

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
2150 Webster Street, P.O. Box 12688, Oakland, CA 94604-2688

Board of Directors
Minutes of the 1,894th Meeting
October 28, 2021

A regular meeting of the Board of Directors was held on October 28, 2021, convening at 9:01 a.m. via teleconference, pursuant to Governor Gavin Newsom's Executive Order N-15-21. President Foley presided; Jacqueline R. Edwards, District Secretary.

President Foley gave instructions on viewing the Meeting, accessing presentation materials online, and Public Comment.

Directors Present: Directors Ames, Dufty, Li, McPartland, Raburn, Saltzman, Simon, and Foley.

Absent: None. Director Allen entered the Meeting later.

President Foley called for Introduction of Special Guests. Vice-President Saltzman honorably introduced and recognized a special BART employee, Andrew Williams, Senior Operations Foreworker; mentioned that earlier in the month, when riding BART she met Mr. Andrew Williams; stated it he is about to celebrate his 50th year of service with BART next month; expressed how incredible and admirable that was and how over the last 50 years, he has written the book on the Foreworker position; and congratulated Mr. Williams on his retirement and thanked him for his service. Roy Aguilera, Chief Transportation Officer, further introduced Andrew Williams; congratulated him on his career; thanked him for his service; stated his professional impact will be felt and will continue to be felt for years to come; and gave Andrew Williams a gift to show great appreciation for his 50 years of service.

President Foley congratulated Andrew Williams on 50 years of public service and hopes he has a long healthy retirement.

Director Allen entered the Meeting.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meeting of October 14, 2021.
2. Resolution for Approval of a Project Funding Tax and Regulatory Agreement, with Metropolitan Transportation Commission (MTC), for BART Car Replacement Program.
3. Resolution of Local Support for 2022 State Transportation Improvement Program Application, for the Downtown Berkeley BART Station Elevator Modernization Project.
4. Property Grants in Colma for Easements to San Francisco Public Utilities Commission (SFPUC) and Pacific Gas & Electric (PG&E).

Director Dufty made the following motions as a unit. Director McPartland seconded the motions.

1. That the Minutes of the Meeting of October 14, 2021, be approved.
2. That the Board adopts the resolution that authorizes the delivery and execution of the Project Funding Tax and Regulatory Agreement and related actions.
3. That the BART Board of Directors approves adoption of the attached Resolution “In the Matter of the Approval of a Resolution of Local Support for a 2022 State Transportation Improvement Program Application for the Downtown Berkeley BART Station Elevator Modernization Project”. The BART Board of Directors also authorizes the General Manager to execute all required documents for participation in the 2022 State Transportation Improvement Program.
4. That the Board of Directors authorizes the General Manager or his designee, the Director of Real Estate and Property Development, to enter into a Purchase and Sale Agreement with the City for the grant of access easements to the City and PG&E along with two temporary construction easements to the City on BART Parcel D-3151-1.

President Foley called for Public Comment on the Consent Calendar. No comments were received.

The motions brought by Director Dufty and seconded by Director McPartland carried by unanimous roll call vote. Ayes: 9 – Directors Allen, Ames, Dufty, Li, McPartland, Raburn, Saltzman, Simon, and Foley. Noes: 0.

President Foley called for general Public Comment.

The following individuals addressed the Board:

Berkeley Mayor Jesse Arreguin
Clarence Fisher
Aleta Dupree
Rigel Robinson
Scott Jerdan

President Foley brought the matter of Proposed Amendment to the Audit Committee Charter before the Board. Director Dufty presented the item. Director Dufty explained the Audit Charter; and made a motion to adopt the proposed revision to the Audit Committee Charter. Vice-President Saltzman seconded the motion.

President Foley called for Public Comment. No comments were received.

The item was discussed, with the following highlights:

Vice-President Saltzman expressed that several months ago the Board decided to change the charter and agreed it didn't make sense to disqualify somebody who is so qualified; encouraged all to support it; and hoped that this item would be a quick vote.

Director Allen stated that the Board had a discussion about these issues of certifications wanted to take this item up when it was agenzized; expressed the history of the Audit Committee Charter, when

it was originally developed, and the structure; mentioned the minimum qualifications for the public committee members; urged members to vote no; and requested that Director Dufty and Vice-President Saltzman explain why the Board is making the change to the charter, the certification minimum qualifications.

Director McPartland expressed appreciation for Director Dufty; mentioned he will be pulling back from the item; gave an example about how qualifications matter; stated he would prefer someone with the correct skill set; and voiced he would not approve this item.

Director Ames echoed Director Allen’s comments which summed up her concerns; questioned why the Board is changing the integrity of the charter; mentioned that it was politicized, and the charter could stay the same; stated the words “at the Board Discretion” should not be at the Board’s discretion to decide; and expressed that she would not support the amendment of the charter.

Vice-President Saltzman took responsibility for getting this item on the agenda and pushed for it because there were multiple discussions prior; mentioned that it should have been brought to the Audit Committee and then back to the Board, where eight of the nine Directors agreed; expressed how many people can be qualified and why it is important to have a mix of people; voiced support for this item.

Director Li expressed that it is a two-step process by amending the Audit Committee Charter, which was one sentence and then choosing someone who the Board thinks would be an appropriate public member; voiced that this is a voluntarily position; and mentioned how there may be confusion with this item.

The motion brought by Director Dufty and seconded by Director Saltzman carried by roll call vote. Ayes: 6 – Directors Dufty, Li, Raburn, Saltzman, Simon, and Foley. Noes: 3 – Directors Allen, Ames, and McPartland.

Jacqueline R. Edwards, District Secretary, brought the matter of Audit Committee Public Member Appointments (Continued from July 22, 2021 Board Meeting) before the Board. District Secretary Edwards stated the candidates for the Audit Committee Public Member seat will speak to the Board, each had previously submitted their applications, and then gave instructions to the applicants.

The following individuals addressed the Board:

Phillip Leiber
Thomas Parry
Thomas Rubin
Tammy Willis

The item was discussed, with the following highlight:

Director Raburn thanked all the candidates for their interest in serving the public at BART; mentioned his support for Ms. Tammy Willis and Mr. Thomas Parry; touched on how the American Institute of Certified Public Accountants in consultation with the California Society of Certified Public Accountants (CalCPA) nominated two candidates, which included Mr. Parry for the Measure RR Board Bond Oversight Committee; and explained Ms. Willis’ and Mr. Parry’s qualifications.

Director Raburn made a motion and Director Dufty seconded the motion.

President Foley called for Public Comment. No comments were received.

The item discussion continued, with the following highlights:

Director McPartland stated he would like to get the best person for the job with the skillset that the job requires; mentioned that he thought Mr. Phillip Lieber had good experience and Mr. Thomas Rubin's experience is noteworthy; and expressed support for Mr. Phillip Lieber and Mr. Thomas Rubin.

Director Simon expressed how qualified and great the candidates were; mentioned how this is a volunteer position, the breadth of experience that each candidate has, and the patience they have had with the process was appreciated.

President Foley announced there was a Public Comment. Iris Maryanne addressed the Board.

The item discussion continued, with the following highlight:

Director Allen mentioned the difference in qualifications; expressed her support for Mr. Thomas Rubin and Mr. Phillip Lieber; and recommended they be appointed.

Director Ames inquired about the candidates' recent experience in auditing.

President Foley gave instructions on the voting.

District Secretary called for the vote:

Director McPartland: Leiber and Rubin
Director Raburn: Parry and Willis
Vice-President Saltzman: Parry and Willis
Director Simon: Willis and Parry
Director Allen: Rubin and Leiber
Director Ames: Leiber and Parry
Director Dufty: Parry and Willis
Director Li: Parry and Willis
President Foley: Willis and Leiber

District Secretary Edwards announced a selection had been made, Parry and Willis.

President Foley brought the matter of Resolution to Continue Virtual Meetings During the Pandemic before the Board. President Foley expressed that this motion will be required on a monthly basis to allow the Board to continue to meet virtually.

President Foley called for Public Comment. Aleta Dupree and Clarence Fisher addressed the Board.

President Foley made the motion. Director Raburn seconded the motion.

The item was discussed, with the following highlights:

Director Raburn inquired about returning to the Board Room with the new equipment and if the training would be postponed.

Vice-President Saltzman expressed support for this item and clarified the question asked by public commenter, Clarence Fisher; and mentioned that when returning to in person meetings, there would still be virtual public comments.

The motion brought by Director Foley and seconded by Director Raburn carried by unanimous roll call vote. Ayes: 9 – Directors Allen, Ames, Dufty, Li, McPartland, Raburn, Saltzman, Simon, and Foley. Noes: 0.

Director Allen exited the Meeting.

President Foley announced that the order of agenda items would be changed.

Director Simon, Chairperson of the Engineering and Operations Committee, brought the matters of (1) Change Orders to Contract No. 54RR-270, Richmond Yard Fire Protection, with DMZ Builders; and (2) Change Order to Contract No. 01RQ-150, Hayward Maintenance Complex Project, Central Warehouse, for Settlement of All Compensable Delay Claims (C.O. 93) before the Board.

Director Simon made the following motions as a unit. Director Dufty seconded the motions.

The item was discussed, with the following highlight:

Director Raburn expressed that on Item 2, the change order to the contract for the Hayward Maintenance Warehouse Project is a 3.6-million-dollar change order; mentioned that with BART's operating deficits and until ridership returns, funding for capital projects will be difficult because of the amount of money that has been allocated from operating to capital; and requested staff return to the Board during the coming year and discuss contingencies on capital projects.

The motion brought by Director Simon and seconded by Director Dufty carried by unanimous roll call vote. Ayes: 8 – Directors Ames, Dufty, Li, McPartland, Raburn, Saltzman, Simon, and Foley. Noes: 0. Absent: 1 – Director Allen.

Director Simon brought the matter of Roll Call for Introductions – Update on RCI # 21-839: Re-Opening BART Restrooms before the Board. Vice-President Saltzman thanked staff for their tremendous work that has been put in over the past few months; and expressed gratefulness for the plan that was created on how to re-open the restrooms. Shane Edwards, Interim Assistant General Manager, Engineering and Operations, introduced Ni Lee, Senior Manager of Engineering Programs, who presented the item.

The following individuals addressed the Board:

Aleta Dupree
Clarence Fisher
Kuro

General Manager, Robert Powers addressed the Board.

The item was discussed, with the following highlights:

Director Dufty inquired about Restroom Attendants and if there was a job description developed; thanked General Manager Powers for his commitment and thanked Vice-President Saltzman for the report and roadmap that staff was able to develop.

Director Ames mentioned that she saw a woman beg the station agent to use the bathroom; stated how important it is to move forward and how funding is a concern; elaborated on Director Raburn's comments; suggested a policy to minimize cap construction contingency by 15 percent; and thanked staff.

Director McPartland acknowledged Director Dufty; and expressed gratitude for the heavy lifting that Senior Manager of Engineering Programs Lee and staff put into the presentation.

Director Raburn thanked Senior Manager of Engineering Programs Lee and Vice-President Saltzman for putting forth the initiative; mentioned how listening to the public calls resonated with him; touched on the restroom needs, ADA requirements, refurbishing for cleanliness and maintenance, and pilot restroom attendants; and applauded the District.

Director Li expressed excitement about the restrooms and how important this is; mentioned how impressed she is by the work that staff has done; mentioned that the World Class Transit is providing high quality restroom facilities; voiced being proud of how thoughtful staff had been about the design of the restrooms and support for the attendant operations; touched on funding; and stated that she would like labor partners to be talked to and if not them, suggested that we explore non-profit options.

President Foley echoed Director Li's comments; thanked Vice-President Saltzman for taking this on, General Manager Powers, and staff for addressing the critical need; expressed full support; suggested an in-house solution to the Attendant Program or non-profit support; and inquired about if every restroom in our system would have attendants and/or if underground stations.

Director Simon applauded Vice-President Saltzman and expressed appreciation for her tenacity and courage.

Vice-President Saltzman touched on the letters and emails that people sent over the years; expressed happiness with the Board and management for deciding to move forward with re-opening the restrooms; mentioned that staff and the Board have to recommit to this in every budget cycle moving forward; thanked staff for their work and the Board for committing to this; and supports the Attendant Program.

Director Raburn, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of Adoption of Goals and Objectives for El Cerrito Plaza Transit-Oriented Development before the Board. Carl Holmes, Assistant General Manager, Design and Construction, introduced Kimberly Koempel, Principal Planner, Real Estate & Property Development, and Rachel Factor, Principal Planner, Station Area Planning, who presented the item.

The following individuals addressed the Board:

Laura Tolkoff
Dan Cloak
Cameron Blackford
Derrick Sagehorn
Elizabeth Basher
Nico Nadel
Joe Kunzler
Gail Feldman

The item was discussed, with the following highlights:

Vice-President Saltzman thanked the public speakers; touched on how this decision is difficult for many people; commended staff for their work that they have put in over the past several years; mentioned that the data driven approach is fantastic, but also conservative; mentioned the parking situation, including street parking; and asked staff if the numbers were lowered minimum what could some of the benefits be for the project, if there could be an average between two numbers, and if there would be a separate conversation about the parking spots.

Director Saltzman made the following amended motion: The BART Board of Directors approves the El Cerrito Plaza Transit-Oriented Development Goals and Objectives, with the addition of a new Section E2.1 that sets the rang for on-site BART commuter parking *at zero* and a maximum of 250 spaces.

The item continued to be discussed, with the following highlights:

Director Li expressed that she was an advocate when working with Supervisor Jane Kim in 2018 to amend the City and County of San Francisco to end parking minimums for all new developments; mentioned being open to setting a maximum of 250 and not having a minimum, making it zero, and suggested a friendly amendment to Director Saltzman's amended motion.

President Foley expressed support, but waved a cautionary flag; mentioned three concerns: (1) needs to make fiscal sense for BART, removal of parking revenue must be exceeded by TOD revenue, (2) the impact to neighborhoods caused by BART overflow parking and the need for an agreement with the city to minimize the impact, and (3) when parking is removed, it displaces auto-dependent riders and mentioned there should be an agreement for more frequent bs or shuttle service.

Director Ames agreed with President Foley; mentioned how people in affordable housing complexes usually do not take public transit; inquired about the number of parking dependent spaces; expressed concern with overflow parking; suggested that there be some push back on the developer for the parking garage; mentioned support; and stated that she would like to see more parking.

Director McPartland echoed President Foley's comments and stated support for Vice-President Saltzman because she knows the needs for that specific station in junction with the community.

Director Raburn indicated support; mentioned parking revenue; stated no free parking; and suggested defining how many spaces we actually need between 60-250, consider people with disabilities, the short-term reservation, and for shared vehicles.

Vice-President Saltzman addressed the comments made by other Directors; mentioned her dedication and commitment to this project and is working with the City Council and the staff there to ensure that this project moves forward with the on-street parking management; and touched on more bus service.

Director Simon exited the Meeting.

The motion brought by Director Saltzman and seconded by Director Li carried by unanimous roll call vote. Ayes: 7 – Directors Ames, Dufty, Li, McPartland, Raburn, Saltzman, and Foley. Noes: 0. Absent: 2 – Directors Allen and Simon.

Director Raburn brought the matter Station Modernization Update before the Board. Assistant General Manager, Design and Construction Holmes introduced Tim Chan, Group Manager, Station Planning, presented the item.

Joe Kunzler addressed the Board.

The item was discussed, with the following highlights:

Vice-President Saltzman mentioned how long it has been since the Board has received an update, wanted everyone to be on the same page, and wants to start to discuss where it is on priorities; commented on the community outreach, the survey that was sent out, and how the concept plan sat for many years; touched on funding; expressed how prioritization is needed and the Board should be involved; voiced that Downtown Berkeley should be a priority; and thanked staff for their work.

President Foley inquired if the replacement for the platform monitors fit into station modernization project.

Director Ames mentioned that the focus should be on brightening the station, such as paint and lighting to make it look cleaner; and expressed reservation about spending more money on concepts and funding.

Vice-President Saltzman announced that Vice-Mayor of Berkeley, Lori Droste, has a public comment.

Lori Droste addressed the Board.

Discussion continued.

President Foley announced that the Board would enter into Closed Session under Items 10-A (Public Employee Performance Evaluation), 10-B (Conference with Legal Counsel), and 10-C (Conference with Labor Negotiators) of the Regular Meeting agenda, and that the Board would reconvene in open session upon conclusion of the closed session.

The Board Meeting recessed at 12:48 p.m.

The Board reconvened in closed session at 1:45 p.m.

Vice-President Saltzman announced that the Board had concluded its closed session under Items 10-A, 10-B, and 10-C and that there were no announcements to be made.

President Foley exited the Meeting.

Director Li, Chairperson of the Administration Committee, brought the matter of Ridership and Financial Update before the Board. Director Li gave a brief introduction; touched on the briefing from staff; and mentioned coming back in December to get a briefing about where to really increase ridership to get to the goal. Pamela Herhold, Assistant General Manager, Budget & Performance, introduced Michael Eiseman, Director of Financial Planning, and Christopher Simi, Director of Budgets, presented the item.

The following individuals addressed the Board:

Derrick Sagehorn
Johnathan Kass
Adina Levin
Kevin Burke

The item was discussed, with the following highlight:

Vice-President Saltzman thanked staff for the presentation and thanked all the public speakers; mentioned that BART has been here before, before the pandemic when ridership started to drop, and how we were able to close the gap without doing some of the worst options; touched on BART can do it again; and suggested things can be done, such as getting more funds, the need to get creative about revenues, and charging for parking.

Vice-President Saltzman exited the Meeting.

Discussion continued, with the following highlights:

Director Raburn stated there is both optimism and pessimism; mentioned how to plan for downside; requested some options for discussion; expressed support of the two-year budget cycle; suggested the strategy is to maximize passenger volume, network management, changing service levels to suit the demand that is being seen, manage expenses, and secure new revenues; and inquired about the funds and how they are allocated.

Director Ames expressed concern and inquired about the downside scenario; touched on the need to pursue additional funding; inquired about the down-case scenario; expressed appreciation for the discussion; and suggested that a plan should be created.

Director Dufty thanked the Finance and Budget team, Herhold, Assistant General Manager, Budget & Performance, Simi, Director of Budgets, and Eiseman, Director of Financial Planning; commended all the executive leadership who have restrained costs and controlling costs; mentioned bringing back service, being responsive, and protecting the health of riders.

Director Li echoed Director Dufty's comments; thanked staff for making the information accessible; requested financial update; suggested to decide what revenue sources are; and gave support for moving onto a two-year rolling budget.

Director Li called for the General Manager's Report. General Manager Powers mentioned the MTC Workshop that focused on the outcomes of the Blue Ribbon Taskforce, title Building Transit Future Together; stated BART and Marin Transit were nominated to present; touched on the ARP Funding; highlighted free BART rides for school fieldtrips donated by Google thanks to Director Simon; stated that Directors Simon, Dufty, Li, and himself have been meeting with the San Francisco Directors to make sure that transit is available to everyone; expressed Halloween service was extended and Trunk or Treat was at North Berkeley BART Station, and the Sound Track Series ended later that night; and provided information about the vaccination rate and ridership.

Director Li called for public comments. Joe Kunzler addressed the Board.

Director Li called for Board Member Reports, Roll Call for Introductions, and In Memoriam requests.

Director Raburn reported he attended the BART/VTA Meeting, the Oakland African American Chamber of Commerce Luncheon, the Fruitvale Sound Tracks event; mentioned his exciting visit to the Austin Plant to see the production line for the new train cars and the retrofit work; and thanked Rodd Lee, Assistant General Manager, External Affairs, Aisha Brown, Principal Government and Communication's Relations Representative, and John Garnham, Group Manager, Rail Vehicle Program.

Director Ames exited the meeting.

Director McPartland reported he attended the BART/VTA Meeting.

The Meeting adjourned at 2:41 p.m.

Jacqueline R. Edwards
District Secretary