

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688

BOARD MEETING AGENDA

December 6, 2012

9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, December 6, 2012, in the BART Board Room, Kaiser Center 20th Street Mall – Third Floor, 344 – 20th Street, Oakland, California.

Members of the public may address the Board of Directors regarding any matter on this agenda. Please complete a “Request to Address the Board” form (available at the entrance to the Board Room) and hand it to the Secretary before the item is considered by the Board. If you wish to discuss a matter that is not on the agenda during a regular meeting, you may do so under General Discussion and Public Comment.

Any action requiring more than a majority vote for passage will be so noted.

Items placed under “consent calendar” are considered routine and will be received, enacted, approved, or adopted by one motion unless a request for removal for discussion or explanation is received from a Director or from a member of the audience.

Please refrain from wearing scented products (perfume, cologne, after-shave, etc.) to these meetings, as there may be people in attendance susceptible to environmental illnesses.

BART provides service/accommodations upon request to persons with disabilities and individuals who are limited English proficient who wish to address BART Board matters. A request must be made within one and five days in advance of Board meetings, depending on the service requested. Please contact the Office of the District Secretary at 510-464-6083 for information.

Rules governing the participation of the public at meetings of the Board of Directors and Standing Committees are available for review on the District's website (<http://www.bart.gov/about/bod>), in the BART Board Room, and upon request, in person or via mail.

Meeting notices and agendas are available for review on the District's website (<http://www.bart.gov/about/bod/meetings.aspx>), and via email or via regular mail upon request. Complete agenda packets (in PDF format) are available for review on the District's website no later than 48 hours in advance of the meeting. Those interested in being on the mailing list for meeting notices (email or regular mail) can do so by providing the District Secretary with the appropriate address.

Please submit your requests to the District Secretary via email to BoardofDirectors@bart.gov; in person or U.S. mail at 300 Lakeside Drive, 23rd Floor, Oakland, CA 94612; fax 510-464-6011; or telephone 510-464-6083.

Kenneth A. Duron
District Secretary

Regular Meeting of the
BOARD OF DIRECTORS

The purpose of the Board Meeting is to consider and take such action as the Board may desire in connection with:

1. CALL TO ORDER

- A. Roll Call.
- B. Pledge of Allegiance.
- C. Introduction of Special Guests.
2012 Holiday Toy Drive Recipient: Tri-Valley Haven, Livermore.

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meetings of October 11, 2012, and November 15, 2012.* Board requested to authorize.

3. ADMINISTRATION ITEMS

Director Sweet, Chairperson

- A. Approval of New Employee Relocation Expense Reimbursement.* Board requested to authorize.
- B. Approval of District Veteran's Preference in Hiring Policy.* Board requested to authorize.
- C. Resolution of Project Compliance and Initial Project Report for Assembly Bill 1171 Funds for the Proposed Livermore Extension Project Environmental Phase Activities.* Board requested to adopt.

4. ENGINEERING AND OPERATIONS ITEMS

Director Fang, Chairperson

- A. Resolution Adopting Modifications to the Warm Springs Extension Project.* Board requested to adopt.
- B. Change Orders to Contract No. 02ED-110, Warm Springs Extension, Fremont Central Park Subway, with Shimmick Construction Co. Inc./Skanska USA Civil West California District Inc./a Joint Venture.*
 - a. Nesting Bird Deterrents – 2011 (C.O. No. 8)
 - b. Schedule Delay Avoidance Measures – 2011 (C.O. No. 44)
 - c. Schedule Delay Avoidance Measures – 2012 (C.O. No. 45)Board requested to authorize.
- C. Oakland Airport Connector Project: Quarterly Update.* For information.

5. PLANNING, PUBLIC AFFAIRS, ACCESS, AND LEGISLATION ITEMS

Director Blalock, Chairperson

NO ITEMS.

6. GENERAL MANAGER'S REPORT

NO REPORT.

7. BOARD MATTERS

- A. Report of the Citizen Review Board.* For information.
- B. Board Member Reports. For information.
(An opportunity for Board members to provide brief reports on meetings attended at District expense.)
- C. Roll Call for Introductions.
(An opportunity for Board members to introduce a matter for consideration at a future Committee or Board Meeting or to request District staff to prepare items or reports.)

8. GENERAL DISCUSSION AND PUBLIC COMMENT

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P.O. Box 12688, Oakland, CA 94604-2688

Board of Directors
Minutes of the 1,664th Meeting
October 11, 2012

A regular meeting of the Board of Directors was held October 11, 2012, convening at 9:13 a.m. in the Board Room, 344 20th Street, Oakland, California. President McPartland presided; Kenneth A. Duron, District Secretary.

Directors present: Directors Blalock, Fang, Keller, King, Murray, Raburn, Radulovich, Sweet, and McPartland.

Absent: None.

Director Fang exited the Meeting.

Consent Calendar item brought before the Board was:

1. Approval of Minutes of the Meetings of September 7, 2012 (Special), and September 13, 2012 (Special).

Director Blalock requested that the September 7 Minutes be amended to reflect that he had exited the Meeting at 10:00 a.m. With that amendment, Director Sweet moved that the Minutes of the Meetings of September 7, 2012 (Special), and September 13, 2012 (Special), be approved. Director Murray seconded the motion, which carried by unanimous roll call vote. Ayes – 8: Directors Blalock, Keller, King, Murray, Raburn, Radulovich, Sweet, and McPartland. Noes – 0. Absent – 1: Director Fang.

Consent Calendar report brought before the Board was:

1. Audit of Directors' Use of District Property for Fiscal Year 2012.

President McPartland announced that the Board would enter into closed session under Item 3-A (Conference with Labor Negotiators) of the regular meeting agenda, and that the Board would reconvene in open session at the conclusion of the closed session.

The Board Meeting recessed at 9:16 a.m.

The Board reconvened in closed session at 9:20 a.m.

Directors present: Directors Blalock, Keller, King, Murray, Raburn, Radulovich, and McPartland.

Absent: None. Directors Fang and Sweet entered the closed session later.

Directors Fang and Sweet entered the Meeting.

The Board Meeting recessed at 9:41 a.m.

The Board reconvened in open session at 9:46 a.m.

Directors present: Directors Blalock, Fang, Keller, King, Murray, Raburn, Radulovich, Sweet, and McPartland.

Absent: None.

President McPartland brought the matter of Training Session: Training in General Ethics Principles and Ethics Laws Relevant to Public Service, in Accordance with California Government Code Section 53235, before the Board. Ms. Morin Jacobs, of Liebert Cassidy Whitmore, conducted the training.

The Board Meeting recessed at 11:21 a.m.

The Board Meeting reconvened at 11:32 a.m.

Directors present: Directors Blalock, Fang, Keller, King, Murray, Raburn, Radulovich, Sweet, and McPartland.

Absent: None.

Director Sweet, Chairperson of the Administration Committee, had no report.

Director Fang, Chairperson of the Engineering and Operations Committee, brought the matter of Implementation of California Assembly Bill 716 Authorizing Prohibition Orders before the Board. Chief of Police, Kenton Rainey, and Deputy Chief Daniel Hartwig presented the item. The item was discussed. Director Sweet made the following motions as a unit:

1. That Janet Abelson, Antonette C. Bryant, Tyrone R. Forte, George Holland, Armando Sandoval, Roy Wilson, and Lauren Sugayan be appointed to the AB 716 Advisory Committee;
2. That the AB 716 Advisory Committee Bylaws be adopted (the Bylaws are attached and hereby made a part of these Minutes);

3. Adoption of Resolution No. 5201, In the Matter of Adopting the San Francisco Bay Area Rapid Transit District Administrative Rules for Issuance and Processing Exclusions;
4. That the General Manager or her designee be authorized to implement AB 716, including designation of staff to perform the initial review and administrative hearing functions, provision of notice to riders of the prohibition order program, and establishment of any training programs recommended by the AB 716 Advisory Committee.

Director Blalock seconded the motions, which carried by unanimous roll call vote. Ayes – 9: Directors Blalock, Fang, Keller, King, Murray, Raburn, Radulovich, Sweet, and McPartland. Noes – 0.

Director Fang brought the matter of Oakland Airport Connector Project before the Board. Mr. Thomas Dunscombe, Project Manager – Oakland Airport Connector, presented the Quarterly Update. The item was discussed.

Mr. Dunscombe presented the item on Change Order to Contract No. 01ZK-110, Oakland Airport Connector, with Flatiron/Parsons Joint Venture, for Procurement and Installation of a Standby Power Generator (C.O. No. 37). The item was discussed. Director Raburn moved that the General Manager be authorized to execute Change Order No. 37 to Contract No. 01ZK-110, Oakland Airport Connector, with Flatiron/Parsons Joint Venture, for procurement and installation of a standby power generator to supply backup system traction power, in an amount not to exceed \$1,849,301.00. Director Sweet seconded the motion. Discussion continued. The motion carried by unanimous roll call vote. Ayes – 9: Directors Blalock, Fang, Keller, King, Murray, Raburn, Radulovich, Sweet, and McPartland. Noes – 0.

Ms. Molly McArthur, Division Manager, Government and Community Relations, Capital Projects, presented the item on Agreements with Artists for Oakland Airport Connector Project. The item was discussed. Director Raburn moved that the General Manager be authorized to execute agreements with Tom Patti and Gordon Huether, in an amount not to exceed \$350,000.00 each, for the procurement, fabrication and installation of artwork for the Coliseum connector and Oakland International Airport terminus stations. Director King seconded the motion.

Mr. Jerry Grace addressed the Board.

Director King exited the Meeting.

The motion carried by unanimous roll call vote. Ayes – 8: Directors Blalock, Fang, Keller, Murray, Raburn, Radulovich, Sweet, and McPartland. Noes – 0. Absent – 1: Director King.

Director Blalock, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of Policy on Sister Transit Agency Affiliations before the Board. Ms. Jennifer Barton, Executive Manager, External Affairs, presented the item.

Director King re-entered the Meeting.

The item was discussed.

Director Murray moved that the Board approve the Policy on Sister Transit Agency Affiliations, with the exception of Rule 5. Director King seconded the motion. Director Murray offered a substitute motion to keep Rule 5 with the exception of the sentence, "After Board approval of a Sister Transit Agency affiliation, related travel expenses by the staff liaison appointed by the General Manager shall not exceed \$10,000 per year." Director McPartland seconded the substitute motion, which carried by roll call vote. Ayes – 8: Directors Blalock, Fang, Keller, Murray, Raburn, Radulovich, Sweet, and McPartland. Noes – 1: Director King.

Director Blalock brought the matter of Resolution Authorizing Development of a Sister Transit Agency Affiliation with Shanghai Metro and Appointment of Board Liaison before the Board. Director Sweet moved adoption of Resolution No. 5202, In the Matter of Support for Developing a Sister Transit Agency Affiliation with Shanghai Metro. Director Blalock seconded the motion. The item was discussed.

Director Blalock proposed an amendment to the motion to make the resolution subject to the adopted amended policy. The maker and the seconder of the motion accepted Director Blalock's proposed amendment. The amended motion carried by roll call vote. Ayes – 8: Directors Blalock, Fang, Keller, Murray, Raburn, Radulovich, Sweet, and McPartland. Noes – 1: Director King.

President McPartland called for the General Manager's report. General Manager Grace Crunican reported on steps she had taken and meetings she had participated in.

President McPartland called for Board Member Reports and Roll Call for Introductions.

Director Keller reported he had attended a groundbreaking event for eBART.

Director Blalock reported he had attended a Conference of Minority Transportation Officials (COMTO) panel discussion on Measure B1, the Board Workshop on Hispanic-Owned Businesses, and a groundbreaking event in Fremont for grade separation projects in preparation for the Silicon Valley extension.

Director Sweet reported she had attended the Oakland Art Murmur, a San Francisco Redevelopment Oversight Board Meeting, and a Citizen Review Board meeting in Richmond.

Director Radulovich reported he had attended the District picnic and had gone to Portland.

Director Radulovich requested an evaluation of potential risks and impacts upon the District's capital and operating programs of the 'fiscal cliff' confronting federal transportation funding.

President McPartland reported he had attended the Board Workshop on Hispanic-Owned Businesses, the eBART groundbreaking event, a planning meeting with staff related to the TransBay Tube, a luncheon meeting related to emergency managers' responsibilities, and a meeting with the mayors of Pleasanton and Livermore regarding parking issues.

Director Murray reported she had attended a presentation by Assemblymember Susan Bonilla on the Science, Technology, Engineering and Math (STEM) program, the Concord Mayors Conference, the Admiral's reception on the USS Macon, the Contra Costa Labor-to-Labor dinner, and a meeting with Human Resources, Dion Aroner, and a representative from East Bay Innovations.

Director Raburn reported he had attended an Oakland Chamber of Commerce breakfast, the COMTO panel discussion on Measure B1, and the Oakland Art Murmur.

Director Raburn requested the following in relationship to the Coliseum Oakland Airport Station Capacity: review of expressive activity permitting process to ensure that customer access/passenger flow is not negatively affected by location of permittees; a plan for improving access to the west end of the platform, as furniture placement is currently inefficient and access to stairs and escalators must be considered; and a report of progress in acquiring Union Pacific Railroad property.

Director King reported she had attended the Oakland Chamber of Commerce breakfast, the COMTO panel discussion on Measure B1, the Board Workshop on Hispanic-Owned Businesses, and a ribbon-cutting at the Rockridge Open Space area.

President McPartland called for General Discussion and Public Comment. Mr. Jerry Grace addressed the Board.

President McPartland announced that the Board would enter into closed session under Item 11-A (Conference with Real Property Negotiator), Item 11-B (Threat to Public Services or Facilities), and 11-C (Conference with Labor Negotiators) of the regular meeting agenda, and that the Board would reconvene in open session at the conclusion of the closed session.

The Board Meeting recessed at 1:43 p.m.

The Board reconvened in closed session at 1:50 p.m.

Directors present: Directors Blalock, King, Murray, Raburn, Radulovich, Sweet, and McPartland.

Absent: Director Keller. Director Fang entered the closed session later.

Director Fang entered the Meeting.

The Board Meeting recessed at 3:33 p.m.

The Board reconvened in open session at 3:34 p.m.

Directors present: Directors Blalock, Fang, King, Murray, Raburn, Radulovich, Sweet, and McPartland.

Absent: Director Keller.

President McPartland announced that there was no announcement to be made for Items 11-B and 11-C.

President McPartland brought the matter of Agreement with TransMart, Inc., for Station Retail Development at BART Stations in Alameda, Contra Costa, San Francisco and San Mateo Counties (excluding San Francisco Airport Station [SFO]) before the Board. Director Blalock made the following motion: That the General Manager or her designee be authorized to complete negotiations and execute a 30-year agreement with two 10-year options with TransMart, Inc., for retail at all BART stations (excluding SFO) at a base rent of \$24.00 per square foot per year subject to annual Consumer Price Index increases and reassessments every 10 years, or 13.5% of Adjusted Gross Income, whichever is greater, and 2.5% of the gross income from any agreement transfer to a non affiliate, subject to the following: completion of Tier 1 and Tier 2 analyses approved by BART; adoption of station retail design guidelines and approval of each station's retail program, subject to California Environmental Quality Act (CEQA) review and approval by BART; and that the General Manager is directed to ensure that throughout this process BART's operational and design interests are effectively and consistently coordinated. Director Sweet seconded the motion, which carried by roll call vote. Ayes – 6: Directors Blalock, Fang, Murray, Raburn, Sweet, and McPartland. Noes – 1: Director Radulovich. Abstain – 1: Director King. Absent – 1: Director Keller/

Award of Agreement No. 6M4189 was continued to a future meeting.

The Board Meeting was adjourned at 3:37 p.m.

Kenneth A. Duron
District Secretary

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P.O. Box 12688, Oakland, CA 94604-2688

Board of Directors
Minutes of the 1,666th Meeting
November 15, 2012

A regular meeting of the Board of Directors was held November 15, 2012, convening at 9:09 a.m. in the Board Room, 344 20th Street, Oakland, California. President McPartland presided; Kenneth A. Duron, District Secretary.

Directors present: Directors Blalock, Keller, King, Murray, Raburn, Radulovich, and McPartland.

Absent: Director Sweet. Director Fang entered the Meeting later.

President McPartland introduced and welcomed Ms. Freddy M. Davis, President of the Hayward/South Alameda County Chapter of the National Association for the Advancement of Colored People (NAACP). Ms. Davis addressed the Board and presented Mr. Linton Johnson, Manager, Strategic Programs, with the NAACP Lifetime Membership Award. Mr. Johnson and his mother, Dr. Leonor Boulton Johnson, addressed the Board.

President McPartland introduced and welcomed Ms. Rebecca Saltzman, Director-elect for District 3.

President McPartland announced that Item 2-B, Request for Withdrawal of Funds from BART/MTC Railcar Replacement Reserve Account, would be moved to the Administration section of the agenda.

Consent Calendar item brought before the Board was:

1. Approval of Minutes of the Meeting of October 25, 2012.

Director Raburn moved that the Minutes of the Meeting of October 25, 2012, be approved. Directors Blalock and Murray seconded the motion, which carried by unanimous electronic vote. Ayes – 7: Directors Blalock, Keller, King, Murray, Raburn, Radulovich, and McPartland. Noes – 0. Absent – 2: Directors Fang and Sweet.

Director Murray, Vice Chairperson of the Administration Committee, brought the matter of Request for Withdrawal of Funds from BART/MTC Railcar Replacement Reserve Account before the Board. Mr. Carter Mau, Executive Manager of Planning and Budgets, presented the item. Director Blalock moved that a request to Metropolitan Transportation Commission, to withdraw up to \$15.5 million from the BART/MTC Car Replacement Account for the purpose of meeting BART Car Replacement Project cashflow needs, be approved. Director Murray seconded the motion, which carried by unanimous electronic vote. Ayes – 7: Directors Blalock,

Keller, King, Murray, Raburn, Radulovich, and McPartland. Noes – 0. Absent – 2: Directors Fang and Sweet.

Director Murray brought the matter of Grant of Easement Agreement with the Port of Oakland for Transition Structure Emergency Generator Project before the Board. Mr. Mau and Mr. Khawaja Zubair, Manager, Electrical Engineering Division, presented the item. The item was discussed. Director Raburn moved that the General Manager or her designee be authorized to execute the Grant of Easement Agreement between the San Francisco Bay Area Rapid Transit District and the Port of Oakland in connection with the Oakland Transition Structure Emergency Generator Project. Director Blalock seconded the motion. Discussion continued. The motion carried by unanimous electronic vote. Ayes – 7: Directors Blalock, Keller, King, Murray, Raburn, Radulovich, and McPartland. Noes – 0. Absent – 2: Directors Fang and Sweet.

President McPartland, Vice Chairperson of the Engineering and Operations Committee, brought the matter of Change Orders to Contract No. 15PC-110, Earthquake Safety Program Aerial Structures – A-Line South, with Robert A. Bothman, Inc., for Differing Site Conditions, before the Board. Ms. Chris Quinn, Chief Extensions Officer, presented the item. The item was discussed. Director Blalock moved that the General Manager be authorized to execute Change Orders to Contract No. 15PC-110, BART Earthquake Safety Program, Aerial Structures – A Line South, for differing site conditions and related, compensable delays at the bridge crossing over Alameda Creek and the bridge crossing over Union Pacific Railroad (UPRR) tracks in an amount not to exceed \$1,200,000.00. Director Radulovich seconded the motion. Discussion continued. The motion carried by unanimous electronic vote. Ayes – 7: Directors Blalock, Keller, King, Murray, Raburn, Radulovich, and McPartland. Noes – 0. Absent – 2: Directors Fang and Sweet.

President McPartland brought the matter of Change Order to Contract No. 15PP-110A, BART Earthquake Safety Program Station Structures - C Line, with Proven Management, Inc., for Differing Site Conditions, before the Board. Ms. Quinn presented the item. The item was discussed. Director Keller moved that the General Manager be authorized to execute Change Order No. 33 to Contract No. 15PP-110A, Earthquake Safety Program, Station Structures – C Line, for differing site conditions and related, compensable delays, in an amount not to exceed \$3,000,000.00. Director Blalock seconded the motion, which carried by unanimous electronic vote. Ayes – 7: Directors Blalock, Keller, King, Murray, Raburn, Radulovich, and McPartland. Noes – 0. Absent – 2: Directors Fang and Sweet.

President McPartland brought the matter of Authorization to Execute Agreements with Union Pacific Railroad, Utilities and Others to Support the Hayward Maintenance Complex Project before the Board. Ms. Quinn presented the item. President McPartland moved that the General Manager or her designee be authorized to execute agreements, including permits, with UPRR and various public or private utilities, including Alameda County, cities, agencies and special districts, including authority to expend a total not-to-exceed amount of \$1,000,000.00 for support services, including, but not limited to: design, relocation and rearrangement and fees in connection therewith, minor construction and field investigation, for the Hayward Maintenance Complex Project. Director Blalock seconded the motion, which carried by unanimous electronic

vote. Ayes – 7: Directors Blalock, Keller, King, Murray, Raburn, Radulovich, and McPartland. Noes – 0. Absent – 2: Directors Fang and Sweet.

Director Blalock, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of Change Order to Agreement No. 6G4544, Central Processing Services for the Regional Transit Discount Card Program, with Cordoba Corporation, for Extension of Time and Funding, before the Board. Ms. Jennifer Barton, Executive Manager of External Affairs, and Ms. Carol Walb, Manager of Customer Services, presented the item.

Director Fang entered the Meeting.

The item was discussed. Director Raburn moved that the General Manager be authorized to execute Change Order No. 5 to Agreement No. 6G4544, Central Processing Services for the Regional Transit Discount Card Program, with Cordoba Corporation, in an amount not to exceed \$336,787.75, and to extend the term of the Agreement to June 30, 2013. Director Radulovich seconded the item. Discussion continued. The motion carried by unanimous electronic vote. Ayes – 8: Directors Blalock, Fang, Keller, King, Murray, Raburn, Radulovich, and McPartland. Noes – 0. Absent – 1: Director Sweet.

Director Blalock brought the matter of BART Metro: Sustainable Communities Operational Analysis, before the Board. Mr. Mau; Mr. Malcolm Quint, Manager of Travel Demand Planning; and Mr. Thomas Tumola, Senior Transportation Engineer, presented the item. The item was discussed.

President McPartland exited the Meeting, and Vice President Radulovich assumed the gavel.

Vice President Radulovich called for the General Manager's report. General Manager Grace Crunican reported on steps she had taken and meetings she had participated in. Mr. Paul Oversier, Assistant General Manager, Operations, reported on the record ridership of 568,061 carried on October 31, 2012.

Vice President Radulovich called for Board Member Reports and Roll Call for Introductions.

Director Keller reported he had attended the Capitol Corridor Joint Powers Board Meeting and the Contra Costa Transportation Authority meeting and had visited the eBART construction site.

Director Blalock reported he had attended an event at the Warm Springs Extension, an outreach event in Union City, a ribbon-cutting event at the Union City Station, the Capitol Corridor Joint Powers Board Meeting, and an event at the Unity Council.

Director Murray reported she had attended the Warm Springs event and the Capitol Corridor Joint Powers Board Meeting.

Director Murray requested an update on staff response to a constituent complaint regarding a stolen bicycle at the Concord Station requesting bicycle security improvements (cameras, lockers, etc.).

Director Murray requested the inclusion of a provision in agreements for development on District property requiring developers to provide Clipper Cards to residents of the development, for a time to be determined.

Director Raburn reported he had attended a Chamber of Commerce breakfast, an event for the Attitudinal Healing Connection, an Oakland African-American Chamber of Commerce luncheon, and the Unity Council event.

Director King reported she had attended the ribbon-cutting event at Union City Station and the Oakland African-American Chamber of Commerce luncheon.

Vice President Radulovich called for General Discussion and Public Comment. Mr. Javier Guzman addressed the Board.

Vice President Radulovich announced that the Board would enter into closed session under Item 9-A, Conference with Legal Counsel, and that the Board would reconvene in open session at the conclusion of that closed session, and that Item 9-B would be continued to a future meeting.

The Board Meeting recessed at 11:38 a.m.

The Board reconvened in closed session at 11:45 a.m.

Directors present: Directors Blalock, Fang, Keller, King, Murray, Raburn, and Radulovich.

Absent: Directors Sweet and McPartland.

The Board Meeting recessed at 12:02 p.m.

The Board reconvened in open session at 12:04 p.m.

Directors present: Director Radulovich.

Absent: Directors Blalock, Fang, Keller, King, Murray, Raburn, Sweet, and McPartland.

Vice President Radulovich announced that the Board had met in closed session, and that after the report from the General Counsel, the Board approved continuing using Liebert Cassidy and Whitmore or other counsel to represent the District in the listed action. Ayes – 7: Directors Blalock, Fang, Keller, King, Murray, Raburn, and Radulovich. Noes – 0. Absent – 2: Directors Sweet and McPartland.

The Board Meeting was adjourned at 12:05 p.m.

Kenneth A. Duron
District Secretary



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Patrice McElroy</i>		GENERAL MANAGER ACTION REQ'D: Board Approval and Authorization		
DATE: c <i>11/30/12</i>		BOARD INITIATED ITEM: <i>No</i>		
Originator/Prepared by: Patrice McElroy Dept: Human Resources	General Counsel <i>Andrew Rowan</i> 11/28/12 []	Controller/Treasurer <i>[Signature]</i> []	District Secretary []	BARC <i>[Signature]</i> 11-29-12 []
Signature/Date: <i>[Signature]</i> 11/21/12 []				

TITLE:

New Employee Relocation Expense Reimbursement

NARRATIVE:

Purpose:

To obtain Board authorization to pay relocation expenses in accordance with Management Procedure 70, New Employee Relocation Expense Reimbursement for the individual selected to fill the position of Assistant General Manager, Transit System Development. Authorization is also requested to pay relocation expenses for the individual to be selected for the position of the Chief Safety Officer, if needed.

Discussion:

The Assistant General Manager, Transit System Development (TSD) assumes the full management responsibility for all of the Transit System Development Office's services and activities including overseeing the development and financial administration of the current major extension projects including, the Oakland Airport Connector; the e-BART project extending service to the north; and the Warm Springs Extension, adding 5.4 miles of new tracks from the existing Fremont Station south to a new station in the Warm Springs District of the City of Fremont.

The Chief Safety Officer is responsible for the full management of all activities throughout the District related to the development and implementation of safety programs, including audit, inspection and analysis of safety aspects of all programs and issues for all departmental services and activities.

Executive and senior management positions are generally conducted by an outside recruitment firm, and authorization for the payment of relocation expenses is requested in conjunction with the request for authorization of the outside recruitment. In these two cases, the District used its own Human Resources Department to conduct the recruitments.

Both positions were advertised on the District's website as well as a number of websites and periodicals that provide broad access to local and national candidates. Through these efforts, a number of both local and out-of-state candidates were considered for both positions.

The District recently completed the recruitment for the Assistant General Manager, TSD, selecting Robert Powers, who currently resides in Seattle, Washington. While the selection process for the Chief Safety Officer has not yet been completed, a number of candidates are from out- of- state.

The District needs the ability to reimburse eligible relocation expenses for the Assistant General Manager, TSD and, as appropriate, for the selected candidate for the position of Chief Safety Officer.

Fiscal Impact:

The cost of the relocation expenses are in an amount not to exceed \$18,000.00 per candidate. Funding for the relocation expenses would come from the FY 2013 adopted budget of the Transit System Development Office and if determined, the Systems Safety Department.

Alternative:

Not to offer relocation expense reimbursements. This alternative would limit the District's ability to attract appropriate talent for its executive and senior management level positions.

Motion:

That the General Manager or her designee be authorized to enter into a relocation agreement with the Assistant General Manger, Transit System Development and, as needed, the Chief Safety Officer each in an amount not to exceed \$18,000, consistent with Management Procedure No. 70, New Employee Relocation Expense Reimbursement.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Patrice McElroy</i>		GENERAL MANAGER ACTION REQ'D: Board Approval and Authorization		
DATE: c <i>11/29/12</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Patrice McElroy Dept: Human Resources	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: <i>Patrice McElroy 11/28/12</i>	<i>Andrew Rawlings 11/28/12</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature] 11-28-12</i>

TITLE:

District Veteran's Preference in Hiring Policy

NARRATIVE:

Purpose:

To request that the Board of Directors adopt a policy providing a veteran's preference in hiring for the District. The proposed policy is attached.

Discussion:

At the request of President McPartland, District staff has developed a proposed policy that provides a benefit in the form of a preference to veterans in the selection process for District jobs. As proposed, the policy would apply to external candidates seeking initial employment by the District who provide proof of active (non-reserve) status for a period of at least 181 consecutive days, and who have been released from active duty under conditions other than dishonorable discharge, in accordance with the Veteran's Preference Act of 1944. Eligible veterans who are otherwise qualified and achieve a passing score in the first phase of the evaluation process would receive a five percent (5%) increase to their scores in that phase. The proposed policy is expressly subordinate to the District's collective bargaining agreements.

President McPartland has requested that this policy be brought forward for Board approval in honor and recognition of the service of the men and women of the United States military forces.

Fiscal Impact:

There is no fiscal impact to this policy.

Alternatives:

Don't adopt the policy or adopt an amended or modified policy.

Recommendations:

Adopt the following motion:

Motion:

That the Board adopts the Proposed Veteran's Preference Policy, a copy of which is attached.

BART's Proposed Veterans Preference Policy

I. General

The District supports the employment of individuals who have served the country as members of the United States armed forces. Accordingly, it is the policy of the District to provide preference in hiring eligible veterans as described below. This preference shall apply only to those positions that are open to candidates who are not already employed by the District. Such preference shall not supersede the provisions of the District's collective bargaining agreements. Veterans' preference does not guarantee that any individual veteran will be hired. The preference does not apply to internal agency recruitment activity including promotions, transfers, reassignments and reinstatements.

II. Eligibility

An individual may establish eligibility for the District's Veterans' preference by providing proof of service in an active (non-reserve) status for a period of at least 181 consecutive days, and release from active duty under conditions other than dishonorable. Such eligibility must be established, as specified herein, at the time the individual files his or her application for employment with the District.

III. Guidelines

- A. The following guidelines shall apply only after it is determined that the eligible veteran meets the minimum qualifications for the position in questions.
- B. An eligible veteran who competes for a position through a selection process, appropriately requests consideration for veterans' preference, and achieves a passing score in the first phase of the evaluation process, shall be given an additional five (5) percent the score for that examination.
- C. No other or further Veterans' credits shall be provided to an individual subsequent to his/her appointment to a position and completion of the required probationary period.
- D. An applicant must notify BART of Veteran status when submitting an application for any position for which Veterans' preference may be applicable using the form provided through the District's website. The information must be attached the job application.
- E. Appropriate documentation to support the request must be provided no later than the date of the first phase of the evaluation process. Documentation in the form of a legible copy of discharge document (DD214), or other official discharge documents, showing the enlisted and discharge dates, social security number, and the charter of service (i.e. Type of Discharge) is required.

- F. A statement that the District welcomes the employment of Veterans of the United States armed services, and provides a Veterans' preference program in accordance with applicable law and District procedures will be included in all District job postings.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia DeBenedictis</i>		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/30/12		BOARD INITIATED ITEM: No		
Originator/Prepared by: Todd Morgan Dept: Capital Development 11.30.12 Signature/Date: <i>Todd Morgan</i>	General Counsel <i>MB</i> 11/29/12	Controller/Treasurer <i>[Signature]</i> []	District Secretary []	BARC <i>Carl Mann</i> 11-30-12 []
Status: Routed		Date Created: 11/16/2012		

TITLE:

Approval of Resolution of Project Compliance and Initial Project Report Summary Regarding AB1171 Funds for Environmental Phase Activities for the Proposed Livermore Extension Project

NARRATIVE:

Purpose:

To obtain BART Board approval of an application for a total of \$13,074,000 in AB1171 funds for the proposed BART to Livermore Extension Project (the "Project"). The application includes a Resolution of Project Compliance ("Resolution") and an Initial Project Report ("IPR") regarding use of AB1171 funds, as described in the attached IPR Summary. This application is a request to provide funding for Project Level Environmental Documentation & Development activities.

Discussion:

A Program Environmental Impact Report (Program EIR) for the BART to Livermore extension was completed in July 2010. The purpose of the Program EIR, completion of which represented a major milestone in extending BART service to the Tri-Valley, was to highlight the differences among the proposed alternatives and to allow BART, after considering comments from local public agencies and the public, to select a preferred alignment as a focus for more detailed engineering efforts and more detailed project-level environmental review. The Program EIR considered 10 alternatives for the proposed extension alignment and station locations. The preferred alignment selected by the BART Board of Directors would extend easterly from the current terminus at Dublin/Pleasanton Station, and would be built partially in the median of I-580, partially in subway under downtown Livermore, and partially in an at-grade configuration to the east of downtown Livermore. The extension would serve two station locations at Downtown Livermore (in subway) and Vasco Road (surface). Both station locations would be multi-modal stations with parking, serving BART, ACE and LAVTA. The extension would also include a yard and shop, and BART would need to acquire additional vehicles to operate the extension.

On February 9, 2012 the Board of Directors unanimously approved a motion directing staff to advance the proposed BART to Livermore Project to the next level of project development, including environmental review, conceptual engineering, development of Ridership Development Plans, and Title VI analysis, as appropriate. The evaluation of alternatives will

include an alternative providing reserved lanes, express bus service, and freeway bus ramps at the existing Dublin/Pleasanton Station. The Board also directed staff to seek external funding sources to advance the project with no impact on funding for essential BART capital needs. BART initiated the environmental scoping process in Fall 2012. The upcoming analysis includes a 4.8-mile BART extension along I-580 to a station in the vicinity of the Isabel Avenue/I-580 Interchange incorporating an efficient bus-to-BART transfer; and also includes express bus services linking inter-regional rail service, Priority Development Areas (PDAs) in Livermore, and proposed offsite parking facilities. In addition, project alternatives currently under consideration include a No Build alternative, a Diesel Multiple Unit (DMU) alternative, and an Express Bus alternative. The scoping comment period closed on October 1, 2012, and BART staff is currently evaluating public comments.

Metropolitan Transportation Commission (“MTC”) Resolution No. 3636, the Policies and Procedures for Implementation of the Regional Traffic Plan of Regional Measure 2, requires that a project sponsor approve a Resolution and IPR when the project sponsor requests an allocation of RM2 funds. Although MTC has not yet taken action to require the same documentation for AB1171 funds, MTC has advised BART that a Resolution and IPR will be required. Staff has prepared the IPR and IPR Summary for this portion of the Project and a Resolution for adoption by the BART Board of Directors to meet MTC’s requirement for allocation of a total of \$13,074,000 of AB1171 funding.

Approval of the IPR and Resolution is a requirement for the application for AB1171 funds. It is expected that the MTC will approve this application in December 2012.

Fiscal Impact:

Approval of the IPR and Resolution is a requirement for the District to receive an allocation of AB1171 funds from the MTC.

Alternatives:

Do not approve the Resolution and IPR. Failure to approve the Resolution and IPR would likely result in schedule delays and cost increases for the Project.

Motion:

The Board of Directors approves the attached Resolution of Project Compliance and Initial Project Report dated November 19, 2012 for AB1171 Funds for the Project, as described in the attached IPR Summary and delegates authority to the General Manager or her designee to make non-substantive changes or minor amendments to the Initial Project Report as she deems appropriate.

**BEFORE THE BOARD OF DIRECTORS OF THE SAN FRANCISCO BAY
AREA RAPID TRANSIT DISTRICT**

**In the Matter of the Approval of a
Resolution of Project Compliance
and Initial Project Report for
AB1171 Bridge Toll Funds for the
Proposed BART to Livermore
Extension Project**

Resolution No.

Whereas, the Metropolitan Transportation Commission (“MTC”) is the regional transportation planning agency for the San Francisco Bay Area pursuant to Government Code Sections 66500 *et seq.*; and

Whereas, Streets and Highways Code Sections 30950 *et seq.* created the Bay Area Toll Authority (“BATA”) which is a public instrumentality governed by the same board as that governing MTC; and

Whereas, pursuant to California Streets & Highways Code (“SHC”) Section 31010 (b), funds (generally referred to as “AB1171 funds”) generated in excess of those needed to meet the toll commitments as specified in paragraph (4) of subdivision (b) of Section 188.5 of the SHC shall be available to BATA for funding projects consistent with SHC Code Sections 30913 and 30914; and

Whereas, SB 916, (Chapter 715, Statutes 2004), commonly referred to as Regional Measure 2 (“RM2”), identifies projects eligible to receive funding under the Regional Traffic Relief Plan; and

Whereas, MTC is responsible for funding projects eligible for RM2 funds pursuant to SHC Section 30914(c) and (d); and

Whereas, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for AB1171 funds; and

Whereas, allocation requests to MTC must be submitted consistent with such procedures and conditions; and

Whereas, MTC adopted Resolution 3434, Revised, which establishes commitments of AB1171 bridge toll funds to specific projects and corridors; and

Whereas, BART is the sponsor of the proposed BART to Livermore Extension project (the “PROJECT”), which is eligible for consideration of RM2 Regional Traffic Relief Plan funds; and

Whereas, the PROJECT is also eligible for consideration of AB1171 funds; and

Whereas, the AB1171 allocation request sponsored by BART will include an Initial Project Report (“IPR”) dated November 19, 2012 that lists the purpose, schedule, budget, expenditure and cash flow plans for which BART is requesting that MTC allocate AB1171 funds for the PROJECT, and an IPR Summary (“Summary”) describing the content of the IPR is attached to this Resolution; and

Whereas, BART and its agents agree to comply with the provisions of the MTC’s Regional Measure 2 Policy Guidance (MTC Resolution No. 3636) for the drawdown of AB1171 funds;

NOW, THEREFORE, BE IT RESOLVED that:

1. BART certifies that the PROJECT is consistent with the Regional Transportation Plan (“RTP”).
2. BART approves the updated IPR dated November 19, 2012, as described in the attached Summary.
3. BART approves the cash flow plan described in the IPR dated November 19, 2012, as described in the attached Summary.
4. BART has reviewed the PROJECT’S needs and has adequate staffing resources to deliver and complete the PROJECT within the schedule set forth in the Summary dated November 19, 2012.
5. BART is an eligible sponsor of projects in the RM2 Regional Traffic Relief Plan, Capital Program, in accordance with SHC Section 30914(c).
6. The PROJECT is eligible for receipt of AB1171 funds consistent with SHC Section 31010 (b).
7. BART is authorized to submit an application for AB1171 funds for the PROJECT in accordance with the provisions of the SHC Sections 30913 and 30914, as applicable.
8. BART certifies that the PROJECT and purposes for which AB1171 funds are being requested are in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State CEQA Guidelines (14 California Code of Regulations Section 15000 et seq.)
9. There is no legal impediment to BART’s making allocation requests for AB1171 funds.
10. There is no pending or threatened litigation, which might in any way adversely affect the PROJECT, or the ability of BART, to deliver the PROJECT.

11. BART has agreed to indemnify and hold harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of BART, its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of AB1171 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of AB1171 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages.

12. BART has agreed that, if any revenues or profits from any non-governmental use of property (or PROJECT) are collected, those revenues or profits shall be used exclusively for the public transportation services for which the PROJECT was initially approved, either for capital improvements or maintenance and operational costs; otherwise, the MTC is entitled to a proportionate share equal to MTC's percentage participation in the PROJECT.

13. BART agrees that assets purchased with AB1171 funds, including facilities and equipment shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life, that the MTC shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to MTC in the same proportion that AB1171 funds were originally used.

14. BART has authorized its General Manager or her designee to execute and submit an allocation request for the construction phase for the PROJECT to MTC for AB1171 funds in the amount of \$13.074 million for the PROJECT purposes and amounts included in the Summary dated November 19, 2012.

15. BART's General Manager or her designee is hereby delegated the authority to make non-substantive changes or minor amendments to the IPR dated November 19, 2012 as she deems appropriate.

16. A copy of this Resolution shall be transmitted to MTC in conjunction with the filing of the IPR dated November 19, 2012 referenced herein.

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Proposed Livermore Extension Project
Initial Project Report Summary – November 19, 2012

Project Description

In July, 2010, BART certified a Final Program Environmental Report (FPEIR) for the BART to Livermore Extension, analyzing ten alternatives that provided different combinations of alignment, station and maintenance facility locations. The DEIR for the proposed BART to Livermore Extension Project will be a second tier, project-level EIR following the FPEIR. The Proposed Project is a 4.8 mile extension of the BART line from the existing Dublin/Pleasanton Station within the I-580 Corridor freeway alignment to a station in the vicinity of the I-580/Isabel Avenue Interchange incorporating an efficient bus to BART transfer. A network of express bus service linking inter-regional rail service, Priority Development Areas in Livermore, and proposed offsite parking facilities are also part of the Proposed Project. In addition to the Proposed Project, the project alternatives currently under consideration include a No Build alternative, a Diesel Multiple Unit (DMU) alternative, an Express Bus alternative and Bus Rapid Transit (BRT). The Proposed Project as well as the DMU, Express Bus and BRT alternatives will include tail tracks and maintenance facilities as needed for effective operations.

Current Allocation Request

Amount Requested	Phase Requested
\$13.074 million	Environmental

Project Schedule

Phase-Milestone	Planned	
	Start Date	Completion Date
Environmental Document	FY13	FY16
Environmental Studies, Preliminary Eng. (ENV / PE / PA&ED)	TBD	TBD
Final Design - Plans, Specifications & Estimates (PS&E)	TBD	TBD
Right-of-Way Activities /Acquisition (R/W)	TBD	TBD
Construction (Begin – Open for Use) / Acquisition / Operating Service (CON)	TBD	TBD

Project Budget

Phase	Total Amount - Escalated - (Thousands)
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	\$13,074.0
Final Design - Plans, Specifications and Estimates (PS&E)	\$TBD
Right-of-Way Activities /Acquisition (R/W)	\$TBD
Construction / Rolling Stock Acquisition (CON)	\$TBD
Total Project Budget (in thousands)	\$TBD

Cashflow (\$000s)

Fiscal year	2012/13	2013/14	2014/15	2015/16
Amount	4,012	5,682	3,380	0



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia DeLuca</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board of Directors		
DATE: c <i>11/28/12</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Paul Medved Dept: Transit System Development <i>Paul Medved</i> Signature/Date: <i>10/30/12</i>	General Counsel <i>[Signature]</i> 11/26/12 []	Controller/Treasurer <i>[Signature]</i> []	District Secretary []	BARC <i>[Signature]</i> 11/26/12 []

TITLE:

PROJECT REVISIONS AND ADDENDUM TO THE WARM SPRINGS EXTENSION (WSX PROJECT) FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT

NARRATIVE:

PURPOSE:

To consider an Addendum to the Final Supplemental Environmental Impact Report (FSEIR) (attached) pursuant to the California Environmental Quality Act (CEQA) for the Warm Springs BART Extension (WSX Project), evaluating the potential environmental impacts of changes to the WSX Project (Revised Project); find that a subsequent or supplemental environmental impact report is not necessary, based upon the Addendum; and adopt the Revised Project.

DISCUSSION:

The potential environmental effects of the WSX Project were first evaluated in a Final Environmental Impact Report (FEIR) that was certified by the BART Board of Directors on September 15, 1992 for the purposes of evaluating environmental impacts under the California Environmental Quality Act (Public Resources Code Section 21000, et seq.). The project was adopted at that time, but did not go forward because of financial and other constraints. The Project was revisited and modified as studied in a Final Supplemental Environmental Impact Report (FSEIR) which was certified on June 26, 2003, when the WSX Project and a Mitigation Monitoring and Reporting Plan (MMRP) were adopted by the Board. The Federal Transit Administration (FTA), acting as the lead agency pursuant to the National Environmental Policy Act (NEPA), published a Final Environmental Impact Statement and Section 4(f)/6(f) Evaluation (FEIS) for the WSX Project in June 2006 and issued a Record of Decision on October 24, 2006. The MMRP was revised in October 2006 following publication of the FEIS.

As part of BART's sustainability program and as an amenity for parkers, BART is considering placing photovoltaic (PV) panels on several of the structures being constructed for the Warm Springs Project. The photovoltaic panels would be an optional design element that could be implemented at BART's discretion. The proposed project revisions would provide approximately 0.7 megawatt (MW) of photovoltaic energy generating facilities, including PV panels, associated electrical wiring, and equipment. Photovoltaic panels would be placed at the Warm Springs/South Fremont Station and the ventilation structures in Fremont Central Park.

PV locations at Warm Springs/South Fremont Station would include the station concourse rooftop, two bus boarding canopy rooftops, and parking lot canopies over the 38 BART staff and 68 of the 2,040 patron parking spaces. The station concourse and bus boarding canopy roof structures are already included in the Adopted WSX Project, and PV panels would be placed on those rooftops. In addition, new purpose-built canopies would be constructed over the BART staff parking and 68 patron parking spaces. Power generated by PV panels at the station is expected to be approximately 0.6 MW. The energy generated by the PV systems is expected to serve all of the daytime electrical power needs of the

station. At times, the generation will exceed the station load and the excess will be fed back into the local electrical grid as it is generated.

PV panels would also be added onto the rooftops of the two subway ventilation structures at Fremont Central Park. The panels would be entirely within the rooftop parapet wall of each ventilation structure and would cover approximately 50 percent of each rooftop's surface. The PV panels on the two vent structures, collectively, would generate approximately 0.1 MW of power.

The Revised Project would advance the sustainability goals in the BART Strategic Plan (updated 2003). These include Goal 2-- "Enhance the use of resource-efficient and environmentally friendly access modes (e.g. bikes, walking, etc.) and other sustainable features at BART's new and existing stations," and Goal 3-- "Integrate sustainability principles and practices including multimodal access into the planning, design, and construction of new BART stations and related facilities."

The Addendum revisited the analysis conducted in the 1992 FEIR, 2003 FSEIR and 2006 FEIS and evaluated the potential environmental effects of the photovoltaic units at the Warm Springs/South Fremont Station and ventilation structures in Fremont Central Park. (All mitigation measures included in those documents and the MMRP will continue to apply to the Revised Project.) The Revised Project was evaluated for all required categories of impact (transportation, land use, visual quality, etc.). The analysis determined that over the course of their 20-year life, if PV facilities replaced fossil fuel sources, a substantial amount of pollutants would be kept from entering the atmosphere and onsite energy generation would meet the daytime energy needs of the South Fremont/Warm Springs Station. This would provide air quality, greenhouse gas, and energy benefits. The analysis did not identify any substantial changes to the affected environment and did not identify any new or substantially more severe impacts not already identified in the previous environmental documents. Based on the evaluation presented in the Addendum, there is no substantial evidence in the light of the whole record that the conditions outlined in Section 15162 of the CEQA Guidelines requiring a subsequent EIR are met. Therefore, an EIR Addendum is appropriate.

FISCAL IMPACT:

There is no increase to the WSX Project budget or the current estimated capital cost of \$890 million.

ALTERNATIVES:

The alternative is not to adopt the Revised Project. The WSX project would be constructed as originally planned without solar photovoltaic panels.

RECOMMENDATION:

It is recommended that the Board adopt the following motion:

MOTION:

Having reviewed and considered the information contained in the Addendum, the BART Board of Directors hereby:

Adopts the attached Resolution in the matter of adopting modifications to the Warm Springs Extension Project (WSX Project).

**EDD: PROJECT REVISIONS AND ADDENDUM TO THE WARM SPRINGS EXTENSION
PROJECT (WSX PROJECT)**

Attachments

**BEFORE THE BOARD OF DIRECTORS OF THE
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

In the matter of adopting modifications to the Warm Springs Extension Project (WSX Project)

WHEREAS, BART is constructing a 5.4-mile extension of the BART system in the City of Fremont from the current terminus at the Fremont Station in downtown Fremont to a new station in the Warm Springs district of the City. The Warm Springs Extension (WSX) is comprised of new trackway between the Fremont Station and Warm Springs, the new station at Warm Springs/South Fremont, and ancillary facilities necessary for operation of the system; and

WHEREAS, the potential environmental effects of the WSX Project were first evaluated in a Final Environmental Impact Report (FEIR) that was certified by the BART Board of Directors on September 15, 1992 for the purposes of evaluating environmental impacts under the California Environmental Quality Act (CEQA); and

WHEREAS, the project was not constructed at that time and the Project was revisited and expanded by a Final Supplemental Environmental Impact Report (FSEIR), which was certified on June 26, 2003, when the WSX Project and a Mitigation Monitoring and Reporting Plan (MMRP) were adopted; and

WHEREAS, the Federal Transit Administration (FTA), acting as the lead agency pursuant to the National Environmental Policy Act (NEPA), published a Final Environmental Impact Statement and Section 4(f) Evaluation (FEIS) for the WSX Project in June 2006 and issued a Record of Decision on October 24, 2006; and

WHEREAS, As part of BART's sustainability program and as an amenity for parkers, BART is considering placing photovoltaic (PV) panels on several structures at the Warm Springs/South Fremont Station and on the two subway ventilation structures in Fremont Central Park. The proposed project revisions (Revised Project) would provide approximately 0.7 megawatt (MW) of photovoltaic energy generating facilities. The photovoltaic panels would be an optional design element that would be implemented at BART's discretion; and

WHEREAS, Section 15164 of the CEQA Guidelines allows a lead agency to prepare an Addendum to a previously certified EIR, rather than a subsequent EIR (SEIR), if some changes or additions to a project are necessary, as long as none of the conditions described in Section 15162 requiring the preparation of a SEIR have occurred. Section 15162 states that, when an EIR has been certified, no SEIR shall be prepared for the project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, that there are substantial changes proposed in the

project which require major revisions of the previous EIR, substantial changes occur with respect to the circumstances under which the project is undertaken, or there is new information of substantial importance regarding new or substantially more severe significant effects, new mitigation measures or alternatives, or the feasibility of mitigation measures or alternatives previously considered; and

WHEREAS, no federal funds are being contributed toward the WSX Project, no additional federal environmental evaluation is necessary at this time; and

WHEREAS, staff has revisited the analysis conducted in the FSEIR and evaluated the potential effects of the Revised Project as described in the Addendum, surrounding circumstances and new information; and

WHEREAS, based upon the evaluation, none of the conditions described in CEQA Guidelines Section 15162 requiring the preparation of a SEIR have occurred; and therefore an Addendum is appropriate; and

WHEREAS, CEQA Guidelines Section 15164(d) provides that the lead agency's decision-making body shall consider an Addendum, together with the FEIR, prior to making a decision on the project.

THEREFORE, BE IT RESOLVED that the BART Board of Directors, having reviewed and considered the information contained in the Addendum and the FSEIR for the WSX Extension Project:

1) Finds that, on the basis of substantial evidence contained in the FSEIR and Addendum and in light of the whole record, that:

(a) there are no substantial changes proposed in the Revised Project that will require major revisions to the FSEIR due to the involvement of new or substantially more severe significant environmental effects; and

(b) there are no substantial changes with respect to the circumstances under which the Revised Project is undertaken which will require major revisions of the FSEIR due to the involvement of new or substantially more severe significant environmental effects; and

(c) there is no new information of substantial importance, which was not known at the time the FSEIR was certified, showing that;

(i) the Revised Project will have new or substantially more severe significant effects,

(ii) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce significant effects of the Revised Project, or

(iii) mitigation measures or alternatives considerably different from those analyzed in the FSEIR would substantially reduce significant effects of the Revised Project, and

2) Adopts the Revised Project, and

3) Authorizes staff to implement the Adopted Project as modified by some or all of the Revised Project elements, depending on funding availability and other contingencies as appropriate.

San Francisco Bay Area Rapid Transit District

Draft

**BART Warm Springs Extension Project
Final SEIR Addendum
Photovoltaic Panels**

Prepared by the San Francisco Bay Area Rapid Transit District

October 17, 2012

BART Warm Springs Extension Project Final SEIR Addendum

Photovoltaic Panels

1.0 Summary

Background

The San Francisco Bay Area Rapid Transit District (BART) is constructing a 5.4-mile extension of the BART system in the City of Fremont from the current terminus at the Fremont Station in downtown Fremont to a new station in the Warm Springs district of the city. The Warm Springs Extension (WSX) is comprised of new trackway between the Fremont Station and Warm Springs, the new station at Warm Springs/South Fremont, and ancillary facilities necessary for operation of the system, such as traction power, train control, communications, and subway emergency ventilation and access/egress structures.

The potential environmental effects of the WSX Project were first evaluated in a Final Environmental Impact Report (FEIR) that was certified by the BART Board of Directors on September 15, 1992 for the purposes of evaluating environmental impacts under the California Environmental Quality Act (Public Resources Code Section 21000, et seq., CEQA). The project was not constructed at that time, and the Project was revisited and expanded by a Final Supplemental Environmental Impact Report (FSEIR), which was certified on June 26, 2003, when the WSX Project and a Mitigation Monitoring and Reporting Plan (MMRP) were adopted.¹ The Federal Transit Administration (FTA), acting as the lead agency pursuant to the National Environmental Policy Act (NEPA), published a Final Environmental Impact Statement and Section 4(f)/6(f) Evaluation (FEIS) for the WSX Project in June 2006 and issued a Record of Decision on October 24, 2006.

Purpose of Addendum

Section 15164 of the CEQA Guidelines allows a Lead Agency to prepare an Addendum to a previously certified EIR if some changes or additions are necessary, as long as none of the conditions described in Section 15162 requiring the preparation of a subsequent EIR have occurred. In brief, Section 15162 states that when an EIR has been certified, no subsequent EIR needs to be prepared for the project unless the Lead Agency determines, on the basis of substantial evidence in the light of the whole record, that there are substantial changes proposed in the project which require major revisions of the previous EIR, substantial changes occur with respect to the circumstances under which the project is undertaken, or there is new information of substantial importance regarding new significant effects, more severe effects, or the feasibility or effectiveness of mitigation measures.

Revisions to the Project

As part of BART's sustainability program and as an amenity for parkers, BART is considering placing photovoltaic (PV) panels on several structures at the Warm Springs/South Fremont Station and on the two subway ventilation structures in Fremont Central Park. The proposed project revisions (Revised

¹ The MMRP was revised in October 2006 following publication of the FEIS.

Project) would provide approximately 0.69 megawatt (MW) of photovoltaic energy generating facilities. The photovoltaic panels would be an optional design element that would be implemented at BART's discretion.

Determination

This Addendum revisits the analysis conducted in the 1992 FEIR, 2003 FSEIR and 2006 FEIS and evaluates the potential effects of the photovoltaic units at the Warm Springs/South Fremont Station and ventilation structures in Fremont Central Park. The Revised Project was evaluated for all categories of impact (transportation, land use, visual quality, etc.).

The analysis did not identify any substantial changes to the affected environment and did not identify any new or substantially more severe impacts not already identified in the previous environmental documents. All mitigation measures included in those documents and the MMRP will continue to apply to the Revised Project. Based on the evaluation presented in this Addendum, there is no substantial evidence in the light of the whole record that the conditions outlined in Section 15162 of the CEQA Guidelines requiring a subsequent EIR are met. Therefore, an EIR Addendum is appropriate.

2.0 Revisions to the Project

Background

The San Francisco Bay Area Rapid Transit District (BART) is constructing a 5.4-mile extension of the BART system in the City of Fremont from the current terminus at the Fremont Station in downtown Fremont south to a new station in the Warm Springs district of the city, which has recently been named the Warm Springs/South Fremont Station. The Warm Springs Extension (WSX) is comprised of new trackway between the downtown station and Warm Springs/South Fremont Station, the station itself, and ancillary facilities necessary for operation of the system, such as traction power, train control, communications, and subway emergency ventilation and access/egress structures.

The Warm Springs/South Fremont Station is a 34-acre multi-modal facility with 2,040 parking spaces and seven bus bays. The station plan is designed around an internal circulation system similar to city blocks, so that in the future, the parking area can be redeveloped with transit-oriented development while maintaining the internal street system. (On-site transit-oriented development was not part of the WSX project and was not analyzed in the previous environmental documents.)

Between the Fremont Station and Warm Springs/South Fremont Station, a 1.0-mile length of the new trackway is being constructed in a subway under Fremont Central Park. This includes two structures for subway emergency ventilation and access/egress. While the majority of each structure is subterranean, a portion of each structure would be located on the surface.

Addition of Photovoltaic Panels

As part of BART's sustainability program and as an amenity for parkers, BART is considering placing photovoltaic (PV) panels on several of the structures being constructed for the Warm Springs project. The photovoltaic panels would be an optional design element that could be implemented at BART's discretion. The proposed project revisions would provide approximately 0.69 megawatt (MW) of photovoltaic energy generating facilities, including PV panels, associated electrical wiring, and equipment. Photovoltaic panels would be placed at Warm Springs/South Fremont Station and the ventilation structures in Fremont Central Park. The locations of Warm Springs/South Fremont Station and the two vent structures are presented in Figure A. Solar technology has continued to improve, and BART anticipates that future system improvements may improve the generating output of the proposed PV panels up to 1.0 MW of energy without any increase in the size of the panels.²

Warm Springs/South Fremont Station. PV locations at Warm Springs/South Fremont Station would include the station concourse rooftop, two bus boarding canopy rooftops, and parking lot canopies over

² One megawatt is enough electrical capacity to power 1,000 average California homes. (Based on a loading factor of 0.5 and an average California home having a 2-kilowatt peak capacity.) Source: California Energy Commission Website/Glossary.

the 38 BART staff and 68 patron parking spaces. The station concourse and bus boarding canopy roof structures are already included in the project, and PV panels would lie flat on those rooftops. In addition, new purpose-built canopies would be constructed over the BART staff parking and patron parking spaces. The purpose-built canopy structures would be sloped to optimize exposure to the sun and maximize generating capacity. The canopy structures would be approximately 16 feet high at the highest point and slope down to a minimum of 10 feet. Power generated by PV panels at the station is expected to be approximately 0.62 MW.³ The energy generated by the PV systems is expected to serve all the daytime electrical power needs of the station. At times the generation will exceed the station load, and the excess will be fed back into the local electrical grid as it is generated. Figure B illustrates the location of the PV panels at the Warm Springs/South Fremont Station, and Figure C provides a simulation of the station with canopies and panels installed.

Subway Ventilation Structures. PV panels also would be added on the roofs of the two subway ventilation structures at Fremont Central Park. The two ventilation structures in the park are each approximately 208 feet long, 48 feet wide and 12 feet high. The panels would be entirely within the rooftop parapet wall of each ventilation structure and would cover approximately 50 percent of each rooftop's surface. The panels would be sloped to optimize exposure to the sun and maximize generating capacity. The PV panels on the two vent structures collectively would generate approximately 0.07 MW of power.⁴ Figure D presents a simulation of the PV panel atop the western ventilation structure in Fremont Central Park.

PV Panel Construction. At the Warm Springs/South Fremont Station, PV panel installation would take place as one of the last phases of station construction, as all structures to support panels would need to be constructed first. The panels would be constructed off-site and trucked to the station for installation. Depending on the size of the panels and the height involved, cranes or a boom truck would be needed to lift the panels into rooftop positions, where they would be fastened and connected.

At Fremont Central Park, installation of the panels would follow construction of the ventilation structures. As at the station site, the premade panels would be lifted to the rooftop with a small crane or boom truck. Once the panels were lifted, the rooftop crews could install and connect the panels without any additional heavy equipment.

Third-Party PV Provider. All PV facilities, including canopies, would be installed, owned, and maintained by third party providers under contract to BART. As a tax-exempt entity, BART is unable to take advantage of state and federal rebates designed to provide an incentive for property owners to develop solar energy generation on their property. Therefore, to implement its own policies for use of renewable energy and to assist with regional and state renewable energy objectives, BART contracts with third party investors, who do qualify for various incentives, to install PV facilities on BART property. The contracting mechanism is called a Power Purchase Agreement (PPA) through which BART will allow

³ Roger Avery, P.E., Transit and Railroad Consultant, email on November 22, 2011.

⁴ Roger Avery, P.E., Transit and Railroad Consultant, email on November 22, 2011.

a third-party provider to the install up to 1.0 MW of solar energy within the Warm Springs Extension project corridor.

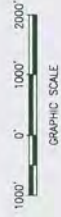
Consistency with BART Policies. The Revised Project would be consistent with the sustainability goals in the BART Strategic Plan.⁵ These include Goal 2-- “Enhance the use of resource-efficient and environmentally friendly access modes (e.g. bikes, walking, etc.) and other sustainable features at BART’s new and existing stations ” and Goal 3-- “Integrate sustainability principles and practices including multimodal access into the planning, design, and construction of new BART stations and related facilities.”

⁵ BART Strategic Plan, Updated 2003, page 15.

WARM SPRINGS STATION SITE
(SEE ALSO FIGURES B & C)



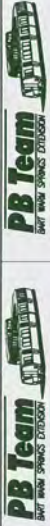
SUBWAY VENTILATION
STRUCTURES
(SEE ALSO FIGURE D)



DATE PLOTTED	FIGURE-A
SHEET NO.	
CONTRACT NO.	
REV.	
CONTRACT SHEET NO.	
PAUSE NO.	

**FIGURE A
WARM SPRINGS EXTENSION
PROPOSED PV LOCATION PLAN**

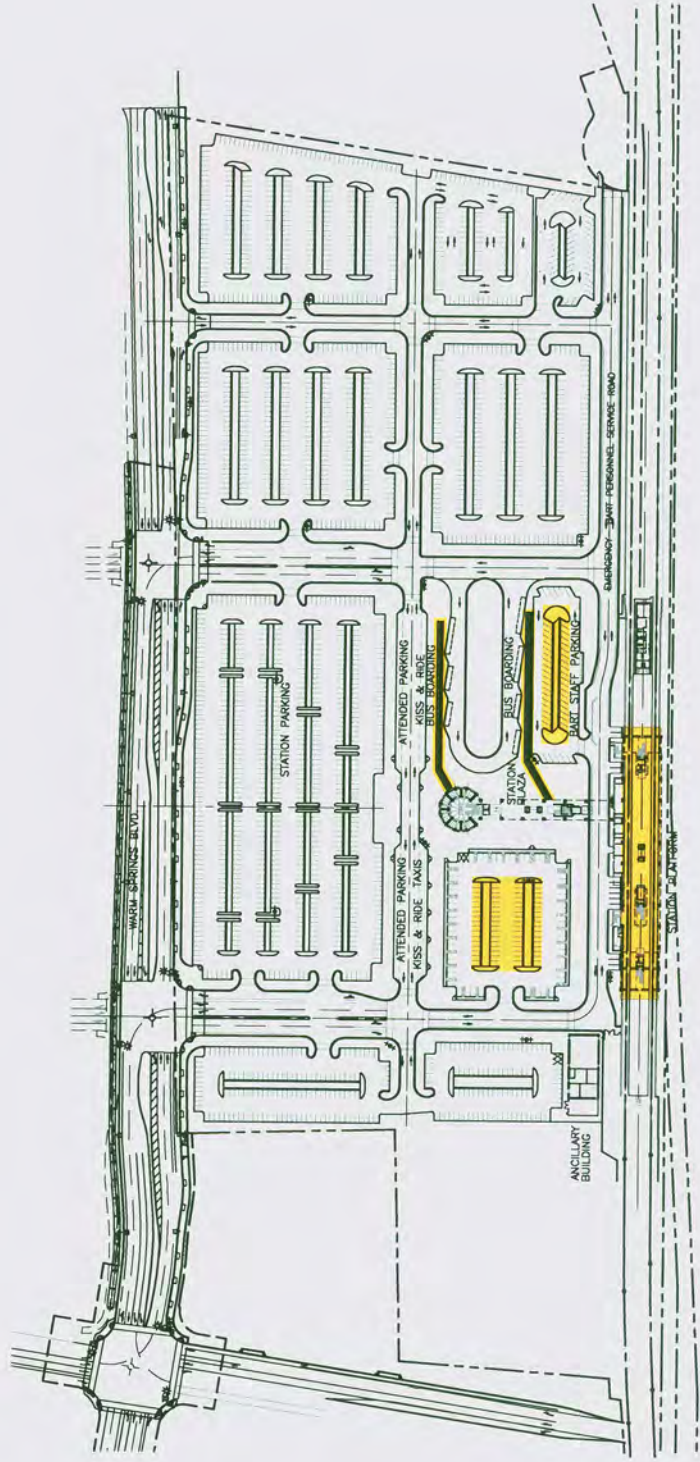
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT



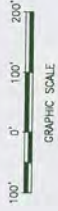
APPROVED

SUBMITTED

REV	DATE	BY	SUB	APP	DESCRIPTION



■ PROPOSED PV SYSTEM LOCATIONS



REV		DATE	BY	SUB	APP	DESCRIPTION												
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SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  SUBMITTED  APPROVED																		
FIGURE B PROPOSED PV LOCATIONS AT WARM SPRINGS STATION						OLD TEMPLATE FIGURE-B SIZE/TITLE CONTRACT NO. CONTRACT SHEET NO. REV. PAGE NO.												



CADD FILENAME: FIGURE-C
 SIZE: BSCALE
 CONTRACT NO.
 REV.
 CONTRACT SHEET NO. PAGE NO.

FIGURE C
 PROPOSED TYPICAL PV CANOPY

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT



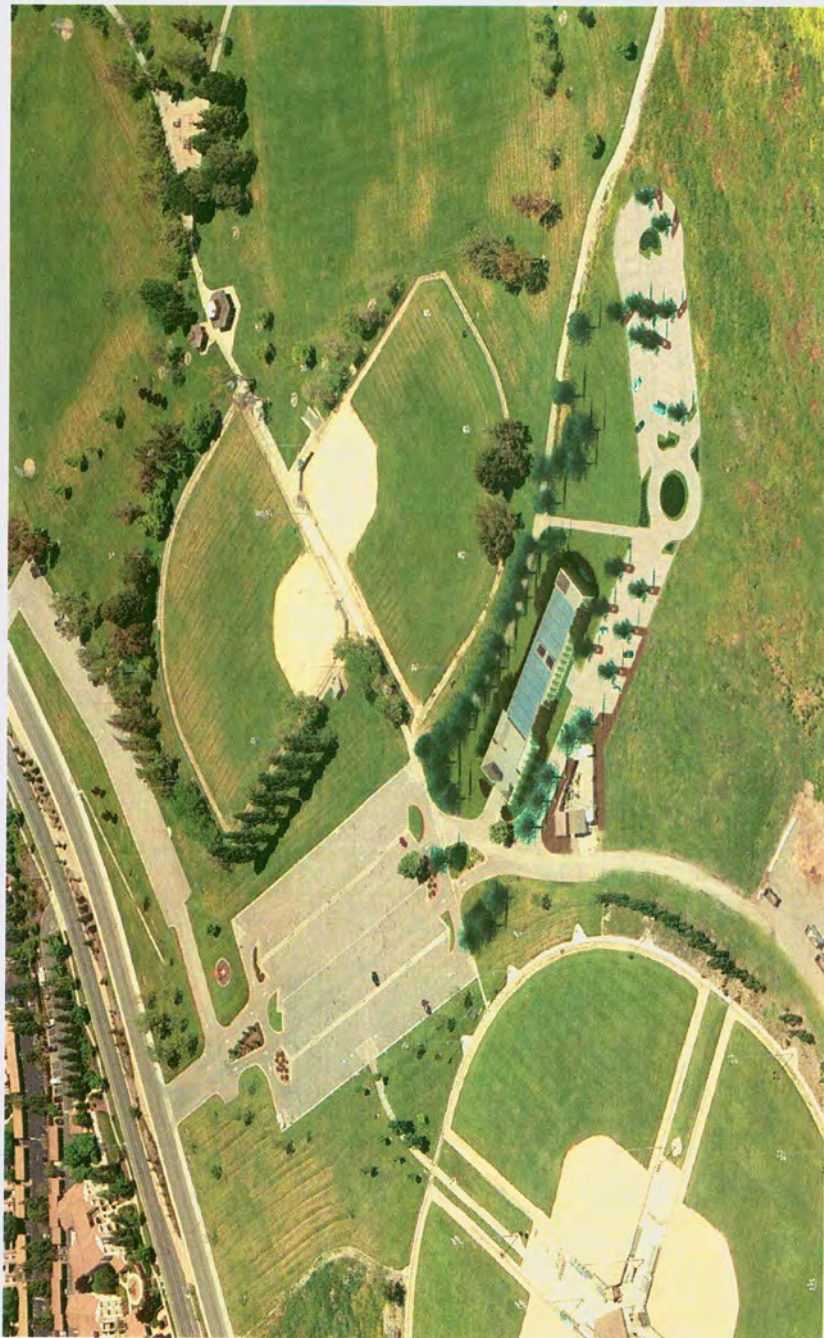
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REV	DATE	BY	SUB	APP	DESCRIPTION



PROJECT NAME	FIGURE-D
SHEET NO.	
CONTRACT NO.	
REV.	
CONTRACT SHEET NO.	
FIGURE NO.	

FIGURE D
 TYPICAL SUBWAY
 VENT STRUCTURE

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

 PB Team SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT	 PB Team SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
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3.0 Environmental Analysis

Aesthetics

The Aesthetics section of the SEIR and FEIS described the visual characteristics in the project area, analyzed the nature and extent of the physical changes resulting from the WSX Project, the visibility of the changes and their effects on the viewing public. The Warm Springs/South Fremont Station and Fremont Central Park, location of the subway ventilation structures, are in two visually distinct areas of Fremont and are discussed separately below.

BART developed thresholds of significance that are based on CEQA Guidelines and commonly accepted urban planning and design principles that use best professional judgment. Standards for determining the significance of visual impacts include the following criteria.

- Visual impact is measured by the degree of visual change either positively or negatively affecting an area's perceived aesthetic value. A highly visible change from a public viewpoint resulting from a project that is incompatible with the setting or is not pleasing to look at would constitute a significant adverse visual impact.
- The elimination of existing features that contribute to a well-defined streetscape, including vegetation originally intended to enhance the appearance of the built environment.
- Obstruction of an important view or scenic vista from any location where people gather.
- Creation of new sources of substantial light or glare that would adversely affect day or nighttime views.

Viewer sensitivity is based on the visibility of resources in the landscape, the proximity of viewers to the visual resource, the relative elevation of viewers to the visual resource, the frequency and duration of views, the number of viewers, and the types and expectations of individuals and viewer groups.

Fremont Central Park. Fremont Central Park is a focal point of community life and is heavily used by a broad base of the citizenry. Viewers who would be affected by the Revised Project include a wide variety of park visitors including passive and active recreational users, sports-team participants, joggers, and bicyclists. Except for construction of the WSX Project itself, visual conditions in the park are largely unchanged since preparation of the 2003 FSEIR and 2006 FEIS. Lake Elizabeth occupies a large portion of the park and is its main focal point.

The *Fremont General Plan* regards both Fremont Central Park and Lake Elizabeth as unique visual features. The landscape character of the park can be described as related to rural green fields, with winding curvilinear pathways leading to activity areas for sports recreation. Trees range from young newly planted deciduous species to mature eucalyptus and evergreens on the southern periphery of the park, which combine to form background view features.

The East Bay hills and Mission Peak provide the major elements of the background view from the park's sports complex. The easternmost portion of the park is bounded by Mission Creek, hidden from view by thick foliage of the mature tree plantings around Lake Elizabeth, and the former SP railroad tracks. The character of the built environment includes elements related to sports and recreational facilities. The

foreground and middle ground views from Stevenson Boulevard are dominated by tall steel poles supporting floodlights, high fencing surrounding softball fields, and the park's parking areas.

The two major streets bordering the park, Stevenson Boulevard and Paseo Padre Parkway, are designated as scenic routes and remain fairly unchanged since 2003. Landscaping has matured and new areas of landscaping have been installed, but otherwise the built environment remains similar. The city's grade separations project altered Paseo Padre Parkway east of the park by creating an underpass where the street used to cross the railroad right-of-way at grade.

East and outside the park, but within the Central Fremont and Fremont Central Park visual analysis area, are the former SP tracks and former WP railroad tracks. The 700-foot-by-1,000-foot area just east of the park's nature area between the two railroad tracks has no structures in it.

Two subway ventilation structures for the WSX Project are currently being constructed in Fremont Central Park; one is near the sports field complex toward the west side of the park, and the second is east of Lake Elizabeth closer to the former railroad alignments. The subway ventilation structures are large, approximately 242 feet long (including enclosed parking area), 49 feet wide, and 12 feet high. The proposed PV panels would be placed on the rooftop of each ventilation structure. The modular panels would be placed on metal frames sloped to provide maximize exposure to the sun. The PV panels themselves will be dark colored and non-reflective. The mounting frames for the panels are usually aluminum or a similar unpainted metal, which tends to oxidize and lose any sheen and reflectivity over time. The panel frames typically stand about 3 feet high. The PV panels would be within the rooftop parapet wall, but may extend slightly above the 2-foot high parapet wall. Figure E presents photos of panels similar to those being considered for the subway ventilation structures.

Views of the western ventilation structure are primarily from the active sports fields and parking areas closest to it. Views of the lower 2 feet+/- of the panels would be blocked by the rooftop parapet. The upper portion of the panels would be visible to park patrons; however, given the large size of the subway ventilation structures, the panels would be a negligible visual addition to the structures and would not be incompatible with the structure or the surrounding park area. The panels are not tall enough to block views of the surrounding hills and would not generate any light. The low angle of the panels (20 to 40 degrees to horizontal) and the generally non-reflective material would minimize the potential for glare. Therefore, no additional visual impacts are anticipated.

Views of the eastern ventilation structure are primarily from the pathway around Lake Elizabeth and the nature area east of the old railroad embankment, though landscaping around the structure will eventually grow to block views from Lake Elizabeth and views from the west. As with the western ventilation structure discussed above, given the large size of the subway ventilation structures, the panels would be a minor visual addition to the structures and would not be incompatible with the structure or the surrounding park area. The panels are not tall enough to block views of the surrounding hills and would not generate any new light or glare as explained above. Therefore, no additional visual impacts are anticipated.



Figure E: Photos of typical photovoltaic system (BART Richmond Shop rooftop, 2012)

Warm Springs/South Fremont Station. The Warm Springs/South Fremont Station is located in an industrial area, which has changed little since preparation of the 2003 SEIR. The landscape is basically flat and open. A number of parcels once used for agriculture are primarily vacant. Older farm buildings either remain as residences surrounded by large areas of open space or, in the case of the building located at the corner of Warm Springs Boulevard/Osgood Road and Grimmer Boulevard, the former house is used as a commercial flower stand.

The industrial character of the built environment is dominated by the horizontal lines of the railroad tracks that extend into the distance, the light-colored crushed rock of the slightly elevated rail beds, and the steel towers supporting electric transmission lines alongside the corridor between Auto Mall Parkway and the Tesla Motors auto manufacturing plant (formerly New United Motor Manufacturing, Inc.). The area along both sides of the rail corridor is a mix of large vacant parcels and new industrial and warehouse buildings, most notably the Tesla Motors plant. Over the last 10 years, additional industrial buildings have been constructed along the corridor. In this area, buildings adjacent to the project corridor are generally one or two stories, approximately 30 to 40 feet in height.

The rail alignment passes over Grimmer Boulevard on two bridges. Views of the hills to the east and to the mountains west across the Bay are prominent from the more open portions of the corridor along Warm Springs Boulevard. The views of the hills dominate the scene and play a central role in defining this area's visual character. Fremont Boulevard, I-680, and Mission Boulevard are designated as scenic routes by both Alameda County and the City of Fremont. Viewers who would be affected by the Proposed Project primarily consist of persons traveling through the area by car and to a smaller extent, those working at local industrial businesses.

The PV panels would be placed on new structures whose construction is already included in the WSX Project (station concourse roof, two bus boarding canopy rooftops) and on two purpose-built canopies over the 38 BART staff parking spaces and 68 patron parking spaces (Figure B and Figure C). The panels placed on the planned structures would follow the contours of the structures without increasing their size, shape, or height. The panels would simply be added to the rooftop. For the structures to be constructed over parking spaces, the structures would be a simple design of post and beams to hold the PV panels at the correct angle to the sun (approximately 22 degrees). The height of the structures (10 feet minimum, 16 feet maximum) would be comparable with other station structures. In each case, the design of the panel structures would be consistent with the industrial/institutional nature of the area and the station site.

All the PV structures would be located near the western side of the station site and away from the public views of the station from Warm Springs Boulevard. As discussed in the FSEIR and FEIS (and illustrated in photo simulations for Viewpoint 6), the station structure and appurtenant structures are set sufficiently back from Warm Springs Boulevard that they will not substantially affect the existing views by workers, residents, and motorists. However, the evaluation notes that the WSX Project could introduce new elements into the area that could have a significant adverse effect on visual quality and character. Mitigation Measure A4 was required to "ensure design of [the] proposed Warm Springs Station is consistent with existing environment." The first element of Mitigation Measure A4 requires BART to "Design the proposed Warm Springs Station so that it is compatible with the scale and massing of other buildings in the surrounding environment, including the commercial facilities to the north and the light industrial uses to the north and south." The majority of the PV panels would be on planned station structures, which have already been designed to be consistent with the surrounding environment. The

two independent panel structures over the parking spaces are of a size and scale that are compatible with the station and the surrounding environment. The PV panels themselves will be dark colored and non-reflective and do not generate any light. The panel mounting frames, where necessary, are usually aluminum or a similar unpainted metal, which tends to oxidize and lose any sheen and reflectivity over time. The slope of the panels, ranging from approximately 9.5 to 22 degrees from horizontal, combined with the low reflectivity, reduces the potential for glare to less than significant. Therefore, there would be no new or additional visual impacts.

Construction of the PV panels would take place off-site and they would be delivered to the site for installation as one of the last phases of construction. Installation would take a relatively short time, without the extended use of heavy equipment or construction stockpiling. Construction is not expected to create any visual impacts.

Agriculture and Forestry Resources

Neither the BART alignment nor adjacent properties are used for agricultural purposes, nor would farmland be converted to non-agricultural use. The entire WSX Project is within an urban corridor. The location of the PV panels would be in the Warm Springs/South Fremont Station and at the subway ventilation structures in Fremont Central Park. There would be no impact to agricultural resources.

Air Quality

The FSEIR conducted a full analysis of air quality impacts related to the WSX project, including ozone precursors, local CO and PM10 emissions, greenhouse gas emissions, toxic air contaminants, and construction-related emissions. Where potentially significant impacts were identified, mitigation measures were required.

The installation of PV panels would generate up to 0.69 MW of electricity. Conversion of solar energy to electrical energy would reduce the need to produce electricity from fossil fuel sources. Over the course of their 20-year life, if PV facilities replaced fossil fuel sources, 0.69 MW of solar facilities would keep a substantial amount of pollutants from entering the atmosphere, including approximately 25.8 million pounds of CO₂ (a leading cause of global climate change), 17,800 pounds of NO_x (a leading cause of smog), and 4,500 pounds of SO₂ (a leading cause of acid rain).⁶ Installation of the PV panels would not require any grading or extended use of heavy equipment that would generate large scale dust or construction emissions. The Revised Project would provide an air quality benefit.

Biological Resources

The FSEIR evaluated the biological resources along the project corridor and the potential for the WSX Project to disturb sensitive biological species and habitat, including wetland and riparian habitats. Potential impacts to California red-legged frogs, California tiger salamanders, western burrowing owls, and nesting cliff swallows and barn swallows were identified. A series of mitigation measures have been implemented to protect these species.

⁶ John-Michael Miller, Energy Consultant, Solar City, email of January 28, 2012.

The PV panels at the Warm Springs/South Fremont Station and Fremont Central Park would be placed on planned structures or over paved areas. All PV-related facilities would be made within the existing project footprint. Installation of the PV panels would be the final phase of construction and would not require use of any ground not already paved or disturbed as part of the larger construction effort. The Revised Project would not create any new or more severe biological impacts not already identified in the previous environmental documents.

Cultural Resources

The FSEIR and FEIS evaluated the operational and construction effects of the Project on archaeological and historic resources in the project corridor. A number of cultural resources were identified, including the William Y. Horner House, the Gallegos Winery in Irvington, and an archaeological resource in the Tule Pond area south of Walnut Avenue. The project also had the potential to damage previously unknown cultural deposits or human remains during ground disturbance. A series of mitigation measures were implemented to reduce potential impacts.

The PV panels at the Warm Springs/South Fremont Station and Fremont Central Park would be placed on planned structures, except for the two new PV structures that would be placed over a paved parking lot at the Warm Springs/South Fremont Station. There would be no new ground disturbance not previously analyzed in the FSEIR and FEIS. Installation of the panels would be the last phase of construction and would not require any subsurface ground disturbance. Therefore, the PV panels would not create any new or more severe impacts from those already identified in previous environmental documents.

Geology and Soils

The FEIR and FEIS assessed the geologic, soil, and seismic hazards along the project corridor and identified a number of potential issues. These include the Hayward Fault, which crosses the WSX alignment in two locations, expansive soils, and potential paleontological resources in the project corridor. Mitigation measures were adopted to reduce potential impacts to less than significant levels.

The PV panels at the Warm Springs/South Fremont Station and Fremont Central Park would be placed on planned structures, except for the two new PV structures, which would be placed over a paved parking lot at the Warm Springs/South Fremont Station. All the structures would be within the Project footprint analyzed in the FEIR and FEIS. Installation of the panels would take place after construction of the supporting structures, and there are no local geological and soil conditions would not affect panel installation. Therefore, the Revised Project would not create any new or more severe impacts not already identified in the environmental analyses.

Greenhouse Gas Emissions

The earth's climate is changing because human activities, primarily the combustion of fossil fuels, which are altering the chemical composition of the atmosphere through the buildup of greenhouse gases (GHG). As a result, global temperatures are predicted to increase over the century. In particular, global warming is predicted to increase statewide annual temperatures between 3 to 10 degrees Fahrenheit, depending on the assumed increase in GHG. Global warming could directly affect human health and

well being by degrading air quality, decreasing water supplies through reduced snowpack, decreasing agricultural production, increasing the potential for wildfires, creating higher sea levels and a greater potential for flooding.

The installation of PV panels would generate up to 0.69 MW of electricity. As noted in Air Quality above, conversion of solar energy to electrical energy would reduce the need to produce electricity from fossil fuel sources. Over the course of their 20-year life, if 0.69 MW of PV generated power replaced energy generated by fossil fuels, approximately 25.8 million pounds of CO₂, a leading cause of global climate change, could be kept from entering the atmosphere. Installation of the PV panels would require the limited use of trucks and cranes, whose engines could result in the generation of small amounts of GHG for a limited time. However, on balance the installation of PV panels would provide an environmental benefit by reducing the regional production of GHG.

Hazards and Hazardous Materials

The FSEIR and FEIS identified existing hazards and hazardous materials in the project corridor, analyzed the potential for project construction activities to disturb hazardous materials, and identified mitigation measures to address construction-related impacts.

The proposed PV panels do not contain any hazardous materials, and conventional construction methods would be used for installation of the panels. The panels would be located within the existing project footprint so that there would be no ground disturbance that was not previously analyzed. Therefore, there would be no new hazardous material impacts related to the panels not already addressed in the previous environmental documents.

Hydrology and Water Quality

The FSEIR and FEIS described the existing hydrology and water quality conditions along the project corridor, and examined potential Project impacts on surface water quality, groundwater, flood storage capacity, and stormwater runoff.

The PV panels would not increase the amount of impervious surface or add any materials or features that would affect water quality. The PV panels would be installed using conventional construction techniques and would not create any new ground disturbance. Mitigation measures implemented for the WSX Project would mitigate any water quality and hydrology impacts related to the Revised Project panels. Therefore, the Revised Project would not create any new or more severe impacts not already identified in the previous environmental analyses.

Land Use and Planning

The FSEIR described existing land uses in the project corridor, evaluated the WSX Project's consistency with relevant plans, policies, and programs, and analyzed the Project's compatibility with existing land uses.

At the Warm Springs/South Fremont Station, installation of the panels would be over planned station structures or parking spaces closest to the station concourse. This location is in the westernmost portion of the station, away from commercial land uses along Warm Springs Boulevard and adjacent to the BART and Union Pacific Railroad tracks, where the station parking lot separates them from surrounding land uses. There would be no interaction with adjacent land uses. The PV panels are passive structures that do not generate any noise, light, or glare. Accordingly, none of the station activities (station access, bus parking, auto parking) would be affected by their presence. Auto parkers would derive a benefit from the panel's shade in the summer and rain protection in the winter. The Revised Project would not affect BART's plans for future transit-oriented development at the Warm Springs/South Fremont Station, which is designated for the easternmost blocks of the station parking lot along Warm Springs Boulevard. Therefore, the Revised Project would be compatible with existing and planned land uses at the Warm Springs/South Fremont Station.

In Fremont Central Park, the PV panels would be located on the two ventilation structures. See the section on Recreation below for a discussion of the Revised Project's compatibility with recreation use.

Mineral Resources

Previous environmental studies examined the geology and soils of the Project corridor. There are no known mineral resources of local or statewide importance in the WSX Project corridor. Therefore, the Revised Project would not affect any mineral resources.

Noise

The FSEIR and FEIS evaluated the noise and vibration associated with BART vehicles, BART operations, and the WSX Project's construction. Noise and vibration impacts were identified and mitigation measures provided. The evaluation determined that although construction impacts would be temporary, construction vibration could have potentially significant impact on sensitive receptors along the project corridor and construction vibration could be significant and unavoidable, even with mitigation measures in place.

The PV panels do not move and do not generate any noise or vibration. Some construction would be required to install the panels, but the small number of trucks, cranes, and workers required would be minor compared to the major construction required to build the WSX Project (station concourse, subway ventilation structures, etc.) that would support the panels. In addition, any panel-related construction would take place in the westernmost portion of the station area near the BART and Union Pacific tracks, and would be furthest from any receptors. The construction at the ventilation structures in Fremont Central Park would consist of lifting the PV panels and frames to the rooftop, where they would be fastened in place. The location of the ventilation structures in the center of the park is more than 1,000 feet from any residential areas. Adopted measures would mitigate any construction noise impacts to the greatest degree feasible.

Population and Housing

The Population and Housing evaluation in the FSEIR and FEIS provided an overview of the population, housing, and economic characteristics of the local community, analyzed the Project's potential impacts

on housing supply and population, including displacement of residential and business uses, and identified mitigation measures to avoid or reduce adverse impacts.

The PV panels would not require any human operators, and there would be no permanent employment related to the panels. Construction employment to install the panels would be minimal and short-term. Therefore, there would be no changes to population, employment, or housing.

Public Services

The Revised Project's effect on police and fire services was evaluated in the FEIR. The PV panels would be a very small increase to the WSX infrastructure at the Warm Springs/South Fremont Station and Fremont Central Park, would not introduce any fire-related hazards, and would not affect ridership or other activities that could draw people to the station. BART and the contractor are responsible for site security during construction. Therefore, the need for police or fire service would not be increased, there would be no need for new facilities, and the Revised Project would not create any additional impacts.

Recreation

An analysis of recreation impacts was provided in the 1992 EIR and revisited as part of the Section 4(f)/Section 6(f) evaluation in the FEIS. There are no recreation uses at the Warm Springs/South Fremont Station, so the addition of the PV panels would have no impact there.

At Fremont Central Park, the western subway ventilation structure is in the vicinity of active recreation facilities, and the eastern ventilation structure is close to walking trails and a passive recreation area. Recreation uses around the western structure include four baseball fields to the west, two baseball fields to the north, and auto parking to the northwest and immediately adjacent to the structure on the south. The playing fields are self-contained, and the distances are great enough (approximately 100 feet to closest ball field) that there is no real interaction between the recreation uses and the ventilation structure. The PV panels would be mounted on the roof of the structure and within the rooftop parapet wall. The panels would not be visually intrusive, and would not interfere with any of the recreation activities around the structure. At the eastern ventilation structure, walking trails come within a few feet of the structure. The most prominent trail is around the perimeter of Lake Elizabeth west of the structure, but a riparian forest occupies the intervening ground and will block most views of the structure, including the PV panels atop the structure. A second walking trail on the east side of the structure follows the same route as the vent structure service road and comes within a few feet of the structure. As with the western ventilation structure, even if the PV panels were visible to walkers nearby, they would not have any impact on walking trails or recreational use in the area.

Installation of the PV panels on the ventilation structures would consist of lifting the premade panels onto the structure rooftops and fastening them into panel support frames. Trucks and perhaps a small crane would be necessary to deliver the panels and lift them to the roof. For both the east and west ventilation structures, truck access is available immediately adjacent to the structures. Small crews working on the roof then would install and connect the panels. Neither of these activities, the lifting or

the rooftop installation, would interfere with the recreational activities taking place around the ventilation structures. For these reasons, the additional of the PV panels to the ventilation structures would not adversely affect any recreational use of Fremont Central Park.

Transportation

The transportation analysis in the FSEIR and FEIS evaluated potential WSX Project ridership and Project impacts to local streets, intersections, transit operations, parking availability, pedestrian and bicycle circulation, and construction impacts.

The proposed PV panels would not affect any aspects of the ridership or access to or from the station. The panels would be placed on existing structures or over parking spaces. No parking spaces would be lost. The photovoltaic panels would be fabricated off-site and transported to the site to be installed. Delivery of the panels and on-site construction of the panel structures over parking would be a very small portion of the overall construction effort for the station and construction within the project corridor, which includes the ventilation structures in Fremont Central Park. There would be no transportation-related impacts related to the PV facilities.

Utilities and Service Systems

The FEIS described the location of existing utility lines and evaluated how construction and operation of the WSX Project could interrupt or damage the proper functioning of these lines. In addition, the FEIS considered whether the existing water and wastewater treatment systems serving the project corridor could accommodate the increased load created by the Project.

The PV panels and related electrical connections would be located on BART property. The panels generate DC power that would be converted to AC power on the BART side of a metered connection to PG&E. The energy generated by the PV systems would provide the daytime electrical power needed for the station. At times the generation will exceed the station load and the excess would be fed back into the local grid as it is generated. These two-way utility connections are becoming common place as energy is increasingly generated at dispersed locations by solar facilities. Installation of the PV panels would not require any ground disturbance that could affect existing underground utilities. The PV panels would not affect existing utility lines or operations.

Energy

The FSEIR and FEIS considered the energy required for both the construction and operation of the WSX Project, as well as the energy savings associated with the WSX Project's reduction in vehicle miles traveled. BART is a major consumer of electric power. BART electrical power currently comes from both renewable and non-renewable sources.

The PV panels would allow the WSX project to become an energy producer. The project would generate a total of approximately 0.69 MW. The energy generated by the PV systems would provide the daytime electrical power need of the station. At times the generation will exceed the station load and the excess would be fed back into the local grid as it is generated. Any energy produced by the WSX system would reduce BART reliance on other energy providers and reduce the overall demand on the electric grid.

One megawatt is equivalent to powering 10,000 100-watt light bulbs and is roughly enough power for 1,000 California households. Over the course of their 20-year life, a 0.69 MW PV facility would save the energy equivalent to driving 28.2 million vehicle miles.⁷ Installation of the PV panels would be an energy benefit.

⁷ John-Michael Miller, Energy Consultant, Solar City, email of January 28, 2012.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Marcia DeBourgen</i>		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board of Directors		
DATE: c <i>11/28/12</i>		BOARD INITIATED ITEM: No		
Originator/Prepared by: Paul Medved Dept: TSD <i>Paul Medved 11/14/12</i>	General Counsel <i>Andrew Kovacs 11/14/12</i>	Controller/Treasurer <i>[Signature]</i>	District Secretary <i>[Signature]</i>	BARC <i>Paul Medved 11/29/12</i>
Signature/Date:	[]	[]	[]	[]

TITLE:

CHANGE ORDER NOS. 8, 44 and 45 TO CONTRACT No. 02ED-110 (WARM SPRINGS EXTENSION FREMONT CENTRAL PARK SUBWAY) FOR NESTING BIRD DETERRENDS AND SCHEDULE DELAY AVOIDANCE MEASURES - 2011 AND 2012

NARRATIVE:

PURPOSE:

To obtain Board authorization for the General Manager to execute Change Order Nos. 8, 44 and 45 for Nesting Bird Deterrents in 2011 and Schedule Delay Avoidance Measures in 2011 and 2012 in connection with construction of the Warm Springs Extension Project (WSX) Fremont Central Park Subway in an amount not to exceed \$4,997,500.

DISCUSSION:

Background: The Board authorized award of Contract No. 02ED-110, Warm Springs Extension Fremont Central Park Subway, to Shimmick Construction Co. Inc./Skanska USA Civil West California District Inc./a Joint Venture (Contractor), in the amount of \$136,750,550.00, on May 28, 2009. This Contract, which is intended to construct a mile long cut and cover subway beneath Fremont Central Park, is currently approximately 99% complete, on schedule and within budget.

This EDD relates to three Change Orders: one dealing with nesting bird deterrents (as described below) for 2011; and two addressing schedule delay avoidance measures for 2011 and 2012, respectively.

The work of this Contract involves significant interaction with wildlife, particularly migratory birds. Fremont Central Park is located within the "Pacific Flyway." With its watercourses, open spaces and areas of wooded habitat, the WSX construction site in Fremont Central Park represents a near ideal setting for migratory birds to nest. Contract No. 02ED-110 is subject to conditions set forth in Section 1602 of the Lake and Streambed Alteration Agreement issued by the California Department of Fish and Game, which specifically requires pre-construction surveys and monitoring by a qualified biologist throughout the nesting season (February 1 to September 1). If nesting birds are encountered within or near the work site, a work exclusion buffer must be established to protect each nest. The federal Migratory Bird Treaty Act (MBTA) also protects migratory birds.

In the fall of 2009, the District retained Garcia and Associates (GANDA) to provide environmental monitoring for the WSX Project. Under the direction of the District's

Environmental Compliance Manager, GANDA biologists have provided independent biological monitoring of all WSX construction activities since that time.

Deterrents: In an attempt to reduce the impact of nesting birds on the construction schedule, and after consultation with the biological monitors, BART issued Change Order No. 8 on February 4, 2011 in the amount of \$90,000 to employ various deterrent strategies both prior to and throughout the 2011 nesting season. Multiple strategies were employed including but not limited to covering material stockpiles and portions of the graded work site, and installing netting, water sprinklers and "air dancers."

Despite all due diligence, the volume and variety of bird nesting attempts over the entirety of the constantly changing construction work site overwhelmed the initially prescribed deterrent strategies. Consequently, during 2011 BART directed the Contractor to expand the scope of the deterrent strategies in an effort to maintain project schedule and minimize overall cost exposure to the District. As a result of the additional deterrent work, the total amount expended by the Contractor to complete Change Order No. 8 work in 2011 was \$430,000.

Schedule Delay Avoidance: The critical path for the Subway Contract involved the work in Lake Elizabeth and Mission Creek (Subway segments 58-91) where work would be restricted by permit to the dry season (April - October). If the Contractor were unable to complete all work in those segments during the summer of 2011, the Contractor would have been required to take significant steps to temporarily protect and secure the work area for the winter and then to attempt to complete the work the following dry season. A significant delay in completion of the Subway Contract would cause a delay in the availability of the Subway to the follow-on WSX Design-Build Line, Track, Station and Systems (LTSS) contractor, which would have exposed the District to significant delay costs associated with both contracts, as well as potentially delay the commencement of revenue service to the Warm Springs/South Fremont station.

Thus, the Contractor was directed to undertake a number of measures specifically intended to mitigate the otherwise potentially significant adverse schedule effects of the nesting bird related work exclusion buffers. Schedule delay avoidance measures included shifting formwork and equipment within the work site to avoid work exclusion buffers, working longer hours, and providing additional formwork, equipment, work crews and supervision so as to work in multiple locations simultaneously. Such measures proved to be successful in keeping the project on schedule throughout both 2011 and 2012.

These schedule delay avoidance measures are the subject of Notice of Potential Claim No. 011 and Notice of Potential Claim No. 014 for impacts occurring in 2011 and 2012, respectively. Accordingly, staff proposes to issue Change Order No. 44 in the amount of \$4,070,000 to the Subway Contractor so as to settle NOPC No. 011 and Change Order No. 45 in the amount of \$497,500 so as to settle NOPC No. 014.

Conclusion: Pursuant to Board Rule 5-2.4, Change Orders involving expenditures greater than \$200,000 require Board approval.

The Office of the General Counsel will approve these Change Orders as to form prior to execution. The Procurement Department will review these Change Orders prior to execution for compliance with procurement guidelines.

FISCAL IMPACT:

Funding of up to \$4,997,500 for Change Order Nos. 8, 44, and 45 to contract 02ED-110 will come from project budget 02ED000 WSX Central Park Subway Construction D/B. The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

As of 10/30/12, \$192,171,000 is available for this project from the following sources:

Fund No.	Source	Fund Description	Amount
5553	State	CTC WSX 04A0076-03	\$ 2,773,000
663K	State/Local	ACTIA - 2 – BART WSX Stage 1	\$ 58,145,186
6217	State	RM2 Alloc 09366703 Match 663K	\$131,252,814
		Total	\$192,171,000

BART has expended \$168,632,000, encumbered \$4,046,390, and pre-encumbered \$79,587 to date. This action will encumber no more than \$4,997,500 leaving an available fund balance of \$ 14,415,523.

There is no fiscal impact on available un-programmed District Reserves.

ALTERNATIVE:

The Board can elect not to authorize the execution of these Change Orders. However, failure to execute the Change Orders would prevent the District from resolving the issues at this time, likely resulting in a claim and/or litigation.

RECOMMENDATION:

Adoption of the following Motion.

MOTION:

The General Manager is authorized to execute the following Change Orders to Contract No. 02ED-110, WSX Fremont Central Park Subway: a) Change Order No. 8, Nesting Bird Deterrents - 2011; b) Change Order No. 44, Schedule Delay Avoidance Measures - 2011; and c) Change Order No. 45, Schedule Delay Avoidance Measures - 2012, for a total not to exceed amount of \$4,997,500.

CONTRACT No. 02ED-110

CHANGE ORDER Nos. 8, 44 & 45

CHANGE ORDER SUMMARY**BACKGROUND**

Program: Warm Springs Extension Project (WSX)

Contractor: Shimmick/Skanska, JV

NTP Date: August 24, 2009

Monetary Completion as of 11/1/12: 99%

Physical Completion as of 11/1/12: 99%

<u>COST</u>	<u>% of Award</u>	<u>CO Totals</u>	<u>Contract Amount</u>
Original Contract Amount			\$136,750,550
Other than Board Authorized CO's	1.87%	\$2,555,274	
Board Authorized CO's*	2.46%	\$3,362,908	
(*CCO 2, 10, 11 & 41)			
These COs (#8, 44 & 45)	3.65%	\$4,997,500	
Subtotal of all CO's	7.98%	\$10,915,682	
<u>Revised Contract Amount</u>			\$147,666,232

SCHEDULE

Original Contract 1,300 days

Time Extension to Date 36 days

Time Extension due to approved CO's (rain) 36 days

Revised Contract Duration 1,336 days

Date: October 9, 2012
To: BART Board of Directors
From: Citizen Review Board
Benjamin L. Douglas, Chairperson
Subject: Report to Board of Directors

Since this is the first written report to be submitted by the Citizen Review Board (CRB) it will include a summary of the most significant activities of the CRB up to this point. In the future it is the intent of the CRB to provide the Board with quarterly reports as outlined in the BART Citizen Oversight Model.

Citizen Review Board Members:

Benjamin L. Douglas (Chairperson)	District 1
Sukari Beshears	District 2
William White	District 3
Peter D. Barnett	District 4
Douglas N. Hambleton	District 5
Les Mensinger	District 6
Sharon Anne Kidd (Vice-Chairperson)	District 7
Ken Jones	District 8
George Perezvelez	District 9
Rev. Daniel A. Buford	Public-At-Large
Thomas H. Minshe	BART Police Officers and Managers Association

The initial public-at-large member, Jennifer Scaife, resigned and the Board replaced her with Daniel Buford in February 2012. The initial representative of the police associations, Sue Angeli, resigned in April 2012 and was replaced in July by Thomas H. Minshe.

Meetings:

The CRB meets in the district boardroom on the second Monday of the month. In order to facilitate public participation on even months the meetings are held at 4 PM and on odd months the meetings are held at 9 AM. Meeting agendas and minutes are posted on the district website and can be found at www.bart.gov/about/bod/meetings.aspx.

Regular agenda items include monthly oral reports by BART Chief of Police Kenton Rainey and Independent Police Auditor Mark Smith. Mr. Smith also presents the CRB with a written monthly report, which can be found on the Auditor's webpage at www.bart.gov/policeauditor.

Initial Organizing activities:

After being established in mid-2011 the CRB elected George Perezvelez as Chairperson and Sharon Kidd as Vice-Chairperson. They served as the CRB officers until July 2012 when Benjamin Douglas was elected as Chairperson and Sharon Kidd was reelected as Vice-Chairperson.

At one of our first meetings a representative from the BART Legal Department made a presentation on the Brown Act and parliamentary procedure.

The CRB established a Bylaw Subcommittee and Bylaws were adopted during the regular meeting on November 14, 2011. The bylaws were later amended on January 9, 2012. A copy of the bylaws is attached.

Primary Duties and Responsibilities

The model lists several primary duties and responsibilities for the CRB. The general topic headings below describe the CRB activities that address these tasks.

Receiving complaints, reviewing investigative reports and making recommendations for corrective action.

The CRB has not directly received any complaints. However, the independent Auditor has received a number of complaints and appeals, many of which will ultimately be reviewed by the CRB.

The Auditor's Office has completed one investigation of an appeal to a prior BART PD Internal Affairs case. The Auditor's report was presented to the CRB on June 11, 2012 and on July 9, 2012 the CRB met in closed session and made their findings. The CRB agreed and concurred with the Auditor's findings that one of the allegations was not-sustained and the other was unfounded.

In September 2012 the Auditor's Office presented the CRB with a second completed complaint investigation regarding an anonymous allegation of racial bias during the handling of a traffic incident in a crowd control situation. The CRB meet in closed session on October 8, 2012 to consider this complaint and unanimously agreed with the Auditor's findings that the complaint was unfounded. The CRB also agreed with the Auditor's recommendation that the department's definition of bias based policing should be expanded to include any act, failure to act or other disparate treatment based on a broad set of criteria which casts suspicion on an entire class of people. There was a general census that the CRB should follow up on this issue and the issue of crowd control training with the Chief and the Auditor.

Recommendations on Procedures, Practices and Training

On September 2, 2011 the CRB held a special meeting regarding the issue of disruption of cell phone service during emergencies and protests. The CRB provided the Board with their input in the form of a memorandum and Chair George Perezvelez made an oral presentation at a following meeting of the BART Board of Directors.

During the regular meeting on October 8, 2012 the CRB reviewed the department's proposed policy regarding officers being issued a wearable Mobile Video Recorder (MVR). There was no formal motion or vote on the proposed policy, but members did generally support the MVR implementation. CRB members did have questions regarding the policy and made informal suggestions for changes.

The CRB has not made any other formal recommendations regarding BART PD procedures practices or training. For the CRB meetings on October 14, 2011 and September 10, 2012 Chief Rainey and his staff provided the CRB with updates to the BART PD Policy Manual. The CRB discussed the changes and some members had recommendations and comments. The CRB did not take any formal action.

The CRB has taken steps to educate themselves regarding police procedures. In order to familiarize themselves with the BART PD, CRB members Sharon Kidd, Les Mensinger have participated in ride-alongs with officers on patrol. The department has been responsive to CRB requests for presentations regarding policies and practices. Chief Rainey and/or his staff have made presentations to the CRB on the following topics:

- Internal Affairs and the Discipline process
- Crisis Intervention Training
- Fare Evasion - problem overview and enforcement
- Officer involved shooting of July 3, 2011
- Public Safety and the Urban Shield Tactical Training Exercise
- BART PD community outreach
- Lexipol Policy Update Process
- Department Training Plan and Practices
- Police Officer Recruitment
- Proposed Body Camera Deployment

The BART PD Training Unit presented a two day class for CRB members on March 1 & 2 2012 that covered the following topics; Laws of arrest, Crisis Intervention, Racial Profiling, Use of Force Policy, Canine Enforcement Police and Demonstration, Arrest and Control Police and Demonstration, Driver Simulation, and Shooting Simulator. CRB members Douglas Hambleton, Ken Jones, Sharon Kidd, George Perezvelez and William White along with Auditor Mark Smith and Investigator Kobia West attended some or all of these training sessions.

On March 12 and 13, 2012 the BART PD Training Unit along with the Consortium for Police Leadership presented a series of four hour training sessions for BART officers on Reframing Officer Civilian Interactions. CRB members were invited to attend. The following CRB

members attended a portion of this training; Sukari Beshears, Benjamin Douglas, Douglas Hambleton, Ken Jones, Sharon Kidd and Les Mensinger.

For the past several months the BART PD Training Unit has been presenting a series of Advanced Officer training sessions for members of the BART PD covering the following topics: Arrest and Control, Impact Weapons, Racial Profiling/Cultural Diversity, TASER, CPR, High Risk Vehicle Stops/Train Searches, and Crowd Control. CRB members have been invited to attend and several are planning to participate in the next few months.

CRB member Sharon Kidd attended the BART PD COMPSTAT presentation on July 17, 2012

Meeting periodically with the BART Police Managers and Police Officers Associations

The presidents and other members of these associations usually attend the regularly scheduled monthly CRB meetings. The CRB involved them in our discussions regarding proposed changes to the Oversight Model, which will be covered later in this report. During the CRB meeting of May 14, 2012 there was a formal item on the agenda for a discussion with the two associations.

Community Outreach

CRB member Sharon Kidd, along with Independent Auditor Mark Smith participated in a Coliseum community clean-up event in Oakland from 1:00 – 3:00 PM on April 14, 2012.

The Office of the Independent Auditor and the CRB held a community forum from 6:00 – 8:00 PM on April 24, 2012 at the Allen Temple Baptist Church in Oakland. CRB members assisted with community outreach prior to the event and CRB Member Daniel Buford, an Allen Temple Minister, helped with organizing and making arrangements to use the facilities. CRB members Sukari Beshears, Daniel Buford, Benjamin Douglas, Sharon Kidd and William White were present and participated in the forum along with Independent Auditor Mark Smith and Investigator Kobia West.

The BART PD held National Night Out events on August 7, 2012. CRB member Sharon Kidd participated at the 12th Street BART station and CRB member Les Mensinger participated at the Hayward station. Members George Perezvelez and William White represented the CRB at various National Night Out events held in the City of Berkeley.

A second community forum was organized by the Independent Auditor's office from 6:30 – 8:00 PM on September 26, 2012 at the Richmond Recreation Center Complex. Again CRB members were involved in the outreach and Peter Barnett, Sukari Beshears, Sharon Kidd and Les Mensinger were present for the forum.

Reporting

This is the first formal written report to the Board of Directors. The CRB intends to submit more timely reports in the future.

Monitor Study Recommendations

The BART Management Audit conducted by the National Organization of Black Law Enforcement Executives (NOBLE) was completed on January 1, 2010. The BART PD has been actively working on the implementation of the NOBLE recommendations. During the meeting of February 13, 2013 the CRB spent several hours reviewing the BART PD response and implementation of the NOBLE report recommendations. The CRB did not take any formal action or vote. However, CRB members were generally pleased with the progress that has been made. CRB members did make individual informal recommendations to Chief Rainey regarding policy matters. Chief Rainey has implemented some of these recommendations.

The NOBLE audit and BART PD updated response was reviewed again during the CRB regular meeting on October 8, 2012. A motion was passed unanimously commending Chief Rainey and his staff for their work implementing the NOBLE recommendations.

OTHER CRB ACTIVITIES

State Assembly Committee on Public Safety

In October 2011, the State Assembly Committee on Public Safety held a public hearing regarding the BART PD, the Noble report and the Citizen's Review Board. General Manager Grace Crunican Chief Kenton Rainey and Independent Auditor Mark Smith made presentations and answered questions. CRB Chair George Perezvelez made a presentation regarding the CRB. Vice-Chair Sharon Kidd and member Douglas Hambleton also attended and addressed the committee.

NACOLE Conference

At her own expense, CRB Member Sharon Kidd attended the National Association for Civilian Oversight of Law Enforcement (NACOLE) annual conference in New Orleans on September 12 – 15, 2011.

Sharon Kidd and William White plan to attend the October 2012 conference in San Diego with funding approved by the Board of Directors.

Participation in Oral Boards

One of the recommendations from the NOBLE report was that the BART PD include citizens in their entry level and promotional oral boards. The Department has adopted this recommendation

and has invited CRB members to participate on a regular basis. The following CRB members have participated on oral panels: Peter Barnett, Daniel Buford, Benjamin Douglas, Ken Jones Sharon Kidd, Les Mensinger and William White.

Recruitment Advisory Committee

CRB members Sukari Beshears, Sharon Kidd and George Perezvelez have participated in the BART PD recruitment Advisory Committee.

RECOMMENDATIONS

It is the intention of the CRB that both of the following proposals go before the Board's BART Police Department Special Review Subcommittee for their consideration before being presented to the full Board of Directors.

CRB Expenses

During the CRB meeting on June 11, 2012 the CRB discussed the travel, parking and related expenses that some members have incurred to attend meetings as well as the time commitment involved with CRB activities. There was discussion regarding a monthly stipend for CRB members and CRB members being issued Law Enforcement Officer (LEO) passes for use on BART while attending to CRB business. A motion was made "to propose to the BART Board that LEO Cards be issued to those CRB members who would like to have one, as well as that a monthly stipend be formulated to offset the costs of attending CRB-related business other than regular meetings." The motion passed with 7 votes in favor and 3 votes against. The CRB members who made this proposal, Les Mensinger and Sharon Kidd prepared a memorandum to the Board on this subject. The memorandum is attachment #2.

Modification of Oversight Model

During the meeting on August 13, 2012 the CRB unanimously passed a proposal to modify the language of BART Citizen Oversight Model. This issue had been discussed at several prior meetings and representatives of the police associations had agreed to the changes. The proposal involves who should be able to file complaints with the CRB and the Office of the Independent Auditor. The current language in the model is unclear regarding the filing of a juvenile's complaint and does not allow for the filing of complaints by family members in cases of death or incapacitation. In addition, the CRB feels the language regarding profiling, bias and harassment should be expanded since the current wording could be interpreted to restrict such complaints. The proposed changes to Chapter 1-04 and Chapter 2-08 are contained in Attachment #3. Wording to be deleted is shown in ~~strikeout~~ and wording to be added is underlined.

Attachments:

- #1 – Bylaws
- #2 – Memorandum Regarding Expenses of Citizen Review Board Members
- #3 – Proposed Oversight Model change