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- San Bernardino County Transportation Commission
 - San Bernardino County Transportation Authority
 - San Bernardino County Congestion Management Agency
 - Service Authority for Freeway Emergencies
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Support Material Agenda Item No. 36

Board of Directors Meeting

September 2, 2015

10:45 a.m.

Location:

San Bernardino Associated Governments
Santa Fe Depot- SANBAG Lobby 1st Floor
1170 W. 3rd Street, San Bernardino, California 92410

Discussion Calendar

Administrative Matters

36. Statutory Entity Ad Hoc Committee Update

That the Board receive and file an update and presentation from the Statutory Entity Ad Hoc Committee Chair, Bill Jahn and General Counsel, Eileen Monaghan Teichert, in preparation for the September 17-18, Board Workshop. **Eileen Teichert**

The Overview Statutory Entity Issues PowerPoint Presentation is being provided for your review and information as a separate handout.



OVERVIEW STATUTORY ENTITY ISSUES

**Board Meeting
September 2, 2015**

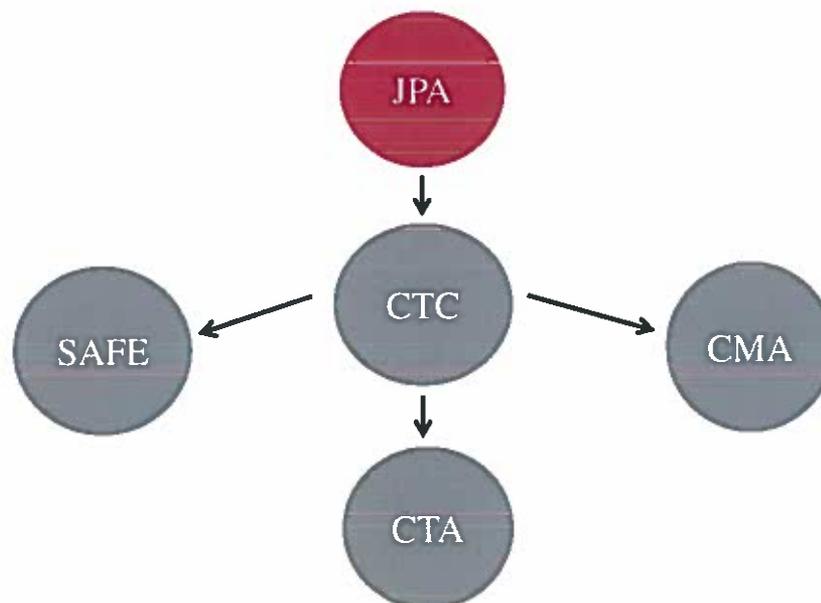
Statutory Entity Ad Hoc Committee Purpose

- To study and make recommendations to the full Board regarding:
 - Sponsoring legislation to consolidate certain SANBAG entities and functions into a new statutory entity
 - Timing & substance of legislation and implementation
- Recommendations deadline:
 - September 17-18, 2015, Board workshop

Why is a change being considered?

- Primarily, because Member jurisdictions are at risk for SANBAG JPA liability due to SANBAG's current legal structure
- Secondly, due to inconsistencies in the laws governing the SANBAG entities

What is SANBAG's current structure?



SANBAG is 5 Separate Legal Entities

- **San Bernardino Associated Governments, a Joint Powers Authority (JPA) - 1973**
- **San Bernardino County Transportation Commission (CTC) - 1976**
- **San Bernardino County Service Authority for Freeway Emergencies (SAFE) - 1986**
- **San Bernardino County Transportation Authority (CTA) - 1989**
- **Congestion Management Agency for San Bernardino County (CMA) - 1990**

Joint Powers Authority

- 1973 – San Bernardino Associated Governments, a JPA, was established by a Joint Powers Agreement (Gov. Code § 6502)
- Powers and duties charged by agreement:
 - Council of Governments (COG) — Improve & coordinate government services on countywide, subregional & regional basis, by gathering info, studies, recommendations
 - Transit – Develop unified & coordinated subregional transit system, planning, priorities, schedules, routings, funding
- Discretionary powers:
 - Serves as *de facto* staffing agency for all SANBAG entities
 - Sponsors various COG activities, i.e. HERO program, GHG Reduction Plan, etc.

County Transportation Commission

- 1976 – Public Utilities Code § 130054 designated San Bernardino Associated Governments as the CTC
- Powers and duties charged by statute:
 - Coordinate all public trans. services within county
 - Serve as Co. TPA planning & programming trans. funds
 - Perform short-range trans. capital & service planning
 - Adopt 3-5 year trans. improvement program, update annually with all Co. trans. capital & service priorities
 - Adopt/maintain long-range expenditure plan for Meas. I
 - Take “all actions necessary” to obtain maximum fedl. transportation funds

CTC (CONT'D)

- Discretionary powers:
 - Exercise powers of eminent domain
 - Contract for construction of transportation projects
 - Own and maintain rail right-of-way
 - Operate transit

Service Authority for Freeway Emergencies

- 1986 –CTC designated as SAFE by County and the cities (Streets & Highway Code § 2551)
- Powers charged by statute:
 - Operate Call-Box program on freeways & state highways
 - Operate Freeway Service Patrol program (2002)

County Transportation Authority

- 1989 – CTC designated as CTA by Board of Supervisors (Public Utilities Code § 180050)
- Powers and duties charged by statute:
 - Adopt annual report on transportation needs and progress
 - Assure Measure I tax proceeds are used for construction, maintenance and operation of state highways, local streets, public transit
- Discretionary powers:
 - Adopt trans. “sales” tax with voter approval—Measure I
 - Adopt county trans. expenditure plan prior to election
 - Issue bonds secured by tax proceeds
 - Contract for design, project management of trans. projects

Congestion Management Agency

- 1990 – CTC designated as CMA by Board of Supervisors (Gov. Code § 65089(a))
- Powers and duties charged by statute:
 - Prepare annual countywide Congestion Management Plan (CMP)
 - Update biennially regional TIP
 - Maintain uniform database of traffic plans
 - Monitor CMP and deficiency plan implementation
 - Hold hearings on non-conformance and submit findings to State

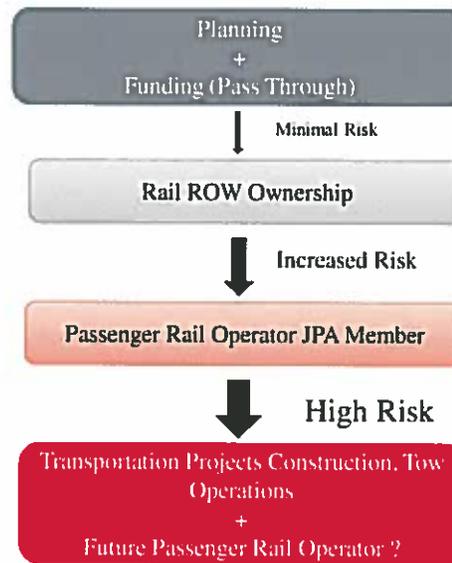
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SANBAG's Expansion of Functions and Risks

DATE	EVENT	FUNCTION	RISK
1973	JPA formed	Planning	Office
1976	CTC	+Programs Funds	Office
1986	SAFE	+Call Boxes	+Emergency calls
1989	CTA/Measure I	+Funding +Bond Issuances	+Accounting +Bond disclosures
1991-94	Join SCRRRA: Purchase RR ROW	+Joint rail operator +Property owner	+Joint operation risk +Premises liability
1993	Begin acquiring fwy & road ROW, designing & constructing projects	+Eminent Domain +CM & PM +Site Control +Construction	+Takings claims +Design errors +Environmental liab. +Worksite safety
2002		+Fwy Svc Patrol	+Freeway towing
2018?	RPRP	+Rail Operator?	+Passenger safety

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Expanded Functions = Increased Risk



Why are we here? 1. Member Liability

- JPA
 - Joint Venture/Partnership-type relationship amongst member jurisdictions
 - Under California law JPA members may be jointly & severally liable for torts, possibly contracts, arising from performance of JPA
 - JPA is staffing entity (employer of staff) for CTC, CTA, SAFE, CMA (akin to staffing relationship between cities/county & their former RDAs)

Why are we here?

2. Unclear rules, regs & administration

- Differing:
 - Board membership (JPA, CTA = 29; CTC=29+1 *ex officio*)
 - Voting requirements (JPA, CTA = majority vote; CTC ability to call for split house vote)
- Conflicting competitive bidding thresholds
- Varying procurement requirements (CTA vs. CTC vs. JPA)
- CMA—Program vs. Agency?
- Which entity enters into various contracts?

Functions of other Transportation Agencies

AGENCY	COG	CTA	CTC	SAFE	CMA	TRANSIT OPERATOR
LACMTA		X	X	X	X	X
OCTA		X	X	X	X	X
RCTC			X	X	X	
SANDAG	X		X	X	X	
VCTC			X	X	X	X
SANBAG	X	X	X	X	X	? (RPRP)

Legal Structures of other Transportation Agencies

AGENCY	STATUTORY ENTITY	JPA
LACMTA	X	
OCTA	X	
RCTC	X	
SANDAG	X	
VCTC	X	
SANBAG		X

Options

1. Business as usual – do nothing
2. Keep current structure, with added liability barriers/protections—gaps would remain
3. Create new statutory entity—transferring employees and as many functions, rights, obligations, liabilities of existing SANBAG entities as legally possible to new entity

New Statutory Entity Benefits

1. Eliminates member liability prospectively
 - a. Separate legal identity, akin to a corporation
 - b. No “Members”, thus no jurisdiction liability
 - c. Liability risk contained within Statutory Entity
2. Clarifies rules, regs. & administration
 - a. One Board structure, one set of voting rules
 - b. Uniform procurement requirements
 - c. Clarifies nature of entity & party to contracts

Issues to Consider With Statutory Entity

- Determine which functions to legislatively consolidate
- Decide board composition, voting rights/restrictions, stipends, name
- Satisfy SBCERA requirements to transfer SANBAG employees to Statutory Entity
- Address outstanding CTA Measure I bonds
- Consider outstanding PACE (HERO) bonds
- Review executory SANBAG contracts and grants
- Analyze insurance coverage and litigation issues
- Resolve budget and accounting issues
- Consult with third parties who have important relationships—Caltrans, SCAG, SCAQMD, SCRRA, etc.

Schedule

- **September 2, 2015, Ad Hoc Meeting:** Finalize recommendations to Board
- **September 3, 2015, City Manager Technical Advisory Committee**
- **September 17, 2015, Board Workshop:** Board considers Ad Hoc Committee's recommendations and provides direction
- **October 7, 2015, Board Meeting:** Board makes decision whether to proceed with statutory entity legislation

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