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**VIA EMAIL and U.S. MAIL**

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Re: BART Comments on *Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing Senate Bill 743*

Dear Mr. Calfee:

The San Francisco Bay Area Rapid Transit District (BART) is pleased to respond to the Governor's Office of Planning and Research (OPR) solicitation for input on *Updating Transportation Impacts in the CEQA Guidelines: Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing Senate Bill 743 (Draft Guidelines)*.

BART is a rapid transit district providing 100 percent electric rail transit service in San Francisco, Alameda, Contra Costa, and San Mateo Counties, and connecting to Santa Clara County in a few years. BART currently has 45 transit stations, the majority of which serve urban neighborhoods. BART promotes more compact and efficient land use patterns, and has advanced several transit-oriented development projects on, or adjacent to, BART property.

BART's overall strategic vision is to maintain "a high-quality transit service that supports a sustainable region."<sup>1</sup> New BART extensions and other BART improvement projects benefit the environment by shifting commuters from thousands of cars to BART's fleet of 669 electric-powered railcars, reducing air pollutants, greenhouse gas emissions, traffic congestion and energy consumption.<sup>2</sup> One rider using BART each weekday saves an average of 300 gallons of gas/year and reduces CO<sub>2</sub> emissions by an average of 6,089 pounds a year. In aggregate, riders save over 4.5 million pounds of CO<sub>2</sub> per year by riding BART.<sup>3</sup>

BART strongly supports changing the focus of transportation impact analysis from vehicle delay, as described by Levels of Service (LOS) to Vehicle Miles Traveled (VMT). We also support the proposed presumptions because they reduce barriers for important infill and transportation projects.

<sup>1</sup> BART Strategic Plan, October 2008.

<sup>2</sup> BART averaged 401,000 weekday riders during the first half of 2014.

<sup>3</sup> BART Green Factsheet. <http://www.bart.gov/guide/bluesky/greenfacts>

However, SB 743 also directed OPR to develop Guidelines to promote the creation of multimodal networks. We believe more guidance is needed in this area. OPR's Draft Guidelines currently implicate transit impacts generally; and the Draft Guidelines and amendments to Appendix G and F rely on the capacity of transit operators to help reduce project VMT. Nonetheless, specific guidance on transit is absent. BART urges OPR to address this absence.

BART's proposed revisions to the Draft Guidelines are set forth in their entirety in Attachment A. Reasons for these revisions are provided in the sections below.

- A. Statewide implementation
- B. Effects on transit
- C. Consultation with transit agencies
- D. Presumption of less than significant impacts
- E. Definition of transit priority areas
- F. VMT mitigations and alternatives
- G. Local authority

#### **A. Statewide Implementation**

The Draft Guidelines state, "After January 1, 2016, the provisions of this section shall apply statewide." BART supports applying the revised Guidelines statewide. This is consistent with BART's strategic vision to be "a high-quality transit service that supports a sustainable region" and to "implement ... service that demonstrates a commitment to transit-supportive growth" and to "work with community partners to maximize support for [Transit Oriented Developments (TODs)] ... and to support regional goals."<sup>4</sup> BART draws riders from places well beyond ½ mile from its stations. Thus, applying the revised Guidelines throughout BART's service territory and not just to places within ½ mile of BART stations would support BART ridership by encouraging development that relies on modes other than automobiles to minimize VMT.

Furthermore, the shortcomings of considering vehicle delay as a transportation impact affect BART not only in areas within ½ mile of BART stations, but throughout BART's service territory. Having a single set of Guidelines would also avoid the confusion and uncertainty that would likely stem from applying different Guidelines based on geography and would provide a simpler and more understandable CEQA process.

BART has supported other statewide measures, including SB 1077 which establishes a pilot program to replace the state's current fuel excise tax with a mileage-based fee.

#### **B. Effects on Transit**

The second sentence of the Draft Guidelines state, "Other relevant considerations include the effects of the project on transit..." However, little guidance follows on how transit should be considered. Absent specific guidance, transit impacts risk being ignored, as project sponsors may be reluctant to assess such impacts without clear guidance. Effective transit is crucial to achieving VMT reduction and reducing greenhouse gas emissions. BART urges more specific guidance on assessing transit impacts, as set forth in Attachment A.

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<sup>4</sup> BART Strategic Plan, October 2008.

### ***B.1. Factual Rationale***

BART has found that proposed projects frequently have significant effects on transit that the lead agencies do not address in their Draft Environmental Impact Reports (DEIRs). Such effects will not be addressed by a VMT analysis. These include effects on transit performance, transit safety, and transit access, as illustrated by the following examples.

- The Coliseum City Specific Plan in Oakland would increase average weekday trips at the Coliseum BART station by 8,600. The plan's DEIR acknowledges that the existing BART platform at Coliseum station is unable to accommodate the projected demand, but does not discuss how this should be addressed.
- The Kaiser Center Expansion in Oakland would add 1.47 million square feet of office space two blocks from BART's 19<sup>th</sup> Street station. The project is expected to add approximately 900 AM plus PM peak hour passengers per day to the station. This level of added ridership could adversely affect station and vehicle capacity. The project's DEIR acknowledges the resulting potential to decrease the performance or safety of transit facilities. However, it does not analyze whether the proposed project might cause significant impacts and, if so, how they should be mitigated.
- The Lake Merritt Station Area Plan in Oakland allows for 4,900 new housing units and 4,100 new jobs in the vicinity of Lake Merritt and 12<sup>th</sup> Street BART stations, and is expected to add 695 boardings and 160 alightings at these two BART stations during the AM peak hour. During peak hours, Lake Merritt BART station is the point on the BART system in the East Bay with the maximum level of vehicle crowding. The plan's DEIR acknowledges the resulting potential to decrease the performance or safety of transit facilities. However, it does not analyze whether the proposed plan might cause significant impacts and, if so, how they should be mitigated.
- The San Francisco Transit Center and Tower project is constructing 1.47 million square feet of office space and 16,500 square feet of retail space a few blocks from BART's Embarcadero and Montgomery stations. These two stations already operate near capacity during the AM and PM peak periods. The project's DEIR acknowledges that the project would cause a substantial increase in transit demand that could not be accommodated by existing transit services. The DEIR suggests a possible fee program to mitigate the impact, but does not commit to such a program or determine how fee revenues would be allocated to affected transit agencies in order to reduce the impact to an insignificant level.
- The Central Subway project is constructing a new MUNI transit line in San Francisco. This project is forecast to increase the number of transfers to BART's Powell Street station by 17,000 per day by 2030. It is unlikely an increase of this magnitude could be accommodated by the existing Powell Street station, potentially impacting passenger level of service, emergency evacuation, security staffing, station ventilation, and fire suppression. None of these effects are considered in the SDEIS/R.

One of the Central Subway project's stations is the Union Square/Market Street station. This station relies on the existing portals of BART's Powell Street station for its primary pedestrian

access. 32,000 to 38,000 riders are projected to use Union Square/Market Street station by 2030. To accommodate this substantial increase in traffic through its portals and passageways, physical modifications to Powell Street station will be needed. The analysis and identification of the needed modifications are not included in the project's SDEIS/R.

Finally, construction of this project would require an extended closure of one of the main entrances to Powell Street BART station. This closure could significantly affect access to the station, but is not discussed in the SDEIS/R.

- The San Francisco Ferry Terminal Expansion is proposed in the vicinity of BART's Embarcadero station in San Francisco. The expansion of the ferry terminal is expected to increase BART ridership at Embarcadero station, which is currently operating at near capacity in the AM and PM peak periods. Yet the project's DEIS/R does not analyze the effects on BART ridership or capacity.

This project also proposed modifying an access road just south of the ferry terminal, affecting BART's ability to access its facilities and causing a potential emergency evacuation problem.

Historically, BART and other transit agencies have addressed capacity impacts, caused by increasing urban growth, by raising funds for the improvements or deferring needed improvements until funding can be identified. However, identifying sufficient funding has been and is a constant challenge. Currently identified funding of \$4.8 billion only covers half of BART's \$9.6 billion capital needs over the next ten years.<sup>5</sup> This shortfall poses major challenges for ensuring that BART can adequately maintain the system's reliability and safety, while also making enhancements and adding capacity to serve new ridership demands. If impacts on transit networks continue to be neglected in CEQA analyses, the ability of transit systems to support additional riders remains a continuing challenge.

## ***B.2. Legal Rationale***

Transit impacts are CEQA impacts. CEQA requires lead agencies evaluating projects of statewide, regional or area wide significance to consider information concerning the project's effect on, among other things, public transit within five miles of the project site and rail transit service within 10 miles of the project site, obtained from the public agencies that operate those facilities. *Pub. Res. Code* Section 21092.4. Case law also recognizes impacts to public transit as impacts on the environment subject to significance analysis and mitigation pursuant to CEQA. *City of San Diego v. Bd. of Trustees of Cal. State Univ.* (2011) Cal. App. 4th 1134, appeal pending on other; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal. App. 3d 748.

In addition, as prescribed by SB 743, the new criteria for determining the significance of transportation impacts must take into account, among other things, the development of multimodal transportation networks. The methodology must not preclude consideration of other potentially significant transportation impacts. As OPR's Draft Guidelines acknowledges, "Impacts to transit and facilities for pedestrians and bicyclists are relevant in an environmental impacts analysis because deterioration or interruption may cause

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<sup>5</sup> BART FY15-FY24 Short Range Transit Plan and Capital Improvement Program, October 2014.

users to switch from transit or active modes to single-occupant vehicles, thereby causing energy consumption and air pollution to increase.”

### ***B.3. Proposed Revisions***

Since OPR’s proposal includes amendments to CEQA Guidelines Appendix G, Section XVI on transportation impacts, we suggest some clarifying changes. First, like existing Appendix G, Section XVI(a), the revised language is ambiguous as to whose transit-related “plan, ordinance or policy” should be considered in a Negative Declaration or EIR. Conflict with policies or programs adopted by a public transit agency is the appropriate standard for impacts on that agency’s system. Otherwise, lead agencies may use their own transit-related policies, which may not have been developed in consultation with affected transit agencies. This is consistent with Appendix G, Section XVII, in which the significance of wastewater utility impacts is based on the wastewater treatment requirements of the applicable Regional Water Quality Control Board and a determination of capacity by the wastewater treatment provider.

Moreover, in crafting the proposed language for Appendix G, Section XVI(c), OPR appears to have narrowed the impact to safety of pedestrian and bicyclist transit users, while en route to and from transit stations. This change is intended to ensure that elimination of the LOS metric does not leave unaddressed potential congestion-related impacts on safety. However, Appendix G, Section XVI addresses all Transportation and Traffic Impacts. Amending the Appendix to address pedestrian and bicyclist safety should not inadvertently exclude transit.

Accordingly, BART suggests breaking out the impacts to transit policies and programs, and to transit performance, safety and access, in separate subsections of Appendix G, Section XVI, as indicated in Attachment A.

## **C. Consultation with Transit Agencies as Required**

The draft “Purpose” for the proposed new Section 15064.3 includes “the effects of the project on transit and non-motorized travel and the safety of all travelers” as effects to be considered in a transportation impacts analysis. However, the remaining draft section 15064.3 and Appendix G do not offer new guidance on how transit impacts should be considered. BART recommends language clarifying that when transit impacts are considered, such consideration should be well-informed, after consulting with all affected transit agencies.

### ***C.1. Factual Rationale***

BART has experienced several instances where lead agencies failed to consult with BART in their assessment of BART transit impacts. This lack of consultation can result in erroneous impact analyses by project sponsors in their environmental documents.

- The Coliseum City Specific Plan DEIR estimated the effect on BART ridership, but neglected to include the effects of BART’s expansion to Silicon Valley. The additional riders from the Silicon Valley stations, now under construction, may create capacity and safety constraints at the Coliseum Station, if unmitigated.
- The Kaiser Center Expansion DEIR assumed the capacity per BART train car to be 150, which is far greater than capacity numbers that BART uses. 150 passengers per train car causes delays to

the boarding and alighting of passengers, if unmitigated. Such levels also compromise safety, if unmitigated. The DEIR, however, was silent on the effect of added riders to BART's safety and emergency evacuation constraints at the two nearest BART stations.

- The Ronald V. Dellums Federal Building added roughly 1 million square feet of office space near BART's 12<sup>th</sup> Street station. BART learned of this development late in the project approval process, leaving insufficient time to order additional fare gates for 12<sup>th</sup> Street station to accommodate the anticipated added demand. The absence of additional fare gates created peak hour crowding that required BART to self-fund mitigations to ensure rider safety.
- The San Francisco Ferry Terminal Expansion's DEIS/R erroneously assumed that all intra-San Francisco transit trips are on MUNI, when in fact, BART provides 60,000 trips within San Francisco each weekday.
- The Glen Park Community Plan DEIR used significance criteria for BART impacts, without consulting with BART on the accuracy of such criteria.

## ***C.2. Legal Rationale***

Requiring consultation with transit agencies is consistent with CEQA. CEQA requires lead agencies to consult with public agencies that have transportation facilities within their jurisdictions that could be affected by projects of statewide, regional or area wide significance, for the purpose of obtaining information concerning the project's effect on, among other things, public transit within five miles of the project site and rail transit service within 10 miles of the project site. *Pub. Res. Code Section 21092.4*. In addition, lead agencies must provide notice to public agencies that have transportation facilities within such proximity. *Pub. Res. Code Section 21083.9(b)(4)*. More generally, CEQA requires consultation with responsible agencies and encourages inclusion of responsible agencies and other public agencies that may have an interest in the proposed project in pre-application and scoping consultation. *Pub. Res. Code Section 21080.3; CEQA Guidelines Sections 15060.5, 15083, 15096*. Case law also supports the conclusion that, while lead agencies have considerable discretion in evaluating significant impacts, they cannot disregard the views of agencies with pertinent expertise. *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commissioners* (2001) 91 Cal. App. 4th 1344.

The need for and value of such consultation was discussed at length in *City of San Diego v. Board of Trustees of Cal. State Univ.* (2011) Cal. App. 4<sup>th</sup> at 1190: "CSU has a duty to investigate potential environmental impacts of the Project, including whether the Project's impacts on the transit system may be significant environmental effects. Although the record supports a finding that CSU consulted with SANDAG and other public agencies on certain matters, CSU does not cite, and we are not aware of, any document in the administrative record showing CSU expressly requested data or other specific information regarding the capacity limitations of the SDSU trolley station or trolley line or system generally. CSU cannot fulfill its duties as a lead agency under CEQA by acknowledging the Project will cause a substantial increase in trolley ridership and then not proactively investigate whether that increase will exceed the trolley system's capacity or otherwise cause potentially substantial adverse changes to the trolley system's infrastructure and operations."

Nevertheless, in BART's experience, such consultation often does not occur. As described above, the lack of consultation can result in substantial errors and omissions in CEQA documents. Accordingly, we suggest the addition of a consultation requirement to the proposed Guidelines, as set forth in Attachment A.

#### D. Presumption of Less Than Significant Impacts

The Draft Guidelines propose that certain projects may be presumed to have less than significant VMT impacts. BART supports these presumptions. Similarly, with respect to transit impacts, BART proposes that the Guidelines recommend that certain projects are presumed to have less than significant effects on transit, if such projects are consistent with the affected transit agency's policies, programs, or plans.

Most transit agencies have policies related to transit-oriented development. In BART's experience, when development projects modify their project to be consistent with BART's Transit-Oriented Development Policy, significant impacts on transit are likely avoided, minimized, or mitigated.

- At MacArthur BART Transit Village, the pedestrian pathways were modified to provide sufficient access to the BART station, the plaza in front of the station was improved, a bike station was incorporated to address demand for bike access, and accommodations for shuttle services were provided.
- The Ed Roberts Campus development adjacent to Ashby BART station included construction of an additional passageway to the BART station, which helped to minimize the risk of crowding at existing BART entry points.

#### E. Definition of Transit Priority Areas

In several locations in the Draft Guidelines, the text refers to places "within one-half mile of an existing major transit stop". BART suggests replacing this with "within one-half mile of an existing *or planned* major transit stop." BART suggests this change because:

1. This change would encourage transit-oriented development (TOD) not only near existing major transit stops, but also near planned major transit stops, which is consistent with the intent of SB743.<sup>6</sup>
2. This change is consistent with SB 743 statutory language.<sup>7</sup>

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<sup>6</sup> For example, this modification would allow transit-oriented development near BART's planned but not yet existing Berryessa station in San Jose to benefit from the presumption of no significant transportation impact.

<sup>7</sup> SB743, Section 5, Chapter 2.7 Modernization of Transportation Analysis for Transit-Oriented Infill Projects, 21099. (a)(7): "Transit priority area" means an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations."

## F. VMT Mitigations and Alternatives

BART also urges several modifications to the draft list of VMT mitigations and alternatives to incorporate mitigations and alternatives that would encourage transit usage. The proposed modifications are in Attachment A.

1. Replace "Providing transit passes" with "Subsidizing transit fares or providing transit passes" and "Facilitating access to transit distribution facilities". "Providing transit passes" could be interpreted as a) physically providing a means for people to get transit tickets, or b) lowering transit fares. Since both of these would encourage transit usage, BART suggests modifying this item to explicitly include both.
2. Replace "Improving ... transit service" with "Improving transit services or facilities". Improving transit facilities can be as effective as improving transit service in increasing transit ridership.
3. Add "Contributing to a fund dedicated to transit service or facility improvements". It may be beyond the reach or need for smaller individual projects to fully implement any of the suggested VMT mitigation measures. In such cases, it may be more practical and effective for the project sponsor to partially pay for one of the VMT mitigation measures by contributing to a fund in an amount appropriate to address its proportionate fair share of the impact.
4. Add "Increasing uses which encourage off-peak or reverse commute transit ridership". BART is currently operating at near capacity during the AM and PM peak periods in the primary commute direction. BART, however, has available capacity during off-peak periods and in reverse commute directions. Encouraging ridership during these periods and directions would increase transit usage without needing to expand transit station and vehicle capacity.

## G. Local Authority

The Draft Guidelines state "Neither this section nor Appendix F limits the exercise of any public agency's discretion provided by other laws, including, but not limited to, the authority of cities and counties to condition project approvals pursuant to general plans and zoning codes." BART assumes that whatever conditions are placed on a project to satisfy general plans and zoning codes would nevertheless be subject to VMT analysis and potentially require mitigation for any significant VMT impacts. As an example, suppose a city requires projects to meet intersection LOS standards, and as a result, projects need to add additional turn lanes at intersections. Analysis of the VMT impacts of the added turn lanes should be provided, and measures to mitigate any significant VMT impacts identified. This is consistent with the treatment of induced travel and transportation projects in subdivision (b)(2) of proposed Guidelines Section 15064.3. We suggest that OPR clarify that, when a project is required to meet LOS requirements imposed by city or county general plans and zoning codes, the analysis discussed in Section 15064.3(b)(2) applies.

In conclusion, we respectfully request that OPR consider BART's recommendations and welcome the opportunity to continue the dialogue. If you would like to discuss further or require more information, please contact Andrew Tang, BART Principal Planner, at (510) 874-7327 or [ATang@bart.gov](mailto:ATang@bart.gov).

Sincerely,

A handwritten signature in blue ink that reads "Robert Powers". The signature is written in a cursive style with a period at the end.

Robert Powers  
Assistant General Manager, Planning and Development

**ATTACHMENT A**

**EXCERPTS FROM PROPOSED NEW CEQA GUIDELINES SECTION 15064.3**

(BART Changes in Bold & Underlined)

(a) Purpose [...]

(b) Criteria for Analyzing Transportation Impacts

(1) Vehicle Miles Traveled and Land Use Projects. [...]

(2) Induced Vehicle Travel and Transportation Projects. [...]

(3) Local Safety. [...]

(A)-(E) [...bicycle/pedestrian/roadway safety...]

**(F) Increase the risk of unsafe operations or require changes to emergency evacuation plans at major transit stops or in transit vehicles.**

**(4) Transit. In addition to a project's effect on vehicle miles traveled, a lead agency may also consider the project's effects on transit. When evaluating transit effects, a lead agency must consult with all public transit agencies operating a major transit stop within ½ mile of the project. Examples of effects that may be relevant are included in Appendix G. Projects that are consistent with policies or programs adopted by the affected transit agency would not result in significant transit impacts.**

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**APPENDIX G**

**ENVIRONMENTAL CHECKLIST FORM**

The following is a sample form and may be tailored to satisfy individual agencies' needs and project circumstances.

[...]

XVI. TRANSPORTATION – Would the project:

(a) Conflict with a plan, ordinance or policy addressing the safety or performance of the circulation system, including ~~transit~~, roadways, bicycle lanes and pedestrian paths.

**(f) Conflict with policies or programs adopted by a public transit agency?**

**(g) Decrease the performance of, safety of, or access to public transit facilities?**

## APPENDIX F

### EXAMPLES OF MITIGATION MEASURES AND ALTERNATIVES THAT MAY REDUCE VMT

“Potential measures to reduce VMT include but are not limited to:

- a. improving or increasing access to transit
- f. orienting the project toward transit, bicycle and pedestrian facilities
- g. improving pedestrian or bicycle networks, ~~or transit service.~~
- i. providing bicycle parking
- o. **subsidizing transit fares or providing transit passes**
- p. **facilitating access to transit pass distribution facilities (e.g. subsidizing the development and operation of facilities)**
- q. **improving transit service or facilities, or contributing to a fund dedicated to transit service or facility improvements**

E. Examples of project alternatives that may reduce vehicle miles traveled include, but are not limited to:

- 2. Locating the project near transit.
- 4. Increasing the mix of uses within the project, or within the project’s surroundings.
- 5. Increasing **transit** connectivity and/or intersection density on the project
- 6. Deploying management (e.g. pricing, vehicle occupancy requirements) on roadways or roadway lanes.
- 7. **Increasing uses which encourage off-peak or reverse commute transit ridership (e.g. suburban office transit-oriented developments, entertainment transit-oriented developments)**

**F. Examples of project alternatives or mitigation measures that may reduce significant effects on transit include but are not limited to items o, p, q, E.5., and E.7. herein as well as any actions consistent with a program or policy adopted by the affected transit agency.**