

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

BOARD MEETING AGENDA

July 8, 2010
9:00 a.m.

A regular meeting of the Board of Directors will be held at 9:00 a.m. on Thursday, July 8, 2010, 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.

2. CONSENT CALENDAR

- A. Approval of Minutes of the Meeting of May 27, 2010.* Board requested to authorize.
- B. Special Appointments: Alameda County Transportation Commission.* Board requested to ratify.

3. ADMINISTRATION ITEMS

Director Blalock, Chairperson

- A. (CONTINUED from May 27, 2010, Board Meeting.)
Review of Proposed Environmental Justice Policy.* For information.

4. ENGINEERING AND OPERATIONS ITEMS

Director Keller, Chairperson

- A. Memorandum of Understanding Regarding Operations and Maintenance of Clipper® Fare Collection System.* Board requested to authorize.

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

Director Ward Allen, Chairperson
NO ITEMS.

6. GENERAL MANAGER'S REPORT

NO REPORT.

7. BOARD MATTERS

- A. Roll Call for Introductions.

8. GENERAL DISCUSSION AND PUBLIC COMMENT

9. CLOSED SESSION (Room 303, Board Conference Room)

A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR.

Property:	Property Located at the San Leandro BART Station
District Negotiators:	Carter Mau, Executive Manager, Planning & Budget; and Jeffrey P. Ordway, Department Manager, Property Development
Negotiating Parties:	Westlake Development Partners, LLC, City of San Leandro, San Leandro Redevelopment Agency, and San Francisco Bay Area Rapid Transit District
Under Negotiation:	Price and Terms
Government Code Section:	54956.8

10. BOARD MATTERS

- A. San Leandro Transit-Oriented Development Project:
- i. Approve Environmental Certification of Phases 1 and 2.
 - ii. Approve Land Transaction for Phases 1 and 2.
- Board requested to authorize.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

DATE: July 1, 2010

FROM: District Secretary

SUBJECT: Special Appointments: Alameda County Transportation Commission

Attached for your consideration are President Fang's proposed appointments of Directors to the as newly created Alameda County Transportation Commission (ACTC).

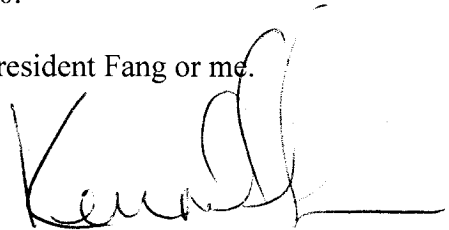
The appointments are consistent with those previously representing the District on the Alameda County Congestion Management Agency, which has been subsumed by the ACTC.

Board Rule 3-3.2 requires the ratification by a majority vote of all members of the Board any appointment of any committee member by the Board President. The Rule includes a provision that such appointments shall be submitted directly to the Board.

In accordance with Board Rule 3-3.2, President Fang is bringing the appointments before the Board of Directors for ratification on July 8, 2010.

Should you have any questions, please contact President Fang or me.

Thank you.



Kenneth A. Duron

Attachment

cc: Board Appointed Officers
Deputy General Manager
Executive Staff

RATIFICATION OF SPECIAL APPOINTMENTS
ALAMEDA COUNTY TRANSPORTATION COMMISSION

MOTION:

That the Board of Directors ratifies the following appointments of representatives to the Alameda County Transportation Commission.

Director Thomas M. Blalock, P.E.

Director Bob Franklin, Alternate



Environmental Justice Policy

San Francisco Bay Area Rapid Transit District

Office of Civil Rights

Board of Directors Meeting
July 8, 2010



Overview

- What is Environmental Justice?
- Agency Statements on Environmental Justice.
- Proposed Environmental Justice Policy Statement.
- Next Steps.

What is Environmental Justice?

➤ Three fundamental guiding principles:

- Full and fair participation from minority and low-income populations in the transportation decision-making process.
- Ensure end result of transportation policies is equitable service.
- Avoid, minimize, or mitigate adverse effects to protected populations.

Agency Statements on Environmental Justice

➤ AC Transit/Oakland

- Commitment to Social & Environmental Justice and to involvement of the people of Alameda & Contra Costa counties in making decisions pertaining to Transit Policy, Service Design and Operations.

➤ Metropolitan Transportation Authority/NY

- Commitment to full and fair participation by all potentially affected communities in the transportation decision process.

➤ TRIMET/Portland

- Commitment to provide high-quality service to low-income and minority communities.

➤ Washington Metropolitan Area Transit Authority

- Commitment to ensure that no person is excluded from participation in or denied the benefits of its services.

Proposed Environmental Justice Policy Statement

- BART is committed to ensuring equitable service and to provide full and fair participation by minority, low-income, and LEP populations in transportation decision-making. Toward this end, it is BART's objective to:
 - Ensure that the level and quality of transportation service is provided without regard to race, color or national origin.
 - Implement public participation plan so that minority, low-income and Limited English Proficient (LEP) populations have early and continuous opportunities for input into transportation decisions.
 - Avoid, minimize or mitigate effects on minority and low-income populations, including health, environmental, social and economic.
 - Prevent the denial, reduction or delay in benefits related to programs and activities that benefit minority populations or low-income populations.

Next Steps

- Solicit input on proposed Environmental Justice Policy Statement through public participation meetings.
- Review and incorporate, appropriate public comments into Environmental Justice Policy Statement.
- Finalize Environmental Justice Policy Statement and forward to Board for consideration.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: 		GENERAL MANAGER ACTION REQ'D: General Manager's signature		
DATE: 6/30/10		BOARD INITIATED ITEM: No		
Originator/Prepared by: Serge Diapoff Dept: Signature/Date: 6/30/10	General Counsel 6/30/10	Controller/Treasurer 6/30/10	District Secretary 6/30/10	BART 6/30/10
Status: Approved		Date Created: 05/24/2010		

TITLE:

MEMORANDUM OF UNDERSTANDING REGARDING OPERATIONS AND MAINTENANCE OF CLIPPER FARE COLLECTION SYSTEM

NARRATIVE:

PURPOSE: To obtain Board authorization for the General Manager to execute the Memorandum of Understanding (MOU) Regarding Operations and Maintenance of Clipper Fare Collection System.

DISCUSSION: In September 2003, the Board authorized BART to proceed with the Phase II systemwide rollout of the regional TransLink fare collection system, and to execute the TransLink Interagency Participation Agreement (IPA). The Agreement was executed between MTC and BART, Alameda Contra Costa Transit District (AC Transit), Golden Gate Bridge Highway and Transportation District (GGT), the City and County of San Francisco, acting by and through its Municipal Transportation Agency (SFMTA), Santa Clara Valley Transportation Agency (VTA), and San Mateo County Transit District (SamTrans).

The IPA created a consortium governed by a TransLink Management Group (TMG) comprised of the general managers of the six above named operators (Charter Member Agencies), the Executive Director of MTC, and one General Member Agency representative for all other transit operators in the region who choose to join TransLink. The IPA defined responsibilities of members, decision-making procedures, voting rights, governance structure, and terms of participation. The IPA also included a cost allocation and revenue sharing method, designation of MTC as the Contracting Agency for provision of TransLink equipment and services, establishment of an Operating Group to oversee day-to-day operations of the consortium, and TransLink Operating Rules.

In 2009, with MTC's approval, the TransLink contract was assigned by Motorola/ERG to Cubic Transportation Systems, Inc. At that time, MTC asked the TMG to reconsider the consortium governance structure to address concerns about efficiency and effectiveness. The TMG researched options for reorganization and decided to proceed with a Memorandum of Understanding (MOU) to replace the existing IPA.

MTC and the TransLink Operators then negotiated a new MOU intended to serve as the successor agreement to the IPA. The MOU defines the basic agreements among MTC and the

Operators, carrying forward the primary elements of the IPA that include commitment to the regional program, financial responsibilities, operating rules and dispute resolution, while modifying the governance structure to allow MTC to reassume its original role as managing agency over the TransLink program. The MOU also reflects the transition of the name of the program from TransLink to Clipper.

The proposed MOU defines high level responsibilities of the Operators and MTC, cost and revenue allocation formulae carried forward from the IPA, a process for dispute resolution, modified operating rules based on the TransLink Operating Rules initially established in the IPA, amendment procedures, a process for new operator participation, and the MOU term. The MOU will be effective on the date when all parties have signed the MOU and will terminate at conclusion of the TransLink/Clipper contract (November 2, 2019), unless otherwise terminated by the parties. Attachment A, prepared by MTC staff, provides additional details on the MOU principles.

The Office of General Counsel has approved the MOU as to form.

FISCAL IMPACT: Approval of the proposed MOU does not alter the District's financial obligations that were established in the IPA; therefore, there will be no fiscal impact as a result of this action.

The MOU will not change the current cost allocation formula. In summary, Operating costs for the Clipper system are split between MTC and Operators by type, as defined in MOU Appendix B. The allocation of operating costs to each Operator is based on a combination of revenue collected and transaction quantities. One-third (1/3) of Clipper operating costs are allocated to Operators based on each Operator's share of total revenue collected by the Clipper Clearinghouse. Two-thirds (2/3) of Clipper operating costs are allocated to Operators based on each Operator's share of total fee payment transactions processed by the Clipper clearinghouse.

Applying the cost allocation formula above, BART's Clipper transaction fees for FY11 will ultimately be determined by the number and rate of customers who convert to Clipper. Conversion of customers to Clipper will be affected by timing considerations of High Value Discount (HVD), Red and Green ticket transitions, including any transition plan changes that may result from MTC's Clipper Title VI analysis. MTC expects to have draft results of their Title VI analysis by September 2010. Any Clipper Clearinghouse failures to remit disputed funds in a timely manner could also affect BART's cost.

MTC's Clipper incentive fund provides \$2.1 million for BART to offset Clipper transaction fees. Based upon current usage patterns and assumptions, it is estimated that BART's incentive fund will last through May 2011 and possibly as late as August 2011. However, depending on the outcome of the items above, it is possible that fees of about \$0.5 million could be incurred in the last few months of FY11. Beyond FY11, when all fare media transitions are complete as defined in the Fare Media Transition Plan, BART's Clipper annual operating costs are estimated at about \$5 million. Over time, we expect some operating cost savings associated with the reduction of magnetic ticket use, which have not been estimated to date.

The MOU contains provisions for allocation of revenues that accrue through the Clipper program. Fare revenues are to be distributed to each Operator based on usage. Any other revenues that might be generated during the life of the Clipper contract will be used first to offset MTC's bank fees, then to reduce the Operators' Clipper operating costs.

ALTERNATIVES: Do not approve the MOU, which would result in the District being left without the protections offered by the MOU in its implementation of the Clipper program.

RECOMMENDATION: Adoption of the following motion:

MOTION: The General Manager is authorized to execute the Memorandum of Understanding Regarding Operations and Maintenance of Clipper Fare Collection System.

Attachment A
Principles of MOU

The recommended MOU defines:

1. *High level responsibilities of MTC and the Operators.* Items of note include:

For MTC:

- confirm existing obligations under the ClipperSM Contract to collect and disperse revenues to the participating agencies, according to the stated cost and revenue sharing formula;
- acknowledge responsibility for management of bank accounts and fiduciary duty to the cardholders;
- notify Operators of changes to Operating Rules, participate in consultation process on Rules changes, and provide regular reports to the Operators;
- pay fixed operating costs, specified variable costs and other lump sum and capital costs, and operator incentive fees; and
- make project records available to the operators (exact terms not yet agreed-upon).

For the Operators:

- implement and operate ClipperSM ;
 - pay specified variable operating costs; and
 - accept ownership of equipment one year after acceptance.
2. *Cost and revenue allocation formula.* The formula first adopted in the IPA is carried with minor revisions. Operating costs allocated to MTC and the Operators are specified described, and any changes require an amendment to the MOU. Operators agree to periodic reviews of the cost allocation formula to support fairness among Operators and accommodate changes.
 3. *Process for dispute resolution.* The TransLink[®] IPA called for, but never defined such a process. The proposed process first calls for informal dispute resolution and then allows escalation to mediation or arbitration, binding or nonbinding, as agreed by the parties.
 4. *Process for Operator input on MTC-proposed changes to Operating Rules.* MTC will provide at least 90 day notice for any changes impacting Operators' Roles and Responsibilities, and consult further with Operators, if requested. Disagreement about changes impacting Operators are subject to the dispute resolution process in the MOU, if the consultation process fails to result in agreement.
 5. *Process for new operator participation.* To implement ClipperSM, an agency must sign a supplemental agreement with MTC, agreeing to the terms of the MOU. MTC will not sign a supplemental agreement until Cubic and the operator are ready to implement Clipper.
 6. *Term of the MOU.* The MOU is effective on the date when all parties have signed the MOU and will terminate at conclusion of the ClipperSM Contract (November 2 2019), unless otherwise terminated by the parties.



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: DATE: c 6/23/10		GENERAL MANAGER ACTION REQ'D: Approve and Forward to the Board		
Originator/Prepared by: Jeffrey P Ordway Dept: Property Development Signature Date: 6/23/10		General Counsel: 6/23/10	Controller/Treasurer: 6/23/10	District Secretary: []
BOARD INITIATED ITEM: No		BARC: 6/23/10		

Environmental Certification of Phases 1 and 2 of the San Leandro Transit-Oriented Development Project

NARRATIVE:

PURPOSE: To have the Board of Directors review and approve the Mitigated Negative Declarations for the San Leandro Crossings West ("Phase 1") and Cornerstone at San Leandro Crossings (Phase 2) prepared by the City of San Leandro in accordance with the California Environmental Quality Act ("CEQA") for the initial two phases of a multi-phase transit-oriented development project adjacent to the San Leandro BART Station.

DISCUSSION: On January 24, 2008, the BART Board of Directors authorized execution of an Exclusive Negotiating Agreement with the City of San Leandro, the San Leandro Redevelopment Agency and Westlake Development Partners, LLC to pursue a transit-oriented development project at the San Leandro BART Station.

In September 2007, the City of San Leandro approved the San Leandro Transit-Oriented Development Strategy ("TOD Strategy") and certified a programmatic Final Environmental Impact Report ("FEIR") for the Strategy. In January 2009, the San Leandro Planning Commission adopted a Mitigated Negative Declaration ("MND") for Phase 1 of the transit-oriented development project, consisting of approximately 100 affordable housing units on the west side of the BART station area (refer to Exhibit 1). In July 2009, the San Leandro Planning Commission adopted a second MND for Phase 2 of the transit-oriented development project, consisting of approximately 200 market rate residential units, 5,000 square feet of retail and a 339-space BART replacement parking garage. The residential units and retail would be on BART property east of San Leandro Boulevard and the replacement garage would be on the west side of San Leandro Boulevard at Parrott Street (refer to Exhibit 1).

A Mitigation and Monitoring Plan was adopted by the San Leandro Planning Commission with respect to Phase 1, and contains 27 mitigation measures addressing population and housing, geology and soils, hydrology and water quality, air quality, biological resources, hazards and hazardous materials, noise, transportation/circulation, public services, utilities and service systems, recreation, aesthetics and cultural resources. The mitigation measures adopted by the Planning Commission address all potentially significant project-related impacts resulting in no significant impacts. Mitigation Measure #15, addresses noise impacts on common outdoor use areas and courtyards, incorporating appropriate mitigation design features and sound barriers. Because it was determined in the TOD Strategy EIR that there is no means of guaranteeing that

exterior balconies can be located so as to fully avoid exposure to excessive noise levels, the City adopted a statement of overriding considerations regarding this issue in conjunction with its certification of the TOD Strategy Certified EIR and approval of the TOD Strategy.

A Mitigation and Monitoring Plan was adopted by the San Leandro Planning Commission with respect to Phase 2, and contains 39 mitigation measures addressing population and housing, geology and soils, hydrology and water quality, air quality, biological resources, hazards and hazardous materials, noise, transportation/circulation, public services, utilities and service systems, recreation, aesthetics and cultural resources. The mitigation measures adopted by the Planning Commission address all potentially significant project-related impacts resulting in no significant impacts. Mitigation Measure #24, addresses noise impacts on common outdoor use areas and courtyards, incorporating noise mitigation design features. Because it was determined in the TOD Strategy EIR that there is no means of guaranteeing that exterior balconies can be located so as to fully avoid exposure to excessive noise levels, the City adopted a statement of overriding considerations regarding this issue in conjunction with its certification of the TOD Strategy Certified EIR and approval of the TOD Strategy.

BART staff has reviewed the TOD Strategy Final EIR and the Mitigation Negative Declarations for the first two phases of the transit-oriented development project at the San Leandro BART Station and concurs with the Planning Commission's findings.

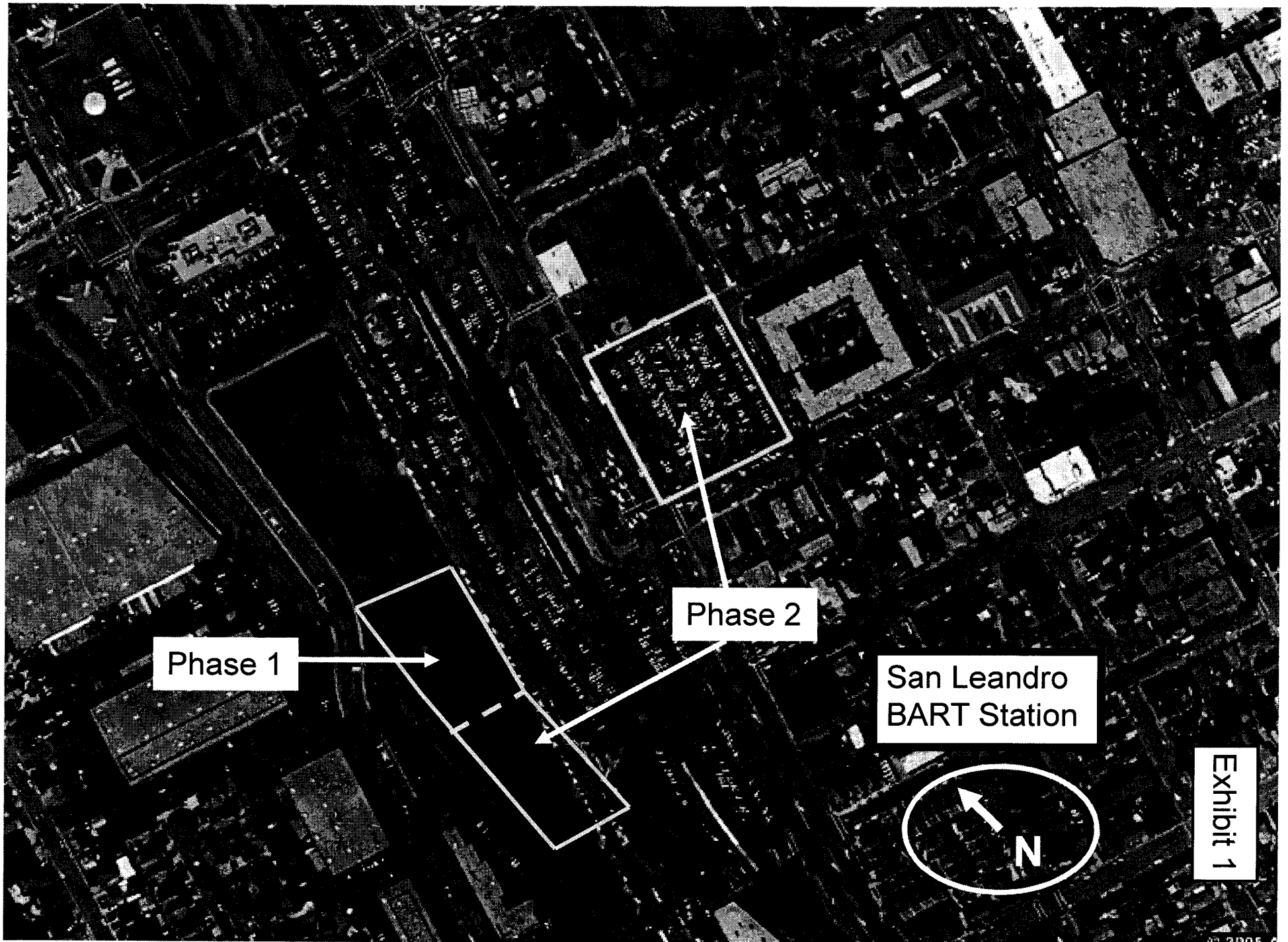
Staff are requesting that the BART Board of Directors adopt a motion that would complete the CEQA process and enable the transaction with Westlake Development Partners to occur.

FISCAL IMPACT: There is no new fiscal impact from the proposed action.

ALTERNATIVES: If the BART Board determines that evidence of CEQA compliance is inadequate, additional analyses would be required to address any deficiencies identified by the Board.

RECOMMENDATION: It is recommended that the following motion be adopted:

MOTION: After review and consideration of the City of San Leandro certified programmatic Final Environmental Impact Report for the San Leandro Transit-Oriented Development Strategy adopted by the City of San Leandro in September 2007, the San Leandro Planning Commission adopted Mitigated Negative Declaration for Phase 1 adopted in January 2009, and the San Leandro Planning Commission adopted Mitigated Negative Declaration for Phase 2 adopted in July 2009, the Board: 1) Adopts the City of San Leandro's Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Plan for the first two phases of the transit-oriented development project at the San Leandro BART Station, and 2) Finds that for the sale, acquisition and lease of the BART property at the San Leandro BART Station, there are no significant environmental effects which have not been mitigated to insignificance and no further environmental review is required.



Phase 1

Phase 2

San Leandro
BART Station

Exhibit 1