



## Citizens' Oversight Committee Meeting Minutes

<b>Meeting No. 3 – Scheduled Meeting</b>	<b>Meeting Date</b> October 14, 2008			
<b>Meeting Time</b> 4:30 – 6:00 p.m.	<b>Recorded By</b> A. Charles			
<b>Attendees:</b> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;"> <b>Current Members:</b>  Amin Almuti  H. Andy Franklin  Linda Lautenberger  Elmo Wedderburn  James Zumwalt </td> <td style="width: 33%; vertical-align: top;"> <b>Alternates:</b>  Bob Barksdale  Larry Donovan  William Kaplan  Claudia Spencer </td> <td style="width: 33%; vertical-align: top;"> <b>Staff:</b>  Angela Charles  Terry Green  Tom Horton  John Love  Kathy Mayo  Molly McArthur </td> </tr> </table>		<b>Current Members:</b> Amin Almuti H. Andy Franklin Linda Lautenberger Elmo Wedderburn James Zumwalt	<b>Alternates:</b> Bob Barksdale Larry Donovan William Kaplan Claudia Spencer	<b>Staff:</b> Angela Charles Terry Green Tom Horton John Love Kathy Mayo Molly McArthur
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<b>Agenda Item</b>	<b>Action Taken</b>			
<i>Welcome &amp; Introduction</i>	Introduction of Members, Alternates, and Staff present.			
<i>Public Comment</i>	No comments.			
<i>Review of Administrative Matters</i>	The COC members reviewed the minutes from the July 1, 2008 meeting. It was noted that on page 11, third paragraph, the word “if” was omitted. The committee members voted unanimously to approve the corrected minutes for posting on the BART website.			
<i>Presentation by Internal Audit Department Regarding Status of Audit on COC</i>	John Love, Principal Internal Auditor, & Terry Green, Audit Manager, made a presentation regarding the status of the Audit of the COC. At the September 2007 meeting, the previous COC members requested an audit of the COC function. The auditors have completed their review and are preparing a written report, which they hope to have available for the next meeting. The objectives of the review were to 1) determine that the actions of the committee are consistent with its responsibilities and 2) identify any potential actions that the committee could take to help meet those responsibilities. The auditors used a benchmarking approach for the audit. They reviewed reports			



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and information from five other GO bond oversight committees in California that were similar to the COC. They reviewed the activities and actions of the oversight committees and created a list which they categorized into benchmarks. The auditors then reviewed the COC's materials, reports and activities, spoke with staff, and then associated each item with the established benchmarks. Through this effort the auditors determined that the actions of the committee are consistent with its responsibilities.

J. Love reviewed the actions that are consistent with the COC's duties, which include: reviewing the Bond Financial Report; speaking with staff regarding cost analysis; receiving presentations from various BART departments, including grant compliance, internal audit, and BART's controller treasurer; meeting at least twice a year, and advertising the COC meetings to the public. J. Love encouraged the COC members to continue review of the single audit on an annual basis.

The auditors had three recommendations for the COC to consider:

- 1) Have a representative from BART procurement attend a future meeting to provide an overview of procurement rules and guidelines that are relevant to the Earthquake Safety Program.
- 2) Consider to what extent the project is predicated on other funds and what contingency exists for the project if those funds are not received.
- 3) Conduct a review of project documents and construction sites



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on which bond funds are being expended. For example, A COC member could ask to review the detailed data that is summarized in the Bond Financial Report or to go to a construction site to view the work in progress.

J. Love indicated that he was informed by project staff that the committee is a Brown Act committee, which means that if three or more COC members are together to discuss COC matters it becomes a public meeting and must be properly noticed. There are, however, a number of things that are happening on the project that can be reviewed between meetings and then have findings brought back to the committee. There might be some areas that the committee might want to see that are hard to see or security sensitive. It would be best to arrange site visits with BART staff. T. Horton indicated that as part of the project safety program members of the general public are not allowed onto project sites and that special arrangements would need to be made for COC members.

A COC member asked if a report would be issued that encapsulates everything presented with the three suggested areas for the COC to consider. J. Love indicated that was correct. A COC member asked if they were recommendations or suggestions. T. Green indicated that they are suggestions for the COC's consideration, and that it was up to the COC to determine if there were any they would like to implement. A COC member commented that the three suggestions were very good and there is one that seems particularly important. A



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COC member asked if the COC was required as part of the bond structure. Staff confirmed that the language of the bond measure stipulates that a COC would be created to evaluate the expenditures of the \$980 million in bond funds. A COC member further asked if it is possible that the BART board could be challenged in public regarding the effectiveness of the COC; if so, at this point in time the Board could answer that the COC has been audited and compared to other oversight committees. A COC member asked if the three suggestions were fundamental weaknesses to their function or if they were enhancements. J. Love indicated that they are enhancements.

COC members asked if looking beyond the scope of the bond contradicts the committee's charter. If the COC wanted to review the funding information for the entire project who would provide that information to them? T. Green indicated that the auditors would recommend reviewing the entire funding picture for the Earthquake Safety Program. During the audit he concluded that there is an implicit promise in the passage of the \$980 million that the entire project would be completed, rather than 75% of the project.

A COC member asked how much additional work this would cause BART staff. Staff responded that advice from legal counsel would be needed to determine if there is an issue with changing the committee's responsibilities as approved by the voters. A COC alternate commented that the funding sources are intertwined and cannot be separated entirely because a delay in one of the other funding sources



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could cause a delay in a project, which in turn could cause the cost of the bond funding to go up. BART staff suggested creating a report that shows the various funding sources, the amounts committed, the amounts received, and what's been expended. A COC member asked if there are limitations on what the other funding sources can be used. Staff indicated that there are. COC members commented that this information would be helpful for the COC to know as it impacts the bond funding. A COC alternate also asked if it would be possible to get a general understating of the funding plan, for example if a funding source is meant to provide 90% of the total funding or is X amount of dollars that can be spent however it is needed. Staff indicated that this would be possible.

A COC alternate commented that the previous committee members asked for the audit review to ensure that the committee's actions satisfied their responsibilities. One member commented that he would recommend accepting and expanding the recommendations. Also, moving to quarterly meetings was generally accepted as a good idea

T. Green provided an over view on the philosophy on the approach for the audit. While the auditors had not considered that the board could be challenged on the COC's activities, they thought that a COC member could be asked at a COC meeting or at the presentation to the Board how the members know that the bond funding is being spent appropriately. The suggestions from the auditors are designed to prepare them for those types of questions.



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A COC member asked if the first recommendation to have a member of the procurement staff make a presentation to the COC was a one time item or recurring. T. Green commented that the suggestion was for COC members to ask for a one-time presentation from the procurement department for an understanding of the process. A lot of the bond funding will be used for contracted work and it would be useful for the committee to have an understanding of the process. Staff indicated that if the committee wanted to have a member of the procurement department make a presentation at the January 2009 meeting that could be arranged. T. Green indicated that the auditors feel that the single audit should be reviewed by the COC annually.

A COC member asked if the auditors started with three recommendations and ended with three recommendations. J. Love indicated that he didn't eliminate any, but that he combined two recommendations into one, specifically the third suggestion to have members review documents or visit sites according to their specialties and report back to the full COC.

Staff then reviewed the recommendations and asked the COC members if they wanted to discuss the suggestions or have further discussion regarding possible action and items to include on the January 2009 meeting. A COC member suggested that the first suggestion be accepted and added to the next meeting's agenda. A COC member suggested that the third suggestion also be accepted.



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There was discussion regarding the Brown Act requirements in noticing meetings with more than two COC members present. A COC member asked if it would be possible to create a subcommittee of no more than two members to make it easier to facilitate the third suggestion. A COC alternate asked if there was a limitation on the number of alternates that could participate. Staff indicated that there was not. Staff suggested creating a draft of what the subcommittees could look like, particularly for site visits. Review of the single audit report and the documents that support the Bond Financial Report can be facilitated easily and the COC members and alternates with the relevant expertise could review. T. Green indicated that there are two documents that would be relevant to review, and that he could help with review of those documents.

A COC member asked if the money from the bond funds is in a lock box or if they are invested until they are spent. Staff indicated that the money is being invested. By law bonds cannot be issued for more than you expect to spend within three years. The funds can be invested until they are needed. A COC member asked how much of the bond money has been obtained by BART. Staff responded that \$500 million has been received. A COC member asked if BART anticipated any problems with getting the rest of the \$980 million in bond funds, based on the current economic climate. Staff responded that the next bonds would not be needed until next year, and that the economic climate could change. Currently BART is getting good rates on the bonds. A COC member recommended adding a presentation by the



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	<p>Controller/Treasurer's office regarding investment of the Bond funds to a future meeting, perhaps the April 2009 meeting</p> <p>Staff asked how the COC would like to address the second suggestion regarding review of the funds. Staff could prepare a draft report that would showcase receipt of funds against spending that we could circulate and then we can evolve from there. The COC members agreed. Staff further suggested that it would be helpful to have an overview of the funding plan presented at the next meeting.</p>
<i>Project Update</i>	<p>Project staff provided an overview of project progress to date.</p> <p>A COC member asked about the requirement to revalidate the environmental clearance when contracts are issued. Staff replied that at the construction phase, the federal funding agencies require that environmental activity be revalidated before a contract is advertised. The revalidation is pretty routine unless there is a major change to the contract. A COC member indicated that this type of requirement would be helpful for the COC to know about, as it could potentially cause a delay to the schedule. A COC member asked if any large changes were expected that could create a problem with the environmental clearance. Staff indicated that there was nothing anticipated that would do that. BART took an approach to be conservative during the environmental review. They estimated for the greatest environmental impact. Having less impact is not a problem.</p> <p>A COC member asked if the Rockridge, West Oakland, and the Underground Stations were all separate contracts. Staff indicated that</p>





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they are separate contracts. A COC member asked how many stations are included in the Underground Stations contract. Staff clarified that two stations - the Muni Church Street Station, which is owned by BART, and the Lake Merritt Station – are underground and the MacArthur Station tracks are on a berm. A COC member asked what type of upgrade is being done on the underground stations. Staff responded that the retrofit is mostly wrapping columns.

A COC member asked if the LMA Dismantling project is part of the scope of the job and is funded with Bond Funds. Staff confirmed that it is partially funded by the bond funds. A COC member asked how the removal of the radio tower was related to the Earthquake Safety program. Staff clarified that the removal of the radio tower is necessary because the tower sat atop LMA, and LMA was found to be seismically unsafe. The tower provides radio coverage for the entire system, so it had to be relocated. Staff further explained that the retrofit for this building is to remove it, as it was not cost effective to retrofit.

A COC member asked about quality checking and how the committee can ensure that is being done. Staff responded that quality checking during design is performed by the general engineering consultant. BART also reviews the design in-house and the construction manager is often brought in early to review for constructability. During construction, the contractor does all of the QC. BART retains quality assurance consultants to ensure that quality control is working. A



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COC member asked for clarification regarding the separation of the company providing quality assurance and the contractor. Staff clarified that the QA consultants work for the construction management consultants, which are hired directly by BART. They are further separated from the RE, since the RE works with the contractor to maintain cost and schedule. The QA consultant works for the project manager. A COC member commented that the QA/QC process could be a topic for discussion at a future meeting.

A COC member asked if properties would be acquired or leased as part of the ROW. Staff responded that they are temporary acquisitions or access rights, depending on the area. In some cases there are leases, as with Caltrans for lay down areas. A COC member asked if the temporary acquisitions are with residents or with cities. Staff responded that there are both residential and city properties involved. A COC member asked if the rights are handled by procurement or legal. Staff responded that there is a department for Real Estate, which does acquisitions as well as protects BART's property rights.

A COC member asked who is paying for the advanced utility relocations and how the rates are being estimated. Staff responded that BART is paying for the relocations and the utilities generally have established rates for this kind of work. BART has an ongoing master contract with agencies such as PG&E. A COC member asked if they were going to be able to meet the schedule. Staff indicated that to date they have been meeting the schedule.



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### *Financial Report*

The project has expended \$122 million in bond funds. The third and final tranch will most likely be issued next year.

A COC member asked what is the encumbered amount, or total amount that BART has contracted for construction. Staff estimated that it was around \$100 million. The COC member asked if this included soft costs or if it was just construction. Staff confirmed that this is just construction.

A COC member asked how BART was finding the bidding climate. Staff responded that the climate is very favorable. On the last contract advertised, BART had 12 bidders on a \$50 million contract. The engineer's estimate was \$50.6 million and there were six bids below \$40 million. The COC member asked if in light of the credit crisis if any of the contractors are talking about difficulties with getting bonding. Staff responded that there has not been any indication of that. The COC member asked about the solvency of the bonding companies. Staff responded that they haven't heard anything about any issues with bonding companies, but BART will keep track of this for the future. A COC alternate asked if there was a 10% contingency of \$3.5 million kept in the budget for the contract last advertised. Staff responded that it was a 15% contingency. The COC alternate asked if when BART showed the committed project it would indicate \$38 million rather than \$33.4 million. Staff confirmed that this is correct.

Staff reported that there is some slippage in the design schedules. So



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far this is not anticipated to impact program completion, because the construction durations can be reduced. Currently it appears that some of the projects will finish earlier than expected. A COC member asked if there was something systemic in the design that was causing the delays. Staff responded that right of way acquisition is included in design, and that this is causing delays.

Staff reported that due to the favorable bidding climate the project is increasing the management reserve, which is up to \$158 million. Staff also reported that it appears that the project will be substantially under budget. This will provide an opportunity for BART to extend the operability retrofits and make good use of the under runs. A COC member asked if the bond measure allows for use of funds for this. Staff responded that it provides the flexibility to do so. A COC member asked if the recovery period for the core is 90 days. Staff responded that it is estimated at 2-3 weeks, using some very robust earthquakes as the model.

A COC member asked if on the program cost section of the Bond Financial report it would be possible to add line items for litigation and settlements. Staff indicated that it would be possible to have the line added; however, there is no litigation currently for the project. The COC member asked if it would be necessary to add a line for overtime on the construction section. Staff responded that the construction contracts are fixed-price and would not incur over time.



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	<p>A COC member asked if the cost saving research done with U.C. Berkeley on retaining walls has saved a significant amount of money. Staff responded that the work was paid for in part by the BART to San Jose project, and that the research has saved contingency.</p> <p>Staff provided a review of the Contracting Status Report and the Anticipated Cash Flow Graph requested at the last meeting.</p>
<i>New Business Items</i>	None.
<i>Selection of Future Meeting Time and Date</i>	The next COC meeting is scheduled for Tuesday, January 6, 2009.
<i>Request to Add Items to Future Agenda</i>	<ol style="list-style-type: none"><li>1) Overview of Procurement Department</li><li>2) Subcommittee recommendations</li><li>3) Overview of investment of the bond funds by Controller/Treasurer</li><li>4) Overview of the funding project funding plan</li></ol>
<i>Public Comment</i>	No comments.
<i>Adjournment</i>	Meeting was adjourned at approximately 6:06 p.m.