SUBJECT: UPDATE ON TRANSBAY TERMINAL PROJECT; STATUS AND REVIEW OF PERFORMANCE OF JOINT POWERS AGREEMENT CONCERNING TRANSBAY TERMINAL PROJECT

RECOMMENDED ACTION:

☐ Information Only  ☐ Briefing Item  ☑ Recommended Motion

Receive the amended report and consider authorizing a letter to the Transbay Joint Powers Authority.

Fiscal Impact:

None at this time.

Background/Discussion:

On April 7, 2004, the Board authorized, President Wallace and Vice President Harper to send a letter to the certifying bodies stating the Transbay Terminal FEIS/FEIR is adequate and requested certification. The Board further requested staff to add additional

BOARD ACTION:  

Approved as Recommended [ ]  Other [ ]

Approved with Modification(s) [ ]
language in this memorandum clarifying the history of the Transbay Terminal project. In addition, staff is providing the Board with a report on the most recent activities concerning the project.

The City and County of San Francisco, the San Francisco Redevelopment Agency, and the Peninsula Corridor Joint Powers Board, working with the Transbay Joint Powers Authority, on March 19, 2004 issued the signed Final Environmental Impact Statement/Final Environmental Report (FEIS/FEIR) for the proposed Transbay Terminal Project.

The San Francisco Redevelopment Agency certified the document on April 20, 2004 and the San Francisco Planning Commission and the Peninsula Corridor Joint Powers Board certified the document on April 22, 2004. The actions have been appealed pursuant to CEQA procedures, and the San Francisco Board of Supervisors will hear the certification appeal on June 8, 2004.

AC Transit is a member agency of the TJPA.

Project Description

As detailed in previous communications to the Board, the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project consists of three key components:

- A new multimodal transportation terminal that will provide convenient and efficient connections between Muni, Caltrain, BART, California's proposed high speed rail system, AC Transit, Golden Gate Transit, Samtrans, Greyhound, and other transit operators. The location of the facility is at First and Mission, the present site of the terminal, pursuant to the interests of AC Transit and consistent with state law (both AB 812 and SB 916).

- An extension of Caltrain commuter rail service from its current terminus at Fourth and Townsend Streets to a new underground terminal at the Transbay Terminal site; and

- Establishment of a Redevelopment Area Plan designed to revitalize the Transbay Terminal area and alleviate blight by supporting transit-oriented development.

Total project cost for the terminal and the Caltrain extension is about $2 Billion. Cost of the terminal building is about $1 Billion.

Staff believes a new terminal will improve public transit by building a convenient, efficient, and safe multimodal transit terminal, including significant improvements in both the aesthetics and comfort associated with bus transit and the utility of the Caltrain downtown extension. This new facility enables passengers to quickly and simply transfer between all transit operators serving San Francisco in a single location. Pursuant to legislative mandate, the facility is designed for the proposed California high speed rail system and will house
shops, restaurants, and other uses designed to appeal to passengers and contribute to the area’s liveliness and excitement.

The FEIS/FEIR documents deficiencies with the existing facility, which does not meet current seismic safety or space utilization standards. The proposed project, which has been under development for more than ten years, is the result of strong public involvement, technical analysis, and political support.

**AC Transit Facilities and Bus Operations.** The Locally Preferred Alternative, as identified in the FEIS/FEIR, provides for expansion of Bay Bridge bus service to meet estimated year 2025 demand. This demand results in the operation of about 150 peak hour bus trips (up from about 100 currently). The project will accommodate these vehicles in a single level, center platform facility where buses operate clockwise and passengers wait in an enclosed, conditioned waiting area. AC Transit operations will be assigned 30 stop locations on a 1,300-foot platform, an increase from the 21 stops that are currently assigned. Articulated buses will be accommodated at 26 of the 30 stop locations.

In addition, a second, half-level would provide greater capacity for intercity buses, Muni Treasure Island service, and also private charter and paratransit operations.

Buses would access the terminal on a dedicated ramp structure leading directly into both bus levels. Buses would loop within the terminal structure. Previous traffic simulations demonstrated the ability of the ramps and terminal structure to adequately accommodate post-2025 bus service levels.

The terminal building is intended to be a signature project for the City and County of San Francisco and for the entire Bay Area. High quality architecture would provide an attractive invitation to the quality services and operations of the region’s public transit system, in addition to superior operational functionality.

Finally, dedicated bus storage would be provided to AC Transit in the area under the I-80 freeway in San Francisco, between Second and Third Streets. Up to 70 AC Transit buses could be stored at this site between the morning and afternoon peaks, thus reducing the number of required deadhead trips to and from the East Bay.

**Project History**

The Transbay Terminal/Caltrain Downtown Extension/Redevelopment Area Project has a long history, involving some concepts that have been complementary, and others that have been competing.

While originally a rail transit facility for Key System, Sacramento Northern and IER trains operating over the Bay Bridge, the “busification” of the East Bay transit network in the late 1950's led to the terminal being converted into a bus station for East Bay oriented transit services. During WWII, more than 50,000 daily passengers used the facility (currently AC Transit use is about 13,000 daily). Bus patronage diminished as BART initiated operations,
and in the 1980’s Greyhound leased space in the terminal and AC operations were limited to two of the three lanes.

As changes were occurring in East Bay services, a desire to extend the existing Caltrain commuter rail service into downtown San Francisco continued to be voiced by public-spirited citizens.

Over the years many studies were completed recommending that Caltrain be extended to a new terminal in downtown San Francisco. Different alternative alignments and terminal locations were considered in these studies, but most of the studies recommended an extension to the area around the Transbay Terminal because of its proximity to downtown employment locations, connection to other regional transit operators, and fortunate availability as publicly owned property.

In the early 1990s an analysis of the existing Transbay Terminal and its Bay Bridge access ramps showed that the terminal and ramps required significant upgrading to improve seismic performance, meet new accessibility standards, and provide better transit service.

In November 1992, Caltrans and the Office of the State Architect released alternative designs for improvements to the existing Terminal. These activities were the result of a study of the Transbay Terminal following the Loma Prieta earthquake in 1989. The report indicated that to retrofit the terminal to meet earthquake standards, as well as to bring it into compliance with the ADA, the cost would range between $70 to $100 million. In December 1992, the City of San Francisco and Caltrans agreed that, given the high estimated costs to bring the existing Terminal building to seismic and code compliance, it was reasonable also to consider its replacement. In November 1993, Caltrans and MTC conducted a “Transit Needs Study” to identify operational needs for an upgraded or new facility (for example, numbers of bus bays, necessary space for bus operations and passenger facilities) while Caltrans proceeded with critical seismic and safety improvements.

In June 1994, San Francisco and Caltrans agreed to undertake a study of alternatives to replace the Transbay Terminal. In December 1994, the San Francisco Board of Supervisors created the Transbay Redevelopment Survey Area to prepare a land use and transportation plan. During 1995 and 1996, terminal upgrade and replacement alternatives were studied by the San Francisco Redevelopment Agency and Planning Department, Caltrans, a Policy Advisory Committee representing the transit operators using the Transbay Terminal, a Citizens Advisory Committee, and a Technical Advisory Committee.

The Transit Terminal Decision Report (October 1995) presented three primary options:

1. A new transit terminal on the site of the present Transbay Terminal,
2. A new terminal between Main and Beale Streets, south of the 201 Mission Street building and north of Folsom Street; and,
3. A surface terminal at the Main/Beale site.
On March 4, 1996, the San Francisco Board of Supervisors recommended the Main/Beale site (identified as Main/Beale North) as the City’s preferred bus terminal alternative and recommended locating the proposed new Caltrain terminal underground at the site of the existing Transbay Terminal. The Board of Supervisors subsequently reversed this action, as discussed below.

In 1995 the City began work on a study to evaluate potential land-use and terminal planning options, and the Peninsula Corridor Joint Powers Board (JPB), the agency responsible for operating Caltrain, began work on a complementary study, a Draft Environmental Impact Statement/Draft Environmental Impact Statement (DEIS/DEIR) for the Caltrain Downtown Extension Project, which evaluated alternatives for evaluating extending Caltrain to the Transbay Terminal area. Several technical studies were completed as part of the DEIS/DEIR study; a key finding was that seismic retrofit of the existing Terminal would not achieve the Project purposes to modernize the Transbay Terminal, improve transit services, and revitalize the Terminal area.

The City and JPB worked closely together on the DEIS/DEIR and in March 1997 the report was issued. This DEIS/DEIR was never certified due to the opposition of the San Francisco Mayor, but the City’s planning efforts for the Transbay Terminal and redevelopment area continued.

In 1997 AC Transit’s Board adopted a series of resolutions (984, 984A) setting forth the District's position regarding the Transbay Transit Terminal (TTT). The District's position in these resolutions, in essence, was to remain at the existing terminal, to support the completion of the Peninsula Joint Powers Board EIR/EIS re extending Caltrain to the terminal, and to support a bus/rail multi-modal terminal. During this time, because San Francisco was supporting the demolition of the TTT and the location of a new, ground level terminal at Howard, Main and Beale North, the Board authorized a lawsuit against the City and County of San Francisco and Mayor Willie Brown, but never filed the suit due to political pressure. Instead, during this time, because of concerns AC Transit had about Caltrans' proposal to eliminate the eastern loop and replace it with a bulb turn around at the eastern end of the terminal, MTC created a "working group." This group, consisting of Caltrans, MTC, AC Transit and SamTrans, was charged with looking into the functionality of the Caltrans' bulb and determining if there were any alternatives.

In 1998, because of proposed work on the western portion of the Bay Bridge, the District filed suit (along with the Counties of Alameda and Contra Costa and nine constituent East Bay cities) against Caltrans contending that the environmental documents prepared for the bridge work did not include the consideration of the bulb turnaround and elimination of the eastern loop. (After many years of discovery and meetings with Judge Morse of Alameda County Superior Court and progress on the creation of a JPA to build a new terminal, Caltrans committed to replacement of the eastern loop section removed to build a new Fremont off-ramp and retrofitting the eastern loop.)
In December 1998, MTC, acting as BATA, began the “Transbay Terminal Improvement Plan” study. The study was guided by a large working group consisting of public agencies, organizations, and individuals affected by the Project. This was a successor to the "working group" created in 1997 and was designated as the BATA Transbay Terminal Panel. An Executive Committee was also formed, consisting of executive staff and policy board members from AC Transit, the City of San Francisco, the JPB, Caltrans, and MTC. The first phase of this study identified terminal components and functional requirements to guide the development of design concepts for the new facility.

In early 1999, Mayor Brown appointed new staff to supervise the Transbay project. Maria Ayerdi, now TJPA Executive Director, continued the consensus building efforts of the BATA project, influenced changes in City policy to favor regional transit investments and good relations with partner agencies, brought active and interested management to the terminal studies, and was able to achieve consensus on a project that met the City’s objectives and worked for the transit operators.

In January 1999 the Board adopted Resolution No. 984B supporting the continuation of transbay service at the TTT and the adoption of resolutions by San Francisco regarding the continued use of the TTT by AC Transit, encouraging MTC and Caltrans to incorporate tail service in the Bay Bridge redesign and supporting the Caltrain extension to a downtown station. In February 1999, the San Francisco Board of Supervisors repealed its previous endorsement of the Main/Beale site and passed the aforementioned resolutions, including the first, which urged the “City and County of San Francisco to work expeditiously with AC Transit, the MTC and Caltrans to retain AC Transit regional bus service at the current Transbay Terminal site.” In November 1999, San Francisco voters approved Proposition H, making it city policy to extend Caltrain to a new terminal at First and Mission streets. The citizen-sponsored initiative passed by a 69-to-31 percent margin.

Phase 2 of BATA’s Transbay Terminal Improvement Plan evaluated three terminal design concepts, and BATA selected a concept to be carried forward for additional analysis. Additional work was done on the design during 2000 to improve its functionality for transit operators. The revised concept is the basis for the Transbay Terminal Locally Preferred Alternative (also known as the West Ramp Alternative) of the proposed Project. The LPA was adopted by the TJPA Board in March 2003.

Following completion of the Transbay Terminal Improvement Plan study, work started on preparation of a new Draft of the old Peninsula JPB EIS/EIR based on the new plans for replacing the Transbay Terminal, extending Caltrain downtown, and encouraging transit oriented development in the Transbay area. This DEIS/DEIR lead into the FEIS/FEIR now under consideration is the result of this planning effort.

In January 2001, the Board adopted Resolution No. 984C identifying the District’s needs at a new terminal and a temporary terminal. In February the Board adopted
Resolution No. 984D approving in concept a joint exercise of powers agreement, bylaws, design and construction agreement and legislation related to a new transbay transit terminal and a temporary terminal. In April 2001, the City and County of San Francisco, AC Transit, and Peninsula Corridor Joint Powers Board (Caltrain) entered into an agreement creating the Transbay Joint Powers Authority (TJPA) for purposes of planning, building, and operating the new Transbay Terminal.

Finally, other regional studies performed by MTC have also indicated the need for new Transbay bus facilities. MTC’s Bay Crossing Study (July 2002) indicated that Bay Bridge traffic will increase from about 280,000 vehicles to about 430,000 vehicles in 2025. Under Alternative 1 of the Bay Crossing Study proposal, Transbay bus patronage would about triple, to 45,000 trips per day. BART patronage is expected to increase from about 160,000 trips currently to about 235,000 trips daily in 2025 under the Alternative 1 scenario, although BART could be operating well above capacity in the peak periods to achieve these forecasts. The Bay Crossing Study, therefore, clearly projects a conservative express bus forecast, and the likely 2025 bus demand would exceed 50,000 passengers daily, a number which, given the existing Transbay Terminal, cannot be met in an efficient, effective or safe manner. To meet these projected demands, a new, modern, efficient and attractive terminal is required.

**Funding Scenarios**

The Transbay Project has several billion dollars in funding identified, as follows:

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Land Sales and Tax Increment -- In July 2003, the TJPA entered into a Cooperative Agreement with Caltrans and the City and County of San Francisco that will transfer ownership of excess right-of-way in the Transbay Terminal area from state ownership to City ownership. Redevelopment of this right-of-way is expected to help achieve the goals of the Project including improving the area’s economic vitality and providing funding for the Project. Pursuant to the agreement, all sales proceeds from the property transfer will be dedicated to the terminal project, as will all tax increments generated by the new land uses.

Other Issues

As with any large capital projects, property and resident impacts are unavoidable. The two main issues concern the proposed midday bus storage under the I-80 structure in San Francisco, and various property takings.

Since it was clear from the beginning that the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project would be complex, involve acquisition of property and displacements, and be controversial, every effort was made in the FEIS/FEIR study to comply and, in fact, do more than required, to meet various federal and state requirements. However, acquisition of property, relocations, and displacements are always difficult for those impacted and therefore controversial. The project staff provided notice of the project to all the affected property owners listed in the City’s records, and to residents, as well as via postings in the neighborhood and both library and website distribution of the various documents.

Bus Storage. One controversial aspect of the Project concerns construction and operation of a daytime bus storage facility under the I-80 Freeway (west Bay Bridge approach) between Second and Fourth streets. Currently AC Transit uses the bus loop ramps that provide access to the Bay Bridge from the Transbay Terminal to store its buses during the day. In the Locally Preferred Alternative there would no longer be space to store buses on the loop ramps (much of the loop ramps would not be re-built in the LPA, in order to increase redevelopment opportunities, improve views, and reduce costs for the new terminal). Instead buses would be stored a short distance away under the freeway.

Daytime bus storage is a critical concern for AC Transit since transit demand requires use of a greater number of vehicles during the morning and evening peak periods, and fewer during
the mid-day. Transit operators need to store vehicles during the day while they are not in use. The closer this storage location is to the place where the vehicles go into service, the lower the operating costs and more efficient the operation. Storing buses under the I-80 freeway, in a location that previously served as parking lots, represents a good compromise between transit efficiency and urban design.

The proposed midday bus storage facility is located under the freeway. Stillman Street is located just to the south of the freeway right-of-way. As part of the Project a noise wall would be built to reduce noise impacts of the new bus storage facility on Stillman Street businesses and residences.

Residents and businesses located along Stillman Street wrote comments and testified on the DEIS/DEIR at the public hearings. The main comments addressed noise and air quality impacts. Supplemental air quality and noise studies were completed as part of preparing the FEIS/FEIR. These supplemental studies support the conclusion that the Project, specifically construction of the midday bus storage facility, would not have adverse environmental impacts. This section lists all the specific comments on the midday bus storage facility and presents detailed responses to the comments. In concert with TJPA Board Director Chris Daly, AC staff is committed to working on the design and aesthetic issues with the affected community in an inclusive and constructive manner.

80 Natoma. The LPA’s Caltrain Downtown Extension alignment includes an underground rail line through property located at 80 Natoma Street. The property is currently undeveloped, but there are plans to construct a large building on the site, and the site has been entitled for more than 12 years. The property is required to meet the operational criteria of the high speed rail program (this requirement was memorialized by state legislation). The only practical method to allow for the high speed rail criteria was to use the 80 Natoma property for rail access into the terminal. Since 80 Natoma was identified as an acquisition in the DEIS/DEIR, and also in response to public comment, the Project was modified to move the terminal about 150 feet to the west to substantially cover 80 Natoma. This has several advantages:

1. Construction and coordination are simplified as control of the right-of-way would reside with the Authority;

2. The terminal no longer crosses Beale Street, a significant urban design advantage;

3. The terminal’s “center of gravity” moves closer to both Union Square and Montgomery Street;

4. The building footprint provides a more flexible space for architects to create an exciting and inspiring terminal design.

In addition, by moving the terminal to the west, two additional and better parcels were created – one on Beale Street, and the other on Howard Street.
In response to requests from the San Francisco Mayor’s Office, TJPA staff and consultants have met with the developers of 80 Natoma Street to determine if the alignment could be refined to reduce or eliminate the impacts on the 80 Natoma parcel and still meet various rail criteria and standards. It should be noted that the FEIS/FEIR identifies more than 20 additional properties as required for acquisition; 80 Natoma is the only affected entity that has directly met with the TJPA staff prior to certification.

The 80 Natoma Street site is located on a curve at the throat (entrance) to the Transbay Terminal. This is perhaps the most complicated and critical location on the underground rail alignment. Since it is on the curve, there is little leeway for shifting the tracks in one direction or the other without revising the entire alignment (which has been developed to maximize rail system efficiency and minimize the need to acquire property). Since it is located at the throat to the terminal, there is little ability to reduce the width of the alignment without significantly impacting the operating efficiency of the terminal for trains and passengers.

Recognizing these constraints, the Federal Railroad Administration sent a letter to the Federal Transit Administration on May 13, 2004 endorsing the FEIS/FEIR locally preferred alternative, which contemplates acquiring the 80 Natoma site. In the letter, the FRA notes that the “LPA track layout as shown in the FEIS represents a reasonable configuration that has been designed to maximize the train capacity and reliability given the enormous constraints on the site. The capacity and efficiency of this public rail facility should be protected and enhanced to the extent feasible....the width of platforms and the provision of ample vertical circulation are essential determinants of terminal capacity.” The proposals of the 80 Natoma developers would significantly reduce train movement flexibility and reduce the size, width and use of the proposed platforms. As such, the alternatives identified by the 80 Natoma developers clearly conflict with the objectives of the FRA.

The FEIS/FEIR has clearly identified the impacts on 80 Natoma, as well as all the other properties. As such, the document is adequate and meets the requirements of the law, and its certification should be upheld by the San Francisco Board of Supervisors.

Recent Developments

As noted, the FEIS/FEIR was certified by the sponsoring agencies during the week of April 19th. However, while the TJPA Board formally adopted the project on April 22, AC Transit staff and board members have concerns about the progress of the project.

The functioning of TJPA management has been particularly hampered by the conflict inherent in the City Attorney acting as counsel to both the TJPA and the City, and the recent actions of the Mayor’s Office concerning 80 Natoma.

Since the City Attorney is also counsel to the Mayor, there is obviously a conflict between representing the Mayor and representing the TJPA.
These issues first surfaced in late 2003. The TJPA Board began the process to hire staff, and entered into a contract with LGS, a joint powers agency formed by ABAG and the City of San Carlos. LGS provides third-party beneficiary services to California public agencies, and is able to offer PERS coverage, and under the TJPA-LGS contract provided staff to TJPA. However, when TJPA asked the City (specifically Muni as the fiscal agent for the TJPA) to pay LGS under terms of the contract, the City’s Human Rights Commission (HRC) stopped the payment to LGS claiming that LGS was not an appropriate contractor under the City’s non-discrimination ordinances.

The JPA agreement states that the TJPA will adopt the City’s non-discrimination ordinances, but also specifically states that such ordinances will only be administered by the Authority. Since a City department was stopping a payment, there was a clear violation of the JPA agreement (it should be noted that LGS as a government entity is specifically entitled to exemption from the provisions of the ordinance). Since the City Attorney acts as counsel to both the TJPA and the HRC, the Authority received legal advocacy that did not result in a resolution to this issue. The issue was not resolved until San Francisco Supervisor Chris Daly intervened and a letter from the AC Transit General Counsel to the City Attorney identified issues of conflict with the JPA agreement and potential claims by LGS and the TJPA against the City. But it took almost two months.

The next issues involving representation concerned delay in certifying the EIR. The Mayor’s Office intervened in April and requested the Redevelopment Agency to delay certifying the document. This was done to allow “discussions” between TJPA staff and the owners/developers of 80 Natoma. AC Transit General Counsel sent another letter noting that such meetings, prior to project adoption, could subject the Authority to pre-condemnation claims. In addition, the letter also requested that the City Attorney, acting as TJPA counsel, provide an overview of the requirements of the Transbay Terminal project, which the Legislature has broadened to include mandatory access for commuter and high speed rail systems.

The City Attorney did not respond to either letter.

At the April 22 meeting of the TJPA Board, Director Michael Burns introduced an amendment to the project adoption and stated it was drafted by a Deputy City Attorney. The amendment stated that “the Executive Director is hereby directed and required to (1) explore an engineering solution 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 Street, that would (a) allow the approved and permitted housing development at 80 Natoma Street to proceed without material delay or interference, AND have the least adverse impact on the costs, timing and future operational capacity of the Project, and (2) quantify those impacts (instead of simply rejecting alternatives as
being infeasible). The Executive Director shall report back ....at the TJPA’s next regularly scheduled meeting.”

There are several important legal and policy issues with this offered amendment, all of which should have been pointed out to the TJPA Board by its legal counsel at that meeting as legally inadvisable, but were not. It required the actions of Directors Harper and Daly to modify the amendment to simply require the Executive Director to report back to the Board at the next regularly scheduled meeting. (the adopted language is as follows: FURTHER RESOLVED, That the Transbay Joint Powers Authority hereby authorizes the Executive Director to take all actions necessary to facilitate the design, implementation and construction of the Project through completion, to work with City departments, boards, commissions and officials, and all other applicable regional, state and federal entities. This authorization shall include authority to negotiate for acquisition of real property or easements, and to participate with the City in eminent domain actions related to terminal design or rail and ramp alignments, provided that; this grant of authority shall not amend existing TJPA Procurement Policy, and the Executive Director shall seek the formal approval of the TJPA Board prior to initiating, recommending, seeking or otherwise pursuing any eminent domain actions, and provided further that the Executive Director may not request that the City or any other public agency commence any eminent domain proceeding related to the Project without the prior approval of the TJPA Board; and be it

FURTHER RESOLVED, That the Executive Director is hereby directed and required to (1) explore an engineering solution to terminal design or rail and ramp alignments for the Project, in collaboration with the High Speed Rail Authority, Cal Train, the San Francisco Redevelopment Agency and the property owner of 80 Natoma Street, that would have the least adverse impacts on the costs, timing and future operational capacity of the Project, and (2) quantify those impacts. The Executive Director shall report back to the TJPA Board the status of such analysis at the TJPA’s next regularly scheduled meeting. Notwithstanding the foregoing, by directing the Executive Director to explore such a potential engineering solution and the impacts of such potential solution, the TJPA is no way committing to any amendment or modification of the Project at this time, and any action modifying or amending the Project shall require all necessary governmental approvals after the completion of any additional environmental review that may be required under CEQA.)

The claims by the 80 Natoma developer that TJPA staff has not been cooperative are completely unfounded. In fact, since the Fall 2003, the Authority has spent about $250,000 to respond the 80 Natoma developers engineering alternatives, only a few of which are marginally feasible and all of which expose the Authority to significant risk, liability and operational and functional degradation. It should be noted that the issues relating to 80 Natoma are not simply rail alignment, but also risk, constructibility and project control. Working with an adjacent private owner is an extremely risky endeavor that is rarely done in the public sector since the public agency loses control
over schedule and is subjected to potential delay or construction claims from the private partner. Such a risk could adversely affect the ability of the TJPA to obtain a federal TIFIA loan, since risk reduction is a key component of the underwriting criteria.

Because state law (AB 812) authorizes demolition of the existing terminal for the “construction of a new terminal at the same location, designed to serve Caltrain in addition to local, regional, and intercity bus lines, and designed to accommodate high-speed passenger rail service,” and since 80 Natoma is essential to provide rail access into the new terminal, the parcel must be acquired for the Transbay Terminal project. Failure to acquire the parcel would place the entire project in violation of the demolition statute, and this would prohibit demolition of the existing building. In addition, RM2 legislative language also requires rail access into the new terminal.

The TJPA staff is under an order from the TJPA Board to respond back to the Board at the next regularly scheduled meeting, which is May 20. However, the Chair of the Board cancelled the meeting, stating that the staff and 80 Natoma needed more time to discuss options.

On May 10, the developers of 80 Natoma started work on their project, and have previously stated they will not modify their designs, nor impact their construction schedule. Under California law, public entities that condemn property pay the fair market value and the cost of whatever improvements have been made to the property. In essence, every day the TJPA Board waits to deal with the policy issues involved in 80 Natoma means additional costs to the public.

When the TJPA was created it was as a separate legal entity, not as an adjunct to any of the parties. As a separate legal entity the members of the board of directors have a responsibility to act in the best interests of that entity. This includes a fiduciary duty to see that the assets of the entity are properly used and accounted for. Unfortunately, it appears that the majority of the TJPA board is acting as if the agency is merely an adjunct of the City and County of San Francisco, particularly as it relates to the 80 Natoma property. As indicated above, a quarter of a million dollars has been expended in studies beneficial only to this property. A special subcommittee of the board has been created to provide direction to the TJPA Manager on this matter (consisting solely of representatives from San Francisco, with the meetings of the committee occurring without public notice or being open to the public) and the TJPA Chair has refused to call for a meeting of the TJPA on May 20th. The potential impact upon funding sources and the viability of the terminal project cannot be ignored and is inconsistent with the Board’s primary obligation to see that a new terminal is built in a timely manner.

The 80 Natoma site must be taken for the project, or, due to statutory requirements, there is no project.
Summary and Recommendation

After more than four years of intensive work and more than 30 years of history, the Transbay Terminal project is at a critical point. Staff believes the FEIS/FEIR adequately identifies all impacts of the proposed project, that it provides decisionmakers with the information needed to make a responsible decision, and therefore, should be certified.

Certification was immediately followed by formal TJPA project approval, allowing the project to move forward through the advanced design, engineering and right-of-way processes, ultimately to completion, provided the TJPA Board meets to give the required consent.

In addition, the AC Transit Board needs to clearly articulate its concern with the recent actions by San Francisco officials. The Board has several options including:

- Sending a letter to the San Francisco Board of Supervisors asking that the Planning Commission’s certification of the Transbay Terminal Project be upheld and that 80 Natoma condemnation proceed.

- Sending a letter to the TJPA Board members and member agencies identifying the issues raised in this memorandum and seeking resolution.

- Reevaluating the function and viability of the TJPA and consider continued participation in the Authority.

Prior Relevant Board Actions/Policies:

Resolution 984A  
Resolution 984B  
Resolution 984C  
Resolution 984D  
Resolution 1150

Attachments:

1. Draft Letter to San Francisco Board of Supervisors from the AC Transit Board  
2. Draft Letter TJPA Chair Michael Nevin from the AC Transit Board  
3. Federal Railroad Administration letter to the Federal Transit Administration  
5. Vice President Harper’s Letter to the Editor in response to the article, “Transbay project jammed”