

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

MINUTES

Thursday, September 16, 2004
1 Carlton B. Goodlett Place, Room 416
San Francisco, CA

REGULAR MEETING
9:00 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

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9:00 – REGULAR MEETING

ORDER OF BUSINESS

1. Call to Order

Chairman Nevin called the meeting to order at 9:02 a.m.

2. Roll Call

Present: Michael Burns
Chris Daly
Greg Harper
Mike Nevin

Absent: Julie Brandt

3. Communications

None.

4. Board of Director's New and Old Business

None.

5. Executive Director's Report

Exec. Director Maria Ayerdi announced that TJPA meetings are now being televised on the government channel. She took a moment to introduce viewers to the TJPA. She congratulated Senator Perata on his election. An MTC and a TA committee have both recommended allocating RM2 and Prop. K funds for preliminary engineering work.

Liz Wiecha, Chief Engineer and David Skinner with the Meyers, Nave law firm provided an update on the 80 Natoma Project and related issues.

Director Daly has heard from Robin Chang who is contending that the TA is preparing an RFQ for the redesign of 80 Natoma. He would have huge concerns as a member of the TA and TJPA if that is the road that the TA is taking with the TJPA's money. Ms. Wiecha replied by saying that there has been no mention by the TA staff of any redesigns.

Director Harper is getting more impressed with staff's ability to negotiate these treacherous waters. Not everyone is rowing in the same direction. He is glad to see Mr. Skinner's letter to the TA because for the first time the City and County of San Francisco is made aware that the TJPA is a creature of the state and is not part of the City and County. He is glad to see that the TJPA is finally getting decent legal counsel that is independent of the City and County of San

Francisco.

Director Burns asked if the additional work referenced in the materials is covered by the scope of funding the TJPA is pursuing from the TA and MTC for continuing engineering. Ms. Wiecha said that further analysis of the TA's proposal is not included. If the decision was made to further pursue their proposal, it would need to be handled as a future allocation. Director Burns expects that if the TA does come forward with a recommendation that requires the TJPA to do further engineering beyond the agreed upon scope, the TA should also provide the funding for that work.

Director Daly will make that point to the TA. Director Daly wondered how MTC is scoring the TA's \$10 million appropriation to investigate their engineering alternative. He hopes that on the 28th, the TA engineers will say the same things as our engineers and they will transfer the money to the TJPA. Exec. Director Ayerdi replied that the TJPA doesn't know how much money the TA has spent. MTC's recommendation to allocate \$15.5 million is with the expectation that the TA will come to the plate with the other \$15.5 million. The TA's position is that since they allocated \$10 million to themselves, they only have \$5.5 left to allocate. Nancy Whelan confirmed that the \$15.5 million includes the \$10 million they have allocated to their own studies. While only a small portion of the TA's allocation is to be used for further engineering study, that amount has never been defined.

Director Daly thinks that if their expenditure of funds doesn't result in anything, this is money tossed down the drain. He stated that we should be having conversations on an informal basis with MTC to get them to influence the TA. It seems to be that the MTC should be interested in making sure the money that the TA puts into the project is well spent.

Chairman Nevin stated that this is a delicate balance and that MTC has been working closely with the TJPA on this matter.

Director Daly takes regional government seriously and is afraid that the TA's efforts are another act of imperial San Francisco acting as if it is above the rest of the region. He cares about being a good neighbor and thinks that San Francisco needs to play in a more fair way.

David Skinner noted that the EIR for the TBT project has been certified and under that certification 80 Natoma would be subject to acquisition but the owner wants to build a massive high-rise. The only way to go forward is with a joint design but the developer has refused. Under state law, the TJPA has primary jurisdiction over the TBT project. When the TA allocated Prop K funds to perform further engineering analysis, they did it without the approval of the TJPA. The TA is not a member of the TJPA and doesn't have the jurisdiction or authority to act on their own. Under their own expenditure plan, the TA is not the sponsoring agency so they can't allocate funds without the TJPA's approval.

Director Burns commented that the TJPA doesn't serve itself well when it takes avenues that are not in a cooperative spirit with counties and organizations within the municipalities that make up the TJPA. We've spent a lot of money on lawyers who write letters that in his view doesn't

serve the TJPA in a positive way.

Director Harper understands Mr. Burns' position but thinks it's incumbent on the TJPA Board to get behind the legal issues as stated in Mr. Skinner's letter. There are limits to what the TA can do. He is frustrated that given the speed of this, the TJPA is not getting together as a Board. An extremely strong message needs to be sent to the Transportation Authority and suggests that the TJPA Board hold a closed session to discuss this matter with legal counsel. He also wants to correct earlier remarks about Legal Counsel. Mr. Cooper has been stellar. Director Harper realizes that Mr. Cooper has been wrestling with conflicts better than anyone else and walking a tightrope. He is glad to see some recognition of the situation and that action is being taken to take the pressure off Mr. Cooper.

6. Public Comment

David Schonbrunn, TRANSDEF, stated that they had been successful in questioning the 80 Natoma property permits with the Department of Building Inspection. On August 30th, the appeal was taken to the Building Inspection Commission where the DBI interim director made an outrageous and preposterous determination that work had commenced on the site permit as a result of work done to underpin adjacent properties. As a result, DBI found that it was appropriate under the building code to issue an altered permit. This is bad policy and is an ad hoc attempt to allow 80 Natoma to go forward. The question of compliance with Prop. H is unresolved. He stated that there was a hearing on Monday and strongly urged the TJPA to have their attorneys present.

Margaret Okuzumi, BayRail Alliance, thanked the TJPA for supporting the eminent domain action. She also thanked TJPA staff for their response to an unworkable Transportation Authority proposal. She believes the TA has violated jurisdiction and that the TJPA should consider taking legal action.

Richard Mlynarik believes that the TJPA should require AC Transit to use buses that have five wheels. Money should be allocated for that.

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 August 13, 2004 special meeting.

On motion to approve the Consent Calendar:

ADOPTED: AYES – Burns, Daly, Harper and Nevin

ABSENT - Brandt

REGULAR CALENDAR

8. Presentation of the Economic Impact Analysis of the Terminal Operations and Redevelopment Area Construction and Operations.

Chairman Nevin asked that the item be continued to the next meeting.

9. Approving the Revised Initial Project Report and Resolution of Project Compliance required for the allocation of Regional Measure 2 funds for the Transbay Terminal/CalTrain Downtown Extension Project.

PUBLIC COMMENT:

Matthew Kliszewski, Friends of 2nd Street, believes that the resolution and Initial Project Report doesn't describe the actual status of the project because it says that there are no pending lawsuits that threaten the viability of the project. There are three lawsuits pending. The report also fails to note objections to the NEPA document. It's inaccurate to state that the environmental documents are complete.

Nancy Whelan presented the staff report. The Metropolitan Transportation Commission requires that the TJPA approve a new resolution and Initial Project Report whenever the TJPA revises its request for RM2 funds. The TJPA approved this item in July and since that time, MTC and the Transportation Authority have agreed on a funding package.

Director Burns asked Counsel about the comment made by the speaker about the lack of reference to the lawsuits. He stated that he is uncomfortable with the resolution as drafted because in his view, it isn't accurate.

City Attorney John Cooper responded by saying that the City Attorney's office believes that the lawsuits have no merit, and the previously raised objections were responded to in the EIR certification. He recommends adoption of the resolution. The lawsuits over the EIS/EIR have nothing to do with this item.

Nancy Whelan suggested the resolution be further clarified by adding "Part 1, Preliminary Engineering Phase of the Project" in the clause pertaining to pending lawsuits.

Director Burns moved to amend the resolution by adding the suggested language. On motion to approve the amendment: unanimously approved (Brandt-absent).

RESOLUTION 04-014

On motion to approve as amended:

ADOPTED: AYES – Burns, Daly, Harper and Nevin

ABSENT - Brandt

10. Adopting Budget Amendment #2 to the Authority's FY2005 annual budget to increase the budget by \$20,910,803, for a total budget in the amount of \$59,451,200, for preliminary engineering, program management and program control contracts, increasing the budgetary reserve fund and increasing the allocation for legal services.

Nancy Whelan presented the staff report. Staff will return to the Board to request approval of a revised budget each time that the TJPA receives an allocation of funds. The TJPA is about to receive money from RM2 funds and from the Transportation Authority.

No public comment.

RESOLUTION 04-015

On motion to approve:

ADOPTED: AYES – Burns, Daly, Harper and Nevin

ABSENT - Brandt

11. Authorizing the Executive Director to enter into an agreement with the law firm of Meyers, Nave, Riback, Silver & Wilson for outside legal services for an amount not to exceed \$100,000.

John Cooper, Legal Counsel thanked Director Harper for his earlier complimentary remarks. Due to an irreconcilable conflict between agencies and city departments represented by the City Attorney, Mr. Herrera has recommended that the TJPA hire the Meyers, Nave law firm to represent the TJPA. The contract is limited to \$100,000. TJPA staff is preparing an RFP to secure outside counsel on a longer-term basis. The City Attorney's Office will remain as Legal Counsel at the TJPA's pleasure and will represent the TJPA on the EIR/EIS lawsuits. Meyers/Nave will represent the TJPA over issues such as condemnation, Building Inspection and other matters where there's a conflict of interest.

Chairman Nevin thanked Mr. Cooper for his personal efforts on behalf of the TJPA.

Director Harper indicated a concern about the language in the agreement stating that the City Attorney would determine when there was a conflict of interest. Mr. Cooper stated that the language would be changed to clarify that the decision would be made in consultation with the TJPA.

RESOLUTION 04-016

On motion to approve:

ADOPTED: AYES – Burns, Daly, Harper and Nevin

ABSENT - Brandt

12. Adopting Board Policy No. 4 regarding Equal Employment Opportunity and Non-Discrimination and Board Policy No. 5 regarding a Drug Free Workplace.

RESOLUTION 04-017 and 04-018

On motion to approve:

ADOPTED: AYES – Burns, Daly, Harper and Nevin

ABSENT - Brandt

ADJOURN - The meeting was adjourned at 10:04 a.m.

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.