

VTA's BART Silicon Valley Phase II Extension

Meeting minutes:

04/25/2022

Meeting with FTA Region IX Regarding BART Board Questions on BSVII

**PURPOSE:** To conduct a meeting with FTA directly in order to get answers to questions from the Board and the public since FTA could not attend a Board or Joint Committee meeting.

Name of Invitee	Agency	(Attendance Y/N)
Takis Salpeas	VTA	Y
Ronak Naik	VTA	Y
Bernice Alaniz	VTA	Y
Toby Hemphill	VTA	Y
Kevin Kurimoto	VTA	Y
Alicia Trost	BART	N
James Allison	BART	Y
Carl Holmes	BART	Y
Shane Edwards	BART	Y
Jianmin Fong	BART	Y
Bernardo Bustamante	FTA	Y
Susan Ko	FTA	Y
Jena Montgomery	FTA	Y
Ray Tellis	FTA	Y

**AGENDA:**

1. Does FTA's Risk Assessment expect the project to be \$9.1 billion?
  - a. See the wording of the last sentence in the second paragraph on the FTA website announcement for the Letter of Intent  
<https://www.transit.dot.gov/about/news/us-department-transportation-announces-path-forward-bart-phase-ii-project-under>

**FTA: \$9.1 billion is the result of FTA's risk assessment projection of the BSVII Project based on P65 probability.**

2. If not, then why did FTA provide a risk assessment value with a corresponding "funded" amount?

**FTA: That is the process FTA uses, which includes a 25% funding cap by statute.**

3. What are the specific requirements in the Letter of Intent (LOI) that need to be met in order for VTA to proceed with the Full Funding Grant Agreement (FFGA)? Based on the same website above, some of the "several conditions" that need to be met within 2 years (October 2023) are as follows:
  - a. VTA must secure and document commitment of all non-Federal funding for the project
  - b. VTA must submit revised financial information per Notice of Funding Opportunity requirements, based on the revised cost and revenue service date
  - c. VTA must provide updated information regarding BART's system-wide operations and maintenance costs and funding sources, given that BART will operate and maintain the project
  - d. Any other conditions??

**FTA: Conditions are all in the LOI. There are no other conditions.**

4. If the Letter of Intent (LOI) 2-year timeframe does not yield tangible bids or proposals from VTA, then will FTA consider extending the duration of time to enter into an FFGA?

**FTA: Yes, FTA would consider the extension since the 2-year timeframe is not part of statute. The 2-year timeframe is FTA's estimate of a reasonable duration under EPD.**

5. If the 2-year timeframe only yields 2 out of 4 or 3 out of 4 contracts, then does that impact the FFGA award date?

**FTA: FFGA commitment is not contingent upon the contract awards.**

6. Does the additional FTA possible funding within the 25% portion (6.9B vs 9.1B) impact the ability of other agencies in the region to secure funding for their projects?

**FTA: No, the FTA commitment is independent from other projects.**

7. Does the \$200M which was promised or allocated recently in President Biden's FY23 proposed budget add to the 25% portion? Or is it part of the 25% maximum contribution?

**FTA: It is not additional. It is part of the 25% funding cap by statute.**

8. How does FTA view the single-bore tunnel as part of the innovations requested in the EPD grant application?

**FTA: Innovations were recognized by FTA, but not the deciding factor. Benefits of the single-bore were recognized as innovative in regards to minimizing street level, utility and business impacts and were encouraged as a concept. Tunnel configuration is the Project team's choice which has no influence on the EPD grant application.**

9. Would FTA require VTA to "start over" if they decided to resume with the twin-bore tunnel design? Environmental requirements? EPD application process? EPD application eligibility?

**FTA: In April 2018, both VTA and BART selected the single-bore configuration; FTA issued a ROD based on this configuration. As such, the current EPD application is based on the single-bore tunnel design. If VTA were to pursue a twin-bore tunnel design, VTA and FTA would have to undertake a NEPA re-evaluation process, even though both configurations were studied and analyzed in the original environmental process.**

10. If FTA did not increase the value of their potential contribution in the Risk Assessment and VTA receives bids that are higher than the VTA Estimate, then how would the project funding application be impacted? Would a separate application need to be resubmitted?

**FTA: The scenario is too hypothetical. The FTA projection is \$9.1M.**

11. Has FTA reviewed additional documents received after the application status date of May 14, 2021 that warrant an adjustment (upward or downward) in FTA's Risk Assessment projected cost amount or Revenue Service Date?

**FTA: There is an ongoing effort to evaluate updates as the procurement process advances. FTA will conduct a risk refresh prior to FFCA, but the funding cap is the same.**

12. Tunneling and Environmental: Per FTA's ROD document, FTA determined that NEPA requirements have been satisfied for the BSVII project, including all options analyzed in the Preferred Alternative, which included the twin-bore option
- a. Confirm that the twin-bore has been "cleared."  
**FTA: It was analyzed, but not cleared. And not in the ROD.**
  - b. Confirm process and rough timeline for amending the SEIS (with a variable extent of analysis needed)  
**FTA: If VTA would decide to change, then the quality of the document will determine FTA's review timeline once the re-evaluation analysis is provided by VTA. Per VTA, this entire process normally takes about 3 years to complete the environmental process, update designs and restart the procurement process to the current milestone reached as of today.**
  - c. If no significant changes in SEIS are anticipated, how long would it take for FTA to issue an amended ROD?  
**FTA: As stated above, the quality of the document will decide how long it will take. The ROD amendment is an administrative process.**
13. Tunneling Methodology & Federal Funding:
- a. How would a ROD amended to describe a twin-bore tunnel project impact VTA's FFGA schedule in the EPD program application process?  
**FTA: There would be no requirement to re-apply or re-submit. However, the EPD application must be updated to reflect a twin-bore project, associated technical work products and amended ROD.**
  - b. Would it jeopardize VTA's eligibility in the program?  
**FTA: No. There would be a different timeline based on the above responses.**
  - c. How would a ROD amended to describe a twin-bore tunnel project impact?  
**FTA: No impact from a funding perspective, but there would be a different timeline.**
14. If VTA were to change the way the stations were constructed – in other words, if they pursued a single bore tunnel but cut-and-cover stations – would that be within the project scope? Would the FTA still fund it, assuming all necessary requirements are met in order to obtain the FFGA?
- FTA: It is up to VTA how to deliver the Project. It will impact FFGA timeline. The NEPA impact must be verified.**
15. If VTA were to change the type of tunnel construction method, to cut-and-cover for instance, would that still be considered in-scope? Would it change anything about the FTA's funding decision?
- FTA: No, it would not impact funding. FTA would just monitor the change in terms of cost, schedule, and other plans.**

16. Could the FTA PMOC conduct a risk review for the twin-bore project that was approved/designed, so that there is an updated cost and risk assessment of the project alternative using a comparable methodology and at comparable levels of design?

**FTA: No, FTA will not conduct a risk assessment on the twin-bore configuration since that is not the proposed project.**

17. Is there a way for the FTA to facilitate the type of partnership between/among VTA, BART, the City of San Jose, and the City of Santa Clara that supports quick, strategic decision-making on project design and delivery decisions?

**FTA: This is not FTA's role. The partnership should be handled locally by the agencies.**

**Per VTA, they have already successfully executed critical agreements with third parties as required by FTA.**

18. Is there a way for the FTA to facilitate greater transparency about the project, such as requiring the publication of PMOC reports (or other documents/reports)?

**FTA: FTA provides the PMOC reports to VTA. BART staff attend monthly meetings with FTA/PMOC. The PMOC reports are technical in nature and not written for public consumption; if any member of the public would like access to these reports, they may make a Freedom of Information Act request. Additionally, this Project is going through a confidential procurement process; sharing these reports during this process could result in a compromise.**

VTA: \*\*\* As a follow up to discussions regarding environmental clearance, see response and additional information below from VTA subject matter experts including Environmental, General Counsel and Outside Counsel:

- VTA analyzed and evaluated the environmental impacts of both the single-bore and the twin-bore tunneling methodologies in the joint Final Supplemental EIS/Subsequent EIR prepared pursuant to NEPA and CEQA, and selected the single-bore tunnel as the approved project.
- In April 2018, the VTA Board certified the Subsequent EIR and adopted CEQA findings to approve the project with the single-bore tunnel. Subsequent to VTA's Board approval, BART's Board also approved the project with the single bore tunnel. In June 2018, FTA issued the ROD making findings under NEPA, based on the Supplemental EIS, for the project with a single-bore tunnel.
- A change from a single bore tunnel to a twin bore tunnel is a change in the approved project. Such a change would require an approval from the VTA Board, which is a further discretionary action, as that term is used under CEQA. This would require the VTA Board to make a new set of CEQA findings. While those findings can be based on the Final Supplemental EIS/Subsequent EIR, VTA would also be required to determine whether the change to the project would trigger the requirements for subsequent environmental review under CEQA. FTA would have to conduct the same inquiry under NEPA.
- CEQA requires a subsequent or supplemental EIR if, among other things, substantial changes are proposed in the project, or substantial changes occur with respect to the circumstances under

which the project is being undertaken, that results in new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

- Similarly, NEPA requires a “reevaluation” of any changes in a proposed action, affected environment, anticipated impacts, and mitigation measures. The purpose of this analysis is to determine whether an approved environmental document remains valid and to determine whether significant changes require preparation of a supplemental or new environmental document
- FTA and VTA, as the NEPA and CEQA lead agencies respectively, must determine the adequate level of analysis sufficient to approve a change in the project to a twin-bore tunnel. Four years have passed since the project approval, and it is highly likely that the change from the single bore tunnel to the twin bore tunnel would necessitate additional NEPA and CEQA environmental analysis. This analysis could take a long time and could add years to the project.
- In addition, any change in the project that requires new discretionary approvals runs a risk of a lawsuit challenging the new project approval and the CEQA/NEPA action in support of that decision. VTA successfully defended against the Sharks’ challenges to the Final Supplemental EIS/Subsequent EIR and it is preferred not to re-open the CEQA and NEPA process the invite the possibility of further lawsuits.