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Tulare County Association of Governments/  
 Tulare County Transportation Authority

Tulare County Association of Governments and Tulare County Transportation Authority	Date: <b>September 1, 2010 (Wednesday)</b> Time: <b>10:00 a.m.</b> Place: Tulare Ag Commissioner’s Auditorium 4437 S. Laspina St., Tulare, CA 93274
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In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, including auxiliary aids, translation requests, or other accommodations, or to be able to access this agenda and documents in the agenda packet, please contact the TCAG office at 559-624-7274 at least 3 days prior to the meeting.

The full agenda including staff reports and supporting materials is available at the TCAG office.

## SPECIAL MEETING

### I. Call to Order & Welcome

### II. Public Comments

This portion of the meeting is reserved for persons wishing to address the Board on items within its jurisdiction but not on this agenda. NOTE: Prior to action by the Board or Transportation Policy Advisory Committee on any item on this agenda, the public may comment on that item. Unscheduled comments may be limited to 5 minutes.

### III. Presentation – East Side Business Plan – Gary Hunter (No Page)

### IV. Information: Rail Update (Pages 1 - 4)

*Tulare County Association of Governments*  
**CLOSED SESSIONS**

### V. CLOSED SESSION NOTICE TO THE PUBLIC

#### CLOSED SESSIONS

As provided in the Ralph M. Brown Act, Government Code sections 54950 et seq., the Governing Board may meet in closed session with members of its staff, county employees and its attorneys. These sessions are not open to the public and may not be attended by members of the public. The matters the Board will meet on in closed session are identified below or are those matters appropriately identified in open session as requiring immediate attention and arising after the posting of the agenda. Any public reports of action taken in the closed session will be made in accordance with Government Code sections 54957.1

**A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION** Significant Exposure to Litigation (Government Code Section 54956.9(b)(1).)  
 Number of Potential Cases: 4

**B. CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION** (Government Code Section 54956.9(c).)  
 Number of Potential Cases: 4

**C.** CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section 54956.8).  
Property: a 30.57 mile line of railroad between Strathmore, CA milepost 268.60 and Jovista, CA milepost 299.17 in Tulare County  
Agency Negotiator: Ted Smalley, Tom Sparks, Pete Vander Poel  
Negotiating Parties: San Joaquin Valley Railroad Company and Union Pacific Railroad Company  
Under Negotiation: Price and Terms of Payment

**D.** CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section 54956.8)  
Property: North to South railroad line from Jovista to Dinuba running through Lindsay and Exeter up to the county line. East to West railroad line running through Exeter, Visalia, toward Hanford up to the county line.  
Agency Negotiator: Ted Smalley, Tom Sparks, Pete Vander Poel  
Negotiating Parties: San Joaquin Valley Railroad Company and Union Pacific Railroad Company  
Under Negotiation: Price and Terms of Payment

## **VI. ADJOURN**

The next scheduled TCAG/Authority meeting will be held on **Monday, September 20, 2010, at 1:00 p.m.** at the BOS Board of Supervisors, County Civic Center, 2800 W. Burrel, Visalia, CA 93291. The Technical Advisory Committee will meet on **Thursday, September 15, 2010, at 1:30 p.m.** in the regularly scheduled location **Main Conference Room**

The TCAG/Transportation Authority Board may provide guidance and/or direction to staff on any item listed as information.

TULARE COUNTY ASSOCIATION OF GOVERNMENTS  
REGIONAL TRANSPORTATION PLANNING AGENCY  
METROPOLITAN PLANNING ORGANIZATION  
 AND  
TULARE COUNTY TRANSPORTATION AUTHORITY

<b>BOARD OF GOVERNORS</b>	<b>AGENCY</b>	<b>ALTERNATE</b>
Allen Ishida	Tulare County-District 1	Walter Stammer, Jr.
Pete Vander Poel – Chair	Tulare County-District 2	William Cushing
Phil Cox	Tulare County-District 3	Bill Whitlatch
J. Steven Worthley	Tulare County-District 4	Ray Millard
Mike Ennis	Tulare County-District 5	Judith Gibbons
Terry McKittrick	City of Dinuba	Mark Wallace
Jack Allwardt	City of Exeter	Ted Macaulay
Paul Boyer	City of Farmersville	Mike Santana
Pamela Kimball - Vice Chair	City of Lindsay	Steve Velasquez
Ronald Irish	City of Porterville	Cameron Hamilton
Richard Ortega	City of Tulare	Phil Vandegrift
Bob Link	City of Visalia	Michael Lane
Rudy Mendoza	City of Woodlake	Raul Gonzales, Jr.
Bob Zimmerman	Member-at-Large*	Bob Stocker
Tom Sparks	Member-at-Large*	Gil Jaramillo
Bill McKinley	Member-at-Large*	vacant
Sharri Bender-Ehlert	Caltrans*	Christine Cox-Kovacevich

\* These TCAG representatives are not members of the Transportation Authority

**TCAG STAFF**

Ted Smalley, Executive Director  
 Elizabeth Wright, Senior Regional Planner  
 Ben Giuliani, Senior Regional Planner  
 Eddie Wendt, Associate Regional Planner  
 Marvin Demmers, Associate Regional Planner  
 Mark Hays, Associate Regional Planner  
 Ramon Lara, Associate Regional Planner  
 Roberto Brady, Associate Regional Planner  
 Jason Waters, Regional Planner  
 Christine Chavez, Regional Planner  
 Michal Mierzwinski, Accountant  
 Colleen Potts, Secretary  
 Carrie Perez, Office Assistant

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# Tulare County Association of Governments

## **AGENDA ITEM IV**

**September 1, 2010**

**Prepared by Jason Waters, TCAG Staff**

### **SUBJECT:**

**Information:** Rail Update

### **BACKGROUND:**

Please see Attachment 1

### **DISCUSSION:**

TCAG staff and members of the Rail Advisory Committee continue to work toward the preservation of rail in Tulare County. Recently, members of the Rail Advisory Committee met with staff from Congressman Nunes' office to discuss the status of the East Side Rail project. Staff and members of the Rail Advisory Committee also spoke with individuals from Rail Ex to discuss the potential expansion of rail in the southern part of the county. Additional updates will be provided at the meeting as needed.

### **ATTACHMENT:**

- 1) Background of SJVR abandonment

## **ATTACHMENT 1**

### **BACKGROUND:**

On June 19, 2007, the Surface Transportation Board (STB) filed a decision to reject an application by Tulare Valley Railroad (TVR) to acquire a 39.77 mile segment of rail line from the San Joaquin Valley Railroad (SJVR) between Exeter and the Kern County line (Jovista) pending additional information to be submitted by TVR. At the October 15, 2007, TCAG Board meeting, the Board adopted a resolution opposing the acquisition of the feeder line by TVR unless information was provided by TVR concerning their plan of operations and proof of financial responsibility.

On February 19 and 28, 2008, the SJVR submitted two Petitions for Exemption for the abandonment of the same segment of rail line to the STB. The February 19<sup>th</sup> Petition includes the rail line from Strathmore to Jovista (Kern County line) and the February 28<sup>th</sup> Petition includes the rail line from Exeter to Strathmore. At the March 21, 2008 TCAG Board meeting, the Board adopted a resolution opposing the abandonment of the entire 39.77 mile segment of rail from south of Exeter to Jovista.

With the assistance of an experienced rail consultant, Shepstone Management Company, the Tulare County Economic Development Corporation (EDC) took the lead in organizing the opposition of the proposed abandonments and filed a protest for each of the rail segments proposed to be abandoned to the STB. The protest for the 30.57 mile segment (Strathmore to Jovista) was submitted on March 28<sup>th</sup> and the 9.2 mile segment (south of Exeter to Strathmore) was submitted on April 3<sup>rd</sup>. Both protests highlighted the insufficient and incomplete information in SJVR's abandonment filings, the viability of rail service if SJVR charged reasonable rates, the importance of decreasing air pollution by moving more goods on rail versus by truck and the importance of available rail service for the future economic growth of the SR-65 corridor.

On April 10<sup>th</sup>, the SJVR filed a rebuttal to the EDC-TCAG protest for the 30.57 mile rail segment (Strathmore to Jovista). The rebuttal claimed that the protest contained no facts to refute SJVR's contention in its petition to abandon the rail line that is "a burden on SJVR and interstate commerce". With the assistance of its consultant, the EDC submitted a response to the SJVR rebuttal to the STB on April 29<sup>th</sup>. The response challenged SJVR's standing in filing the rebuttal and responded to several of the misleading characterizations and missing information in both the original SJVR abandonment filing and the rebuttal. SJVR never submitted a rebuttal to the STB regarding the EDC-TCAG protest of the northern section (south of Exeter to Strathmore) of the proposed abandonment.

On June 6<sup>th</sup>, the STB issued decisions for both cases. For the northern section of line, the STB denied SJVR's petition and found the following:

*In sum, a shipper and other parties have sufficiently challenged the presentation made by SJVR and there remains enough unresolved questions to make reliance on the exemption process inappropriate on this record. We concluded, SJVR has failed to establish that continued regulation is not necessary to carry out the rail transportation policy, and we therefore are denying SJVR's petition for exemption.*

For the southern section of line, the STB approved SJVR's petition and found the following:

*Based on our analysis as explained in this decision, the record shows that continued operation of the line will impose a substantial economic burden on SJVR and on interstate commerce. Accordingly, we conclude that continued operation of the lines is not warranted.*

During the 10 day period following the STB's approval of SJVR's petition, the Tulare County Board of Supervisors (BOS) and Tulare Valley Railroad (TVR) submitted Offers of Financial Assistance (OFAs) to the STB (both OFAs attached). After initially beginning negotiations with the County, on June 17<sup>th</sup>, SJVR notified the STB that it would begin negotiations with TVR on July 1<sup>st</sup>. TVR notified the STB on July 16<sup>th</sup> that they could not come to an agreement with SJVR and would not be asking that the STB establish terms and conditions for the rail line's conveyance.

Tulare County hired a rail expert to inspect and determine the value of the rail line and submitted a request on July 18<sup>th</sup> to the Surface Transportation Board (STB) for the "establishment of conditions and amount of compensation" for the rail line using the County's valuation (\$1.2 million) rather than SJVR's valuation (\$3.8 million). SJVR submitted a response to the STB on August 4<sup>th</sup> disputing the County's valuation and requesting the STB use SJVR's proposed conditions and valuation. On August 25<sup>th</sup>, the STB issued a decision that sets the valuation of the track at \$3.3 million. On September 5<sup>th</sup>, Tulare County notified the STB that it will not be purchasing the rail line at the STB valuation price and would be pursuing conversion of the right-of-way for railbanking and interim recreational use. On September 15<sup>th</sup>, SJVR notified the STB that it has discontinued service to the rail line from Strathmore to Jovista.

While the abandonment has been approved by the STB, SJVR can not start pulling the track until it complies with the environmental conditions set by the STB and submits a notice of consummation to the STB. The deadline for SJVR to submit the notice of consummation is the following (excerpt from the STB decision approving the abandonment):

*Pursuant to the provisions of 49 CFR 1152.29(e)(2), SJVR shall file a notice of consummation with the Board to signify that it has excised the authority granted and fully abandoned the line. If consummation has not been effected by SJVR's filing of a notice of consummation by June 6, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1 year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.*

The Rail Advisory Committee had positive meetings with representatives of Patriot Rail on November 19<sup>th</sup> and December 8<sup>th</sup>. In addition, the Rail Advisory Committee Chair met with officials in Washington D.C. on November 19<sup>th</sup>. Representatives from TCAG met with STB staff and legislative representatives on January 14<sup>th</sup> and 15<sup>th</sup>. Representatives of the eight San Joaquin Valley Councils of Governments (COGs) met with representatives of Patriot Rail during the Valley One-Voice trip on February 26<sup>th</sup>.

In February, the Craig MBA program at Fresno State was contracted to develop a business plan for the short-haul rail corridor through Tulare County. The MBA team presented the Business Plan to some members of the TCAG Rail Committee and support staff on May 15<sup>th</sup>. The report included the following:

- 1) An operating business plan
  - Needs of shippers

- Level of interest/commitment of prospective rail users
  - Financial projections for short line railroad operation
  - Suggested public/private operating structure
- 2) Analysis of the community benefit of the project
- Long term vs short term
  - Economic
  - Environmental
  - Traffic
- 3) Aspects related to financing
- Capital expenditure plan as it relates to upgrading existing rail infrastructure
  - Purchase of land for additional right-of-way
  - Funding sources available (federal grants, federal loans, other)

As part of a community outreach effort to disseminate the importance of preserving short-haul rail, Rail Committee members began to make presentations to groups in the south San Joaquin Valley. Presentations were given to the Fresno COG Rail Committee on April 10<sup>th</sup>, Sanger and Reedley City Staff on April 30<sup>th</sup>, the California Counties Planning Commissioners Association on May 16<sup>th</sup> and the Dinuba and Farmersville City Councils in June. Presentations were given to the Porterville, Tulare, Lindsay, Woodlake and Exeter City Councils and Tulare Planning Commission in July. Visalia city staff made a rail presentation to the Visalia City Council in August.

The Tulare Valley Railroad (TVR) filed an Abandonment Exemption (Case AB-397-6X) to the STB on July 1<sup>st</sup> for the 5.9 mile spur line from Ducor (connecting to the SJVR between Jovista and Strathmore) and dead-ending at Ultra. TVR filed a petition for reconsideration (9/8/09) regarding the STB's conditional approval of the abandonment of TVR's rail line from Ultra to Ducor. The specific condition related to a process to determine whether there are any historical sites, buildings, structures or objects within the right-of-way of the conditionally approved abandonment. TVR is requested the removal of that condition because of difficulties communicating with the California State Historic Preservation Office (SHPO).

The San Joaquin Valley Railroad (SJVR) filed a Notice of Consummation with the Surface Transportation Board (STB) on November 24, 2009. This completes the abandonment process and the track infrastructure can now legally be removed. However, the TCAG negotiating team is continuing efforts to pursue a public-private partnership to keep the track from being pulled.

TCAG has retained the services of Railroad Industries Incorporated to prepare a business plan that will examine the entire portion of rail in Tulare County. The plan will evaluate the condition of the rail and will determine the feasibility and potential costs associated with acquisition of the rail line and the right-of-way.