



TRANSBAY JOINT POWERS AUTHORITY  
Board of Directors

April 22, 2004

## **TRANSBAY JOINT POWERS AUTHORITY BOARD OF DIRECTORS**

### **MINUTES**

Thursday, April 22, 2004  
1 Carlton B. Goodlett Place, 2<sup>nd</sup> Floor  
Chambers of the Board of Supervisors  
San Francisco, CA

**SPECIAL MEETING**  
9:00 p.m.

**BOARD OF DIRECTORS**  
Michael Nevin, Chair  
Greg Harper, Vice Chair  
Michael T. Burns  
Chris Daly

Executive Director  
Maria Ayerdi

Secretary  
Roberta Boomer

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9:00 p.m. – SPECIAL MEETING

### **ORDER OF BUSINESS**

#### **1. Call to Order**

Chairman Nevin called the meeting to order at 9:41 p.m.

2. Roll Call

Present:  
Michael Burns  
Chris Daly  
Greg Harper  
Mike Nevin

3. Communications

None.

4. Board of Director's New and Old Business

None.

5. Executive Director's Report

Executive Director Ayerdi announced that after 37 years, an environmental document for the Transbay Terminal Project had been certified. She thanked the organizations and members of the public for their ongoing support of the project. The FTA signed off on the final document in March. Staff continues to move forward on this important regional project.

The House of Representatives passed the TEA-21 reauthorization, with \$14 million included for the TBT project. The American Institute of Architects gave the project's Design for Development Document an award for excellence in design. The TJPA is now a member of the American Public Transportation Association.

Staff has interviewed candidates for the Engineering Contract and issued a Notice of Intent to negotiate. Interviews for the Program Management RFP will be held in June; evaluations and interviews for an Architectural Competition Manager in May. An RFP for Economic Analysis has been issued and a contract awarded, and an RFP for Legislative Advocacy will be issued in May.

6. Public Comment

Richard Mlynarik appreciates being able to read the staff reports and documents on the website prior to the meeting.

THE FOLLOWING MATTERS BEFORE THE TRANSBAY JOINT POWERS AUTHORITY ARE RECOMMENDED FOR ACTION AS STATED BY THE EXECUTIVE DIRECTOR OR THE CHAIR.

## REGULAR CALENDAR

7. Adopting California Environmental Quality Act Findings for the Transbay Terminal Project, including approval of Mitigation Measures, a Mitigation Monitoring and Reporting Program, and a Statement of Overriding Considerations; approving the Project and authorizing the Executive Director to take actions for Project implementation.

Executive Director Ayerdi stated that mitigation measures have been developed to reduce or eliminate the impacts discussed in the environmental documents.

John Cooper, Deputy City Attorney, announced that the item before the Authority is a policy approval of the project. This project has changed since the Locally Preferred Alternative was adopted and now that the Final EIS/EIR has been approved, the Authority is required to act under CEQA prior to adopting the project. The Mitigation Measures address significant environmental impacts found in EIS/EIR and the findings will be incorporated into the project. Staff will be required to implement these mitigation measures and the mitigation monitoring and reporting program that will mitigate or reduce to insignificance the significant environmental impacts that were found.

CEQA also requires a Statement of Overriding Considerations. Some impacts couldn't be avoided no matter which alternative is picked and include traffic congestion and loss of historic properties and buildings. The Statement of Overriding Considerations lists the benefits of the project that outweigh these significant environmental effects and authorize the program to proceed despite those effects. The mitigation measures also require staff to meet and work with Stillman Street residents on the design and landscaping for the sound walls.

Director Daly is concerned about finding a way to mitigate bus storage on Stillman Street. John Malamut, Deputy City Attorney, pointed out that the EIR states that the noise impacts identified will be mitigated and that the noise will be reduced to level of insignificance. The installation of sound walls has been identified as a mitigation measure and the approval of the resolution will impose the construction of those sound walls on the project.

Director Daly has attended a community meeting with the residents, adding that the most significant number of comments received from the public were about the bus layover plan. He hopes that staff can continue to look at the other project alternatives outlined in the EIR on this issue and wondered if the Authority could select a preferred alternative that is more silent and ambiguous on the bus storage site question. D.C.A. Malamut confirmed that it is within the discretion of the Authority to consider a new location for bus storage. He added that the EIR analyzed various locations but they were rejected because they didn't satisfy the needs of the project sponsor. Director Daly asked if the motion before the Board, which rejects the other alternatives and embraces the proposed location, could be amended. D.C.A. Cooper confirmed that it could be amended. Director Daly asked if some other combination of alternatives identified in the EIR could be explored. D.C.A. Malamut stated that alternate locations did not

receive the same level of environmental treatment in the EIR as the preferred alternative. In situations where the sponsor would like to continue to explore other alternatives, they should independently direct the Executive Director and staff to work to identify potentially feasible alternatives that might lead to project modification.

Joan Kugler, City Planning, Major Environmental Analysis, stated that the amount of discussion and analysis between the preferred alternative and other alternatives is not comparable. She suggested that other alternatives for bus storage would require additional analysis.

Executive Director Ayerdi suggested that the TJPA approve the project. Staff will continue to work with residents and can, especially once the architectural team is onboard later this year, look at ramped storage as suggested by the community.

Director Daly expressed a desire to leave the door as open as possible to examine alternatives to the bus storage. He would like the alternatives of ramped parking and the 8<sup>th</sup> and Harrison lot or other sites to undergo further environmental analysis for feasibility, in case the TJPA should choose in the future to modify the bus storage location.

D.C.A. Malamut stated that he did not want to leave the impression that the EIR is in any way inadequate, inaccurate, incomplete, or unobjective under CEQA standards. In terms of the alternate locations, the EIR is adequate, accurate and complete in terms of rejecting them. It remains an open question as to whether it would be adequate, accurate and complete to embrace one of these alternatives. Director Daly stated that he was willing to move forward with the identified alternative but would be more comfortable if staff would continue to explore environmental analysis of other alternatives so that they could be looked at by the Board in the future if necessary.

Director Burns asked the City Attorney to clarify that adoption of the resolution doesn't preclude the opportunity to revisit this issue in the future. He recognizes that it may require additional environmental review, but agrees with Director Daly that this issue seems to have struck a nerve in the community. D.C.A. Malamut stated that Director Burns' characterization is correct.

Executive Director Ayerdi introduced Elizabeth Wiecha, TJPA Deputy Director & Chief Engineer, to review the scope of the project. The three main components are the Transbay Terminal, including bus ramps and storage, the downtown extension of the rail corridor to serve Caltrain and High Speed Rail, and the Redevelopment Plan. A temporary terminal will be constructed between Beale & Main Streets during the decommissioning of the current terminal and construction of the new terminal. Her presentation touched upon the bus storage issue, showing similar bus storage facilities elsewhere in the world.

Executive Director Ayerdi expressed her personal commitment to work closely with all interested parties on the project, including those concerned about the bus storage location. She added that the TJPA may hear from Mr. Myers this evening regarding 80 Natoma Street. They

continue to have a dialogue. She gave assurances that approval of the resolution will in no way undermine their ability to continue this dialogue. They are meeting tomorrow to continue to explore recently proposed possible design concepts. The ideas presented so far haven't been viable but that does not preclude finding a mutual arrangement with an investment of time and resources. Staff recommends adoption of the resolution. She will make every effort to accommodate both interests, if possible to do so without risk to the TJPA or the project. She will keep the Board updated on any potential solutions and undertake any necessary environmental analyses that another alternative may require. She will also continue to work with other interested or displaced parties to minimize the impact of the project on the surrounding neighborhood. She pointed out that project approval is important to position the TJPA for receipt of funding and finalization of the land transfer from the State to the City and the TJPA.

**PUBLIC COMMENT:**

Chris Peeples urged the TJPA to adopt the project. He is an elected member of the AC Transit board but is not speaking in an official capacity. He has had extensive experience trying to meld transit through San Francisco and has followed this process closely. This is a superb project with good management and it needs to go forward.

Margaret Okuzumi, BayRail Alliance, stated that the Terminal Project has been a dream of her group since its' founding more than 20 years ago. There has been a tremendous volunteer effort towards making this project a reality. Society owes a debt of gratitude to all the volunteers who put the public interest ahead of everything else. The Authority should adopt the resolution.

Richard Mylnarik says that the actions that the Board is being asked to take represent the interests of the public. Without approval of the resolution, staff will continue to battling private interests. He doesn't want to see the public interests not represented.

Emilio Cruz, Vice-Chair, SPUR presented letters on behalf of John Burton and Walter Johnson. The gist of the letters can be summarized in one sentence - take any and all steps to approve the item tonight.

Norman Rolfe, SF Tomorrow, urged adoption of the resolution. This project is important to the future of the Bay Area and decades of planning have gone into this effort. If the process is reopened, the state might decide to not transfer land. If that happens, the City will lose a new neighborhood, much needed affordable housing.

Joyce Roy, League of Women Voters urged certification of the Final EIS/EIR. She has long advocated for regional transit connectivity. This project means we can have a virtually seamless connection. The public process was very comprehensive, with a high level of professional and public input.

Jack Myers, Chairman, Myers Development Co., shares the hope and advocacy for the Terminal Project as it's exciting and visionary. There is a potential conflict between the project and 80 Natoma. There has been some speculation that the 80 Natoma project wasn't real. They have raised all the money required and have let over \$77 million in contracts with their general contractor. The 80 Natoma project has demonstrated their desire to build affordable housing. A engineering solution for both projects is in the best interest of the City.

Jeffrey Heller, Heller/Manus, 80 Natoma architect, stated that their project was approved and endorsed through editorials as the first high-density, transit friendly development in the area. He has been trying to communicate with staff for more than a year and is just now having conversations. He hopes that we can move ahead in a good way and the TJPA Board should make sure it does. The 80 Natoma project is a benefit to San Francisco and offers affordable housing. Clearly, a win-win solution is important.

Steve Atkinson, Steefel Levitt & Weiss, observed that the EIR didn't consider the impact on Jack Myers' project and therefore is inadequate as it failed to consider the impact to his project. Redevelopment Agency and TJPA staff has taken the position that Myers' proposals are infeasible and have systematically refused to engage in a dialogue. Joan Kugler testified that the Myers alternative has not been shown to be infeasible. Certification should be delayed for a few weeks to discuss minor realignments.

Eric Lundquist, Heller/Manus project architect for 80 Natoma, has been working on drawings for the project for over a year. They have the site permit and are in conformity with all codes. This is a real project that can't be stopped. They are going ahead.

Shep Heery, Myers Development, is the person responsible for developing 80 Natoma. Their project is going forward and work is due to begin in a matter of days. They have \$77 million dollars worth of contracts already let. He is committed to finding a solution for both projects.

Elizabeth Carney asked the Board to consider other sites for bus parking. Stillman Street is densely residential and heavily pedestrian. She supports the project but asked for relief rather than mitigation. Other alternatives are currently being used for storage. They should be considered.

Jon Spangler, Alameda Transit Advocates, stated that if you build the project, we will come. She uses the current Terminal every week. It lacks a good transit connection from there to Potrero Hill. On behalf of the express bus riders, approve the project. The sooner it gets built, the happier we'll be.

David Schonbrunn, TransDef, has heard nothing that bears upon the Board's decision about the approval of project tonight. Either an agreement will be reached that doesn't hurt the rail alignment or you'll have a condemnation proceeding. The TJPA should go ahead with the approval.

Jan Mathews thanked Director Daly for his proposal to expand consideration of the Stillman St. neighbors. Locating the bus storage facility in their area will mean a tight turning radius, toxic fumes and noise. Staff should look more closely at redesigning the west terminal ramps, at 8<sup>th</sup> and Harrison and the upper bus level.

Chairman Nevin closed public comment.

Director Burns is encouraged by the Executive Director's commitment to work with the community and the property owners of 80 Natoma Street. He finds the developer's comments somewhat compelling and thinks that 80 Natoma is a real project, with benefits to the City, and that it is well underway. As a Board, we can't ignore the reality of that project and we need to put more effort as an organization into looking into how we can co-exist. The developer has said that they are not trying to maximize the benefit they would achieve through an eminent domain proceeding. Even if that were the case, it only serves to reinforce the point that staff needs to sit down with them and do the engineering work so if we come to point where we can't agree on a feasible alternative, then we have a solid case to go forward with to our funding agencies and other agencies that would support next steps.

Director Burns is fully prepared to support the approval of findings in the EIS/EIR and supports Director Daly's concerns and the mitigation measures. While he has full faith in the Executive Director, he wonders if delegating major decisions, such as eminent domain and property acquisition, to staff is proper. He proposes amending the resolution to require approval of the Board prior to entering into negotiations regarding real estate acquisitions or eminent domain proceedings. His second amendment would be to direct the Executive Director to explore solutions with the developer of 80 Natoma. The purpose of the second amendment is to put pressure on both parties to try to come to a win-win solution that will allow for both developments if at all possible. The TJPA should extend every effort to see if the Myers development could proceed with the least adverse impacts to the terminal.

The Board Secretary read the language into the record (amended language underlined):

FURTHER RESOLVED, That the Transbay Joint Powers Authority hereby authorizes the Executive Director to take all actions necessary to facilitate the design, implementation and construction of the Project through completion, to work with City departments, boards, commissions and officials, and all other applicable regional, state and federal entities. This authorization shall include authority to negotiate for acquisition of real property or easements, and to participate with the City in eminent domain actions related to terminal design or rail and ramp alignments, provided that; this grant of authority shall not amend the existing TJPA Procurement Policy, and the Executive Director shall seek the formal approval of the TJPA Board prior to initiating, recommending, seeking or otherwise pursuing any eminent domain actions, and provided further that the Executive Director may not request that the City or any other public agency commence any eminent domain proceeding related to the Project without the prior approval of the TJPA Board; and be it

FURTHER RESOLVED, That the Executive Director is hereby directed and required to (1) explore an engineering solution to terminal design or rail and ramp alignments for the Project, in collaboration with the High Speed Rail Authority, Cal Train, the San Francisco Redevelopment Agency and the property owner of 80 Natoma Street, that would (a) allow the approved and permitted housing development at 80 Natoma Street to proceed without material delay or interference, AND (b) have the least adverse impacts on the costs, timing and future operational capacity of the Project, and (2) quantify those impacts (instead of simply rejecting alternatives as being infeasible). The Executive Director shall report back to the TJPA Board the status of such analysis at the TJPA's next regularly scheduled meeting. Notwithstanding the foregoing, by directing the Executive Director to explore such a potential engineering solution and the impacts of such potential solution, the TJPA is no way committing to any amendment or modification of the Project at this time, and any action modifying or amending the Project shall require all necessary governmental approvals after the completion of any additional environmental review that may be required under CEQA.

Director Burns requested that the phrase “(instead of simply rejecting alternatives as being infeasible)” of the amended language be struck.

Director Daly asked the City Attorney to clarify who had the power to proceed if eminent domain proceedings were required. D.C.A. John Cooper stated that the City has the authority but the TJPA does not. The proceeding would be done through the Redevelopment Agency or the Board of Supervisors, likely at the request of the TJPA Board once funding was in place.

Director Daly then questioned how long the process of trying to find a feasible solution for the existence of both the Project and 80 Natoma should go on if the experts on both sides cannot come to an agreement, given the amended language proposed by Director Burns. Director Burns stated that his intent is to give a short timeframe prior to the next TJPA meeting for both parties to work together.

Director Daly questioned the logic of approving section (1)(a) of the proposed amendment. He feels that (1)(a) and (1)(b) could possibly cause a conflict. Director Burns wanted to stress that the best solution allows both projects to go forward. D.C.A. Cooper stated that the two sections of language do not create a conflict. The language provides an opportunity for both parties to publicly present their side of the disagreement before the Board. Director Daly asked the specific purpose of the language in (1)(a). Director Burns responded that the purpose was to direct staff to extend every effort to see the development proceed with the terminal, with the least adverse impacts on the terminal. His position is that this is a significant development in San Francisco, with over 400 units of housing, and that the best solution is for both projects to succeed.

D.C.A. Cooper suggested that rather than stating that the 80 Natoma Street project proceed “without material delay or interference”, that perhaps that language should read “with the least adverse impacts” to 80 Natoma Street. Director Daly pointed out that 80 Natoma is a private



project and to the extent that it is invested in the city planning process it can move forward at the discretion of Mr. Myers. The only thing that could prevent their private project from moving forward is if the Board of Supervisors or Redevelopment Commission takes eminent domain action.

Director Burns reiterated that the reason for the language of (1)(a) and (1)(b) is to be direct about an intention that the ideal solution would be the 80 Natoma development goes forward and the Terminal goes forward as well, working within whatever modifications are necessary for both projects to move forward together.

Director Harper doesn't mind language allowing the Myers' development to possibly proceed but questions the phrase "approved and permitted housing" in the amendment. The Board does not have any evidence as to the status of permits for a private development. It is tantamount that the Board be able to tell the public that they have produced a project with the least cost and best timing for future operations. Myers' development is not his concern. Declaring eminent domain allows for the possibility of certain discussions that can't occur without that declaration. Executive Director Ayerdi should be enabled to take an initial look at appraisal numbers and engineering so that she can come back to our Board with those facts. Myers has been talking about numbers in terms of property value for months. Director Harper would like to see those numbers. He doesn't want to tie the Executive Director's hands.

Chairman Nevin announced that both parties were meeting tomorrow. There needs to be a logical way for the Board to make it clear that the intent is to have a final look at the engineering question, and resolve it before we get into the eminent domain question.

Director Burns agreed to strike the language "approved and permitted housing" and "without material delay or interference" in the proposed amendment. However he feels the Board has a serious obligation to explore whether the projects can move forward from a track geometry standpoint, given that a review of the budget for condemnation proceedings shows that there may not be anywhere near what is needed if that option is pursued.

Director Daly proposed that the entirety of (1)(a) be struck from the proposed amendment. The Board is charged with moving the project forward in the most cost effective way.

Director Harper asked the City Attorney about the language regarding the Executive Director not requesting any actions of eminent domain. D.C.A. John Cooper believes the intent of the language is to prevent the Executive Director from going to the Board of Supervisors requesting eminent domain. He does not believe that could happen in any case. The Supervisors would be looking for a resolution from the TJPA Board before they would take any action. Director Harper asked if the Executive Director could obtain an appraisal, for example. D.C.A. Cooper replied that under this language he believes so. Director Harper wants to be able to proceed on all fronts without getting too far down the road in terms of time spent. D.C.A. Cooper stated that the Board should authorize the Executive Director to move forward on all fronts, not just on

exploring engineering solutions. D.C.A. Malamut submitted into the record a paragraph from Joan Kugler's memo regarding the subject, clarifying that engineering alternatives have not yet been determined to be feasible and that the issues are still being explored. If, in the future, a feasible proposal is arrived at, it will undergo further environmental analysis and evaluation.

Director Burns accepted Director Daly's amendment to the language.

On motion to amend the resolution to add language regarding TJPA Board approval of eminent domain proceedings and exploring solutions for the 80 Natoma project:

ADOPTED: AYES – Burns, Daly, Harper and Nevin

Director Daly made a motion to amend the resolution to add language regarding the location of bus storage and directing staff to further investigate design solutions for the offsite bus storage facility:

“WHEREAS, A community meeting was held on Stillman Street where mitigation and possible alternatives to the offsite bus storage facility were discussed, and...

...FURTHER RESOLVED, That although identified alternatives to the preferred offsite bus storage facility were not found feasible, the TJPA directs staff to further investigate feasible alternatives to the offsite bus storage facility.”

D.C.A. Malamut suggested using the word “design solutions” rather than “alternatives” and Director Daly agreed to that change.

On motion to amend the resolution to direct staff to further investigate design solutions for the offsite bus storage facility:

ADOPTED: AYES – Burns, Daly, Harper and Nevin

Executive Director Ayerdi thanked the Directors and commented that there appears to be some mischaracterization regarding the TJPA's communications with representatives of 80 Natoma. She will prepare a memo outlining their extensive work to date for the next meeting.

RESOLUTION 04-004

On motion to approve as amended:

ADOPTED: AYES – Burns, Daly, Harper and Nevin

ADJOURN - The meeting was adjourned at 11:33 p.m.



TRANSBAY JOINT POWERS AUTHORITY

**Board of Directors**

A tape of the meeting is on file in the office of the Secretary to the Transbay Joint Powers Authority Board of Directors

Roberta Boomer  
Board Secretary

The Ethics Commission of the City and County of San Francisco has asked us to remind individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Admin. Code Sections 16.520 - 16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market Street, Suite 801, San Francisco, CA 94102, telephone (415) 554-9510, fax (415) 554-8757 and web site: [sfgov.org/ethics](http://sfgov.org/ethics).