are incomplete and before rights are vested. In general, one legislative body cannot restrict the powers of successors by enacting legislation that is purported to be unrepealable. An act of one legislature is not binding upon, and does not tie the hands, of future legislatures. *County Mobilehome Positive Action Committee, Inc. v. County of San Diego,* 62 C.A. 4th 727 (1998).

The Motion to Rescind and the Motion to Amend Something Previously Adopted are consistent with these principles.

MOTION TO RESCIND

The Motion to Rescind can be used to cancel a previous action taken by the body at an earlier meeting. Where notice is provided, a majority vote is required to approve the motion. There is no restriction as to who may make such a motion; a second is needed to take up the motion. If the Motion to Rescind carries, the prior action is effectively repealed and of not further effect.

The Motion to Rescind is not available when something has been carried out as a result of a prior action which cannot be undone; however, an unexecuted part of an order can be rescinded or amended.

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
8	09/12/11	Open	Action	09/07/11

Subject: Project Labor Agreement (PLA) for South Sacramento Corridor Phase 2 Light Rail Extension Project

MOTION TO AMEND SOMETHING PREVIOUSLY ADOPTED

The Motion to Amend Something Previously Adopted has a somewhat narrower focus than the Motion to Rescind. While it allows the body to revisit a prior action, it allows the body to amend a prior action, rather than rescind it. As with the Motion to Rescind, because of the notice requirements of the Brown Act, a majority vote is also sufficient to approve a Motion to Amend Something Previously Adopted. There is no restriction on who may make such a motion; a second is needed to take up the motion.

However, once notice is given of the proposed action, the vote necessary for approval increases to a two-thirds vote if the proposed action exceeds the scope of the notice. As with the Motion to Rescind, the Motion to Amend Something Previously Adopted is not available when something has been done as a result of a prior action which is impossible to undo; however, an unexecuted part of an order can be rescinded or amended.

Either of these proposed actions would have to be included in a properly-posted and noticed meeting agenda in compliance with the Brown Act.

BRINGING A MATTER BEFORE THE BOARD

Both the Brown Act and the RT Code require the prior posting of a meeting agenda specifying the time and place of the meeting and "a brief general description of each item of business to be transacted or discussed at the meeting." The description "shall be reasonably calculated to adequately inform the public of the general matter or subject matter of each agenda item." [RT Code Sec. 3.1.3.2; CA. Gov't Code Sec.54954.2(a)]. These provisions make it clear that both action items and discussion items must be placed on the properly noticed agenda.

While members of the public may address the Board on matters not included on the posted agenda (during "Public Addresses Board on Matters Not on Agenda" agenda item), the open meeting provisions of the Brown Act limit the Board's discussion or action to only those items listed on the posted agenda, or which satisfy narrowly specified conditions related to emergencies, immediate need for action, or continued items. {RT Code, Sec. 3.1.3.6; CA. Gov't. Code Sec. 54954.2(b)].

The Brown Act also provides an exception from the agenda requirement for certain unnoticed discussion topics at a noticed meeting, including when a member of the body (or a member of its staff), on his or her own initiative, or in response to a question from the public, asks a question for clarification, makes a brief announcement, or makes a brief report on his or her own activities. [CA. Gov't Code Sec. 54954.2(a)].

RT's procedures include such a provision; RT Code Sec. 3.1.3.6 expressly authorizes the Board to direct the General Manager/CEO to place an item of business for discussion and/or action on a

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
8	09/12/11	Open	Action	09/07/11

Subject:	Project Labor Agreement (PLA) for South Sacramento Corridor Phase 2 Light Rail Extension Project

subsequent agenda. In addition RT Code Sec. 3.1.3.5 also provides that members of the Board may submit items for inclusion on future agendas by orally making the request to the Chair during the *Report, Ideas, and Questions from Directors, Communications* agenda item.

Finally, where a member of the public raises an issue which has not yet come before the Board, the Brown Act permits a brief discussion of such item, but no action may be taken at that meeting. The purpose of such discussion is to permit a member of the public to raise an issue or a problem with a legislative body, to permit the legislative body to provide information to the public, provide direction to its staff, or schedule the matter for a future meeting. [CA. Gov't Code Sec. 54954.2(a), 54954.3(a)].

Members of the Board have expressed interest in revisiting the adoption of Resolution No. 09-12-0206 which authorized the General Manager/CEO to enter into a PLA with the local craft unions which would apply to the construction of SSCP2. Because the PLA has not yet been fully negotiated and executed, the Board may, if it so chooses, adopt a Motion to Rescind the action taken on December 14, 2009 and direct staff and the General Manager/CEO to take no further action on the adoption of a PLA. Alternatively, the Board may choose to adopt a Motion to Amend Resolution 09-12-0206 and direct staff and the General Manager/CEO to take some modified action to the action directed in the Resolution. Finally, the Board may opt to take no action at all which would preserve the directive contained in Resolution 09-12-0206.