



METROPOLITAN
TRANSPORTATION
COMMISSION

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Memorandum

TO: Commission

DATE: January 28, 2009

FR: Deputy Executive Director, Policy

RE: Public Hearing Comments Related to the Proposed Reassignment of RM2 Funds

Background

As presented at the January meeting of the Programming and Allocations Committee, MTC staff proposes to redirect certain currently assigned RM2 funds in exchange for other committed funds. In accordance with the provisions in California Streets and Highways Code Section 30914 (f), staff proposes to reassign \$91 million in RM2 funding from the Dumbarton Commuter Rail project to the BART Warm Springs Extension project, as well as reassign \$10 million from the BART Oakland Airport Connector project to the BART Tube Seismic Strengthening Project.

MTC obtained authorization to hold a public hearing at the December 10, 2008 PAC meeting and sent out the legal notice opening the 30-day public comment period on December 12, 2008. The 30-day public comment period closed at 4 p.m. on January 16, 2009. A public hearing was held at MTC's regularly scheduled Committee meeting on January 14th.

Summary and Response to Comments

This memorandum summarizes the written comments received by MTC during the 30-day public comment period as well as the oral comments received at the PAC public hearing for the proposed reassignment of RM2 funds from the Dumbarton Rail Project to the BART to Warm Springs Extension Project. No comments were received on the proposal related to the BART Airport Connector/Tube Seismic projects. All comments are summarized in Attachment A, and copies of the written comments are provided in Attachment B.

Staff acknowledges the comments in support of the proposal. As to comments opposing the proposal, these generally involved two issues that staff would like to respond to.

1. Legal Authority to Reassign Funds. One comment questioned the legal authority of MTC to make the proposed reassignment of funds. MTC proposal for proposed reassignment is based on the authority granted in California Streets and Highways Code, Section 30914(f):

“If a program or project identified in subdivision (c) is to be implemented with other funds not derived from tolls, the commission shall follow the same consultation and hearing process described above and may vote thereafter to reassign the funds to another project consistent with the intent of this chapter.”

A copy of Section 30914(f) is attached in its entirety as Attachment C.

As indicated in the Resolution 3434 Strategic Plan approved by the Commission in September 2008, the proposed reassignment of the RM2 funds is conditioned on a commitment of \$91 million in Alameda County Regional Transportation Improvement Program funds to the Dumbarton Rail project. In December 2008, the Alameda County Congestion Management Agency Board took action supporting the commitment of these funds by MTC, thus meeting the condition of MTC's Resolution 3434.

2. Support for Dumbarton Rail Project. Several comments opposed the proposed reassignment and indicated that they wanted a stronger commitment from MTC for the Dumbarton Rail Project funding plan. MTC would like to reiterate its commitment to this important project. The proposed reassignment of Regional Measure 2 funds from the Dumbarton Rail project to the BART to Warm Springs Extension project is an effort to move forward a project which is in a better state of readiness. It does not change the regional commitment to the Dumbarton Rail project as a project included in the Region's Transit Expansion Program, Resolution 3434.

Resolution 3434 includes the following commitments to the Dumbarton Rail project:

MTC, in cooperation with Caltrain and the other funding partners, shall:

- 1. Support completion of the alternatives analysis and environmental phase*
- 2. Support steps toward the purchase of Right-of-Way in the ACE, Capitol, and Dumbarton Corridors*
- 3. Support expanded cost-effective express bus service in the corridor to build ridership*
- 4. Explore other funding opportunities, including the potential for future bridge tolls, to accelerate repayment of the reassigned \$91 million in RM2 funds.*
- 5. In conjunction with all funding partners, explore other funding opportunities, including the potential for future bridge tolls, to close the \$300 million project shortfall.*

MTC will work with the Dumbarton Rail project staff and Policy Advisory Board to support these strategies for advancing the project.

In addition, the action for the Resolution 3434 Strategic Plan committed that staff will provide a project update that includes project status, results from November 2008 transportation-related ballot measures, and reassessment of the Dumbarton Rail project funding plan based on updated information. MTC staff looks forward to presenting that update to the Commission in the next three months.

Therese W. McMillan

Attachment A – Summary of Comments Received

Attachment B – Written Comments Received

Attachment C – California Streets and Highways Code, Section 30914(f)

Attachment A – Summary of Comments Received

Date	Name	Agency/Affiliation	Overall Position	Comments
07-Jan-09	P. Michael Dubinsky*	Fremont Resident	Support	<ul style="list-style-type: none"> ● BART Extension Project when compared to other projects provides a significant benefit to the Bay Area's overall transit objectives. ● All of the necessary pieces, including the successful passage of ballot referendum (B) by the voters of Santa Clara County, are in place and demonstrate that the public is in support of moving forward with the BART WSX project.
07-Jan-09	Sarah Jeske*	Fremont Resident	Support	<ul style="list-style-type: none"> ● BART Extension Project when compared to other projects provides a significant benefit to the Bay Area's overall transit objectives
08-Jan-09	M. Fruth*	N/A	Support	<ul style="list-style-type: none"> ● BART Extension Project will provide transit relief for citizens in the East Bay and is a higher priority than Dumbarton Rail.
09-Jan-09	James Dei Rossi*	Menlo Park Resident	Support	<ul style="list-style-type: none"> ● BART Extension Project is a higher priority compared to the Dumbarton Rail project.
14-Jan-09	Rose Jacobs Gibson*	County of San Mateo/Supervisor	Oppose	<ul style="list-style-type: none"> ● Reassignment would severely delay the much needed Dumbarton Rail project ● Reassignment of funds from promoting cross bay transit to a BART project is contrary to the voter's intention when approving these funds. ● The Dumbarton Rail project is important to the Bay Area because it will serve the growing numbers of cross bay commuters by connecting East Bay cities served by BART, ACE and the Capitol Corridor, to Caltrain on the peninsula. ● This project will cut Dumbarton Bridge related congestion and pollution and provide a new and necessary rail link to both sides of the Bay. ● The RM2 monies should be used as the voters intended. ● Significant delay in the Dumbarton Rail project receiving the substitute STIP funds (not until 2019)

Attachment A – Summary of Comments Received (cont.)

Date	Name	Agency/Affiliation	Overall Position	Comments
14-Jan-09	David Schonbrunn	TRANSDEF/President	Oppose	<ul style="list-style-type: none"> ● MTC does not have the legal authority to undertake the proposed action and this is a “grab of authority” beyond what RM2 allows. ● No finding has been made that the Dumbarton Rail project cannot continue due to funding obstacles. ● The language of the legislation states that the funds should be reassigned to projects within the same corridor. ● This action will damage MTC’s reputation and will be understood as a breach of faith with the voters.
14-Jan-09	Diane Howard	Redwood City/Vice Mayor; Member of Dumbarton Rail PAC	Oppose	<ul style="list-style-type: none"> ● San Mateo Measure A passed by a majority largely because the voters were promised the Dumbarton Rail project. ● The Dumbarton Rail Policy Advisory Committee voted against this reassignment of funds and hope the MTC Commission does not vote for this either. ● If the Commission decides to move forward with the reassignment, a replacement fund source should be identified as soon as possible so that the promise to the citizens of San Mateo County for a Transbay Connection is not violated.
14-Jan-09	Barbara Pierce		Oppose	<ul style="list-style-type: none"> ● Cities on the Peninsula and developers were actively involved in station planning and transportation improvements surrounding the Dumbarton Rail project. ● Plans have a shelf life and when funding is switched from one project to another it throws the economic values off. ● Request MTC to return the funds to Dumbarton Rail or provide a bridge loan to the Dumbarton Rail project when it is ready to go, to be paid back by the Alameda STIP funds or fund the project from the bridge tolls being used towards the seismic improvements.

Attachment A – Summary of Comments Received (cont.)

Date	Name	Agency/Affiliation	Overall Position	Comments
14-Jan-09	Paul Sheperd	Cargill Corporation	Oppose	<ul style="list-style-type: none"> ● Cargill owns land adjacent to the proposed Dumbarton Rail station in Newark. ● The match for the Newark station area plan for the project to be provided by local businesses and want to see the project move forward. ● Developers contributed towards the RM2 campaign and now realize that the promises of RM2 will not occur soon owing to the reassignment of funds. ● Would like to see a more secure and reasonable source for the \$91 million so that the project moves forward soon and is not pushed out far into the future.
14-Jan-09	Jim Bigelow	Redwood City/ San Mateo County Chamber of Commerce	Oppose/Neutral	<ul style="list-style-type: none"> ● Would like to hold MTC to the commitment that staff would come back with a plan to deliver the \$91 million to the project sooner than 2019-2026. ● Once the project is in a state of readiness, urge MTC staff to look at innovative ways to fund the project (e.g. from seismic retrofit money, bridge toll changes etc) to help the project move forward sooner than the Alameda repayment date.
14-Jan-09	Gerald Cauthen	Oakland Resident	Oppose	<ul style="list-style-type: none"> ● BART capacity issues for commute between East Bay and San Francisco need to be addressed. ● Dumbarton Rail provides a relatively near term and cheap way of providing access to the West Bay from the East Bay not only into San Mateo county but also into San Francisco, making this project important and urgent.
14-Jan-09	Bob Wykowski	Fremont City Council	Support	<ul style="list-style-type: none"> ● Warm Springs Extension project has been waiting for the funds to move the project forward for a long time (even lent \$145 million to the BART- SFO Airport extension). ● The City of Fremont is committed to this project, and has been working actively on the grade separation to allow the project to move forward and has put up 50 % of the cost for the grade separations. Fremont will also work to fill in the Irvington station to make transit available in Fremont.

Attachment A – Summary of Comments Received (cont.)

Date	Name	Agency/Affiliation	Overall Position	Comments
14-Jan-09	Carlos Romero	City of East Palo Alto/ City Council member	Oppose	<ul style="list-style-type: none"> ● East Palo Alto has commenced a serious planning process to connect land use planning with transit ● The Dumbarton Rail project will spur growth all the way from Newark to Redwood City. If the project does not move forward the developers will look for non- TOD sites for development which will affect the Bay Area negatively in general ● If the Commission does move forward with the reassignment, please identify the replacement funds as quickly as possible.
14-Jan-09	George Duarte	Board of Directors for the Fremont Chamber of Commerce/ Chairman	Support	<ul style="list-style-type: none"> ● Transportation vital to the economic success of a region ● The City of Fremont supports the growth of greener and alternative energy companies and technologies in their area. ● For the industrial areas in South Fremont the Bart to Warm Springs Extension is required to provide an alternative means of commute. ● The project is vital in reducing congestion for Fremont industrial suppliers; it provides an important connection between the East Bay and Silicon Valley and allows us to reduce our carbon footprint. ● This project will also facilitate the success of the attempt of Oakland Athletics to move to Fremont
14-Jan-09	Tony Fisher	NUMMI	Support	<ul style="list-style-type: none"> ● NUMMI employs 5000 members and generates thousands of additional jobs in Fremont. ● NUMMI sees the Warm Springs BART station as a wonderful opportunity for economic growth for additional commercial and industrial operations in South Fremont. ● The project will bring the employees from the South Bay to the work site without crowding roads.
14-Jan-09	Tom Blalock	BART Board of Directors/ President	Support	<ul style="list-style-type: none"> ● This action allows projects in a state of readiness to move ahead.
14-Jan-09	Dennis Fay	ACCOMA /Executive Director	Support	<ul style="list-style-type: none"> ● The BART to Warm Springs project is the single largest project in ½ cents sales tax program in Alameda County and there is significant voter confidence in moving forward with this project. ● This project is very important to the citizens of Alameda County.

Attachment A – Summary of Comments Received (cont.)

Date	Name	Agency/Affiliation	Overall Position	Comments
14-Jan-09	Rich Hedges	San Mateo Transportation Authority	Oppose	<ul style="list-style-type: none"> ● This reassignment is not line with the voters’ intent in passing Regional Measure 2. ● This reassignment will lead to delay which will further intensify the Coast Guards’ requests to tear down the trestle bridge if it is not in use. They would later have to spend a lot more to build it again. ● The Warm Springs station is not a suitable TOD; also I believe ridership would be very low on this project.
14-Jan-09	Michelle Koan	Warm Springs Business and Community Association/ President	Support	<ul style="list-style-type: none"> ● All the business and communities at Warm Springs need BART. It would particularly be helpful to students who do not have an alternate means to commute.
15-Jan-09	David Schonbrunn*	TRANSDEF	Oppose	<ul style="list-style-type: none"> ● MTC does not have the statutory authority to undertake the proposed action ● Inadequate rationale for the proposed transfer because the Dumbarton Rail project is not “unrealistic” and statute clearly states that the reassignment of funds should be to another project within the same bridge corridor. ● Proposed reassignment not fair because the substitute funds are not proposed to be delivered even in the same decade and the funds will not be escalated for inflation ● Dumbarton Rail Project very cost effective in solving one of the most serious problems facing the Bay Area (i.e. inadequate capacity in the BART connection from the East Bay to San Francisco) ● MTC, at the verge of contemplating another regional measure, should not be seen as picking and choosing projects. It is important for MTC to retain the confidence of voters.

* Written Comments – Copy provided in Attachment B

Attachment B – Written Comments Received

From: <JDeirossi@aol.com>

To: MTC info

Subject: Bart Springs Extension Funds from Dumbarton Rail

Date/Time: 1/9/2009, 9:52 a.m.

Sent: Via email

Thank you for the decision to transfer funds from Dumbarton rail to Warm Springs BART extension. The Dumbarton rail has always been a project of dubious value. Now that capital costs have increased so much, it deserves to be on the "back burner".

Also since congestion on the Dumbarton Bridge has all but disappeared, it make sense to used funds for projects that reduce more congestion first. This will better help reduce energy consumption so badly needed.

James Dei Rossi
Menlo Park, CA

From: "M. Fruth" mafruth@yahoo.com

To: MTC info

Subject: BART Springs Extension

Date/Time: 1/8/2009, 5:00 p.m.

Sent: Via email

Thank you in advance for your decision to transfer funds to Warm Springs BART extension. The citizens in the East Bay have waited long enough for transit relief.

I have heard that the Dumbarton Bridge has the least amount of congestion of any freeway in the Bay Area. Please take care of more congested roads first. This will save the air from idling car engines.

From: "Sandy Dubinsky" foxrun9@comcast.net
To: MTC info
Subject: Proposed MTC Resolution #3801 Revised. - Concur with the Proposal.
Date/Time: 1/7/2009, 4:05 p.m.
Sent: Via email

As a citizen of the Bay area I have followed and kept myself informed about a variety of transportation related projects in particular those which impact the community and neighborhood where I reside.

I believe however that I have kept in perspective the fact that all major transportation projects involve advantages and disadvantages which must be weighed and assessed for their overall merit.

The decision by the MTC staff to transfer funds from the Dumbarton Rail to the BART Warm Springs extension is in my view a wise one. The BART extension when compared to other projects offers significant benefit to the Bay area's overall transit objectives.

I have kept in touch with a large number of community members in my neighborhood and can report that they also support this point of view.

I have followed the decision making process on this particular matter over the last 6-9 months and have previously commented in support of this fund transfer. If restating the value added outcomes of moving forward with the BART WSX project is useful I will be glad to do so but I believe they have all been thoroughly discussed and debated.

It appears that all of the necessary pieces, including the successful passage of ballot referendum (B) by the voters of Santa Clara County, are in place and demonstrate that the public is in support of moving forward with the BART WSX.

I concur with and encourage the Commission to complete this final step as proposed.

Best regards

P. Michael (Mike) Dubinsky
695 Posada Way
Fremont 94536

From: sarah <a_swell_girl@yahoo.com>

To: MTC info

Subject: Proposed MTC Resolution #3801 Revised. - Concur with the Proposal.

Date/Time: 1/7/2009, 4:19 p.m.

Sent: Via email

I thank the board for transferring the monies from the Dumbarton rail project to one that will benefit more of the Bay Area ie. the BART extension to Warm Springs.

The decision by the MTC staff to transfer funds from the Dumbarton Rail to the BART Warm Springs extension is an excellent use of public funds. The BART extension when compared to other projects offers significant benefit to the Bay area's overall transit objectives.

I encourage the Commission to complete this final step as proposed.

Thank you,

Sarah Jeske
Fremont Resident



ROSE JACOBS GIBSON
SUPERVISOR, FOURTH DISTRICT
COUNTY OF SAN MATEO

Supervisor Adrienne Tissier, Chair
Programming and Allocations Committee
Metropolitan Transportation Commission
101 Eight Street
Oakland, CA 94067

Dear Supervisor Tissier,

I am writing to express my opposition to the Commission's proposed reassignment of \$91 million in RM2 funding from the Dumbarton Rail project to the BART Warm Springs Extension project. The reassignment of funds would severely delay this much needed project. Furthermore, the reassignment of funds from promoting cross bay transit to a BART project is contrary to the voter's intention when approving these funds.

The Dumbarton Rail Project is important to the Bay Area and the Peninsula. The project will serve the growing numbers of cross-bay commuters by connecting east bay cities served by BART, ACE and the Capitol Corridor, to Caltrain on the peninsula. In my home city of East Palo Alto, this service will cut Dumbarton Bridge related congestion and pollution and provide a new and necessary rail link to both sides of the Bay. The improvements achieved by this project are exactly what the voters' intended when they approved RM2 in 2004.

RM2 raised the toll on the seven State-owned toll bridges in the San Francisco Bay Area by \$1.00. This extra dollar was meant to fund various transportation projects within the region that have been determined to reduce congestion or to make improvements to travel in the toll bridge corridors. The Dumbarton Rail project is a model project given this stated intention. I would urge the Committee to ensure that these monies are used as the voters intended. Otherwise, it may be many years before funding becomes available for this project, as STIP funding is not anticipated until at least 2019.

Once again, I urge you to oppose the Commission's proposed reassignment of \$91 million in RM2 funding from the Dumbarton Rail project to the BART Warm Springs Extension project. Thank you for your consideration. Please do not hesitate to contact me regarding this important matter.

Sincerely,

ROSE JACOBS GIBSON
Supervisor, County of San Mateo

Transportation Solutions Defense and Education Fund

P.O. Box 151439 San Rafael, CA 94915 415-460-5260

January 15, 2009
By E-Mail and Fax

Steve Heminger, Executive Director
Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607

Re: Proposed RM 2 Program Amendment

Dear Steve:

TRANSDEF opposes the proposed reassignment of the Dumbarton Rail project's RM 2 funding to the Warm Springs BART Extension on the following grounds:

Authority

MTC does not have the statutory authority to undertake the proposed action. The staff report for the proposed action did not indicate the specific rationale for the proposed Program Amendment. Instead, it blurred the issue by providing three separate rationales, of which two might be applicable: "if a project cannot continue as scoped, or can be completed using other non-toll funds." Neither of these rationales provides a legitimate basis for the proposed reassignment of funds. We critique them in turn:

To remove funding from a project because "it cannot continue as scoped," the statutory test under H&S Section 30914(f) is whether the project

"cannot continue due to delivery or financing obstacles making the completion or continuation of the program or project unrealistic..."

Nothing in the record indicates that the Dumbarton Rail Project is unrealistic. The BART extension to San Jose has had massive funding shortfalls for its entire history, yet the project is considered to be "realistic" enough to be included in the 2009 RTP, despite multi-billion dollar shortfalls that VTA will disclose in February. The Caltrain Downtown Extension, an RM 2 subdivision (c) project, has a significant funding shortfall, yet it is still considered realistic. MTC has not produced any information that would single out the Dumbarton project as being undeliverable.

The problem here is a conflict between MTC's project management role and its statutory authority. As stated in the September 10, 2008 cover memo on the 2008 Strategic Plan update, "The purpose of the Strategic Plan is to provide a framework for successful

program and project delivery by initially addressing: 1) escalating project costs; 2) near-term funding requests; and 3) the development of the financially constrained element of the Transportation 2035 Plan.”

While MTC certainly has the management authority to make strategic reallocations within its role as MPO in the creation of funding plans, it cannot do so when project funding is subject to statutory restrictions. In the instant case, H&S Section 30914(f) does not give MTC authority to prioritize projects so as to further its effectiveness in overall project delivery. MTC was not granted the discretion to pick and choose amongst projects in furtherance of its strategic plans. Only in cases where a project is obviously failing does MTC have the authority to reassign its funds.

Secondly, and more troubling, the Executive Director misquoted the amended portion of the code section. The correct quote is:

“After the hearing, the commission may vote to modify the program or the project's scope, decrease its level of funding, **or reassign some or all of the funds to another project within the same bridge corridor.**” (emphasis added)

Obviously, the Warm Springs BART Extension is not part of the “same bridge corridor.” The Dumbarton Rail corridor is an East-West corridor, while the Warm Springs BART Extension is part of a North-South corridor. There is no connection between the Warm Springs BART extension and the Dumbarton corridor. On its face, the statute is clear that funds may not be reassigned to the Warm Springs Extension, even if there were grounds to claim that the Dumbarton Rail Project was “unrealistic.”

The section that was quoted to the Commission pertained to swapping funds:

If a program or project identified in subdivision (c) is to be implemented with other funds not derived from tolls, the commission shall follow the same consultation and hearing process described above and may vote thereafter to reassign the funds to another project consistent with the intent of this chapter.

This section is inapplicable, for two reasons. First, it simply is not credible to call the proposed reassignment a funds swap, and assert that the proposed reassignment of RM 2 funds will result in the Dumbarton Rail Project receiving “other funds not derived from tolls.” Those funds are not proposed to be delivered even in the same decade. Worse yet, they won't be escalated for inflation. MTC's shifting of funds from Warm Springs to the SFO extension a decade earlier would not be permissible using RM 2 funds. So this is not at all the situation of a swap to change the color of money, as is proposed for the BART Transbay Tube Seismic Strengthening project. Second, the phrase “consistent with the intent of this chapter” indicates that the funds must remain in “the same bridge corridor.”

Policy

One of the most serious problems facing the Bay Area is inadequate capacity in the BART connection from the East Bay to San Francisco. The most cost-effective solution that has emerged for this problem is the Dumbarton Rail project. Eliminating this project now (by removing a substantial portion of its future construction funding) would be very short-sighted. The sooner this project moves forward, the sooner it can be part of a growing robust transit network that can shunt significant traffic away from the BART tube, thereby greatly extending the usefulness of that very expensive facility and eliminating the future need for massive expenditure there.

A final key issue here is retaining the confidence of the voters. MTC is starting to contemplate another regional measure. If MTC is seen as picking and choosing winners, irrespective of the will of the voters, it will be unable to win support for future funding from the public. MTC's reputation is one of its most valuable assets. TRANSDEF believes it would be a serious mistake to squander that reputation in its zeal to build yet another BART extension.

Sincerely,

/s/ DAVID SCHONBRUNN

David Schonbrunn,
President

**Attachment C – California Streets and Highways Code,
Section 30914(f)**

(f) The Metropolitan Transportation Commission shall annually assess the status of programs and projects and shall allocate a portion of funding made available under Section 30921 or 30958 for public information and advertising to support the services and projects identified in subdivisions (c) and (d). If a program or project identified in subdivision (c) has cost savings after completion, taking into account construction costs and an estimate of future settlement claims, or cannot be completed or cannot continue due to delivery or financing obstacles making the completion or continuation of the program or project unrealistic, the commission shall consult with the program or project sponsor. After consulting with the sponsor, the commission shall hold a public hearing concerning the program or project. After the hearing, the commission may vote to modify the program or the project's scope, decrease its level of funding, or reassign some or all of the funds to another project within the same bridge corridor. If a program or project identified in subdivision (c) is to be implemented with other funds not derived from tolls, the commission shall follow the same consultation and hearing process described above and may vote thereafter to reassign the funds to another project consistent with the intent of this chapter. If an operating program or project as identified in subdivision (d) cannot achieve its performance objectives described in subdivision (a) of Section 30914.5 or cannot continue due to delivery or financing obstacles making the completion or continuation of the program or project unrealistic, the commission shall consult with the program or the project sponsor. After consulting with the sponsor, the commission shall hold a public hearing concerning the program or project. After the hearing, the commission may vote to modify the program or the project's scope, decrease its level of funding, or to reassign some or all of the funds to another or an additional regional transit program or project within the same corridor. If a program or project does not meet the required performance measures, the commission shall give the sponsor a time certain to achieve the performance measures before reassigning its funding.