



DEPARTMENT OF  
**FINANCE**

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June 18, 2008

Mr. Will Kempton, Director  
California Department of Transportation  
P.O. Box 942873  
Sacramento, CA 94273-0001

Dear Mr. Kempton:

**Final Report—Review of Amtrak's Oakland Maintenance Operations**

The Department of Finance, Office of State Audits and Evaluations (Finance), has completed its review of Amtrak's Oakland maintenance operations. The enclosed report is for your information and use. The Department of Transportation's and Amtrak's responses, and our evaluation thereof, are incorporated into this final report.

We appreciate the assistance and cooperation of the Department of Transportation and Amtrak. If you have any questions, please contact Richard R. Sierra, Audit Manager, at (916) 322-2985, Ext. 3159.

Sincerely,

*Original signed by:*

David Botelho, Chief  
Office of State Audits and Evaluations  
(916) 322-2985

Enclosure

cc: Mr. William D. Bronte, Chief, Division of Rail, California Department of Transportation  
Mr. Steve Cates, Chief, Office of Rail Equipment & Track Construction, Division of Rail, California Department of Transportation  
Mr. Carlos Aguila, Audit Manager, Audits and Investigations, California Department of Transportation  
Mr. Don Saunders, Assistant Vice President, Strategic Partnerships-West, National Railroad Passenger Corporation

A COMPLIANCE REVIEW

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National Railroad Passenger  
Corporation (Amtrak)

Review of Oakland Maintenance  
Operations

Prepared By:  
Office of State Audits and Evaluations  
Department of Finance

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# EXECUTIVE SUMMARY

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The California Department of Transportation (Caltrans) requested the Department of Finance, Office of State Audits and Evaluations (Finance), to review the National Railroad Passenger Corporation's (Amtrak) maintenance of state-owned equipment at the Oakland maintenance facility. Specifically, the review assessed whether Amtrak:

- Performed and documented its maintenance work as required.
- Accurately billed the state for maintenance of state-owned equipment.
- Properly controlled its inventory of maintenance parts and supplies.

The review determined that Amtrak is not fully compliant with the maintenance and recordkeeping requirements, and that Caltrans has entered into agreements that impair its oversight and Amtrak's accountability. The following observations were identified:

## **Maintenance Operations**

- Amtrak's preventative maintenance schedules are not consistently met or properly documented.
- Amtrak's maintenance of non-state equipment is contrary to the state's intended use of the Oakland facility, and such work may interfere with the timely maintenance of state equipment.
- Amtrak does not make parts inventories accessible to second-shift crews, and needed parts are unnecessarily removed from other cars and locomotives.

## **Fiscal Control and Accountability**

- Amtrak's cost accounting process is not transparent, does not provide a clear audit trail, and over-relies on the allocation of shared costs in lieu of direct charges. Moreover, the process does not provide sufficient fiscal information for Oakland staff to effectively monitor and control costs.

## **Program Oversight**

- Caltrans has not held Amtrak accountable and does not appear to exercise sufficient authority over Amtrak's Oakland maintenance operations.
- Caltrans has paid Amtrak's claimed maintenance costs without a clear understanding of the basis for allocating these costs.
- Caltrans has entered into agreements with Amtrak that contain insufficient fiscal and oversight provisions that do not protect the state's interests.

This report is intended to assist Amtrak and Caltrans in improving control and accountability of the Oakland maintenance program, and to further Caltrans' goals of maximizing transportation system quality, reliability, and accessibility. Amtrak and Caltrans should jointly develop a plan to address the observations and recommendations noted in this report.

# BACKGROUND, SCOPE, AND METHODOLOGY

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## BACKGROUND

In 1970, the Rail Passenger Service Act created the National Railroad Passenger Corporation (Amtrak) to provide inter-city passenger rail service. In most states, inter-city passenger rail service is provided solely by Amtrak with no assistance from state or local governments. California is one of the few states that assists Amtrak in providing rail service. Through the California Department of Transportation (Caltrans), the state provides capital grants and support for station and track improvements, locomotives and coaches, Amtrak bus service connections, operations, and maintenance.

Caltrans' Division of Rail is responsible for managing and coordinating the intercity rail passenger service in partnership with Amtrak. This partnership oversees the operation of rail passenger service with integrated motor coaches in three corridors: (1) Sacramento region to the San Francisco Bay Area (known as the *Capitol Corridor*), (2) Sacramento through the Central Valley (known as the *San Joaquin*), and (3) Coastal route from San Luis Obispo to San Diego (known as the *Pacific Surfliner*). These three services are commonly referred to as Amtrak California. The services are provided with a combination of state and Amtrak-owned rail equipment which Amtrak operates and maintains.

Preventative maintenance is carried out at two locations: (1) Oakland for the Capitol Corridor and San Joaquin trains (collectively referred to as the *Northern California Fleet*), and (2) Los Angeles for the Pacific Surfliner trains. Minor servicing and cleaning is performed at other locations where trains remain overnight. The Oakland facility is the subject of this report.

In 2004, a new 141,000 square-foot maintenance and inspection facility was opened in Oakland. Constructed jointly with state (66 percent) and Amtrak (34 percent) funds, the facility was designed to service and maintain the Northern California Fleet (comprising 17 locomotives and 78 coaches), and maintain Amtrak's California Zephyr (a non-state funded train). In addition to a state-of-the-art maintenance bay, the facility also includes an extensive rail yard, support buildings, parts warehouse, cleaning facilities, and related overhaul and maintenance equipment. The state and Amtrak own the Oakland facility as joint tenants. The construction agreement stipulates that Amtrak will manage and operate the facility under the general supervision of Caltrans.

Caltrans has delegated the supervision of certain maintenance activities to the Capitol Corridor Joint Powers Authority (CCJPA). Specifically, the CCJPA oversees Amtrak's maintenance of the state's Northern California Fleet. This supervision is limited primarily to monitoring the quality of Amtrak's work. The CCJPA is not an owner of the facility, has minimal control over the amount of reimbursements paid to Amtrak, and no authority to change the facility's policies or Amtrak's corporate actions. Accordingly, because this report raises issues that will require policy changes at the facility, state, and Amtrak corporate levels, the focus will be on Amtrak and Caltrans as the entities with authority and responsibility to effect these changes.

## SCOPE

Caltrans expressed concerns about whether Amtrak had timely maintained and accurately billed the state for maintenance of state-owned equipment at the Oakland facility. In response to these concerns, Caltrans requested the Department of Finance, Office of State Audits and Evaluations (Finance), to perform a compliance review of specified provisions of the Renegotiated Maintenance and Transfer Agreement, dated October 1, 1999 (Agreement). The Agreement (between Amtrak and the CCJPA) stipulates Amtrak's maintenance responsibilities, required maintenance schedules, and documentation requirements. Of particular concern was Amtrak's maintenance of non-state (e.g. third-party) equipment, and whether Amtrak's procedures were sufficient to ensure that these costs were not billed to the state. Specifically, Finance was asked to determine whether Amtrak:

- Performed and reported maintenance work according to the Agreement's maintenance schedule.
- Billed the state accurately for maintenance work performed on state-owned equipment.
- Properly controlled its inventory of maintenance parts and supplies.

The review included maintenance activities performed on the Northern California Fleet at the Oakland maintenance facility. The review did not include maintenance performed at other locations, or on the Pacific Surfliner Fleet.

## METHODOLOGY

To evaluate Amtrak's compliance, we observed maintenance operations; inspected facilities and equipment; reviewed policies, procedures, maintenance logs, inspection reports, daily line-up sheets, contracts, consultant reports, and internal memoranda; tested physical inventories; interviewed Caltrans and CCJPA staff and management, and the following Amtrak staff and management:

- |  |   |
|--|---|
| • Service and Inspection Supervisor    | • Assistant Controller (Philadelphia)*          |
| • Preventative Maintenance Supervisor  | • Director of Route Analysis (Washington D.C.)* |
| • Locomotive Supervisor                | • Senior Director of Finance (Philadelphia)*    |
| • Coach Cleaner                        |   |
| • Electrician – Service and Inspection |   |
| • Locomotive Machinist                 | * via telephone and e-mail.                     |
| • Facility Finance Officer             |   |
| • Manager of Material Controls         |   |

To determine whether maintenance costs were properly recorded and accurately billed to the state, we observed Amtrak personnel working on state-owned (Northern California Fleet) and non-state (Zephyr and Caltrain) coaches and locomotives, and reviewed their schedules to determine if they were working overtime or regular shift. We attempted to follow the flow of the related labor costs through the recordkeeping system to ensure they were correctly claimed on Amtrak's 403(b) invoices. We walked through the timekeeping, reporting, and payroll input processes with the Facility Finance Officer; and reviewed timecards, punch lists, labor reports from the Work Management System, and the methodology used to bill third parties for labor

costs. We reviewed a sample of monthly 403(b) invoices and requested supporting documentation in order to trace specific transactions from entry through invoicing.

Recommendations were developed based on data analysis, the documentation made available to us, and interviews with subject matter experts. This review was conducted during the period August 2007 through December 2007.

A review was performed of the National Railroad Passenger Corporation's (Amtrak) Oakland maintenance operations for compliance with specified provisions of the Renegotiated Maintenance and Transfer Agreement, dated October 1, 1999 (Agreement). The review determined that Amtrak is not fully compliant with the Agreement, and several opportunities for improvement were identified in the areas of maintenance operations, fiscal control and accountability, and program oversight, as described below. The proposed recommendations, if implemented, would improve control and accountability of the Oakland maintenance program.

## **Maintenance Operations**

### **OBSERVATION 1: Amtrak's Preventative Maintenance Schedules Are Not Consistently Met or Properly Documented**

During 2007, Amtrak failed to timely perform the required 120-day preventative maintenance inspections (PM) on 65 coaches. The PM was performed from 4 to 48 days late. Further, Amtrak did not fully document the PM work as to individual unit, equipment type, hours expended, and materials consumed. Proper maintenance is critical to efficient and effective operation of the state-funded trains, and failure to maintain the state's fleet according to the Agreement's minimum standards is a serious non-performance issue. As a consequence, the Capitol Corridor Joint Powers Authority (CCJPA) assessed Amtrak penalties totaling \$151,600 for the fiscal year ended September 30, 2007. In response, Amtrak identified employee turnover as a contributing factor; however, during the time PM on state-owned coaches fell into delinquency, Amtrak continued to perform maintenance work for third parties (refer to Observation 2 below). Section 5.2 of the Agreement describes the required maintenance schedules and documentation requirements.

#### **Recommendations:**

1. Amtrak should timely complete and document all preventative maintenance according to the terms of the Agreement.
2. The California Department of Transportation (Caltrans) (via the CCJPA) should continue to assess Amtrak penalties and withhold funds for delinquent preventative maintenance.
3. Caltrans should consider other maintenance providers in the event Amtrak is unable to consistently meet the required maintenance schedules.

### **OBSERVATION 2: Amtrak's Maintenance of Non-State Equipment is Contrary to the Intended Use of the Oakland Facility**

Amtrak regularly maintains non-state and non-Amtrak equipment at the Oakland facility. The maintenance of this equipment is contrary to the state's intended use of the Oakland facility, and such work may interfere with the timely maintenance of state equipment. In 2001, the state and Amtrak jointly agreed to construct the Oakland facility with the express purposes of maintaining

the state-supported Capitol Corridor and San Joaquin trains, and the Amtrak-supported California Zephyr. Significant financial resources were allocated to the project (\$35.7 million of state and \$18.2 million of Amtrak cash funds). Since the facility opened in 2004, Amtrak has also provided maintenance and storage services for other clients, such as Caltrain and private railcar owners (referred to as third parties), without Caltrans' approval. This third-party work is not permitted under the capital improvement or operating agreements, and Amtrak continues to undertake this work (while behind in performing state maintenance) using substantially state-funded facilities and equipment. Moreover, controls and procedures are not in place to assign third-party work a lower priority or confirm Amtrak has not billed the state for this work. For example, although Amtrak supervisors indicated this work was performed only when there is spare capacity and only on a volunteer basis or overtime, Amtrak staff were observed turning the wheels on a Caltrain locomotive during regular paid hours. As discussed in Observation 4, Amtrak's accounting system is unable to clearly establish that these costs are properly excluded from amounts billed to the state.

Caltrans requested Amtrak to provide a full accounting of third-party maintenance costs and revenues (which this review also attempted to obtain); however, as of the date of this report Amtrak has not provided this information.

Caltrans was also in the process of negotiating a separate agreement with Amtrak that would permit third-party work. The proposed Facility Operations and Maintenance Agreement would require Amtrak to assess its clients a special surcharge to be used for facility maintenance and repair with the surcharge funds controlled by Amtrak. Any such proposal is contrary to the state's intended use of the facility.

### **Recommendations:**

1. Amtrak should discontinue performing maintenance and storage services for non-state locomotives and coaches (except California Zephyr) at the Oakland facility.
2. Amtrak should provide Caltrans with a full accounting of all third-party maintenance costs and related revenue since the Oakland facility opened in 2004.
3. Amtrak should remit to Caltrans third-party revenue (earned since the Oakland facility opened) proportionate to the state's investment in the facility (approximately 66 percent).
4. Caltrans should abandon the proposed Facility Operations and Maintenance Agreement.

### **OBSERVATION 3: Amtrak Does Not Make Parts Inventories Accessible to All Maintenance Crews**

Amtrak does not make new parts inventories accessible to second-shift Service & Inspection (S&I) crews, and needed parts are unnecessarily removed from other coaches and locomotives. Second-shift S&I crews generally work from 2:00 p.m. to 10:00 p.m., during which time the parts warehouse is closed after 5:00 p.m. When the warehouse is closed, second shift crews routinely remove needed parts from coaches and locomotives on the preventative maintenance line for use on priority turnaround trains. This is an expensive practice that incurs additional labor and parts costs, first to remove the used part, then to reinstall a new part. Further, the priority turnaround train is released with a used and potentially worn part. In addition, as discussed in Observation 1, Amtrak does not consistently document the disposition of requisitioned parts.

## Recommendations:

1. Amtrak should keep the parts and supplies warehouse open and accessible 24-hours.
2. Except in emergency situations as defined in the Agreement, Amtrak should refrain from removing parts from coaches and locomotives for use on other trains.
3. Amtrak should document the disposition of all requisitioned parts.

## Fiscal Control and Accountability

### **OBSERVATION 4: Amtrak's Cost Accounting Process is Not Transparent And Impairs Effective Management**

Amtrak's Route Profitability System (RPS), used to allocate operational costs to the state's three routes (including maintenance of the Northern California Fleet), is unaccountable and unacceptable for purposes of administering the state-funded trains. The system provides no assurance that the amounts billed to the state are the true and actual costs. This weakness goes beyond maintenance costs and applies to all of Amtrak's claimed operational costs. RPS is not transparent, does not provide a clear audit trail, and over-relies on the allocation of shared costs. Moreover, the system does not provide sufficient fiscal information for Oakland Amtrak or Caltrans staff to effectively monitor and control costs. The review found that:

- Amtrak's cost identification and allocation methods are not clear and supporting records are not readily available. During the federal fiscal year ended September 30, 2006, the state paid Amtrak approximately \$17 million to maintain the Northern California Fleet. When asked how the system produces output costs attributable to the state's fleet, Amtrak management did not provide a clear explanation and kept referring reviewers to the RPS allocation reports. These reports provide only the final allocated amounts by cost code, but no details or linkage back to originating cost pools. Source documents and books of original entry supporting the allocations (e.g. general and subsidiary ledgers, payroll ledgers, vendor invoices, utility bills, etc.) were requested but not provided.

As a result, Amtrak has not substantiated that the Oakland maintenance costs input to RPS and reimbursed by the state on the 403(b) invoices were accurate, supported, and properly attributable to the state's fleet. There is no documented assurance that Amtrak's third-party maintenance costs were excluded from the state's costs. Amtrak offered to make the documents available for review in Philadelphia or Washington D.C.; however, it indicated that the reviewers would be required to travel there for a potentially extended period.

- Amtrak over-relies on cost allocations in lieu of direct charges. The majority of the costs billed to the state were derived from a shared cost allocation process. As a consequence, the allocated costs may not provide a true measure of the route's actual performance. Generally accepted accounting principles encourage organizations to directly identify as many costs as possible, and allocate any remaining costs based on a documented allocation methodology. Amtrak's Oakland office has no control over this process, which is administered by its corporate headquarters.
- Oakland Amtrak and Caltrans supervisory and management staff are unfamiliar with the RPS cost allocation process, unable to explain or interpret the output reports, and unable to reconcile the reported and billed costs back to the original input. From a managerial

standpoint, these reports are of little value and unusable in directing daily operations and controlling costs. There is presently no source of actual cost information at the Oakland facility to effectively manage operations.

Section 2.3.2 of the Agreement requires Amtrak to keep full and accurate accounting records in accordance with generally accepted accounting principles of all costs associated with the Agreement; and requires Amtrak to cooperate fully with the state in the explanation of the contents of said records.

### **Recommendations:**

1. Amtrak should discontinue billing the state based on the RPS allocations, and develop an alternative process that separately identifies and records all direct state operations costs.
2. Caltrans should determine an appropriate and fixed allowance for indirect costs as a percentage of total direct costs.
3. Amtrak should retain the related cost reports and all supporting documentation for billed costs (payroll records, vendor invoices, utility bills, etc.) in Oakland for program management and audit.

### **Program Oversight**

#### **OBSERVATION 5: Opportunities Exist For Caltrans to Better Control the State-Funded Rail Program**

Caltrans has not been successful in holding Amtrak accountable and does not appear to exercise sufficient authority over Amtrak's Oakland maintenance operations. The other observations in this report are partly a result of this weakness. The problems stem from Caltrans' assignment of much of the program's control to Amtrak and the CCJPA, and the execution of poorly written contracts that do not adequately protect the state's interests, or ensure accountability.

To Caltrans' credit, it has made several attempts to exercise more authority, but with limited success. There are numerous letters and e-mails to Amtrak from both Caltrans and the CCJPA requesting that Amtrak address various performance issues (primarily late preventative maintenance), and the assessment of fines, but the problems persist. Caltrans has not been successful in:

- Requiring Amtrak to consistently comply with the required maintenance schedules and related documentation.
- Preventing Amtrak from performing third-party maintenance at the Oakland facility.
- Obtaining satisfactory explanations and documentation from Amtrak regarding claimed costs and third-party revenues.
- Requiring Amtrak to take direction from Caltrans' on-site manager.
- Enforcing the terms of cost-share agreements with Amtrak.

Improvement is needed. As discussed below, there are actions Caltrans can take to enhance its oversight effectiveness.

### Caltrans Does Not Verify Amtrak's Costs

Controls and procedures are not in place to verify expenditures or identify variances in Amtrak's claimed costs prior to payment. Caltrans appeared unfamiliar with the various expenditure line items on Amtrak's monthly 403(b) invoices, and was unable to explain significant cost variances. Invoices are paid without question. A more structured expenditure review process would help address this weakness.

### Contracts Do Not Protect the State's Interests

There have been at least twelve different agreements executed with Amtrak since 1994 providing for capital improvements, transfer of fleet oversight, maintenance, and operations. Several of these agreements did not appear to provide Caltrans with sufficient management and oversight authority, and some agreements specifically assigned management and oversight to Amtrak and the CCJPA. Further, Caltrans expressly elected not to be a party to the Renegotiated Maintenance and Transfer Agreement between Amtrak and the CCJPA. Irrespective of the specific contract language, Caltrans has a fiduciary responsibility to exercise ultimate authority over the state's rail program and to step in when needed to correct problems. Authoritative contract language giving Caltrans complete authority on all program and operational decisions (and execution of this authority) would help mitigate this weakness.

Moreover, Caltrans and its delegate (CCJPA) have entered into agreements with Amtrak that contain poorly written or vague fiscal provisions that actually impair the state's ability to manage and enforce Amtrak's compliance. For example:

- The Agreement for the Provision of Rail Passenger Service, dated October 1, 2006, Section 7(b), states that "Amtrak shall...make available such financial... data...as may be available in Amtrak's information retrieval system." This is a weak and unaccountable provision that permits Amtrak to control what information it provides the state, and still remain in full compliance. Observation 4 raised doubts about the system's ability to produce verifiable costs.
- The Renegotiated Maintenance and Transfer Agreement is silent in terms of defining when an assessment should be levied because of a late 120-day inspection. In response to assessed penalties, Amtrak has challenged Caltrans and the CCJPA for clarification on this point.

### On-Site Supervision is Not Effective

Caltrans has assigned one state employee to oversee the facility's daily operations in Oakland; however, this manager acknowledges not having sufficient authority to control or influence facility operations, and Amtrak does not appear to consistently take direction from him. Specific examples:

- Caltrans has been unable to ensure that Amtrak's Equipment Liaison Manager and Maintenance Scheduling Manager (state-funded Amtrak employees) consistently perform their required duties and accept specific work direction from Caltrans' on-site representative. In practice, both employees frequently relegate Caltrans' direction to a lower priority. Recent correspondence indicates that Amtrak has redirected the Maintenance Scheduling Manager (without Caltrans' authorization) to perform other

duties, and not those specified in the operating agreement. This may be a contributing factor in Amtrak's inability to timely perform preventative maintenance.

- A September 14, 2007 letter from Caltrans' on-site manager to Amtrak "requesting" an immediate end to all third-party maintenance did not appear implemented. Such an important directive would have been more effective coming from Caltrans' executive management and presented as a requirement instead of a request.
- On August 14, 2007 Caltrans was unable to prevent Amtrak from placing a rebuilt cab car into revenue service, in contravention of Caltrans' specific directive, and prior to being accepted by Caltrans for a return to service.

### **Recommendations:**

Caltrans should exercise more direct control over Amtrak's state operations, and demand full compliance and accountability. Specifically, Caltrans should take the following actions:

1. Maintain a more visible on-site presence at the Oakland facility. Executives from Caltrans' Division of Rail should regularly visit the facility and actively participate in planning and oversight activities, and support its on-site manager. Require Amtrak to comply with the on-site manager's directives.
2. Require Amtrak and the CCJPA to amend the Renegotiated Maintenance and Transfer Agreement to include Caltrans as a party to the agreement, with specific provisions that designate Caltrans as the ultimate decision making authority for all matters involving the state-funded routes.
3. Amend the Agreement for the Provision of Rail Passenger Service requiring Amtrak to separately identify and record all direct state operations costs, and retain supporting documentation for management and audit (as described in Observation 4). Reimburse Amtrak only for actual costs identified and claimed through this process.
4. Implement a stringent expenditure review process requiring verification of Amtrak's claimed costs, and including procedures for questioning or reducing invoices when necessary.
5. Enforce Amtrak's compliance with all contract requirements and directives, and assess Amtrak penalties for non-performance or non-compliance. Include specific language in the two aforementioned agreements on when and how penalties will be assessed for non-compliance.

## RESPONSES

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**California Department of Transportation**  
**Detailed Response to the Draft Report**  
**“Review of Amtrak’s Oakland Maintenance Operations”**  
**April 28, 2008**

**OBSERVATION 1: Amtrak’s Preventative Maintenance Schedules Are Not Consistently Met or Properly Documented**

**1. Recommendation**

"Amtrak should timely complete and document all preventative maintenance according to the terms of the Agreement."

**Caltrans’ Response**

The California Department of Transportation (Caltrans) concurs with this recommendation and will seek language in the upcoming Operating Agreement that will define penalties for delinquent or inadequate maintenance work at the Oakland Maintenance Facility (OMF).

**2. Recommendation**

"The California Department of Transportation (Caltrans) (via the CCJPA) should continue to assess Amtrak penalties and withhold funds for delinquent preventative maintenance."

**Caltrans’ Response**

Caltrans and the Capital Corridor Joint Powers Authority (CCJPA) will continue to work with Amtrak to resolve the delinquent preventive maintenance problem, including the CCJPA’s ongoing program of assessing Amtrak penalties and withholding funds for delinquent preventive maintenance.

**3. Recommendation**

"Caltrans should consider other maintenance providers in the event Amtrak is unable to consistently meet the required maintenance schedules."

**Caltrans’ Response**

Caltrans had a consultant review operations performed by Amtrak staff that could possibly be contracted to another vendor. One of the areas recommended was the maintenance of State-owned rolling stock in the northern fleet. Under the terms of the OMF Construction Agreement, Caltrans can replace Amtrak as the maintenance vendor. However, as a condition of this agreement, Caltrans must buy out Amtrak’s investment of both land and facility. Caltrans will continue to investigate, and will seriously consider the feasibility, and economic issues required to contract out the maintenance of State-owned rolling stock in northern California. In

the event Caltrans' investigation reveals an inability to secure funding to buy out Amtrak's share of the facility, Caltrans and the CCJPA will work with Amtrak to implement improved internal controls that ensure OMF maintenance operations are structured to accommodate State-owned rolling stock before any other outside work is performed.

**OBSERVATION 2: Amtrak's Maintenance of Non-State Equipment is contrary to the Intended Use of the Oakland Facility**

**1. Recommendation**

"Amtrak should discontinue performing maintenance and storage services for non-state locomotives and coaches (except California Zephyr) at the Oakland facility."

**Caltrans' Response**

Caltrans sent a letter to Amtrak on September 14, 2007, directing them to stop third-party work at OMF until all State-owned equipment is properly maintained in accordance with the Renegotiated Maintenance and Transfer Agreement. Should Amtrak fail to comply with this request, Caltrans will pursue a contractual solution and, if necessary, a legal remedy.

**2. Recommendation**

"Amtrak should provide Caltrans with a full accounting of all third-party maintenance costs and related revenues since the Oakland facility opened in 2004."

**Caltrans' Response**

Caltrans agrees with this recommendation. However, the only method Caltrans has to enforce this recommendation is to make it part of the negotiation of the upcoming Operating Agreement.

**3. Recommendation**

"Amtrak should remit to Caltrans third-party revenue (earned since the Oakland facility opened) proportionate to the state's investment in the facility (approximately 66 percent)."

**Caltrans' Response**

Caltrans concurs with this recommendation and will include it in the impending Operating Agreement negotiations.

#### **4. Recommendation**

"Caltrans should abandon the proposed facility maintenance and surcharge agreement."

#### **Caltrans' Response**

The OMF Construction Agreement requires an Operations and Maintenance Agreement acceptable to both parties. Caltrans will not execute the proposed agreement as it is now written, but will ensure that the final agreement complies with the principles set forth in the Draft Report.

### **OBSERVATION 3: Amtrak Does Not Make Parts inventories Accessible to All Maintenance Crews**

#### **1. Recommendation**

"Amtrak should keep the parts and supplies warehouse open and accessible 24-hours."

#### **Caltrans' Response**

Caltrans concurs with all the recommendations made under Observation 3, and will endeavor to implement them as an amendment to the Renegotiated Maintenance and Transfer Agreement as recommended in Observation 5, Recommendation 2, of this Draft Report.

#### **2. Recommendation**

"Except in emergency situations as defined in the Agreement, Amtrak should refrain from removing parts from coaches and locomotives for use on other trains."

#### **Caltrans' Response**

See Caltrans' response to Recommendation 1 above.

#### **3. Recommendation**

"Amtrak should document the disposition of all requisitioned parts."

#### **Caltrans' Response**

See Caltrans' response to Recommendation 1 above. In addition, Caltrans and Amtrak will establish inventory control procedures whereby all requisitioned parts are traceable to the respective preventive maintenance report and Amtrak's inventory cost records.

**OBSERVATION 4: Amtrak's Cost Accounting Process is Not Transparent And Impairs Effective Management**

**1. Recommendation**

"Amtrak should discontinue billing the state based on the RPS allocations, and develop an alternative process that separately identifies and records all direct state operations cost."

**Caltrans' Response**

Caltrans concurs with all the cost accounting recommendations made in Observation 4. Caltrans will propose appropriate language in the upcoming Operating Agreement to put these recommendations into practice for maintenance of equipment. It should be noted that until such time that Amtrak replaces the Route Profitability System with an accounting system that tracks direct costs, it will be difficult to fully implement this recommendation.

**2. Recommendation**

"Caltrans should determine an appropriate and fixed allowance for indirect costs as a percentage of total direct costs."

**Caltrans' Response**

See Caltrans response to Recommendation 1 above.

**3. Recommendation**

"Amtrak should retain the related cost records and all supporting documentation for billed costs (payroll records, vendor invoices, utility bills, etc.) in Oakland for program management and audit."

**Caltrans' Response**

Caltrans concurs with this recommendation.

**OBSERVATION 5: Opportunities Exist For Caltrans to Better Control the State-Funded Rail Program**

Caltrans should exercise more direct control over Amtrak's state operations, and demand full compliance and accountability. Specifically, Caltrans should take the following actions:

### **1. Recommendation**

"Maintain a more visible on-site presence at the Oakland facility. Executives from Caltrans' Division of Rail should regularly visit the facility and actively participate in planning and oversight activities, and support on-site manager. Require Amtrak to comply with the on-site manager's directives."

#### **Caltrans' Response**

Caltrans is supportive of and appreciates the objective of this recommendation. Time restraints and the workload of Caltrans' Division of Rail executives have prevented a more active role in the management of OMF. The Division of Rail executives will attend quarterly meetings at the OMF and will make unannounced visits as their schedules permit. Amtrak's compliance with the directives of the on-site manager will be an area of negotiation for the OMF Operations and Maintenance Agreement.

### **2. Recommendation**

"Require Amtrak and the CCJPA to amend the Renegotiated Maintenance and Transfer Agreement to include Caltrans as a party to the agreement, with specific provisions that designate Caltrans as the ultimate decision making authority for all matters involving the state-funded routes."

#### **Caltrans' Response**

Caltrans agrees with the recommendation in part. Caltrans will work with Amtrak and CCJPA to amend the Renegotiated Maintenance and Transfer Agreement to include Caltrans as a party to the agreement, with specific provisions that designate Caltrans as the ultimate decision-making authority for all matters involving the maintenance and the deployment of State-owned equipment. However, California statutes give the CCJPA specific decision-making authority for the Capitol Corridor Route.

### **3. Recommendation**

"Amend the Agreement for the Provision of Rail Passenger Service requiring Amtrak to separately identify and record all direct state operations costs, and retain supporting documentation for management and audit (as described in Observation 4). Reimburse Amtrak only for actual costs identified and claimed through this process."

#### **Caltrans' Response**

Caltrans concurs with Recommendations 3, 4, and 5. Caltrans will seek language in the upcoming Operating Agreement that will implement these recommendations for the accounting of work performed by Amtrak at the OMF.

#### **4. Recommendation**

"Implement a stringent expenditure review process requiring verification of Amtrak's claimed costs, and including procedures for questioning or reducing invoices when necessary."

#### **Caltrans' Response**

See Caltrans response to Recommendation 3.

#### **5. Recommendation**

"Enforce Amtrak's compliance with all contract requirements and directives, and assess Amtrak penalties for non-performance or non-compliance. Include specific language in the two aforementioned agreements on when and how penalties will be assessed for non-compliance."

#### **Caltrans' Response**

See Caltrans' response to Recommendation 3.

**National Railroad Passenger Corporation (Amtrak)**  
**Response**  
**to**  
**California Department of Finance (DOF) Draft Report**  
**“Review of Amtrak’s Oakland Maintenance Operations”**  
**May 19, 2008**

**OBSERVATION 1: Amtrak’s Preventative Maintenance Schedules Are Not Consistently Met or Properly Documented**

a. **DOF Statement**

*During 2007, Amtrak failed to timely perform the required 120-day preventative maintenance inspections (PM) on 65 coaches. The PM was performed from 4 to 48 days late.*

**Amtrak Response**

Amtrak has been unable to determine how DOF concluded that 65 coaches were behind in preventative maintenance inspections for FY07. Amtrak’s records indicate that CCJPA’s FY07 assessment letters identified 49 coaches as being late. Amtrak staff examined DOF working papers and supporting documentation at DOF’s Sacramento, CA offices on Thursday, May 15, 2008, but DOF staff was unable to provide any documentation to support the finding of 65 coaches.

In addition, it appears that DOF’s report relied solely upon the assessment letters issued by CCJPA and did not consider responses by Amtrak that disputed the PM assessments levied during FY07. However, at the May 15, 2008 meeting, DOF staff did indicate that they were aware that some of the penalties assessed were disputed by Amtrak. If so, such information should have been included in the DOF draft report to provide an updated status of the issue discussed. Attached as **Exhibit A** is Amtrak’s April 18, 2007 letter disputing the PM assessments levied by CCJPA for the period October 1, 2006 through March 31, 2007.

As can be seen from Amtrak’s responses, Amtrak does not schedule preventative maintenance in a vacuum. Amtrak has had to balance scheduling of timely PMs against requests from both its partners (CCJPA and Caltrans) to modify the PM schedule for either ridership demand or maintenance work performed by parties Amtrak does not control (e.g., Siemens, Curtis Door, etc.). Meeting these requests may have resulted in any particular car being unavailable for preventative maintenance for a minimum of three days, based solely upon equipment set cycles when a car is needed for ridership demand, or for weeks if an overhaul and warranty activity has been otherwise arranged by Caltrans or CCJPA.

Amtrak has also disputed the PM assessments in letters issued by CCJPA for the period April 1 through September 30, 2007, but the parties have not settled those disputes as of the date of this response. A copy of Amtrak's dispute letter dated March 18, 2008, covering the period April 1 through September 30, 2007, is attached as **Exhibit B**.

b. **DOF Statement**

*Amtrak did not fully document the PM work as to individual unit, equipment type, hours expended, and materials consumed. Proper maintenance is critical to efficient and effective operation of the state-funded trains, and failure to maintain the state's fleet according to the Agreement's minimum standards is a serious non-performance issue... Section 5.2 of the Agreement describes the required maintenance schedules and documentation requirements.*

**Amtrak Response**

Amtrak staff met with DOF on May 15, 2008 to review the audit records supporting this DOF statement. When asked on what basis DOF concluded that Amtrak did not fully document preventative maintenance work, the DOF representative indicated that he had relied upon a letter from Steve Cates, Chief Office of Rail Equipment and Track Construction (Caltrans) to Carol Gambrel, Principal Officer (Amtrak) dated February 5, 2007 and did not independently validate the content of the letter.

Section 5.2 of the Renegotiated Maintenance and Transfer Agreement (RMTA) requires work performed to be "fully documented by individual units *where appropriate* (emphasis added), including equipment type worked on, worker-hours expended, and spares and materials consumed. Periodic maintenance work shall be done in accordance with printed instructions. These instructions shall be found on the maintenance worksheets contained in the Appendices to this Agreement and may be revised by mutual agreement of Amtrak, CCJPA and State. Each item of maintenance shall be signed by the mechanic when completed. The completed forms shall then be signed by the foreworker in charge and Amtrak's Mechanical Department Officer. The completed forms shall be available for inspection by CCJPA representatives at any time after completion of the relevant work and shall be kept on file for at least three (3) years."

Amtrak consistently complies with the above quoted requirements of Section 5.2 of the RMTA. Amtrak utilizes the mutually agreed-upon Amtrak MAP forms included in Appendix II of the RMTA (which have been updated as necessary to meet changes in maintenance practices) as the format for documenting inspections and maintenance of Caltrans-owned rolling stock. The MAP forms are completed for each individual unit of equipment and reflect equipment type, car number and major parts/components removed from or added to the unit of equipment. Work

hours associated with preventative maintenance work are captured in Amtrak's Work-Management System (WMS). Materials leaving Material Control are primarily requisitioned out on form NRPC2070. The document is part of Material Control inventory records and a list of materials that have been requisitioned out of Caltrans custodial stores 463 and 464 are provided in a month-end report to Caltrans, along with a monthly inventory balance sheet. However, Amtrak's available inventory control documentation system consists of more than the month-end reports. Facility personnel (including onsite CCJPA and Caltrans representatives) have access to real-time itemized transactional detail. Querying tools are used to facilitate managerial accounting and to identify potential errors in disposition identification. A segregation of duties provides for independent review of inventory transactions via budget variance analysis and other performance appraisals.

The completed MAP forms and inventory control records are retained onsite and are readily available to Amtrak managers, Caltrans and CCJPA representatives, as well as the regulatory community. In addition to the hard copy records, Amtrak maintains the maintenance records in its Work Management System. These records are noted in Amtrak's Record Retention policy. Attached as **Exhibit C** is an excerpt from Amtrak's Record Retention policy regarding rolling stock maintenance records.

Further, Section 3.1 of the RMTA requires that Amtrak "document and maintain a complete and accurate mechanical history of each piece of equipment in the Northern California Pool for control, maintenance and repair scheduling and planning purposes, as well as for claims against warranties and performance guarantees." Amtrak consistently complies with the requirements of Section 3.1 of the RMTA. In addition to the hard copy files, Amtrak maintains mechanical history logs in its Work Management System, which is available in real-time format to the CCJPA.

Section 3.2 of the RMTA requires that Amtrak retain "for at least three (3) years, and make available to CCJPA upon request, all records concerning the inspection, maintenance, repair and cleaning of each unit of Equipment and will deliver such records to CCJPA at the end of that period if CCJPA requests." As noted above, Amtrak complies with the requirements of Section 3.2 of the RMTA and these records are maintained at the Oakland Maintenance Facility and are available for inspection.

Section 3.8 of the RMTA requires that Amtrak provide the State and CCJPA with access to the following operational reports: Unit Status List; Display Unit Record Report; Mechanical History Report; Build Resources List Report; Train Status Report for Capitol Corridor Trains and Connections; and the Daily Consist Report. Attached as **Exhibit D** is a matrix of all reports provided by Amtrak to the State and/or CCJPA, either in hard copy, electronic access, or available upon request, as required by the RMTA or operating agreements.

The maintenance practices followed by Amtrak at the Oakland Maintenance Facility are consistent with its maintenance practices nationwide. As discussed in subsection (a) above, the primary reason preventative maintenance was not performed on state-owned rolling stock within the 120-day cycle is because the state-owned rolling stock was not available to Amtrak for scheduling into the PM Line. Amtrak cannot perform preventative maintenance on a car that CCJPA has required to be in service. While the RMTA sets a 120-day cycle for preventative maintenance, it is important to note that the FRA regulatory standard for preventative maintenance is 184 days and no preventative maintenance within Amtrak's control was delinquent beyond the regulatory period.

The safety of our passengers and employees is Amtrak's first priority. Amtrak's maintenance practices are heavily regulated by the FRA and the PUC who perform periodic inspections of Amtrak's maintenance practices at all of Amtrak's maintenance facilities, including the Oakland Maintenance Facility. Further, Caltrans and CCJPA onsite representatives consistently inspect Amtrak's maintenance activities and review maintenance records with the Facility Manager. Amtrak received no FRA violations associated with overdue PM during the audit period.

c. **DOF Statement**

*As a consequence, the Capitol Corridor Joint Powers Authority (CCJPA) assessed Amtrak penalties totaling \$151,600 for the fiscal year ended September 30, 2007. In response, Amtrak identified employee turnover and training as contributing factors; however, during the time PM on state-owned coaches fell into delinquency, Amtrak continued to perform maintenance work for third parties (refer to Observation 2 below).*

**Amtrak Response**

Amtrak is unable to determine how DOF concluded \$151,600 was assessed for fiscal year ended September 30, 2007. At Amtrak's May 15, 2008 meeting with DOF representatives, DOF staff were unable to provide adequate documentation that supported the finding of \$151,600. DOF staff indicated that they relied upon information received from CCJPA in an email and provided no affirmative confirmation that an independent verification of the subject amount was performed. They also indicated that the \$151,600 amount could be for a different period, and not for FY2007, as stated in the DOF draft report. DOF agreed to try to locate the CCJPA email to confirm the applicable period. On May 19, 2008, DOF forwarded an email from CCJPA's representative to DOF indicating that the applicable period for the \$151,600 alleged amount was for FY2007.

Amtrak also questioned DOF staff as to what information it relied upon to conclude that Amtrak identified employee turnover and training as contributing

factors. DOF pointed to an auditor's working paper, documenting DOF's interview on August 14, 2007 with Mr. Haslam (CCJPA Oversight Manager), as support for the statement on employee turnover and training. Amtrak staff found no interview notes in the auditor's working papers to indicate that Amtrak employees or managers provided the subject cause.

As discussed in subsection (a) above, Amtrak successfully disputed PM assessments for the period October 1, 2006 through March 31, 2007, as there is no process in either the RMTA or operating agreements as to when a PM assessment can be triggered. Further, as outlined in Amtrak's PM assessment dispute letters, the vast majority of late PMs were due to causes outside Amtrak's control (e.g., rolling stock that had been scheduled for the PM Line was not available due to untimely warranty repair work being performed by another Caltrans contractor.) And although a credit was mistakenly issued to CCJPA for assessments levied for the months of April through September, 2007, Amtrak is in the process of disputing PM assessments for that period and will reverse the credit error pending resolution of the assessment dispute.

See also Amtrak's Response to Observation 2 regarding third party work performed at the Oakland Maintenance Facility.

d. **DOF Recommendation 1**

*Amtrak should timely complete and document all preventative maintenance according to the terms of the Agreement.*

**Amtrak Response**

Except for circumstances beyond Amtrak's control, as noted in Exhibits A and B, Amtrak consistently performs timely preventative maintenance on Caltrans-owned rolling stock in accordance with the FRA regulations and the terms of the RMTA. As outlined above, Amtrak properly documents and maintains maintenance records in accordance with the RMTA.

There appears to be insufficient supporting documentation in the DOF representative's working papers and supporting records to have concluded that Amtrak has failed to timely complete and document preventative maintenance in accordance with the RMTA.

e. **DOF Recommendation 2**

*The California Department of Transportation (Caltrans) (via the CCJPA) should continue to assess Amtrak penalties and withhold funds for delinquent preventative maintenance.*

**Amtrak Response**

Amtrak recommends that the parties should clarify the process under which CCJPA may assess penalties for late preventative maintenance through a formal amendment to the RMTA and operating agreements that, among other things, expressly addresses the conflicts Amtrak has described above.

f. **DOF Recommendation 3**

*Caltrans should consider other maintenance providers in the event Amtrak is unable to consistently meet the required maintenance schedules.*

**Amtrak Response**

Amtrak is fully capable of meeting and has materially met the required maintenance schedules. Amtrak would object to any third party maintenance provider.

**OBSERVATION 2: Amtrak's Maintenance of Non-State Equipment is Contrary to the Intended Use of the Oakland Facility**

a. **DOF Statement**

*Amtrak regularly maintains non-state and non-Amtrak equipment at the Oakland facility. The maintenance of this equipment is contrary to state's intended use of the Oakland facility, and such work may interfere with the timely maintenance of state equipment. In 2001, the state and Amtrak jointly agreed to construct the Oakland facility with the express purposes of maintaining the state-supported Capitol Corridor and San Joaquin trains, and the Amtrak-supported California Zephyr. Significant financial resources were allocated to the project (\$35.7 million of state and \$18.2 million of Amtrak cash funds). Since the facility opened in 2004, Amtrak has also provided maintenance and storage services for other clients, such as Caltrain and private railcar owners (referred to as third parties), without Caltrans' approval. This third-party work is not permitted under the capital improvement or operating agreements, and Amtrak continues to undertake this work (while behind in performing state maintenance) using substantially state-funded facilities and equipment.*

**Amtrak Response**

While Amtrak cannot speak to the State's "intended use" of the Oakland Maintenance Facility, the capital funding agreement executed by Amtrak and Caltrans for construction of the Oakland Maintenance Facility (Contract No. 75A0154) does not in any way restrict or preclude Amtrak from performing maintenance on equipment other than State- or Amtrak-supported intercity trains. If the State had intended Amtrak to discontinue third party work (which Amtrak had performed at the predecessor Oakland facility for decades), the State should have sought to include such a restriction in Contract No. 75A0154. As Amtrak demonstrates below, the third party work performed at the Oakland Maintenance Facility does not affect whether preventative maintenance of state-owned equipment is effectively or timely performed. Accordingly, Amtrak sees no basis for the State at this time seeking to restrict Amtrak from performing third party work at the Oakland Maintenance Facility; neither Contract No. 75A0154 nor the annual operating agreement contains such a limitation or restriction. The fact that Amtrak has offered to negotiate an agreement with Caltrans to assess Amtrak clients a surcharge to be applied to maintenance/repair at the Oakland Maintenance Facility in no way undermines Amtrak's rights as described here and following.

Additionally, when a contract contains a "specific list of exceptions[, it] implies that the specific list is exclusive, and the Court should not imply another exception." *In Re Air Passenger Computer Reservations System Antitrust*

*Litigation*, 724 F. Supp. 744, 750 (C.D. Cal. 1989). In this instance, Article S of Contract No. 75A0154 included a specific list of conditions, implying that the list is “exclusive.” Because neither Article S nor any other provisions of Contract No. 75A0154 prohibit Amtrak from performing third party work, the Contract cannot be interpreted to imply such a restriction. Amtrak had performed third party work at the predecessor Oakland facility for decades and continues this practice at the Oakland Maintenance Facility. Had the State intended to restrict Amtrak’s continued third party maintenance practices, it should have negotiated Contract No. 75A0154 to *specifically exclude* third party work, or limit the function of the Facility *exclusively* to maintenance of State- or Amtrak-supported rolling stock.

Pursuant to Section R of the Amtrak/Caltrans Contract No. 75A0154, Amtrak and Caltrans own the Project improvements to the Oakland Maintenance Facility as joint tenants. “One of the essential unities of a joint tenancy is that of possession. Each tenant owns an equal interest in all of the fee and each has an equal right of possession to the whole. Possession by one is possession by all.” *Schoenmann v. DeLeon*, 311 B.R. 539, 544 (N.D. Cal. Bkr. 2004); *Swartzbaugh v. Sampson*, 11 Cal App. 2d 451 (Ct. App. 4<sup>th</sup> Dist., 1936). Therefore, under California law, joint tenants have equal, not proportional, rights to the entire property. Consequently, Amtrak and Caltrans, as joint tenants, share equal rights to the Project improvements. Caltrans is not entitled to a proportionate share based on its funding contribution. Rather, by establishing joint tenancy, Contract No. 75A0154 granted equal ownership to Amtrak and Caltrans.

Further, “under property principles, each co-tenant has a right to full use of the property limited only to the other tenant’s right to such use.” *United States v. Washington*, 761 F.2d 1404, 1408 (9<sup>th</sup> Cir. 1985). Accordingly, Amtrak has a right to use the Oakland Maintenance Facility to perform third party work, as long as such work does not limit Caltrans’ right to use the Facility.

In response to DOF’s assertion that third party work performed at the Oakland Maintenance Facility may interfere with the timely maintenance of state equipment, Amtrak respectfully, but categorically, disagrees. Amtrak analyzed the percentage of costs associated with third party work performed at the Oakland Maintenance Facility against total costs for the Facility and found that less than 1% of the total costs are associated with performance of third party work.

Amtrak would also like to note that Contract No. 75A0154 does not limit Amtrak’s ability to maintain Amtrak-supported intercity service only to the California Zephyr. Any Amtrak intercity train (e.g., the Coast Starlight) may be serviced at the Oakland Maintenance Facility.

b. DOF Statement

*Moreover, controls and procedures are not in place to assign third-party work a lower priority or confirm Amtrak has not billed the state for this work. For example, although Amtrak supervisors indicated this work was performed only when there is spare capacity and only on a volunteer basis or overtime, Amtrak staff were observed turning the wheels on a Caltrain locomotive during regular paid hours. As discussed in Observation 4, Amtrak's accounting system is unable to clearly establish that these costs are properly excluded from amounts billed to the state.*

Amtrak Response

While there is no written procedure in place to assign third party work a lower priority, the practice at the Oakland Maintenance Facility is to assign a work element to capture the cost, and instructions are issued from the Amtrak Superintendent's office that the Amtrak-supported and State-supported work take priority. Third party work is usually performed on an overtime basis, which is reflected in the work element assigned to the project, and every effort is made to assure no impact to the Amtrak- or State-supported services.

In Amtrak's May 15, 2008 meeting, DOF indicated that the statement "*controls and procedures are not in place to assign third party work a lower priority*" was based upon an interview with M. Hilliard (Caltrans). According to the interview notes contained in the auditor's working papers, Mr. Hilliard indicated that Amtrak did not seek Caltrans or CCJPA input on planning the facility's daily maintenance schedule, and that third party work would arrive at the facility without Caltrans' prior approval. Neither the RMTA nor Contract No. 75A0154 requires Amtrak to seek daily input from Caltrans and CCJPA on planning the daily maintenance schedule and, in fact, those agreements specifically assign responsibility for day-to-day activities to Amtrak. Nonetheless, Amtrak does seek input from the onsite Caltrans representatives through the Caltrans-funded Maintenance Scheduling Manager position, who is responsible for scheduling PM maintenance, equipment rework, wreck repair and warranty work.

As discussed in section (a) above, neither the RMTA nor Contract No. 75A0154 restrict Amtrak from performing third party work at the Oakland Maintenance Facility. At the May 15, 2008 meeting with Amtrak, DOF admitted that no verification work was performed to gather sufficient and appropriate evidence of actual instances to indicate that Amtrak had provided priority to third party work over Caltrans rolling stock maintenance.

There are controls and procedures in place to assure Amtrak does not bill the state for third party work. As noted in subsection (a) above, the amount of third party work performed at the Oakland Maintenance Facility is insignificant compared to

the Amtrak-supported and State-supported maintenance work. The cost of reimbursable work performed for third parties is captured in discrete account codes that are excluded from the cost pool that is allocated to trains and billed to the State.

c. **DOF Statement**

*Caltrans requested Amtrak to provide a full accounting of third-party maintenance costs and revenues (which this review also attempted to obtain); however, as of the date of this report Amtrak has not provided this information.*

**Amtrak Response**

Amtrak is under no contractual or legal obligation to provide the State with a full accounting of all third party maintenance costs and related revenue. However, to the extent Caltrans needs to review the materials pursuant to an audit, such information can be reviewed by the auditors to assure that no third party costs are captured in the cost pools allocated to the State-supported trains.

d. **DOF Statement**

*Caltrans was also in the process of negotiating a separate agreement with Amtrak that would permit third-party work. The proposed agreement would require Amtrak to assess its clients a special surcharge to be used for facility maintenance and repair with the surcharge funds controlled by Amtrak. Any such proposal is contrary to the state's intended use of the facility.*

**Amtrak Response**

While Amtrak is under no obligation by contract or by law to share in the revenue it generates from third party work performed at the Oakland Maintenance Facility, in the spirit of the state partnership, Amtrak had offered in its negotiations with Caltrans to include in Amtrak's price proposals for third party work an additional facility fee which would serve as a small revenue source for the Oakland Maintenance Facility. The fees collected would be separately accounted for and used solely for improvements to the Oakland Maintenance Facility. As noted above, third party work performed at the Facility generates minimal revenue, so the facility fees generated from this source will not be significant.

e. **DOF Recommendation 1**

*Amtrak should discontinue performing maintenance and storage services for non-state locomotives and coaches (except California Zephyr) at the Oakland facility.*

**Amtrak Response**

As described in subsection (a) above, Amtrak intends to continue to perform third party work at the Oakland Maintenance Facility.

f. **DOF Recommendation 2**

*Amtrak should provide Caltrans with a full accounting of all third-party maintenance costs and related revenue since the Oakland facility opened in 2004.*

**Amtrak Response**

Amtrak is under no contractual or legal obligation to provide the State with a full accounting of all third party maintenance costs and related revenue. However, to the extent Caltrans needs to review the materials pursuant to an audit, such information can be provided to assure that no third party costs are captured in the cost pools allocated to State-supported trains.

g. **DOF Recommendation 3**

*Amtrak should remit to Caltrans third-party revenue (earned since the Oakland facility opened) proportionate to the state's investment in the facility (approximately 66 percent).*

**Amtrak Response**

Pursuant to 49 U.S.C. § 24101(d), Amtrak is encouraged to make agreements with the private sector and undertake initiatives that are consistent with good business judgment and designed to maximize its revenues and minimize federal subsidies. Further, Amtrak is operated and managed as a for-profit corporation as required by 49 U.S.C. § 24301(a)(2).

Contract No. 75A0154 does not in any way restrict or preclude Amtrak from performing maintenance on equipment other than State- or Amtrak-supported intercity trains, nor does it provide for the parties to share proportionately in any revenues generated from such activities.

Under California joint tenancy law, "One tenant may not maintain an action against his cotenant who is in sole possession of the property to recover...for profits derived from the property by means of the occupant's own labor." *Schell v. Schell*, 74 Cal. App. 2d 785, 788 (Ct. App. 4<sup>th</sup> Dist. 1946) (citing *McWhorter v. McWhorter*, 99 Cal. App. 293, 296 (Ct. App. 3d Dist. 1929)). Therefore, in this instance, Caltrans is not entitled to Amtrak's profit derived from using the property to service third party trains. Amtrak's profit was the result of its own labor and as a result does not have to be shared proportionately with Caltrans.

h. **DOF Recommendation 4**

*Caltrans should abandon the proposed facility maintenance and surcharge agreement.*

**Amtrak Response**

This recommendation appears completely contrary to the best interests and the Oakland Maintenance Facility.

**OBSERVATION 3: Amtrak Does Not Make Parts Inventories Accessible to All Maintenance Crews**

a. **DOF Statement**

*Amtrak does not make new parts inventories accessible to second-shift Service & Inspection (S&I) crews, and needed parts are unnecessarily removed from other coaches and locomotives. Second-shift S&I crews generally work from 2:00 p.m. to 10:00 p.m., during which time the parts warehouse is closed after 5:00 p.m.*

**Amtrak Response**

Amtrak staff met with DOF representatives in Sacramento on May 15, 2008 to review DOF supporting documentation and working papers with regard to the conclusions set forth above. DOF staff indicated that their conclusion regarding new parts inventory was based partially upon an interview with an Amtrak S&I supervisor. Amtrak staff were unable to locate, nor were they shown, any work papers and/or supporting data and records in DOF's audit file that indicated DOF had verified the validity of the supervisor's statements, discussed the issue with Amtrak management, identified records to reflect that parts were removed from a car or cars, or performed observations of any of the activities cited in their conclusion.

The Oakland warehouse is accessible on a 24/7 basis, but is unstaffed between the hours of 5 p.m. to 11:59 p.m. While the parties mutually agreed in July 2007 to eliminate the second shift material control clerk and assign a Master Key to all General Foremen, based on the concerns raised by the DOF in their audit, Amtrak believes material control accessibility should be reviewed.

There is a weekly working stock of high usage items available to second shift Service & Inspection employees that includes such items as brake shoes, windows, and seat covers, that are stored next to the service tracks. Additionally, these work areas have over 400 products available by card-access vending machines. This system also applies to the Locomotive and Preventative Maintenance Lines.

b. **DOF Statement**

*When the warehouse is closed, second shift crews routinely remove needed parts from coaches and locomotives on the preventative maintenance line for use on priority turnaround trains. This is an expensive practice that incurs additional labor and parts costs; first to remove the used part, then to reinstall a new part.*

*Further, the priority turnaround train is released with a used and potentially worn part.*

**Amtrak Response**

This statement is simply not true. Removal of parts from other coaches or locomotives may occur in an emergency to minimize any passenger service delay, but is neither a standard operating procedure nor a common practice.

c. **DOF Statement**

*In addition, as discussed in Observation 1, Amtrak does not consistently document the disposition of requisitioned parts.*

**Amtrak Response**

Section 6.1 of the RMTA states that “Amtrak will institute a materials control and management system for the Northern California Pool that will maximize efficiency, reduce inventory cost through forecasting of material requirements, and control all phases of the materials handling function. CCJPA shall have reasonable access to this materials control and management system. A complete parts inventory will be maintained and monitored, and an annual audit will be performed by CCJPA.”

Amtrak is compliant with Section 6.1 of the RMTA. All materials leaving Material Control are primarily requisitioned out on form NRPC2070, a copy of which is attached hereto as **Exhibit E**. The document is part of Material Control inventory records and a list of materials that have been requisitioned out of Caltrans custodial stores 463 and 464 are provided in a month-end report to Caltrans, along with a monthly inventory balance sheet, copies of which are attached hereto as **Exhibit F**. However, Amtrak’s available inventory control documentation system consists of more than the month-end reports. Facility personnel (including onsite CCJPA and Caltrans representatives) have access to real-time itemized transactional detail. Querying tools are used to facilitate managerial accounting and to identify potential errors in disposition identification. A segregation of duties provides for independent review of inventory transactions via budget variance analysis and other performance appraisals.

d. **DOF Recommendation 1**

*Amtrak should keep the parts and supplies warehouse open and accessible 24-hours.*

**Amtrak Response**

As noted previously, the Oakland warehouse is accessible 24/7 and parts are available to the employees servicing the trains. Six trains are dispatched on third shift and five trains are dispatched on first shift. No trains are dispatched on second shift. On July 1, 2007, the second shift Material Control clerk was reassigned to third shift and first shift coverage was extended to 5:00 p.m. To date, no problems have been reported. Furthermore, the warehouse is accessible during the second shift as the General Foreman has a master key to the warehouse. Caltrans representatives participated in the decision to make this change.

e. **DOF Recommendation 2**

*Except in emergency situations as defined in the Agreement, Amtrak should refrain from removing parts from coaches and locomotives for use on other trains.*

**Amtrak Response**

Removal of parts from other units may occur in an emergency to minimize delays to passenger service, but is not a common practice.

f. **DOF Recommendation 3**

*Amtrak should document the disposition of all requisitioned parts.*

**Amtrak Response**

As discussed in subsection (c) above, Amtrak properly documents the disposition of all requisitioned parts.

**OBSERVATION 4: Amtrak's Cost Accounting Process is Not Transparent And Impairs Effective Management**

a. **DOF Statement**

*Amtrak's Route Profitability System (RPS), used to allocate operational costs to the state's three routes (including maintenance of the Northern California fleet), is unaccountable and unacceptable for purposes of administering the state-funded trains. The system provides no assurance that the amounts billed to the state are the true and actual costs. This weakness goes beyond maintenance costs and applies to all of Amtrak's claimed operational costs. RPS is not transparent, does not provide a clear audit trail, and over-relies on the allocation of shared costs. Moreover, the system does not provide sufficient fiscal information for Oakland Amtrak or Caltrans staff to effectively monitor and control costs.*

**Amtrak Response**

The Route Profitability System (RPS) is not a cost accounting system, it is an allocation system. Its use was explicitly agreed upon by Amtrak and Caltrans through the annual operating agreement. Some costs, such as labor, are 100% allocated to a route. The majority of the costs, however, are allocated to routes based on a variety of allocation methodologies and statistical drivers. In either case, 100% of the costs can be traced back to the general ledger. The simplest way to explain the process is:

All entries to the general ledger contain account code information. At its base form it includes five distinct pieces; the responsibility center, the business line, the account number, the function code and the location code (all together, the "ACK" code). Management reports can be run that will aggregate the data by any of these pieces of the ACK or combination of pieces (Income Statements, Balance Sheets, Departmental Variance Reports, etc.). The RPS system is a stand alone system that takes the general ledger data and assigns or allocates the costs to routes based on the various ACK pieces using, where appropriate, statistical drivers.

As information, Amtrak is in the process of developing a new cost accounting system as part of a comprehensive overhaul of its entire financial system. This project is in the beginning stages and Amtrak anticipates that it will be completed in five to seven years. Even then, not all costs will be directly assignable to routes. A system to allocate the remaining, shared costs will still be needed. As part of the transition to a new accounting system, a replacement for the RPS system is also being developed. While the new allocation system (called APT, Amtrak Performance Tracking) will incorporate new procedures for allocating costs, it will still be an allocation system.

b. DOF Statement

- *Amtrak's cost identification and allocation methods are not clear and supporting records are not readily available. During the federal fiscal year ended September 30, 2006, the state paid Amtrak approximately \$17 million to maintain the Northern California Fleet. When asked how the system produces output costs attributable to the state's fleet, Amtrak management did not provide a clear explanation and kept referring reviewers to the RPS allocation reports. These reports provide only the final allocated amounts by cost code, but no details or linkage back to originating cost pools. Source documents and books of original entry supporting the allocations (e.g. general and subsidiary ledgers, payroll ledgers, vendor invoices, utility bills, etc) were requested but not provided.*

*As a result, Amtrak has not substantiated that the Oakland maintenance costs input to RPS and reimbursed by the state on the 403(b) invoices were accurate, supported, and properly attributable to the state's fleet. There is no documented assurance that Amtrak's third-party maintenance costs were excluded from the state's costs. Amtrak offered to make the documents available for review in Philadelphia or Washington, DC; however, it indicated that the reviewers would be required to travel there for a potentially extended period.*

Amtrak Response

DOF representatives requested Amtrak to provide copies of 100% of the FY06 invoices that were charged to the Oakland Maintenance Facility. This is an unreasonable request based on the sheer volume of data involved. Amtrak extended an offer to the DOF representative to visit Amtrak's Washington, DC and Philadelphia, PA offices to perform a sample audit of one month's worth of source data, attached as **Exhibit G**. However, Amtrak's offer was not accepted. Had the DOF representative come to Amtrak's Corporate Headquarters and requested a random sample of data, the Washington or Philadelphia offices could have demonstrated 100% traceability between amounts reported in the general ledger and RPS.

c. DOF Statement

- *Amtrak over-relies on cost allocations in lieu of direct charges. The majority of the costs billed to the state were derived from a shared cost allocation process. As a consequence, the allocated costs may not provide a true measure of the route's actual performance. Generally accepted accounting principles encourage organizations to directly identify as many costs as possible, and allocate any remaining costs based on a*

*documented allocation methodology. Amtrak's Oakland office has no control over this process, which is administered by its corporate headquarters.*

#### Amtrak Response

DOF states "Generally accepted accounting principles (GAAP) encourage organizations to directly identify as many costs as possible, and allocate any remaining costs based on documented allocation methodology." Amtrak adamantly states that the RPS system adheres to this tenet. A recent study of mechanical costs found that the Oakland Maintenance Facility responsibility centers were properly charged to the Capitols and the San Joaquins while a small percentage was allocated to Amtrak, recognizing the work that is also performed on Amtrak equipment in the Facility. The result of the study was presented to CCJPA on April 3, 2008, and can be made available to DOF upon request.

#### d. DOF Statement

- *Oakland Amtrak and Caltrans supervisory and management staff are unfamiliar with the RPS cost allocation process, unable to explain or interpret the output reports, and unable to reconcile the reported and billed costs back to the original input. From a managerial standpoint, these reports are of little value and unusable in directing daily operations and controlling costs. There is presently no source of actual cost information at the Oakland facility to effectively manage operations.*

*Section 2.3.2 of the Agreement requires Amtrak to keep full and accurate accounting records in accordance with generally accepted accounting principles of all costs associated with the Agreement and requires Amtrak to cooperate fully with the state in the explanation of the contents of said records.*

#### Amtrak Response

Several financial management information systems are available to Oakland facility managers. The managers have full access to payroll, inventory management, procurement, and general ledger content and analysis which they continually use as part of Amtrak's internal controls. The Finance department will work with Amtrak management in Oakland so that they better understand the variety of reports and tools at their disposal.

In regard to Section 2.3.2 of the RMTA, Amtrak keeps full and accurate accounting records in accordance with generally accepted accounting principles. This is confirmed by KPMG annually in their Independent

Audit Report. A copy of KPMG's FY07 Audit Report of National Railroad Passenger Corporation is attached as **Exhibit H**. Had the California DOF representatives elected to travel to Washington or Philadelphia where such records are stored, they would have been in a position to verify the data. Amtrak's offer to the DOF auditors to review the records in our Washington and/or Philadelphia offices demonstrates that Amtrak was cooperating fully with the State. Additionally, considerable amounts of data were sent to the DOF representative electronically along with contact information in case the auditor had any questions, as set forth in attached **Exhibit I**. No one listed as a contact was ever contacted by the DOF; therefore, it was assumed the state's representatives understood the material provided.

e. **DOF Recommendation 1**

*Amtrak should discontinue billing the state based on the RPS allocations, and develop an alternative process that separately identifies and records all direct state operating costs.*

**Amtrak Response**

Amtrak maintains its accounting records in full GAAP compliance. RPS then utilizes that data to allocate, both directly and via statistical drivers, costs to the routes. Because not all costs incurred by the state are direct costs, some system of allocation rules has to be used. Whether it is RPS or its replacement system, APT, the results will be materially the same.

f. **DOF Recommendation 2**

*Caltrans should determine an appropriate and fixed allowance for indirect costs as a percentage of total direct costs.*

**Amtrak Response**

The Amtrak/Caltrans annual operating agreement explicitly established use of the RPS system as the basis for allocating costs to California for Amtrak's state-supported services. This allocation method is used consistently for Amtrak's services nationwide.

g. **DOF Recommendation 3**

*Amtrak should retain the related cost reports and all supporting documentation for billed costs (payroll records, vendor invoices, utility bills, etc.) in Oakland for program management and audit.*

Amtrak Response

Amtrak does maintain certain financial records, documents and reports in Oakland, consistent with the needs and requirements of directing daily operations. Amtrak concurrently avails itself of the efficiencies generated through a centralized national supply chain and information management systems, similar to many firms. Access to the Corporation's source documents, inclusive of those existing locally, is available upon request, in accordance with the terms of the RMTA and operating agreements.

Amtrak is a national corporation with headquarters in Washington, DC and support offices in Philadelphia, PA. It is inefficient and expensive to keep duplicate records at all field offices. Per the RMTA and operating agreements, authorized personnel are welcome to visit either our Washington or Philadelphia offices to inspect source documentation.

**OBSERVATION 5: Opportunities Exist for Caltrans to Better Control the State-Funded Rail Program**

a. **DOF Statement**

*Caltrans has not been successful in holding Amtrak accountable and does not appear to exercise sufficient authority over Amtrak's Oakland maintenance operations. The other observations in this report are partly a result of this weakness. The problems stem from Caltrans' assignment of much of the program's control to Amtrak and the CCJPA, and the execution of poorly written contracts that do not adequately protect the state's interests, or ensure accountability.*

*To Caltrans' credit, it has made several attempts to exercise more authority, but with limited success. There are numerous letters and emails to Amtrak from both Caltrans and the CCJPA requesting that Amtrak address various performance issues (primarily late preventative maintenance), and the assessment of fines, but the problems persist. Caltrans has not been successful in:*

- *Requiring Amtrak to consistently comply with the required maintenance schedules and related documentation.*
- *Preventing Amtrak from performing third-party maintenance at the Oakland facility.*
- *Obtaining satisfactory explanations and documentation from Amtrak regarding claimed costs and third-party revenues.*
- *Requiring Amtrak to take direction from Caltrans' on-site manager.*
- *Enforcing the terms of cost-share agreements with Amtrak.*

**Amtrak Response**

The agreement governing maintenance of Caltrans-owned rolling stock at the Oakland Maintenance Facility is the RMTA. The parties to the RMTA are Amtrak and CCJPA. As noted in Section 1.4 of the RMTA, Caltrans elected not to be a party to this Agreement. Section 2.3.1 of the RMTA specifically directs Amtrak managers assigned to the Capitol Corridor service to have experience in the area of railroad passenger car and locomotive maintenance and to have authority to make decisions in a timely manner concerning the daily operations and management of the equipment maintenance operations and related functions. Most importantly, the RMTA specifies that Amtrak is required to administer and manage all functions involved in providing the equipment maintenance operations. All personnel provided by Amtrak involved in any aspect of providing the equipment maintenance operations in the Capitol Corridor are required to be employees of Amtrak or its contractors, and not of CCJPA or the

State, and to be subject to the direction, supervision and control of Amtrak, and not the CCJPA or the State.

Additionally, Article R(1) of Contract No. 75A0154 (the capital funding agreement for the Oakland Maintenance Facility) specifically provides that upon completion of the Facility and subsequent to execution of an Operations and Maintenance Agreement acceptable to both parties, Amtrak shall accept control of and shall thereafter repair and maintain the facility as set forth in the Operations and Maintenance Agreement.

Finally, Amtrak acknowledges that there are two Amtrak managers at the Oakland Maintenance Facility whose positions are 100% funded by Caltrans through the annual operating agreement. Those employees report to an Amtrak manager and receive specific work direction from the Caltrans Manager of Equipment, Track and Inspection or his on-site representative. However, providing specific work direction to two Amtrak managers should not be interpreted to negate the clear language in the RMTA and Contract No. 75A0154 that Amtrak is responsible for directing, supervising and managing its employees in the daily maintenance activities within the Oakland Maintenance Facility.

b. **DOF Statement**

*Improvement is needed. As discussed below, there are actions Caltrans can take to enhance its oversight effectiveness.*

(1) **Caltrans Does Not Verify Amtrak's Costs**

*Controls and procedures are not in place to verify expenditures or identify variances in Amtrak's claimed costs prior to payment. Caltrans appeared unfamiliar with the various expenditure line items on Amtrak's monthly 403(b) invoices, and was unable to explain significant cost variances. Invoices are paid without question. A more structured expenditure review process would help address this weakness.*

**Amtrak Response**

This DOF statement is addressed to Caltrans so Amtrak declines to comment.

(2) **Contracts Do Not Protect the State's Interests**

*There have been at least twelve different agreements executed with Amtrak since 1994 providing for capital improvements, transfer of fleet oversight, maintenance, and operations. Several of these agreements did not appear to provide Caltrans with sufficient management and oversight authority, and some agreements specifically assigned management and oversight to*

*Amtrak and the CCJPA. Further, Caltrans expressly elected not to be a party to the Renegotiated Maintenance and Transfer Agreement between Amtrak and CCJPA. Irrespective of the specific contract language, Caltrans has a fiduciary responsibility to exercise ultimate authority over the state's rail program and to step in when needed to correct problems. Authoritative contract language giving Caltrans complete authority on all program and operational decisions (and execution of this authority) would help mitigate this weakness.*

*Moreover, Caltrans and its delegate (CCJPA) have entered into agreements with Amtrak that contain poorly written or vague fiscal provisions that actually impair the state's ability to manage and enforce Amtrak's compliance. For example:*

- *The Agreement for the Provision of Rail Passenger Service, dated October 1, 2006, Section 7(b), states that "Amtrak shall...make available such financial....data...as may be available in Amtrak's information retrieval system." This is a weak and unaccountable provision that permits Amtrak to control what information it provides the state, and still remain in full compliance. Observation 4 raised doubts about the system's ability to produce verifiable costs.*
- *The Renegotiated Maintenance and Transfer Agreement is silent in terms of defining when an assessment should be levied because of a late 120-day inspection. In response to assessed penalties, Amtrak has challenged Caltrans and CCJPA for clarification on this point.*

### **Amtrak Response**

This is a sweeping, and Amtrak believes, erroneous, assessment of the contracts and working relationships of the parties. As always in the next contract negotiations, Amtrak is willing to consider proposals that Caltrans may put forward.

#### **(3) On-Site Supervision is Not Effective**

*Caltrans has assigned one state employee to oversee the facility's daily operations in Oakland; however, this manager acknowledges not having sufficient authority to control or influence facility operations, and Amtrak does not appear to consistently take direction from him. Specific examples:*

- *Caltrans has been unable to ensure that Amtrak's Equipment Liaison Manager and Maintenance Scheduling Manager (state-funded Amtrak employees) consistently perform their required duties and accept specific work direction from Caltrans' on-site representative. In*

*practice, both employees frequently relegate Caltrans' direction to a lower priority. Recent correspondence indicates that Amtrak has redirected the Maintenance Scheduling Manager (without Caltrans' authorization) to perform other duties, and not those specified in the operating agreement. This may be a contributing factor in Amtrak's inability to timely perform preventative maintenance.*

#### Amtrak Response

The employees assigned to these positions are fulfilling the duties prescribed by the operating agreement. At the May 15, 2008 meeting, Amtrak reviewed the auditor's working papers relating to this issue and it appears that no independent validation of the correspondence referred to occurred. Amtrak could find no evidence of an interview with the incumbent in the Maintenance Scheduling Manager's position.

- *A September 14, 2007 letter from Caltrans' on-site manager to Amtrak "requesting" an immediate end to all third-party maintenance did not appear implemented. Such an important directive would have been more effective coming from Caltrans' executive management and presented as a requirement instead of a request*

#### Amtrak Response

Amtrak acknowledges receipt of the request described above (which Amtrak does not consider a directive); however, it appears that DOF did not consider Amtrak's response dated October 2, 2007, which is attached hereto as **Exhibit J**. As stated in its response to Observation 2, there is no legal or contractual basis upon which Amtrak should agree with Caltrans' onsite manager's request to end third party maintenance work.

- *On August 14, 2007 Caltrans was unable to prevent Amtrak from placing a rebuilt cab car into revenue service, in contravention of Caltrans' specific directive, and prior to being accepted by Caltrans for a return to service.*

#### Amtrak Response

As noted in Amtrak correspondence dated September 19, 2007 and again on November 19, 2007, the Caltrans' agent, CCJPA, directed Amtrak to place Cab Car 8313 in revenue service. Please see **Exhibit K** for the referenced correspondence. Amtrak indicated in its correspondence and reiterates here, that authority to return equipment

to revenue service will be obtained from Caltrans (rather than CCJPA) in the future.

c. **DOF Recommendation 1**

*Maintain a more visible on-site presence at the Oakland facility. Executives from Caltrans' Division of Rail should regularly visit the facility and actively participate in planning and oversight activities, and support its on-site manager. Require Amtrak to comply with the on-site manager's directives.*

**Amtrak Response**

As stated above, the RMTA specifically establishes that Amtrak will direct its employees in the performance of their work. Further Contract No. 75A0154 (the Capital Funding Agreement for the Oakland Maintenance Facility) established that upon completion of the Facility and execution of an Operations & Maintenance Agreement for the facility, Amtrak would control the day-to-day management of the facility. It is not contemplated in either agreement that Caltrans' onsite manager will give "directives" to Amtrak regarding the operations or management of the Oakland Maintenance Facility.

d. **DOF Recommendation 2**

*Require Amtrak and the CCJPA to amend the Renegotiated Maintenance and Transfer Agreement to include Caltrans as a party to the agreement, with specific provisions that designate Caltrans as the ultimate decision making authority for all matters involving the state-funded routes.*

**Amtrak Response**

Amtrak will not execute an agreement that transfers to the State or another entity the control of Amtrak's train operations, including its state-supported routes.

However, Amtrak is interested in amending the RMTA to address a variety of issues including better coordination of decisions by Caltrans and/or CCJPA that affect timely preventative maintenance and clarification of the process and timing of PM assessments, if and when caused by an Amtrak performance failure.

e. **DOF Recommendation 3**

*Amend the Agreement for the Provision of Rail Passenger Service requiring Amtrak to separately identify and record all direct state operations costs, and retain supporting documentation for management and audit (as described in*

*Observation 4). Reimburse Amtrak only for actual costs identified and claimed through this process.*

**Amtrak Response**

Please refer to Amtrak's responses to Observation 4.

f. **DOF Recommendation 4**

*Implement a stringent expenditure review process requiring verification of Amtrak's claimed costs, and including procedures for questioning or reducing invoices when necessary.*

**Amtrak Response**

As is set forth above, Amtrak's claimed costs are supported by the agreed-upon RPS system.

g. **DOF Recommendation 5**

*Enforce Amtrak's compliance with all contract requirements and directives, and assess Amtrak penalties for non-performance or non-compliance. Include specific language in the two aforementioned agreements on when and how penalties will be assessed for non-compliance.*

**Amtrak Response**

As is set forth throughout Amtrak's response, Amtrak has been in compliance with all contract requirements and directives.

## EVALUATION OF RESPONSES

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We have reviewed the Department of Transportation's (Caltrans) and the National Railroad Passenger Corporation's (Amtrak) responses and acknowledge Caltrans' agreement to implement a number of the recommendations. Exhibits referenced in Amtrak's response have been omitted in the interest of brevity. We acknowledge receipt and review of these exhibits.

Amtrak disagrees with some of the reported observations and recommendations on the basis of audit methodologies, such as reliance on interviews, e-mails, correspondence, and similar data. This information was obtained directly from Amtrak, the Capitol Corridor Joint Powers Authority (CCJPA), and Caltrans, and is considered authoritative for purposes of establishing facts and events. Amtrak did not provide additional information that has caused us to modify the reported information.

Amtrak makes a number of assertions about its obligations under the contracts. However, Finance's review was not solely to discern Amtrak's compliance with the existing contracts, but to determine whether the billing and maintenance practices that are in place support Caltrans' ability to obtain cost effective maintenance of state equipment, and result in the most cost effective use of the jointly-owned facility. For that reason, we believe that many of Amtrak's contractual authority arguments are misplaced.

In addition, Amtrak fails to address the concerns raised about the terms of the existing contracts, and the possibility that the contracts can be amended to better address Caltrans as an equal partner in the relationship. Amtrak recommends that the parties clarify one process embodied in the Renegotiated Maintenance and Transfer Agreement that it considers burdensome. We believe that a more constructive approach than the one Amtrak has taken would be for Amtrak, along with the CCJPA and Caltrans, to focus on the management issues raised in the Compliance Review, and to jointly agree to solutions for moving forward to provide the quality of operations and accountability that justify the state's investment in and continuing support of the Oakland facility.

Amtrak also spends significant effort to argue that it has the right, as a joint tenant, to use of the Oakland facility to perform third party work, without addressing the questions of whether that work interferes with the work that is the contractually stated purpose of the jointly-financed facility.

The observations and recommendations in this report provide both Caltrans and Amtrak latitude in developing appropriate corrective actions. Implementation of the recommendations will help strengthen control and accountability over the Oakland facility, and achieve the goals of safe and cost-effective intercity rail service in California.