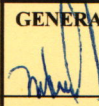
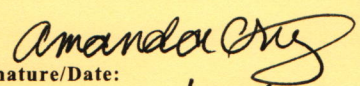
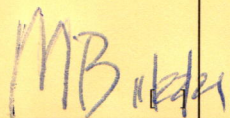
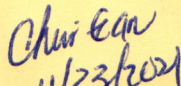
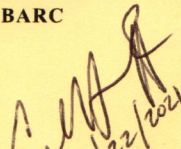




## EXECUTIVE DECISION DOCUMENT

<b>GENERAL MANAGER APPROVAL:</b>  11/23/21		<b>GENERAL MANAGER ACTION REQ'D:</b>		
<b>DATE:</b> 11/17/2021		<b>BOARD INITIATED ITEM:</b> No		
<b>Originator/Prepared by:</b> Amanda Cruz <b>Dept:</b> Gov't & Community Relations  <b>Signature/Date:</b> 11/22/21	<b>General Counsel</b> 	<b>Controller/Treasurer</b>  11/23/2021 [ ]	<b>District Secretary</b> [ ]	<b>BARC</b>  11/22/2021 [ ]

### 2022 Federal and State Legislative Advocacy Program

#### PURPOSE:

To review, discuss, and seek approval of the San Francisco Bay Area Rapid Transit District's (BART) 2022 Federal and State Legislative Advocacy Program.

#### DISCUSSION:

BART's federal and state advocacy efforts are guided by annual goals adopted by the Board of Directors. The goals reflect BART's legislative priorities and provide direction to staff and BART's advocates as they seek to influence funding and policy decisions made in Washington, D.C. and Sacramento. The following summarizes proposed federal and state goals for the 2022 legislative session.

#### PROPOSED FEDERAL ADVOCACY GOALS

##### Federal Transit Grants - California Public Employees' Pension Reform Act of 2013 (PEPRA)

On October 28, 2021, the United States Department of Labor (USDOL) reversed their previous 2019 determination regarding the impacts of PEPRA on transit workers' collective bargaining rights and returned to an original position asserting the implementation of PEPRA by California transit agencies precludes the certification of federal grants under Section 13(c) of the Urban Mass Transportation Act of 1964. This decision by USDOL is prospective and may impact the certification of future California transit grants, including federal funds BART receives.



On November 19, 2021, the State of California filed a motion to stay implementation of USDOL's October 28 determination until the U.S. District Court rules on the merits of the new position. BART submitted a declaration in support of the State's request and USDOL has stated they will neither certify nor deny grant applications prior to December 21, 2021. Given the importance of federal funding to California transit agencies, BART shall continue coordinated outreach with regional and state partners to the USDOL, Federal Transportation Administration (FTA), and members of Congress to request transit grants continue to be processed and certified while litigation proceeds.

### **Transbay Corridor Core Capacity Project (TCCCP)**

On September 14, 2020, the FTA issued a Full Funding Grant Agreement (FFGA), committing \$1.169 billion of FTA Section 5309 Capital Investment Grant (CIG) funds to BART's TCCCP. Under the American Rescue Plan Act of 2021, an additional \$87 million was allocated to the TCCCP to assist with BART's local funding commitments. Within the newly passed Infrastructure Investment and Jobs Act (IIJA), \$23 billion in authorizations and advanced appropriations is also included for the CIG program. BART anticipates a \$143.3 million allocation for the TCCCP from a Fiscal Year 2022 (FY22) Appropriations bill. Within funding provided by the IIJA, BART will advocate that a portion of CIG funds be made available to project sponsors with existing FFGAs to increase the federal cost share up to 60 percent. Increasing the federal share for projects with existing FFGAs would enable CIG-funded projects to address unforeseen cost increases, largely attributed to the COVID-19 pandemic and other challenges exacerbated by it.

### **Transit Operating Assistance**

The COVID-19 pandemic and slow return of commute-based transit trips has impacted almost all sources of BART revenue. The three COVID relief bills passed by Congress have provided BART with approximately \$1.3 billion in emergency assistance to address the District's budget deficits. This funding is expected to stabilize BART's FY23 operating budget and may stretch into part of FY24 depending on ridership recovery. Thereafter, BART projects significant ongoing annual operating deficits in the range of \$100 – 250 million. On November 8, 2021, BART submitted a \$154 million grant application for additional operating assistance from the American Rescue Plan Act of 2021. Additional funds, if secured, will help mitigate anticipated deficits. However, BART shall continue to educate members of Congress, the FTA, and Administration on the long-term impacts COVID has had on BART's budget and operational capacity. Additional federal support, or a new source of operating funds, will almost certainly be required for BART to sustain normal operations.

### **Transit Funding Requests – FY23 Appropriations**

In early 2021, House Appropriations Committee Chair Rosa DeLauro (D-CT) announced



the Committee would accept Community Project Funding requests (i.e., earmarks) from members of Congress for FY22 Appropriations bills. Specifically, the plan released by the Chair limited earmarks to 1% of discretionary funding, allowed for 10 requests per member, and included a set of reforms that prioritized accountability, transparency, and strong community support. With the anticipated acceptance of Community Project Funding requests for FY23, BART will submit projects to members of the Bay Area Congressional delegation for inclusion in a Transportation, Housing, and Urban Development Appropriations bill. BART will utilize the Capital Project Selection Process when prioritizing earmark requests for each office.

### **Implementation of IIJA and Build Back Better Act Programs**

The IIJA and proposed Build Back Better Act (budget reconciliation package) represent significant opportunities for BART to receive increased formula funding and compete for new and existing discretionary grants. The levels of funding within the IIJA and reconciliation package could help BART modernize aging infrastructure, replace rail cars, improve safety and accessibility, increase access to transit and affordable housing, respond to climate change, and invest in transformational projects that promote greater racial and social equity. As various federal departments begin to implement new programs created by the IIJA and Build Back Better Act, if passed, BART will ensure the District's interests are represented in any rulemaking efforts, discretionary grant development, and policy-making decisions that could impact eligibility or project competitiveness. This may include engagement with various congressional offices, professional committee staff, federal agencies, and industry working groups as necessary.

### **Transit Security and Safety**

As more riders return to BART post-pandemic, transit security and safety remain a top priority. Progress has been made towards increasing sworn and non-sworn personnel, which include Fare Inspectors, Transit Ambassadors, and Crisis Intervention Specialists. BART will continue to educate members of Congress and the Administration on activities within the Progressive Policing and Community Engagement Bureau, the District's compliance with federal security directives, and ongoing needs for transit security funding. BART will also pursue available safety and security grants administered by the Departments of Homeland Security, Transportation, and Justice.

### **Housing and Transit-Oriented Development (TOD)**

The House version of the Build Back Better Act contains nearly \$150 billion in housing investments. Funding is directed towards Section 8 Housing Choice Vouchers, the national Housing Trust Fund, the HOME Investment Partnership grant program, support for first-time home buyers, and the Community Development Block Grant program. The bill also contains Low Income Housing Tax Credit (LIHTC) provisions to temporarily lift the ceiling



on tax credit financing in states that have hit their volume cap and lower to 25 percent from 50 percent the required state match of bond allocations. BART will engage in regional and national advocacy urging the Senate to keep these provisions within the Build Back Better Act. BART will also begin discussions with the District's development partners to identify TOD projects that could benefit from the 4 percent LIHTC expansion and decreased state bond match.

## **PROPOSED STATE ADVOCACY GOALS**

### **Transportation Funding**

The 2021 State Budget Act (the Budget) conditionally appropriated \$3.4 billion from the State's General Fund for a variety of transportation projects, including \$1 billion to deliver critical projects in advance of the 2028 Olympic games and \$1 billion to enhance connectivity through clean transportation investments in priority transit and rail projects. The transportation funds in the Budget were contingent on an allocation schedule set in legislation. While no agreement was reached before the end of the 2021 legislative session, discussions between the Governor and Legislature are ongoing regarding additional General Fund dollars for transportation projects and the \$4.2 billion in bond funds requested for California's High-Speed Rail project.

Within the Fiscal Year 2022-2023 State Budget, BART, in coordination with the Metropolitan Transportation Commission and Bay Area transit operators, will advocate for additional General Fund support for the region's transit priority projects. BART will work collaboratively with the region's stakeholders to maximize the Bay Area's competitiveness for funding and request the use of regional targets to help ensure an equitable distribution of funding throughout the state.

BART will continue to support High-Speed Rail and the Administration's request for funding to complete the current segment under construction between Bakersfield and Merced. If the Legislature pursues redirection of funds to local priorities, BART will advocate that projects included in a final agreement assist with bringing High-Speed Rail to the Bay Area.

Assuming a healthy budget surplus, BART shall also pursue member district funding requests to support specific capital projects and operating programs.

### **Federal Transit Grants - California Public Employees' Pension Reform Act of 2013 (PEPRA)**

In mid-November, the State of California requested a stay with the District Court to block the implementation of the United States Department of Labor's October 28 determination that PEPRA adversely impacts transit workers' collective bargaining rights. BART submitted a declaration in support of the State's stay request, which attests to the significant impacts to



BART and the Bay Area if the determination were to go into effect. Although it is unclear if and for how long a stay may be granted, BART will continue to support the legal and legislative efforts of the California Transit Association and the State to ensure transit agencies are able to maintain essential service and continue with capital reinvestment projects as planned.

### **Housing, Jobs Centers, and TOD**

BART's 250 acres of developable land is arguably some of the most strategically located land in the Bay Area to help catalyze transit-oriented development and affordable housing. BART is poised to play a critical role in helping local jurisdictions meet their Regional Housing Needs Assessment targets and supporting the State's housing and climate goals, but must accelerate the scale and pace of development if 20,000 units are to be built by 2031.

With the anticipated appointment of a new Assembly Housing & Community Development Committee Chair, BART will renew efforts within the Legislature and among state agencies to secure eligibility for state housing funds and continue to support legislative efforts that promote affordable housing production and higher-density housing near transit and jobs-rich areas. BART will also advocate that transit-oriented developments in the Bay Area – especially those on public land - are competitively scored to receive affordable housing subsidies and that new funding for infrastructure includes funds for station access enhancements supporting BART's access and TOD programs and policies.

### **Homelessness and Related Quality of Life Issues**

The 2021 Budget appropriated a historic homelessness package of approximately \$12 billion over two years, including \$2.75 billion for Homekey, \$2.2 billion for housing along the behavioral health continuum, and \$2 billion in flexible local homelessness aid. Within the California Department of Transportation (Caltrans), \$1.1 billion was allocated to a new Clean California Initiative including \$296 million for a two-year program focused on beautifying public rights-of-way, parks, transit centers, other public spaces. BART, in partnership with the California Transit Association, will continue to advocate that state resources be made available to transit agencies for programs and services aimed at addressing homelessness and related quality of life issues. BART will also engage with Caltrans on their implementation of various Clean California programs and may choose to seek direct support for the District's Progressive Policing and homelessness initiatives through a member budget request.

### **Transit Transformation Action Plan Implementation**

In the 2021 legislative session, Assemblymember David Chiu introduced AB 629, the Seamless and Resilient Bay Area Transit Act, to advance integration of the region's 27 transit



systems and build off the work of the region's Blue Ribbon Transit Recovery Task Force. While the bill was designated as a two-year effort, the Blue Ribbon Transit Recovery Task Force advanced a Transit Transformation Action Plan focused on near term actions to transform the Bay Area's transportation network into a more connected, more efficient, and more user-focused system that attracts many more users. To the degree the Action Plan may require legislation and state resources, BART will work with MTC and the region's transit operators to develop proposals that support progress in key areas such as fare payment and integration, mapping and wayfinding, and a transit priority network.

### **Climate Change and Resilience**

The Budget conditionally appropriated \$400 million to a new Transportation Climate Adaptation Program, with funds evenly split for state and local needs. Unfortunately, the funds reverted to the General Fund in October 2021 due to the collapse of negotiations over High-Speed Rail. As talks resume over a transportation funding package and efforts begin around implementation of the State's Climate Action Plan for Transportation Infrastructure, BART will advocate for existing funding programs to focus more on transit investments and less on auto-oriented projects as a means to achieve statewide goals on climate, equity, accessibility, and safety. BART will also support funding and policy strategies that seek to better coordinate state and regional climate goals, advance energy efficiency, and improve the Bay Area's resilience to natural hazards such as earthquakes, sea level rise, and fires.

### **Police Reform and Racial Equity**

In the 2021 legislative session, the Legislature and Administration were successful in passing several bills focused on strengthening policing responsibility and accountability guidelines, raising eligibility standards, and banning harmful techniques and transport methods. BART has actively focused on implementing progressive and equitable policing practices and will continue supporting administrative and legislative efforts that advance racial justice and equity, create a culture of police accountability and responsibility, and de-emphasize the use of sworn officers as first responders for handling mental health and socioeconomic issues.

### **BART-Sponsored Legislation**

As necessary, BART will seek to introduce and pass sponsored legislation that addresses a specific problem or goal as identified by the Board and/or staff.

### **FISCAL IMPACT:**

Funding to support the Federal and State Legislative Program is within the Government and Community Relations Department operating budget and includes legislative advocacy agreements with CJ Lake, LLC and California Strategies & Advocacy, LCC (Department 0604366, Account 681300 - Professional and Technical Services).



**ALTERNATIVES:**

The Board could amend or decline to support the 2022 Federal and State Legislative Advocacy Program.

**RECOMMENDATION:**

That the Board approve the following motion.

**MOTION:**

The Board approves the 2022 Federal and State Legislative Advocacy Program as presented by staff.