

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

Board of Directors
Minutes of the 1,883rd Meeting
April 8, 2021

A regular meeting of the Board of Directors was held on April 8, 2021, convening at 9:00 a.m. via teleconference, pursuant to Governor Gavin Newsom's Executive Order N-29-20 and the California Shelter-in-Place mandate. President Foley presided; Jacqueline R. Edwards, District Secretary.

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

Absent: Director Simon.

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

President Foley inquired whether public comments had been received via email and Jacqueline R. Edwards, District Secretary, confirmed that public comments had been received via email.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meeting of March 25, 2021.
2. BART Police Citizen Review Board Member Appointment.
3. Award of Agreement No. 6M2075, Independent Audit Services.
4. Revision of Equal Employment Opportunity (EEO) Policy.
5. Resolution Authorizing the Submittal of BART to Antioch Operations Application, and Supporting Documents, for the Fiscal Year 2020-2021 Low Carbon Transit Operations Program (LCTOP).
6. Agreement with Alameda-Contra Costa Transit District for Feeder Service Payments for Fiscal Year 2021.
7. Cooperative Agreement with California Department of Transportation (Caltrans), K-Line Interlocking Replacement Project.
8. Additional Increase in Authority to Execute Third Party Agreements and Work Authorizations to Support the Hayward Maintenance Complex Project.
9. Waiver of Board Rule 5-2.3 for Contract No. 09AU-120, Earthquake Safety Program TBT Internal Retrofit.

Directors McPartland and Raburn requested that Item 2-I, Waiver of Board Rule 5-2.3 for Contract No. 09AU-120, Earthquake Safety Program TBT Internal Retrofit, be discussed and removed from the Consent Calendar.

Director Saltzman made the following motions as unit. Director Dufty seconded the motions.

1. That the Minutes of the Meeting of March 25, 2021, be approved.
2. That the Board of Directors ratifies the appointment of Pedro Babiak – District 1, to the BART Police Citizen Review Board, for a term expiring on June 30, 2022.
3. That the Controller/Treasurer be authorized to award Agreement No. 6M2075 to Crowe LLP to provide independent audit services to the District, Retiree Health Benefit Trust (RHBT), Other Other Post Employment Benefit Trust (OPEB) and Capitol Corridor Joint Powers Authority (CCJPA) for an amount not to exceed \$1,251,250.00 for a five-year period from Fiscal Year (FY) 2021-2025.
4. That the Board adopts the revised Equal Employment Opportunity (EEO) Policy.
5. That Resolution No. 5477, In the Matter of Authorizing the Submittal of BART To Antioch Operations Application, and Supporting Documents, for FY 20-21 Low Carbon Transit Operations Program (LCTOP), be adopted.
6. That the General Manager be authorized to execute the FY21 BART/Alameda-Contra Costa Transit District (“AC Transit”) Feeder Agreement for an amount not to exceed \$2.7 million.
7. That the General Manager, or designee, be authorized to execute agreements with Caltrans, including authority to expend a total of \$356,750.00 (three hundred fifty-six thousand seven hundred fifty dollars) to support the K Line Interlocking Replacement Project.
8. That the General Manager, or designee, be authorized with an additional increase of \$1,500,000.00 in monetary authority to execute Third Party Agreements and Work Authorizations with various public and private entities, including cities, agencies, utilities, special districts and the Union Pacific Railroad, in order to provide support services for the Hayward Maintenance Complex Project including, but not limited to, design, installation, minor construction, relocation, permitting, and inspections.

President Foley called for Public Comment on the Consent Calendar. Robert Griffin addressed the Board.

District Secretary Edwards indicated that a written comment from Aleta Dupree was previously forwarded to the Board, and read a written comment submitted by Haleema Bharoocha into the record.

The Consent Calendar was discussed, with the following highlights:

Director Raburn inquired whether the written comments from Robert Griffin were provided to the Board and District Secretary Edwards informed the Board that she would resend the email immediately.

Director Raburn requested a summary of the written comments from Robert Griffin.

Director Li requested that a member of the Audit Committee or staff respond to the comments by Robert Griffin.

Michael Jones, Deputy General Manager, commented on the Independent Auditor procurement process.

Director Dufty commented on the Independent Auditor procurement process.

Director Allen expressed agreement with Director Dufty regarding the transparency of the independent auditor procurement process.

The motions brought by Director Saltzman and seconded by Director Dufty carried by roll call vote. Ayes: 7 – Directors Allen, Ames, Dufty, Li, McPartland, Saltzman, and Foley. Noes: 0. Abstentions: 1 – Director Raburn. Absent: 1 – Director Simon.

Director Raburn suggested that the Earthquake Safety Program Citizens' Oversight Committee oversee BART Safety, Reliability and Traffic Relief Program (Measure RR) expenditures and explained his suggestion.

Director Raburn moved that the Earthquake Safety Program Citizens' Oversight Committee shall continue to provide public oversight for the duration of the Transbay Tube Internal Retrofit project and the General Manager be authorized to issue Change Orders up to an amount of \$49.0 Million, or 15% of the current Contract Price, which is approximately \$326 Million, prior to providing the Board with the 10 days advance notice required by Board Rule 5-2.3. Director Dufty seconded the motion.

Item 2-I, Waiver of Board Rule 5-2.3 for Contract No. 09AU-120, Earthquake Safety Program TBT Internal Retrofit, was discussed, with the following highlights:

Director Allen inquired whether the Board Rule change proposed by the motion would apply to all procurements and commented on presenting proposed procurement process changes to the Audit Committee prior to presenting policy changes to the Board.

Carl Holmes, Assistant General Manager, Design and Construction, gave background on Item 2-I.

Director Saltzman expressed support for the motion and appreciation for Director Raburn's consideration of the Earthquake Safety Program Citizens' Oversight Committee; indicated that the Item 2-I should not have been included in the Consent Calendar and that Item 2-I did not need to be considered by another committee; and commented on the Transbay Tube Internal Retrofit project and Item 2-I.

Director McPartland indicated a desire for Item 2-I to be removed from the Board's consideration; expressed agreement with Director Raburn's comments; commented on his concerns about and opposition to Item 2-I; and suggested that the Board President meet with the General Manager to address planning issues, as necessary.

Director Allen expressed appreciation for the comments by Assistant General Manager Holmes and support for the motion.

Director McPartland commented on scheduling an emergency meeting via Zoom and his opposition to Item 2-I.

Director Dufty commented on his respect for staff, and expressed support for the motion and appreciation for Director Allen's comments.

The motion brought by Director Raburn and seconded by Director Dufty carried by roll call vote. Ayes: 7 – Directors Allen, Ames, Dufty, Li, Raburn, Saltzman, and Foley. Noes: 1 – Director McPartland. Absent: 1 – Director Simon.

President Foley called for general Public Comment. Aleta Dupree addressed the Board.

Director Li, Chairperson of the Administration Committee, brought the matter of Budget Update: District Retirement Incentive Program (DRIP) before the Board. Pamela Herhold, Assistant General Manager, Performance and Budget, and Veronica Thomas, Director of Human Resources, Talent Acquisition, presented the item.

Director Li inquired about backfilling positions and the frequency of updates on the DRIP.

The item was discussed, with the following highlights:

Director Allen inquired about accounting for recruitment and replacement costs in the DRIP Fiscal Year (FY) 2021 costs and savings, the amount of time it takes for an employee to move from the first salary level to the last salary level, and accounting for backfilling positions in the \$20-25 million savings in FY 2022.

Director Raburn expressed excitement about the \$20-25 million savings in labor and benefits in FY 2022, and inquired whether Table 11 in the preliminary budget memo accounts for Service Scenario D and the DRIP savings.

Director Ames requested that staff provide an analysis of current inactive, vacant, frozen, and reclassified positions, and inquired about the staffing strategy.

Director Li commented on meeting the DRIP goals and backfilling positions.

Director Li brought the matter of Future Service Scenarios for Consideration before the Board. Tamar Allen, Assistant General Manager, Operations; Christopher Simi, Director of Budgets; and Assistant General Manager Herhold presented the item.

The following individuals addressed the Board:

Aleta Dupree
John Arantes
Jesse Hunt
Sal Cruz
Leot Zumlisker

The item was discussed, with the following highlights:

Director Saltzman thanked the public speakers for their comments; commented on her support for Service Scenario D, weekend service and capital projects, increasing weekend and post 8:00 p.m. train service, off-peak ridership recovery, restoring 15-minute off-peak train service, and the cost of increasing train service; and requested that staff provide an update on capital projects.

Director Ames commented on her concern about expanding train service; inquired about how \$40 million in operating costs could be invested in capital projects; and requested that improvements to the train ventilation system be included in capital planning for FY 2022.

Director McPartland echoed the comments by Director Saltzman and commented on BART's role in providing public transportation that is critical for recovery.

Director Raburn commented on his support for Service Scenario D, increased off-peak service, and restoring regular Sunday train service; and inquired about flexibility to offer additional train service between September 2021 and February 2022.

Director Dufty expressed support for Service Scenario D and commented on changes to the system.

Director Allen commented on previous train service models, her support for Service Scenario B, expediting capital programs and infrastructure replacements, asking labor partners for more flexibility with the position bidding process, and selectively adding trains when necessary; and inquired about the deadlines that must be met for the train service change in September 2021, ridership from 9:00 p.m. to 12:00 a.m. prior to the COVID-19 pandemic, the equity benefits derived from 9:00 p.m. to 12:00 a.m. train service, and data regarding equity concerns.

Director Li expressed support for Service Scenario D; thanked public speakers for their comments and labor partners' support for Service Scenario D; commented on her agreement with Board Members' comments regarding restoring weekend train service frequency, the importance of mid-day and early evening train service frequency on weekends, revisiting weekend rider incentives and increasing Saturday train service, and capital benefits and Sunday train service.

President Foley thanked public speakers for supporting Service Scenario D; commented on his support for Service Scenario D; requested that future updates include a scenario with changes from the past year and pre-COVID-19 full train service; and inquired about ridership expectations for fare revenue and cleaning the system under Service Scenario D.

Director McPartland exited the Meeting.

Director Li requested that Items 5-A, Award of Agreement No. 6M6145, Construction Management Services for the TBT; and 5-B, Change Order to Contract No. 09AU-120, Earthquake Safety Program TBT Internal Retrofit, with Shimmick/CEC, Joint Venture, for Additional Work Windows (C.O. No. 190), be brought tougher.

Director Ames, Vice Chairperson of the Engineering and Operations Committee, brought the matters of (1) Award of Agreement No. 6M6145, Construction Management Services for the TBT; and (2) Change Order to Contract No. 09AU-120, Earthquake Safety Program TBT Internal Retrofit, with Shimmick/CEC, Joint Venture, for Additional Work Windows (C.O. No. 190) before the Board.

Director Li made the following motions as a unit.

1. That the General Manager be authorized to award Agreement No. 6M6145 to provide Construction Management Services for TBT to Gannett Fleming for an amount not to exceed \$20,000,000.00, pursuant to notification to be issued by the General Manager and subject to the District's Protest Procedures.
2. That the General Manager be authorized to execute Change Order No. 190 Gallery/Bore Work during Additional Work Windows for an amount not to exceed \$2,000,000.00 to Contract No. 09AU-120, BART Earthquake Safety Program TBT Internal Retrofit with Shimmick/CEC Joint Venture.

Zecharias Amare, Capital Projects Group Manager, Capital Program ESP/HMC; Chuck Bernardo, Earthquake Project Manager, Capital Program ESP/HMC; and Assistant General Manager Holmes, presented the items.

Anthony Ferruccio and Dominic Tafoya addressed the Board.

Director Raburn seconded the motions brought by Director Li.

Director Dufty thanked Anthony Ferruccio and Dominic Tafoya for their comments.

Director Allen inquired about the cost associated with the additional work windows and commented on her opposition to Change Order No. 190 for Contract No. 09AU-120.

Director Li indicated that she was agreeable to voting separately on her motions.

Director Li moved that the General Manager be authorized to award Agreement No. 6M6145 to provide Construction Management Services for TBT to Gannett Fleming for an amount not to exceed \$20,000,000.00, pursuant to notification to be issued by the General Manager and subject to the District's Protest Procedures.

Director Li moved that the General Manager be authorized to execute Change Order No. 190 Gallery/Bore Work during Additional Work Windows for an amount not to exceed \$2,000,000.00 to Contract No. 09AU-120, BART Earthquake Safety Program TBT Internal Retrofit with Shimmick/CEC Joint Venture.

Director Ames requested that staff provide the scope of work for projects in the future.

Director Raburn seconded Director Li's motion regarding Agreement No. 6M6145, which carried by unanimous roll call vote. Ayes: 7 – Directors Allen, Ames, Dufty, Li, Raburn, Saltzman, and Foley. Noes: 0. Absent: 2 – Directors McPartland and Simon.

Director Raburn seconded Director Li's motion regarding Change Order No. 190 to Contract No. 09AU-120.

Director Ames commented on the urgency of timely completion of the Earthquake Safety Program TBT Internal Retrofit project and her support for Change Order No. 190 to Contract No. 09AU-120.

The motion brought by Director Li regarding Change Order No. 190 to Contract No. 09AU-120, and seconded by Director Raburn, carried by roll call vote. Ayes: 6 – Directors Ames, Dufty, Li, Raburn, Saltzman, and Foley. Noes: 1 – Director Allen. Absent: 2 – Directors McPartland and Simon.

Director Ames brought the matter of Richmond Interlocking Replacement Update before the Board. Linda Lee, Project Manager, Strategic Engineering, and David Scherer, Superintendent of Power and Mechanical Maintenance, Maintenance and Engineering, presented the item.

A time lapse video depicting the work on the Richmond Interlocking Replacement project was shown.

Aleta Dupree and John Arantes addressed the Board.

The item was discussed, with the following highlights:

Director Saltzman commended the project; commented on utilizing BART employees for more projects and posting the video and information about the project on bart.gov; and requested that staff provide more periodic project updates at Board meetings.

Director Raburn commended the project and BART workers.

Director Ames inquired about the cost and staffing for the project.

Director McPartland re-entered the Meeting.

Director Raburn, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of State Legislation for Consideration before the Board. Rodd Lee, Assistant General Manager, External Affairs; Director Li; and Amanda Cruz, Manager of Government Relations and Legislative Affairs, Government and Community Relations, presented the item.

Aleta Dupree addressed the Board.

Director Saltzman thanked Director Li for bringing Assembly Bills (AB) 557 and 886 before the Board and moved the that Board of Directors supports AB 557, AB 886, and AB 917. Director Li seconded the motion, which carried by unanimous roll call vote. Ayes: 8 – Directors Allen, Ames, Dufty, Li, McPartland, Raburn, Saltzman, and Foley. Noes: 0. Absent: 1 – Director Simon.

Government Relations and Legislative Affairs Manager Cruz presented Senate Bill (SB) 2.

Aleta Dupree addressed the Board.

The item was discussed, with the following highlights:

Director Raburn commented on the Bane Act and SB 2.

Director Allen inquired about AB 60; commented on SB 2; stated that she would not support SB 2; and requested that AB 60 be presented to the Board.

Director Raburn commented on AB 60, the Celeste Guap case, and SB 2; and expressed support for SB 2.

Director Ames inquired about and/or commented on AB 60's completion of the Public Safety Committee process, the composition of the review boards under AB 60 and SB 2, the composition of the advisory board under SB 2, conveying concerns to the Public Safety Committee, her inability to support SB 2 at this time, the League of California Cities' position on SB 2, and SB 2; and requested a legal analysis of AB 60 as compared to SB 2.

Director McPartland commented on the BART Police Citizen Review Board, the Celeste Guap case, police officers potentially avoiding disciplinary action by resigning, and his support for SB 2; and inquired about the advisory board's recommendations and the composition of the advisory board under SB 2.

President Foley commented on the need for police reform, improvement to policing at BART, and his opposition to SB 2; and inquired whether AB 60 requires a conviction.

Director Dufty requested that Matthew Burrows, General Counsel, address the issue raised by Director Allen and President Foley, regarding elevator attendants and station agents.

Director Dufty moved that SB 2 be continued to the next Board Meeting. Director Allen seconded the motion.

SB 2 was continued to the next Board Meeting.

Director Raburn brought the matter of Update on Sustainability Action Plan before the Board. Val Menotti, Chief Planning and Development Officer, Systems Development; Rajiv Dabir, Sustainability Program Group Manager; and Paul Bostrom, Manager of Energy, presented the item.

Aleta Dupree addressed the Board.

The item was discussed, with the following highlights:

Director Saltzman commented on minimizing the amount of BART funding for the infrastructure for electric vehicles because there is a lot of outside funding and we should compete with that.

President Foley asked Director Saltzman about her comment regarding electric vehicle charging; commented on including electric non-revenue vehicles in the budget for fleet renewal; and inquired about electrification of eBART trains.

Director Ames expressed agreement with President Foley's comment regarding BART vehicles; inquired about the opportunity for electric vehicles with incoming funding, the strategy to purchase wholesale electricity, and the amount of time it takes to retain another supplier.

Director Raburn thanked Director Saltzman for requesting that staff present an update on sustainability measures and commented on transitioning to renewable energy sources, hydrogen fuel cells, and reusing water collected at the Hayward Maintenance Complex.

President Foley called for the General Manager's Report. Robert Powers, General Manager, reported on on-site COVID-19 vaccinations for employees, the "Not One More Girl" campaign and event attended by Directors Simon, Li, Saltzman, Foley, and Dufty, the progressive policing positions posted on bart.gov, and ridership; and thanked Alicia Trost, Chief Communications Officer, for her assistance with the "Not One More Girl" event.

President Foley brought the matters of (1) Resolution Condemning Violence Against the Asian Pacific Islander (API) Community; and (2) Resolution in Support of the 2020 Revised California High-Speed Rail Authority Business Plan as Part of an Integrated Zero-Emission Public Transit System before the Board.

Director Li presented the API Resolution and submitted the following amendment to the Resolution: that all instances of "Asian American Pacific Islander" or "AAPI" be replaced with "Asian Pacific Islander" or "API."

Director Li moved that Resolution No. 5478, Resolution of the Board of Directors of the San Francisco Bay Area Rapid Transit District Condemning Violence Against the Asian Pacific Islander (API) Community, be adopted. Director Dufty seconded the motion.

Director Dufty thanked Director Li for bringing the Asian Pacific Islander Resolution before the Board and for her leadership, and commented on violence and hate against the Asian community.

Aleta Dupree addressed the Board.

Director McPartland thanked Director Li for bringing the Asian Pacific Islander Resolution before the Board.

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

Director Li presented the High-Speed Rail Authority Resolution.

Director Saltzman expressed agreement with Director Li's comments, and commented on funding for the high-speed rail project and the importance of the project.

Director Saltzman moved that Resolution No. 5479, In the Matter of Support of the 2020 Revised California High-Speed Rail Authority Business Plan as Part of an Integrated Zero-Emission Public Transit System, be adopted. Director Li seconded the motion.

Gia Sabi and Aleta Dupree addressed the Board.

The motion brought by Director Saltzman and seconded by Director Li carried by roll call vote. Ayes: 7 – Directors Ames, Dufty, Li, McPartland, Raburn, Saltzman, and Foley. Noes: 0. Abstentions: 1 – Director Allen. Absent: 1 – Director Simon.

Director Allen exited the Meeting.

President Foley called for Board Member Reports, Roll Call for Introductions, and In Memoriam requests.

Director Saltzman reported that she had visited El Cerrito Del Norte Station following the completion of the modernization project and attended the “Not One More Girl” event; and thanked employees for their work on the El Cerrito Del Norte station modernization project.

Director Saltzman submitted the following Roll Call for Introductions (RCI) request:

Youth need to have decision-making power in the system they rely on to access work, education, healthcare, and so much more. It is their lifeline. BART youth riders are often not included in community engagement and must have a say in how decisions are made for a system they rely on. Transitional aged youth (TAY) often characterized as unaccompanied youth and young adults between the ages of 18-24, are an overlooked population, who age out of many opportunities when they turn 18.

BART has partnered with the Alliance for Girls to launch the Not One More Girl community driven initiative that centers girls and gender expansive youth up to age 24 in creating solutions to reimagine safety that will benefit all.

One recommendation of the initiative is to hire transitional age youth to serve on the hiring panels for BART’s new Transit Ambassador and Crisis Intervention Specialist positions as part of the BART Police Department’s Progressive Policing and Community Engagement Bureau. Creating employment opportunities for TAY to develop their leadership not only empowers youth to make decisions, but it also creates a pipeline to professional development and potential job opportunities. We ask staff to develop a program that allows transitional age youth with lived or learned experience on violence prevention, de-escalation, and community safety to be selected and compensated for serving on the hiring panels for these positions.

President Foley seconded Director Saltzman’s RCI request.

Director Raburn thanked Director Saltzman for her RCI request and reported that he had attended the “Stop Hate Rally” in Oakland Chinatown, the Alameda County Health Services COVID-19 briefing, the My Climate Action Plan workshop, and the East Bay Paratransit Service Review Advisory Committee meeting.

Director Li echoed Director Saltzman’s comments regarding the “Not One More Girl” event; expressed support for Director Saltzman’s RCI request; thanked Chief Communications Officer Trost and Director Simon for their efforts with Alliance for Girls and General Manager Powers, Assistant General Managers, Ed Alvarez, Chief of Police, and the BART Police command staff for their attendance at the “Not One More Girl” event; and requested that the Meeting be adjourned in honor of Anne Halsted, former San Francisco Planning and Urban Research Association (SPUR) Board Member and Commissioner on the Metropolitan Transportation Commission.

Director Dufty thanked Director Li for her *In Memoriam* request for Anne Halsted; reported that he had attended the “Not One More Girl” event; thanked staff for their representation at the “Not One More Girl” event; requested that General Manager Powers seek review of Crowe LLP’s suggestions made to the Audit Committee by Harriet Richardson, Inspector General, Christopher Gan, Interim Controller/Treasurer, and Assistant General Manager Herhold; acknowledged Macias Gini & O’Connell LLP (MGO) for its work with BART; and announced that Shireen McSpadden was appointed as Director of the San Francisco Department of Homelessness and Supportive Housing.

Director Ames reported that she had met with the Port of Stockton and Port of Benicia regarding their growth and commented on the throughput of freight, the Oakland Athletics project, and her research regarding regional transit projects.

President Foley requested that staff contact the Contra Costa Mayor's Conference regarding El Cerrito Plaza Station; thanked Director Simon, Chief Communications Officer Trost, and Jennifer Easton, Manager of Special Projects, Strategic and Policy Planning, for their leadership and support on the "Not One More Girl" event; and reported that he had attended the "Not One More Girl" event.

The Meeting adjourned at 1:26 p.m. in honor of Anne Halsted.

Jacqueline R. Edwards
District Secretary