



CITY COUNCIL RAIL COMMITTEE MINUTES

Special Meeting
May 10, 2012

Chair Klein called the meeting to order at 8:30 a.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Council Members Burt, Klein (Chair), and Shepherd

Absent: Scharff

ORAL COMMUNICATIONS

None

AGENDA ITEMS

2. Discussion of the Bay Area Blended System Memorandum of Understanding

Richard Hackmann, Management Specialist reported the Peninsula Corridor Joint Powers Board (JPB) approved the Resolution and Memorandum of Understanding (MOU) the prior week. Representatives of the City of Palo Alto attended the meeting and commented on concerns regarding the MOU. The comments were well received and Supervisor Kniss acknowledged the active role of Palo Alto in the entire rail process. She and others felt the MOU was sufficient and the accompanying Resolution addressed concerns.

Council Member Burt stated key issues were reasons for not including points from the Resolution in the MOU. Placing the City's concerns in the Resolution acknowledged those issues; however, the Resolution was merely one party asserting its position and not an agreement. JPB members insisted JPB ownership of the right-of-way provided certain rights. However, if the Metropolitan Transportation Commission (MTC) controlled funding for capital and operations, then Caltrain may not be able to control the negotiation or outcome to the degree JPB members asserted. There was a contradiction between the claim that there was an agreement and JPB's inability to place the issues in the MOU.

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Council Member Shepherd was pleased the Resolution stated the JPB owned the right-of-way. The Council was making progress in narrowing the conversation points.

Chair Klein felt the Council could not seek help from the JPB. The Resolution was ambiguous regarding agreements. The key language was acceptance of the MOU subject to understandings and conditions.

Herb Borock noted the Resolution and MOU did not mention termination of the previous MOU for the Peninsula Rail Program. The JPB appeared to equivocate on its position regarding termination. The conditions in the Resolution referred to the blended system. The Caltrain electrification Environmental Impact Report (EIR) for a blended system should be performed concurrent with the California High Speed Rail Authority (CHSRA) EIR.

Council Member Burt stated the Council should consider; 1) encouraging Caltrain to request MTC to accept the Resolution in some formal action, 2) express the concern that MTC could in the future use its control of funding to apply leverage, and 3) request Caltrain repeal the current Peninsula Rail Program MOU.

Chair Klein felt Council Member Burt's first item would not accomplish anything. The second item was not an Action Item. The third item would be appropriate as Caltrain had not acted on that.

Council Member Shepherd wanted to address the current MOU by asking Caltrain to explain its interpretation of the MOU if it did not rescind the Peninsula Rail Program MOU. If the Council could influence Caltrain to re-circulate the Caltrain electrification EIR it would be an important method to articulate their thoughts.

Chair Klein believed the Council's comments were on record regarding re-circulation of the EIR.

Council Member Burt indicated Caltrain had provided an update on its intention to re-circulate the EIR. He asked if the EIR included any intention to have the three- and four-track systems.

Mr. Hackmann reported any approval of the Caltrain electrification EIR was suspended until a full analysis of the blended system was complete. He understood their evaluation of the Caltrain corridor included three- and four-

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track areas at certain points. The Caltrain EIR did not include additional passing tracks.

Council Member Shepherd stated the trigger for this EIR was not a specific amount of High Speed Rail (HSR) traffic in the corridor. She wanted to understand how Caltrain would re-circulate and incorporate any changes.

Council Member Burt felt Caltrain had already stated that.

Steve Emslie, Deputy City Manager reported Caltrain had committed to re-circulating the EIR.

Council Member Shepherd inquired whether Caltrain would add options for HSR passing tracks.

Council Member Burt understood Caltrain had stated it would not.

Mr. Hackmann indicated Caltrain would perform a subsequent EIR if HSR became a factor.

Council Member Burt noted Caltrain had stated their intention.

Council Member Shepherd said that was not her understanding of Mr. Murphy's comments at the Peninsula Cities Coalition (PCC) meeting.

Mr. Hackmann noted the Caltrain EIR had studied up to six trains per hour on the existing track capacity. The HSR analysis would study eight trains per hour, six Caltrain and two HSR; and ten trains per hour, six Caltrain and four HSR with the inclusion of potential additional tracks. Mr. Murphy's reference to expanded capacity was not for the Caltrain EIR only.

Council Member Shepherd asked if Caltrain would not perform the Project EIR for this potential build out.

Chair Klein stated the focus of the discussion was the MOU. The EIR was a main consideration rather than follow-up.

Council Member Shepherd indicated the EIR was part of the MOU.

Council Member Burt suggested the City Council Rail Committee (Committee) could not resolve the confusion until Staff provided clarification. One EIR was the pure Caltrain electrification EIR with up to six trains per hour and the other EIR concerned the blended system. Caltrain could elect

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to perform the blended system EIR sooner but that did not appear to be its intention.

MOTION: Chair Klein moved, seconded by Council Member Shepherd for the City Council Rail Committee to direct Staff to follow-up with the Joint Powers Board on previous discussions regarding the initial Memorandum of Understanding.

Mr. Hackmann asked if Staff should also request a clarification on the significance of the Resolution to the MOU.

Chair Klein replied no.

MOTION PASSED: 3-0 Scharff absent

Council Member Burt asked why Chair Klein thought recommending the JPB seek MTC's acceptance of the Resolution did not have value. It was less than including it in the MOU but more than a unilateral Resolution.

Chair Klein felt the Council should limit the number of its recommendations or risk being ignored.

Council Member Burt reported Supervisor Kniss asked for his request for a recommendation concerning language in the Resolution versus in the MOU. The JPB could make one-sided assertions with no acknowledgement from the other party while they continued to claim the other party had agreed.

Chair Klein would support an action if Council Member Burt felt it was appropriate. The most likely result was the JPB would do nothing.

Council Member Burt would discuss the issue at the next PCC meeting and determine Supervisor Kniss' interest in pursuing it.

3. Report from the Professional Evaluation Group

John Garamendi Jr., Professional Evaluation Group, reported between May 14, 2012 and June 15, 2012 the State had to complete its budget. On Tuesday, May 15, 2012 the Joint Transportation and Senate Subcommittee would hold hearings on High Speed Rail (HSR). No action items were listed but it would frame the Legislature's choices for budget cuts. He hoped to see a budget preview on Friday, but did not expect one.

Chair Klein asked if anyone would receive a preview of the budget.

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Mr. Garamendi indicated some would receive a preview but he probably would not. There would be efforts to fund HSR before June 15; however, if there were not enough votes to approve HSR, it would move to August 6th.

Chair Klein noted the Council's break began July 24.

Mr. Garamendi would remain in contact. He wanted to know how the City would approach litigation. He attended the HSR meeting in Fresno concerning the EIR for Central Valley, which was approved. Coalitions were forming around the litigation that would be forthcoming over the next 30 days when the record of decision was issued and followed by the notice of determination. The Fresno Board of Supervisors supported HSR because Fresno would benefit in some ways. He was coordinating the Federal and State delegations regarding funding. He would attend the Peninsula Cities Consortium (PCC) meeting on June 1st. He had a clear direction going into the budget cycle and assumed that direction would continue. The Council needed to consider the pieces of legislation for the fall that could help the City of Palo Alto. The City Council Rail Committee (Committee) should consider which items it could work with local Legislators on to help protect the City's interests.

Chair Klein inquired if he had suggestions.

Mr. Garamendi did not. He would have some suggestions depending on how events played out.

Chair Klein liked the idea of going on the offensive rather than being on the defensive on legislation.

Mr. Garamendi stated as long as there was \$9 billion for HSR it would not go away. Someone would resurrect it in a different form.

Chair Klein noted Mark DeSaulnier was a leader of the effort for HSR and asked if he was leaving office at the end of the year.

Mr. Garamendi indicated he was running for State Senate.

Chair Klein asked what the chances were of winning.

Mr. Garamendi stated polls indicated it was a toss-up.

Chair Klein asked who his opponent was.

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Mr. Garamendi reported he had two opponents in Stockton, who both opposed HSR. The race would be hotly contested because of the Senate Democrats' effort to win a super majority.

Chair Klein inquired if his opponents were Republicans or Democrats.

Mr. Garamendi indicated both candidates were Republicans. The open primary was a whole new world and there were three very good candidates in that region. Leadership in the District was shifting as well.

Council Member Burt reported Council Member Klein and he shared some of the City's asks with Assembly Member Gordon; however, Assembly Member Gordon did not give a clear response on which he would fight for. Several Legislators indicated he intended to put hooks in the budget but would support budget approval. The City's concerns were partial California Environmental Quality Act (CEQA) exemptions, an alleged counsel opinion concerning the blended system's compliance with Proposition 1A, and language linking funding to the blended system as the maximum build out on the Peninsula.

Chair Klein added the concern regarding the Opinion from the Attorney General's office.

Council Member Burt stated he was focusing on the Legislative Counsel because it appeared the Attorney General was unlikely to deliver an Opinion.

Mr. Garamendi hoped to hear from the Legislative Counsel in the next several weeks.

Council Member Burt inquired if he had heard anything about the rumor of an informal opinion.

Mr. Garamendi did not know what the opinion was. Experience indicated a favorable informal opinion would be formalized.

Council Member Burt asked if the implication was the Legislative Counsel believed the blended system was compliant with Proposition 1A.

Mr. Garamendi did not know but would find out. He would watch the issue closely and ensure those hooks were included.

Council Member Burt learned the California High Speed Rail Authority (HSRA) had received negative publicity in Washington D.C. He understood a Legislative Analyst Office (LAO) preliminary response indicated Cap and

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Trade was not a reasonable backup funding source, which was the basis for the CHSRA Business Plan. If Federal funding was not forthcoming CHSRA did not have an identified funding source. Assembly Member Gordon asked in the Subcommittee hearing whether Cap and Trade could be used for this purpose. The Council had not discussed whether the Business Plan and Funding Plan were compliant with Proposition 1A or whether the Legislature dismiss that issue.

Mr. Garamendi agreed with Council Member Burt's comments about Cap and Trade. The Business Plan identified Cap and Trade as the backup source of funding. AB 3034 required CHSRA to identify a source of funding but it did not require a legitimate source of funding. The Legislature would prefer to let the courts determine if this maneuver was legal. Business interests and environmental groups would challenge this use of the funds. That would be a major point of contention in the hearings because the Governor was counting on those funds to fill budget holes. Many people were poking holes in the project. He would remain in close contact over the next several weeks because there would be many developments.

Council Member Shepherd relied on Mr. Garamendi to avoid a vacuum between becoming successful and not becoming successful.

Mr. Garamendi reported there was nothing moving through the Legislature that was as germane as funding HSR. A couple of bills were pending that he wanted to watch. The Governor was committed to HSR while few Congressmen were advocating for it.

Chair Klein asked when the Committee would report to the Council.

Steve Emslie, Deputy City Manager indicated it was in June.

Chair Klein stated that date had to be reconsidered. This was a crucial time for applying pressure to Legislators and with the budget cycle beginning.

Council Member Burt asked what action needed to be taken that could not be taken by the Committee.

Chair Klein wanted to urge citizens to contact their State Assemblymen and Senators to vote the right way. The Committee was authorized to take emergency action but this was not an emergency. He felt the public considered HSR dead.

Council Member Shepherd noted the Committee was not on the Council tentative Agenda.

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Mr. Emslie asked if June 4, 2012 was soon enough.

Chair Klein stated the choices were May 21, 2012 and June 4, 2012. He preferred May 21st.

Mr. Garamendi reported May 21, 2012 would be more beneficial for the cause. With budget cuts necessary he wanted to draw on the contrast of the choices people were making.

Chair Klein suggested reminding friends in the education community that funding HSR would cost education.

Mr. Garamendi stated kids and pets were directly competing for funding.

Council Member Shepherd inquired if there was a way to summarize or highlight expected budget cuts.

Mr. Garamendi suggested waiting until the budget was released to determine the budget cuts.

Council Member Shepherd felt the Council needed to talk broadly about all the items.

Mr. Garamendi noted the City would be facing cuts from this budget on various issues.

Roland Lebrun felt Senator Simitian would be on the Caltrain Board the following year. Regarding the blended system the Peninsula was the only segment in the entire HSR network that was remotely close to being legal even with two tracks. Electrification would not help but if Caltrain expended some effort it could get a subsidy. Concerning Cap and Trade, the State would be a net emitter of greenhouse gases during the construction period. It should buy credits rather than receive revenue from Cap and Trade.

NO ACTION TAKEN

4. Discussion of Potential Litigation

Chair Klein felt the discussion today should cover upcoming deadlines and decisions concerning the potential litigation.

Mr. Emslie reported the most significant action taken was certification of the re-circulated Environmental Impact Report (EIR). There was no formal

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litigation on that matter. Any action on this issue should be coordinated with the other lawsuit in order to prevent litigating issues the City had less chance of winning.

Chair Klein recalled the City held preferred status because they were already a litigant. The re-circulated EIR was in effect part of that litigation.

Mr. Emslie indicated the California High Speed Rail Authority (CHSRA) had the option of returning the writ. The City should consider taking action based on that possibility.

Chair Klein stated the time constraints previously discussed were no longer in effect. Another general area of potential litigation was the legality of the blended system which was subject to the lawsuit by Mike Brady. He asked Mr. Garamendi if he had spoken with Mr. Brady.

John Garamendi Jr., Professional Evaluation Group, reported he had spoken with Mr. Brady and he was moving forward with the lawsuit. They expected a hearing on the matter in June 2012.

Chair Klein noted the City would explore that litigation.

Mr. Emslie stated the question was whether the City wanted to file suit to get an answer prior to the Attorney General releasing an Opinion or wanted to wait for the Attorney General Opinion. If the Opinion did not support the City's position, then the City could consider challenging it.

Council Member Burt asked Chair Klein to explain his thinking for challenging the blended system, when his prior inclination was not to pursue clarification on the Memorandum of Understanding (MOU).

Chair Klein did not see the point in wasting some of the City's credibility on an issue which had already been decided and over which the City had no control. The MOU situation was totally political whereas courts provided a more level playing field.

Council Member Burt noted the Council had previously endorsed the blended system.

Chair Klein said the endorsement was subject to a variety of conditions.

Council Member Burt indicated some of those conditions were part of the discussion on whether they were adequately addressed between the MOU and the Caltrain Resolution.

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Chair Klein clarified the City's position was termination of High Speed Rail (HSR). If it was not terminated then the City supported the blended system subject to various conditions.

Council Member Burt inquired if the discussion was challenging the legality of the blended system.

Chair Klein explained potential litigation questioning the legality of the blended system was part of the strategy to terminate HSR.

Council Member Burt stated that created opposing positions on the same issue around the blended system. He expressed concerned about the mixed messages.

Chair Klein did not feel the messages were mixed. The City Council Rail Committee (Committee) was outlining potential possibilities and it would need many facts before making a decision. He wanted to continue thinking about potential litigation.

Council Member Shepherd inquired if there would be a consideration of funding sources for litigation.

Chair Klein answered yes.

Council Member Shepherd felt that was just as important as whether the blended system had a dedicated track for HSR.

Chair Klein asked if the question was funding sources for litigation.

Council Member Shepherd answered no. She meant using the lack of funding sources to attack the HSR project.

Chair Klein inquired if she was suggesting a potential lawsuit based on HSR not meeting the requirement in Proposition 1A and AB 3034 of identified funding sources.

Council Member Shepherd responded yes.

Chair Klein felt that was a good suggestion.

Council Member Shepherd referred to the lawsuit regarding Honda's published miles per gallon ratings. She asked whether the notice regarding

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greenhouse gas reduction was open for consideration. Advocacy for HSR included reduction of greenhouse gases as opposed to railroads.

Chair Klein agreed there were other sources of litigation. He felt the lack of identified funding sources was a better option for litigation.

Council Member Shepherd was interested in reviewing the CHSRA's policies to determine if they aligned with the ballot initiative.

Chair Klein indicated these were ideas to forward to the Council.

Mr. Emslie agreed it was brainstorming.

Council Member Shepherd stated there were other environmental concerns and issues.

Chair Klein suggested inviting the City Attorney to future discussions.

Mr. Emslie stated he would invite her to the next meeting.

Roland Lebrun preferred the City not litigate on the blended system. He did not want the City to legally challenge the Caltrain electrification EIR. He suggested closely reviewing the forthcoming Dumbarton Rail EIR which did not consider a tunnel or the effects of an earthquake.

Herb Borock indicated the two court cases in the Superior Court had been combined into one case at the Appellate Court with all litigants listed. He suggested the City Attorney review this to confirm proper procedure had been followed. He stated the City did not have extra time to challenge the return on writ because it was a party in a previous lawsuit. He did not feel comfortable saying the City could wait to challenge the current final EIR. In regard to the Brady lawsuit, Mr. Brady thought the CHSRA, rather than the Legislature and the Governor, made funding decisions. This led to CHSRA's success in two prior lawsuits. He did not think there was anything to challenge relating to AB 3034. In thinking of future lawsuits such as with the Caltrain electrification EIR the Council had to decide what it would say in anticipation of litigation and who the co-litigants would be.

5. Reports on Meetings

- California High Speed Rail Authority (CHSRA) Board
- Peninsula Cities Consortium (PCC)
- Peninsula Corridor Joint Powers Board (PCJPB)

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Richard Hackmann, Management Specialist reported the California High Speed Rail Authority (HSRA) would meet on July 10, 2012, but an agenda was not available. It would possibly hold a meeting in June. The Peninsula Cities Consortium (PCC) was coming out of the Peninsula Corridor Joint Powers Board (JPB), and would explore an advisory committee of Caltrain. The PCC wanted to work with the San Mateo County Rail Corridor Partnership to create a Peninsula advisory committee to influence the discussion of all rail issues. The PCC would follow up with Caltrain attorneys regard the legal significance of the Memorandum of Understanding (MOU) resolution relative to the MOU.

Council Member Burt reported the discussion was to request the Caltrain legal counsel provide their interpretation of the impact of the resolution. He asked if the City Council Rail Committee (Committee) wanted to request that as well.

Chair Klein asked who the representing counsel was for Caltrain.

Council Member Burt indicated Mr. Miller was their in-house counsel.

Chair Klein agreed with asking for an interpretation.

Council Member Burt indicated there was discussion at the PCC meeting concerning the future role of the PCC. The PCC could assume a role focused on future Caltrain implementation of electrification and create a policy group led by the cities rather than staff. In a discussion of the MOU Resolution Jayme Ackemann, Caltrain Government Affairs Officer stated cities were fully protected from impacts as a result of the future electrification and future blended Environmental Impact Reports (EIR). He made two points to her; 1) the EIR did not require mitigations and 2) that was exhibited by the recent certification of the Program EIR for the four-track system, which identified major impacts as significant and unavoidable. She seemed baffled by his assertion that the EIR did not ensure mitigations.

Chair Klein asked if Ms. Ackemann understood the process.

Council Member Burt expressed concerns about the Caltrain Board members and staff holding that misunderstanding. Ms. Ackemann conveyed a position of the Board and staff that the EIR itself ensured that those impacts would not occur.

Chair Klein stated it would be great to have that assurance.

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Council Member Burt recommended that City Staff discuss that with Caltrain staff.

Mr. Emslie would contact Marian Lee of Caltrain.

Chair Klein suggested handling the conversation delicately. He did not want to imply that Caltrain staff did not know what it was doing.

Mr. Emslie stated if Caltrain overrode it, they did not have to mitigate.

Chair Klein asked for a status update on the creation of a policy working group.

Council Member Burt reported Supervisor Kniss discussed the issue at the JPB meeting but it was not agendaized. He understood it would be addressed at a subsequent JPB meeting. The concept seemed to have gone mainstream within Caltrain.

Chair Klein inquired when the next JPB meeting was.

Mr. Hackmann indicated June 7, 2012.

Council Member Burt said Supervisor Kniss was pursuing one of the City's recommendations outside of the Resolution. The PCC ad hoc committee had not followed up on recommendations to Caltrain. They did discuss including Mountain View in discussions. He was working to ensure the policy working group had the structure to be meaningful.

Chair Klein asked Staff to determine if the policy working group was on the agenda for the JPB meeting on June 7th. If it was not on the agenda, the Committee should encourage JPB to put it on the July agenda.

Council Member Burt stated one of the models discussed was the Santa Clara Valley Transportation Authority (VTA) Policy Advisory Committee. San Mateo County had a version as well.

Chair Klein asked for an update on PCC working with the other group in San Mateo County.

Council Member Burt reported he and Jerry Carlson, Atherton Council Member, were appointed as PCC representatives to engage with that group and determine if it wanted to hold discussions.

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Chair Klein asked why the San Mateo Rail Committee had been quiet for the previous several months.

Mr. Hackmann recalled the last meeting was in mid-March 2012 but their meetings were not consistent.

Council Member Shepherd asked if they were a public entity.

Mr. Hackmann replied yes. Their agendas and staff work was led by San Mateo.

NO ACTION TAKEN

6. Discussion of Recent and Future Rail Letters

Richard Hackmann, Management Specialist provided a list of all City High Speed Rail (HSR) and Caltrain correspondence since July 1, 2010. Staff would update it as needed.

Chair Klein asked if it would be included in the Council Packet.

Steve Emslie, Deputy City Manager answered yes.

Mr. Hackmann had a draft letter regarding the references to a potential four-track system in the Business Plan. Staff welcomed John Garamendi's input on timing the release of the letter and direction regarding recipients. He had found a January 10, 2011 letter from Roelof van Ark to then-Mayor Burt regarding a four-track system and the need for phasing.

Council Member Burt stated that was the position of the California High Speed Rail Authority (CHSRA) at that time. The questions were whether that remained the position of CHSRA and whether that assertion was supported by either the Attorney General or the Legislative Counsel.

Mr. Hackmann felt it had relevance to the discussion of phasing.

Mr. Emslie stated it gave the City credibility because it was the last written statement of HSR.

Council Member Burt indicated additional statements were made in the iterations of the Business Plan subsequent to that letter.

Mr. Emslie stated that was a meaningful reason why the City was dedicating the resources it had.

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Chair Klein noted several people on the CHSRA had left since the release of that letter.

Mr. Hackmann had noted on the spreadsheet direct and indirect replies to City correspondences.

Council Member Burt recommended the City's concerns be specific requests rather than bullets in the draft letter. The City should continue asserting that the four-track Program Environmental Impact Report (EIR) contradicted language in the latest Business Plan and assurances made to the Peninsula and that there was not an adequate method for removing the four-track Program EIR as the document of record.

Chair Klein suggested providing comments to the letter off line.

Council Member Shepherd stated the current Caltrain system was more than two tracks. She asked if the letter should continue to describe it as a two-track system.

Chair Klein indicated it was primarily a two-track system.

Council Member Burt suggested describing it as the current primarily two-track system.

Council Member Shepherd wanted to tie it to the current system. If it went to two tracks then the commute service would change. She asked if the third track was needed for passing.

Chair Klein stated that was in place now.

Council Member Burt said there was no discussion of removing the third track.

Council Member Shepherd wanted to ensure they were discussing the current system.

Council Member Burt stated that was not part of the blended proposal. That was part of the discussion regarding separate systems for HSR and Caltrain.

NO ACTION TAKEN

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FUTURE MEETINGS AND AGENDAS

Richard Hackmann, Management Specialist stated Staff would request the City Attorney attend future meetings.

Chair Klein indicated there was no urgency. He asked items for future consideration be submitted to him or Staff for inclusion in the upcoming Agenda. There would be a focus on the Governor's budget. Another topic for discussion was the Caltrain electrification Environmental Impact Report (EIR) and actions related to that.

Steve Emslie, Deputy City Manager indicated Staff would determine the status of the analysis and release date of the EIR.

ADJOURNMENT: The meeting adjourned at 10:05 a.m.