



TRANSBAY JOINT POWERS AUTHORITY  
Board of Directors

June 23, 2004

## TRANSBAY JOINT POWERS AUTHORITY BOARD OF DIRECTORS

### MINUTES

Wednesday, June 23, 2004  
1 Carlton B. Goodlett Place, Room 416  
San Francisco, CA

### SPECIAL MEETING

8:00 a.m.

### BOARD OF DIRECTORS

Michael Nevin, Chair  
Greg Harper, Vice Chair  
Julie Brandt  
Michael T. Burns  
Chris Daly

### Executive Director

Maria Ayerdi

### Secretary

Roberta Boomer

201 Mission St. #1960  
San Francisco, California 94105  
415-597-4620  
415-597-4615 fax

8:00 – SPECIAL MEETING

### ORDER OF BUSINESS

#### 1. Call to Order

Chairman Nevin called the meeting to order at 8:06 a.m.

2. Roll Call

Present:

Julie Brandt  
Michael Burns  
Chris Daly  
Greg Harper  
Mike Nevin

3. Communications

None.

4. Board of Director's New and Old Business

Director Daly asked staff to investigate the possibility of televising the meetings and return to the Board with a proposal.

5. Executive Director's Report

Exec. Director Ayerdi welcomed Director Julie Brandt to the TJPA. Ms. Brandt is highly qualified and we are pleased to have her on board. The EIR certification was affirmed by the Board of Supervisors by a vote of 11-0. A Notice of Determination has been filed. Staff and others who worked to advance this project should be commended.

Exec. Director Ayerdi will present a plan for allocating Regional Measure 2 funds for the Board's consideration at the July meeting. The Board is required to approve the plan prior to allocation of funds.

Staff has prepared and provided to the board a record of communication related to the 80 Natoma project. To date, staff has spent \$650,000 on technical reviews, analyses and reports. Staff has allocated \$750,000 for this effort.

Nancy Whelan presented the Quarterly Status report on Contracts. The IT contract with bluecrane is on consent. The terms are being negotiated for the Engineering contract and discussions are underway with the selected contractor for the Program Management and Control contract. These two contracts will be presented to the Board for approval soon.

6. Public Comment

None.



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

#### CONSENT CALENDAR

7. All matters listed hereunder constitute a Consent Calendar, are considered to be routine by the Transbay Joint Powers Authority, and will be acted upon by a single vote. There will be no separate discussion of these items unless a member of the Board or the public so requests, in which event the matter shall be removed from the Consent Calendar and considered as a separate item.

(7.1) Approving the Minutes of the February 19, 2004 meeting.

Approved.

(7.2) Approving the Minutes of the April 22, 2004 special meeting.

Director Harper asked that the minutes be continued to the next meeting. He asked for a full rendition of the resolution as passed by the TJPA. All minutes should have the full text of the resolution as amended, including any discussion about the changes.

The item was continued.

(7.3) Authorizing the Executive Director to execute a Professional Services Agreement with bluecrane to provide IT management and support services for a term not to exceed three years and a cost not to exceed \$133,341.14.

Director Daly asked that the item be continued. He would like to see who the lowest bidder was and information about the factors determining the final bidder when the lowest bidder isn't selected. Nancy Whelan noted that staff looked at each bidder's approach to performing this work, as it's an important component in this type of contract. Staff also looked at response times and types of routine services provided as well as references. He would like to see a side-by-side analysis of the various bidders' proposals and for a more detailed explanation about why this contractor was selected.

Director Harper remembers that the Board asked that a list and description of other bidders be included in the staff report when contracts are presented to the Board for approval.

The item was continued. Exec. Director Ayerdi will re-present the item at the next meeting.

No public comment.

On motion to approve Item 7.1:

ADOPTED: AYES – Burns, Brandt, Daly, Harper and Nevin

### SPECIAL CALENDAR

8. Presentation by Myers Development Company on potential engineering solutions for accommodation of underground rail and a condominium tower on the 80 Natoma site.

Chairman Nevin asked the Board Secretary to call Items 8, 9, and 10 together in the interest of time. Each side will be given 30 minutes, an equal amount of time, to present their views, after which the Board will hear comment from members of the public.

Director Harper doesn't think it's appropriate to set the hearing up as if it was a judicial matter. While he wants to hear what Jack Myers has to say, he is more interested in hearing what the paid staff has to say.

Jack Myers, Myers Development, stated that his presentation would focus on engineering solutions. The debate over the rail alignment and deep evacuation has raged on and the resolution of issues has been problematic.

Director Daly agreed with Director Harper that the procedure of equal time was irregular but that he was interested in what Mr. Myers had to say. He has heard rumors that Mr. Myers intends to sue the Authority, the City of San Francisco and CalTrain. He would like to make sure that there is good faith on Mr. Myers part and that it's not Mr. Myers' intention to sue upon adoption. Mr. Myers replied that they are considering suing as a possibility to further protect their rights.

Tim Tosta, Attorney for Mr. Myers, stated that their position continues to be that the Environmental Impact Report is legally deficient because it failed to account for the 80 Natoma project in the environmental setting and it failed to account for the loss of housing. This need not result in litigation if a solution can be found.

Director Daly appreciates the answer but thinks that the EIS/R is adequate and objective, especially since it's been closely scrutinized by the Planning Commission, Redevelopment Commission, the Joint Powers Board and the Board of Supervisors. Each board's vote was a unanimous, which says that the documents are adequate, accurate and objective. The 80 Natoma people are saying that if something isn't worked out in 30 days, you'll sue. This seems to be a threat and is the direction he has feared we've been headed for some time. The TJPA has gone above and beyond what is reasonable to accommodate the demands of the developer but those efforts don't seem to be reciprocated.

Jack Myers continued his presentation. The compelling problems can be sorted through regarding the geotechnical and rail alignments. He presented three options, including the

projects co-existing, 80 Natoma proceeding with construction without modifications, or eminent domain. He is dismayed over the characterizations of property values by Authority staff in the newspapers. Authority figures do not include the value of entitlements or hard and soft costs.

Director Daly commented that the \$87.2 million listed as profitability is only true if there is an approved project on that site. The Department of Building Inspection may not agree that the developer has a valid worksite permit. Mr. Myers declined to agree.

Director Brandt asked Mr. Myers when the soft costs were shared with Authority staff. Mr. Myers said that the information had not previously been seen.

Ron Klemencic presented the geotechnical aspects of the 80 Natoma site. They have considered a number of solutions to best balance various parameters. Their driving assumption is to deliver a completed building to the market within a set time frame. The TJPA staff proposal to extend piles 190 feet deep would result in an 8-month delay in construction. The Myers Company has deemed this delay as untenable due to financial reasons. It wouldn't be problematic from an engineering perspective. MDC proposed a different rail alignment than the Terminal project's LPA as it was an impossible challenge to have the rail alignment run under the core of the 80 Natoma building supports.

The geotechnical conditions for the 80 Natoma project and the 100 First St. building are similar. Director Burns stated that he did not feel it was entirely accurate to compare this situation to the 100 First St. situation. In response to Director Brandt's question about seismic safety, Mr. Klemencic stated that the building would be equally safe whether there are short or long piles. Director Harper asked about the design of the secant wall. Mr. Klemencic stated that the settlement of the tower was irrelevant to the movement of the wall. The major settlement of the 80 Natoma tower will occur within the first five years of development. If the rail alignment is built after five years, then settlement has already occurred. Director Harper asked if the wall design would be the same if the settlement figures were higher, as had been estimated by other outside consultants. Mr. Klemencic stated that they have reviewed those calculations and that there are some errors.

Chairman Nevin asked if the Myers Company would sign off on the wall design and movement. Mr. Myers stated that what's really being asked for is if the engineering people will take responsibility for the engineering design. They have discussed this with Ms. Ayerdi, who first proposed the concept of engineering responsibility. His engineers have attested to their solution and absolutely would stand by it. Director Harper asked Mr. Myers was saying that he would not hold anybody harmless and that the TJPA would be relying upon Myers' engineers' errors and omissions coverage. Mr. Myers did not see how this situation was any different from the Four Seasons project which was in proximity to the BART tube and wondered if BART had required such a sign-off from the Four Seasons owners. He stated that he had not been formally asked to consider holding the TJPA harmless and would be willing to take that possibility under consideration.

Director Daly stated that this situation was fundamentally different from any other previous situation in San Francisco. He commented that this may be a moot point pending the hearing about the rail alignment and that other problems could rule this out as an option. He believes that it would be fair of the TJPA to ask Myers to hold the TJPA harmless for his proposed engineering solution, whether it was a formal request or not.

Mr. Myers is willing to consider it but hasn't fully considered taking full responsibility for the design. Mr. Myers corrected a clerical error in the materials he'd distributed. The cost is not \$132 million as stated but is \$149 million. TJPA staff has exaggerated the engineering difficulties and their report on the alignment is potentially flawed. He asked the Board to help find a venue of objectivity.

Director Brandt asked Mr. Myers how his company plans for schedule delays. Mr. Myers stated that his company has a 30-year track record of on-time and on-budget projects. They can confirm their ability to deliver a completed building by August 2006.

Director Harper stated that the engineers on both sides seem to be in proximate agreement on the delay that would result from changing to a long piling system. Director Harper asked if Mr. Myers has ever presented details about actual costs for delays so staff could independently verify the cost impact. Mr. Myers is happy to provide the details. The problem is the market timing and inventory supply. By the time we get to market with the project, it will be a near record low of availability of housing stock. That is expected to last for about a year and then the climbs sharply as other projects come on-line. Director Harper does not believe that a delay of six months is that critical in the real estate market. Mr. Myers replied that they track all developments and have a delivery projection schedule. It is incorporated in the covenants of the MDC loan agreement that they shall not have delays on the 80 Natoma project. It is egregious to their lenders that Myers would be spending time trying to work out this problem.

In response to a question by Director Burns, Mr. Myers stated that the option of long piles is out of the question.

Tim Tosta asked if they could use their remaining time after staff makes their presentation.

9. Presentation of consultants' report on potential engineering solutions to terminal design or rail and ramp alignments for the Project in collaboration with the High Speed Rail Authority, CalTrain, the San Francisco Redevelopment Agency and the property owner of 80 Natoma St. that would have the least adverse impact on costs, timing and future operational capacity of the Transbay Terminal Project.

Executive Director Ayerdi stated that they have had a team of experts from around the country working diligently on this project and these experts are not affiliated with the Transbay project. There have been 17 meetings and teleconferences since February. They have spent \$650,000 on this effort and have been working cooperatively with Mr. Myers.

Elizabeth Wiecha, Chief Engineer, addressed the technical evaluation of the design options for the Transbay Terminal project to address the Myers Development Company's proposal for a high-rise building on the 80 Natoma project.

In response to a question by Director Burns, Ms. Wiecha noted that building a train box under a building is done elsewhere in the world. Director Burns asked for clarification that the constraint in moving the third option forward is due to the impact in schedule to the 80 Natoma project. Ms. Wiecha confirmed that assumption. The developer has rejected that option due to timing and schedule delays.

The options that utilize the rail alignment proposed by MDC result in significant schedule delays to the 80 Natoma project and a significant cost increase to the Transbay project. The secant wall needs to be thoroughly analyzed and is a possibility if Mr. Myers would accept the liability. Due to federal funding guidelines, it would require a separate insurance policy for any kind of risk transfer or indemnity. Any insurance company would require an analysis similar to the type of analysis that the TJPA is calling for. The cost analysis that Mr. Myers sent a few weeks ago, in the amount of \$36 million, is different than the \$22 million cost that he presented today. However, Myers' solution would not provide the performance criteria required to support the building and excavation. The area of ground treatment would need to be doubled to provide adequate support for construction, which doubles the cost and results in the \$72 to \$113 million figure that TJPA is presenting. The 80 Natoma contractor also verified this. The other costs associated with this solution are outlined in the report.

Paul Mosier, Parsons Brinckerhoff, discussed both alignments and their various switches, track approaches, track and platform curvature, and operational performance. Longer approach tracks put switches further out and provide more opportunity for simultaneous train movements, increasing capacity and reducing potential delays. A straight platform is a universal objective in rail design. Curved platforms impede a line of sight inspection of the train and would impact operating rules and safety. Curved edges would cause a 19-22 inch gap. The FTA and ADA require a gap of no more than 3 inches for any new design. Given curvature and platform length, the Locally Preferred Alternative configuration provides universal access to all trains on all platforms while the 80 Natoma configuration does not. You would not design a station that had train cars hanging off the end of a platform for various safety and passenger flow reasons. The Federal Railroad Administration has written to the FTA supporting the Locally Preferred Alternative.

Director Burns asked if the letter from the FRA was unusual. Mr. Mosier replied that it was uncommon but not necessarily unusual. Dave Mansen, Parsons Corporation, mentioned that the FRA is one of the joint lead agencies for the Program EIR for California High Speed Rail so this is part of their overall interest in the high speed rail program. Director Burns asked that it be acknowledged that curvature issues also exist in the Locally Preferred Alternative configuration. Mr. Mosier replied that in the refined configuration it is not to the extent or magnification of the 80 Natoma alignment. When you mitigate the curvature in the 80 Natoma alignment, you

shorten the platforms to the extent that they become unusable. Director Burns asked if low platforms had been considered. Mr. Mosier replied that he believed low platforms had been considered and no final decision had been made, but high-level platforms contribute to passenger safety, comfort and convenience, and provide a more expedient method of boarding/dismounting. The FRA endorses high-level platforms. You could lose up to 30 percent of the capacity by using low platforms. Director Burns asked about a combination of low and high platforms. Mr. Mosier replied that he did not believe both could be accommodated in this footprint. Director Burns confirmed that the number of trains per hour with the 80 Natoma alignment is 24 versus 26 with the Locally Preferred Alternative. He commented that it may not be appropriate to extrapolate that across the entire day given that there are off-peak times. Mr. Mosier stated that was an assumption that was made to give context to the analysis that was consistent with how passenger service is typically defined and delivered in major cities across the country.

Director Brandt asked how the future rail capacity of the terminal was determined for Caltrain and High Speed Rail. Mr. Mosier replied that it was determined based upon Caltrain and High Speed Rail forecasts of peak hour service in the year 2020 for Caltrain and for the initial build for High Speed Rail.

Demetrious Koutsoftas, ARUP, has reviewed possible solutions for both the Transbay Terminal project and the 80 Natoma project to determine what the best solution would be to support both developments. The two projects are very far apart in terms of schedule. His team has been performing what should probably take 24 months of analysis, a couple of weeks at a time in the past four months. Given enough time, it is possible to integrate the design of the train box with the design of the 80 Natoma mat foundation. The locations for the building supports cannot be pinpointed until the rail operations planning is completed, which causes the 18-24 month delay that is unacceptable to 80 Natoma. So the next consideration was construction for the revised rail alignment. The biggest concern is stability of the 80 Natoma building during excavation for the train box. The thickness and strength of the Old Bay Clay is in question. The geotechnical information available is limited to one strength test and based on that test, excavation is unstable. The TJPA has to be concerned about settlements due to potential challenges from future owners of the units in the 80 Natoma building when the train box excavation is ready to begin. The settlement issue goes away with the use of long pilings.

The buttressed secant wall alternative is extremely expensive and risky and cannot be recommended at this time without further investigation to evaluate all the issues and make certain that the design can meet the specified performance criteria. In response to Director Harper's question about how the engineers on both sides could come to a mutual agreement, Mr. Koutsoftas stated it would take approximately 12 months to fully analyze this alternative.

Dave Mansen, Parsons Corporation, stated that their report considered costs, timing and the future operational capacity of the TBT Project. They conclude that the LPA alignment provides

maximum passenger throughput and improves the reliability of rail operations. There are also significant construction and liability issues associated with any of the 80 Natoma alignments.

Chairman Nevin understands that the San Francisco Transportation Authority has authorized an independent study, which will take about three weeks to complete.

Luis Zurinaga, Cordoba Engineering, is the Transportation Authority's (TA) engineering consultant. They have looked at the project from the perspective of the whole project including the critical path of decisions necessary to fund the project, an assessment of all the engineering analyses performed to date. They also are looking at the assumptions that have been made, how they affect the various reports, and they are assessing the risk in terms of both solution and cost. There are vastly differing opinions. They are also looking at the possibility of generating new concepts to see if anything pops up that hadn't previously been considered. This project calls for \$200 million in Prop. K funds which is the largest request that the TA has right now. They are trying to expedite some very complex issues.

Director Brandt confirmed that the time for the study would take three weeks. Mr. Zurinaga thought that the outside date would be end of July. Director Burns asked if consultants were on board. Mr. Zurinaga replied that they were. Director Burns stated that an independent review from the financing agency would be helpful. He asked if the Terminal project was included in the TA financial plan. It is not currently, but the TA is analyzing the funding request to see how they can make things work. Director Burns asked the Executive Director where the next phase of funding was coming from. Executive Director Ayerdi replied that it would come from the TA and RM2 funding.

Director Harper asked if the TA would have access to the TJPA's appraiser's numbers. Mr. Zurinaga expected that they would. Deputy City Attorney John Cooper stated that the actual appraisal may be kept private and the TJPA can choose to release the data or not. Director Harper would like to protect confidentiality and not waive privilege. Mr. Zurinaga stated that they would be willing to sign a confidentiality agreement. Director Harper asked if the TA would be looking at Myers numbers, in terms of delay costs and lost profits. Mr. Zurinaga stated that those figures could be developed independently, although Myers would need to let them know how much had been spent already. Director Harper asked if the TA considered itself bound to Prop. H. Director Burns stated that there was a commitment in Prop. K that binds the TA to the extension of Caltrain as well as building the terminal. Director Burns asked if the TA would be doing this study regardless of any decisions made today. Mr. Zurinaga replied that they would certainly perform an analysis of the financing and the critical path of decisions that need to be made for funding, although not necessarily an assessment of analysis or generating of other solutions.

**PUBLIC COMMENT:**

Richard Mlynarik is surprised that we have no more knowledge or understanding after months of delay and the additional expenditure of funds. Given the Authority's fiduciary responsibility to the public, at some point, you have to be grown ups and not keep punting while hoping someone will save you. It's cheaper to proceed. The right course for the public is to build the terminal at the lowest possible cost.

Chris Peeples encouraged the Authority to move project along as expeditiously as possible. A good bit of money is coming from the Caltrans land transfers. If it begins to appear that a decision is going to be delayed, it may be difficult to fight off an attempt by the Governor to take the promised land for other uses. Make the hard decision and move this process forward. The Authority's responsibility is limited and it's appropriate to shift some of the responsibility to the Board of Supervisors.

Ken Scheidig, AC Transit General Counsel, commented that Mr. Myers didn't do a good job of tracking his permits and entitlements contrary to his representation that he closely tracks his projects and stays on schedule. He thinks that the emperor has no clothes because, in reality, his project doesn't exist. The Supreme Court has said that soft costs can't be considered. The Board should get clear direction from the City Attorney on this matter.

Norman Rolfe, San Francisco Tomorrow, commented that if 80 Natoma is under construction as Mr. Myers said, then Mr. Myers is breaking the law. There is a stop project order for 80 Natoma. Nobody from the 80 Natoma project said anything during the public comment time for EIS/EIR. The history of this property is interesting. There have been four owners of record and at least one disclosure. Mr. Myers first appears on the Assessor records on March 25, 2004, only three months ago. He has serious doubts about whether this is a real project. He urges the TJPA to move forward, approve the LPA as the rail alignment, and pass a resolution of intent to acquire the 80 Natoma property.

Ken Bukowski stated that one of the most paramount things regarding the long and short piles is public safety. He doesn't understand the rush to get to market when this project has sat for 13 years. He questions the validity of the entitlements. This project is getting more attention than it deserves.

Emilio Cruz, speaking on behalf of SPUR, stated that SPUR has supported the Terminal since conception. He had hoped that there would be a compromise and a technical solution. Personally, he has attended no less than five hearings on the subject. This is the first time that he has heard their engineers stated that there can be zero impact on the schedule. He thinks that setting a strong parameter of zero impact will only leave technical solutions that are inferior or infeasible. That will result in the worst of both worlds, a costly solution that is technically inferior. There could be a solution if there was flexibility in the schedule. Absent that, the benefits to the public are a stronger compelling argument and need to be considered.

Gerald Cauthen stated that trackways are built under buildings throughout the world. Settlement will occur with or without the track work and is something to be worried about. The Transbay Terminal is being built for the ages, and to do something that will limit terminal capacity is a problem. It's time for the City to act. Much hard work has been done by both sides and it's time to move on.

Alice Barkley, attorney for TransDef, spoke about the entitlement of the 80 Natoma project. The original conditional use permit, issued in 1993, required the developer to receive a site permit not later than Feb 25, 2002. The site permit was issued in February 1999. Work was required to start within 3 years. As far as we can determine, no work was started under 1999 site permit, and therefore the permit is null and void by law. Anytime work is stopped for more than 90 days, a permit is null and void. No work was started until May 10, 2004. Myers did submit an alteration permit. The question before the Planning Commission will be to determine if the 1993 conditional use permit is still valid. The Building Inspection Commission will consider the validity of the site permit. Do not disclose the appraisal.

David Schonbrunn stated that the Department of Building Inspection has determined that the 1999 site permit for 80 Natoma has expired and is null and void. The TJPA has heard from Mr. Myers that they've been hoodwinked on the rail alignment. The developer knows how the game is played, and their architect's partner is the Chair of the CAC. Their claims that they didn't know what was going on is absurd. They have only done one boring on this site. The President of the Building Inspection Commission has performed eleven borings for a much smaller building right across the street from 80 Natoma. Their project is not for real and the Myers' dog and pony show is an elaborate charade designed to gain condemnation. Their lack of flexibility in scheduling is keynote. If there were a solution worked out, they would have to actually build the building. Don't let them get away with it.

Margaret Okuzumi, BayRail Alliance, said that the Department of Building Inspection has put a permanent stop work order on the 80 Natoma building. DBI has issues with the proposed foundation and settlement. TJPA staff has made a good faith effort and has bent over backwards to come up with a compromise. The developer is not willing to accept delays to work out a compromise. Proceeding with eminent domain is the least costly alternative. It may not be worth it to the project to further delay this project just to accommodate some growth in housing. Make a decision and move forward.

Richard Rogers, Treadwell & Rollo, commented that his company has an extensive history of doing projects in San Francisco. He wants to correct some misconceptions. We do know a lot about this site. Four bores were done. His company is not in the habit of designing buildings that are prone to failure. Their reputation stands on its own. Mr. Koustafous said they used miscalculations in the land settlements. The only objective look has been the one done by the Dept. of Build Inspection. It's false to say settlement will be near 11 inches. DBI will send a letter saying that settlement will be closer to five inches. The only way to resolve this is to get

an objective, outside consultant for and independent review. Otherwise both sides continue to trade accusations and misinformation. This consultant should be practicing within the Bay Area.

Shep Heery, Myers Development, is troubled by the misrepresentations. They have prior studies that going back a long time, that show the TBT project and this project peacefully co-existing. That was the situation in all prior analyses. The geotechnical issues are similar to the approved projects at 555 and 535 Mission. Our perception is that a deal was made with 301 Mission, which forced the project to the west. As result, we are being treated unfairly. We are simply seeking to be treated fairly.

Michael Kiesling stated that staff has gotten a good deal of work for the money. He questions whether there will be an acceptable solution, regardless of the money. This is a big building. There are questions at the Department of Building Inspection about piling. You will never give an acceptable answer to the person who only wants to ask questions. This money needs to be spent in other ways. The alignment needs to allow for the whole train to fit into the station.

Ian McAvoy, Caltrain Joint Powers Board, discussed the policy side of the TBT project. The Joint Powers Board has supported this project for many years. The Terminal project is a lynchpin project for all CalTrain projects.

Tim Tosta noted that this has been a long process. In April, the TJPA made a request for a cooperative solution. The greater part of the Authority's energy has been spent on proving there is no solution rather than on finding one. The data presented to TJPA hasn't been made available to them until the last minute. Ms. Ayerdi committed earlier to another developer about their site. There has been a gross miscalculation about the viability of this project. He questioned the peculiar configuration of Transdef challenging permits, and a troublesome relationship between Ken Harrington and Ms. Ayerdi. There needs to be a rational versus a protracted way to get to a conclusion. It is alarming to find a modality that insists on a winner and loser and fails to work jointly to find a solution.

Exec Director Ayerdi feels an obligation to the TJPA and the public to correct the record. Myers Development, through their representatives continues to allude to two letters sent in 2003. We have never heard any comment from Mr. Myers or the owner of record during the EIS/EIR public comment period. Clark Manus, a partner at Heller/Manus is the Chairman of the Transbay Citizen's Advisory Committee. The 2003 letters were sent after Mr. Tosta demanded a comfort letter in response to a SF Business Times article. The letters are standard and were drafted by the City Attorney to protect the City from inverse condemnation actions. It is unbecoming of Mr. Tosta or Mr. Myers to undermine the credibility of professional staff in order to deflect attention from the fact that they are refusing to change their schedule. We have offered to purchase the land, engage in joint development as well as other solutions. Using 301 Mission as a comparison further confuses the matter. We didn't make a deal with the owners of 301 Mission. That alignment was rejected for technical reasons and those reasons can be explained by Ms. Wiecha or Mr. Mansen.

Director Daly commented that there seems to remain significant disagreement over the secant wall, other geotechnical aspects, what the costs will be, and over who would bear the liability if that option were pursued. He has heard deflections from Mr. Myers about indemnification. He would like to think that the Natoma property sponsors would put more of themselves on the line if they desired to move forward with their building. Notwithstanding an agreement to indemnify and solutions for cost-effective geotechnical solutions, we still have problems with the rail alignment in the terminal with respect to length, gap, capacity and other issues. We need to move forward swiftly to protect the LPA rail alignment adopted at the last meeting. If we are serious about having a multi-modal, world-class facility, we need to protect rail capacity and engineering. It doesn't mean we can't peacefully co-exist with 80 Natoma. It may be possible to move forward without compromising the 80 Natoma project with only a slight delay but that may not be the best solution to select. It may be that acquisition or some alternative solution would be better.

Director Daly moved to amend the motion to limit the potential solutions to acquisition, a land swap or a mutually preferential box.

Chairman Nevin asked if his motion to amend excludes the secant wall. Director Daly stated that the secant wall is not part of his motion.

Director Daly stated it is imperative to protect the LPA rail alignment. He would like to rule out the secant wall.

Chairman Nevin doesn't want to take away any options for the TA's consultants. Director Daly's motion would remove that. Director Daly is concerned about looking at the engineering options as proposed. He will rely on the TA and TJPA staff recommendations.

Director Burns asked the City Attorney what the impact of a DBI finding that 80 Natoma permits were not valid would be on the Transbay Project. D.C.A. Cooper replied that those actions were still in progress and the impact was unclear at this time. The stop work order has been extended.

Director Burns recognizes the need to make a decision but he continues to hear two sides of the story. He is leaning toward a compromise but doesn't see one worth mentioning. If Mr. Myers is not willing to look at any schedule impacts, there is not much of a decision to be made other than where we're going to get the money for the condemnation. His position would be to not tie the TA consultant's hands as options may come out of an independent review. There has clearly been an effort made by both parties but he doesn't believe the effort has been on finding a common solution. If the TA comes up with a new idea, then he feels that we should look at getting some of the \$650,000 that we've spent returned. He won't support the amendment. He recommends and will be looking for the TA consultant to do a complete review and then make a decision. He is not comfortable with making a decision about condemnation without a good fiscal picture.

Director Harper supports the amendment. He doesn't think that anyone could believe that the 80 Natoma alignment could work. The Transportation Authority's study won't change anyone's mind. Staff submitted a substantial report while Mr. Myers presented three pages. The numbers provided by Mr. Myers have never been backed up and they still won't declare that they will hold us harmless. The fundamental questions haven't been answered. Mr. Myers could have said long ago that if they could come up with a joint agreement, they would waive liability. He is willing to move forward with the original alignment but the Board needs to dispense with the notion that we can get along with a squeezed alignment.

Chairman Nevin commented that this matter is in its' "11th" hour. He agrees with Director Burns. It's prudent for the Transportation Authority to take a last look at this issue.

Legal Counsel Cooper confirmed for Director Burns that the Board has already adopted the LPA. Director Daly withdrew his amendment. He would not like to extend more resources on this matter. Director Burns agreed. He suggested that staff not expend any further effort on this. He is just interested in seeing the Transportation Authority report.

Chairman Nevin expects that the Transportation Authority will complete their report by the end of July. TJPA staff will need some time to analyze the report. The TJPA should hold a special meeting at the end of the month. Director Daly added that the TA's "Plans and Programs" committee would consider the report at their July 13 meeting. E.D.Ayerdi stated that there does need to be a meeting in July to consider RM2 items.

Luis Zurinaga, consultant for the Transportation Authority, understands the urgency of this report and intends to move forward quickly.

10. Discussion and possible vote on motion to close further consideration of engineering and other options for rail alignment at the 80 Natoma site at the next regular meeting of the Authority, and to select a solution upon close of discussion and public comment.

Public comment on this item was taken as part of Items 8 and 9.

Chairman Nevin asked that the motion be amended to delete the word "regular".

MOTION 04-001: Close further consideration of engineering and other options for rail alignment at the 80 Natoma site at the next meeting of the Authority, and to select a solution upon close of discussion and public comment.

On motion to approve:

ADOPTED: AYES – Burns, Brandt, Daly, Harper and Nevin



11. Adopting Board Policy No. 003, Category: Financial Matters that will guide the Authority's annual budget process and the development of the FY2005-06 budget.

Bob Kuo presented the staff report, policy and timeline.

Director Harper stated that the policy doesn't recognize that the Chairman appointed a Finance Committee comprised of himself and Director Daly. He asked that the policy be amended to recognize the Finance Committee

Chairman Nevin asked that the documents be amended to recognize the Finance Committee where appropriate.

No public comment.

RESOLUTION 04-005

On motion to approve as amended:

ADOPTED: AYES – Burns, Brandt, Harper and Nevin

ABSENT – Daly

12. Approving the TJPA FY 2004-05 budget in the amount of \$6,273,440.

Bob Kuo presented the FY05 budget.

No public comment.

Director Burns asked staff to make sure that travel or conference fees, board expenses and membership or association fees are reimbursable under federal grant guidelines. Bob Kuo will make sure costs are eligible for reimbursement.

RESOLUTION 04-006

On motion to approve:

ADOPTED: AYES – Burns, Brandt, Harper and Nevin

ABSENT – Daly

ADJOURN - The meeting was adjourned at 11:48 a.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).