

Federal Transit Administration

RECORD OF DECISION

Bay Area Rapid Transit District Warm Springs Extension Project Fremont, California

DECISION

The U.S. Department of Transportation, Federal Transit Administration (FTA), has determined that the requirements of the National Environmental Policy Act of 1969 (NEPA) have been satisfied for the San Francisco Bay Area Rapid Transit District (BART) Warm Springs Extension Project (WSX Project) in Fremont, California. The WSX Project consists of the design, construction, and future operation of an extension of the system 5.4-miles from its current terminus in central Fremont to a new station in the Warm Springs district in southern Fremont. An optional station at Irvington is also being considered if funding for the station is secured by the City of Fremont.

The WSX Project was adopted by the BART Board of Directors on June 26, 2003 as a state-funded project, following evaluation of environmental impacts pursuant to the California Environmental Quality Act (CEQA). Subsequent changes in state transportation funding priorities caused BART to seek funding for the WSX Project from sources subject to NEPA and other federal requirements. FTA and BART, as joint lead agencies, prepared a Final Environmental Impact Statement (FEIS) for the WSX Project. The Notice of Availability for the FEIS was issued on July 14, 2006 (*Federal Register*, Vol. 71, No. 135). The FEIS also satisfied the requirements of other environmental laws that apply to federal actions, such as Section 4(f) of the Department of Transportation Act (49 U.S.C. Section 303), Section 6(f) of the Land and Water Conservation Fund (LWCF), and Section 106 of the National Historic Preservation Act (NHPA).

PROJECT OVERVIEW

BART has been in operation since 1972 and currently operates in four Bay Area counties: San Francisco, Alameda, Contra Costa, and San Mateo. In southern Alameda County, BART provides service to downtown Fremont.

In the early 1990s, BART developed a project to extend BART service from the current terminus at the Fremont BART Station through Fremont to the Warm Springs district. The Warm Springs Extension project was originally developed in response to growth projections for the study area that indicated a need for alternative travel modes to better meet current and anticipated travel demand in combination with regional freeway network limitations.

In 1991, pursuant to the California Environmental Quality Act (CEQA), BART prepared an Environmental Impact Report (EIR) for the WSX Project, which was programmed as a state-funded project. On September 15, 1992, the BART Board of Directors certified the *BART Warm Springs Extension Final Environmental Impact Report* and adopted a project consisting of a 5.4-mile, two-station extension of the BART system, with stations at Irvington and Warm Springs. The 1992 Project was not constructed because sufficient funds were not available at that time.

When the WSX CEQA EIR was certified in 1992, Fremont did not support the recommended project alternative, which included an aerial alignment over Lake Elizabeth in Fremont Central Park. Fremont did support an alternative that included a subway alignment under Lake Elizabeth. Sufficient funds were not available to construct either alternative. However, because of public support for the extension of rail transit service beyond the existing Fremont BART Station, BART continued to consider the possibility of an extension from Fremont to Warm Springs.

In 2002, BART initiated the preparation of a CEQA Supplemental EIR (SEIR) to address modifications to the 1992 Project studied in the prior EIR. The principal modification from the 1992 Project was the change from an aerial structure to a subway alignment under Fremont Central Park and Lake Elizabeth, which would reduce environmental impacts on the park. Other important changes include an at-grade alignment from Paseo Padre Parkway to the end of the extension, where the 1992 alignment included both aerial and below-grade segments. In addition, Irvington Station, which was a part of the 1992 Project, was made an optional station due to funding constraints. At the conclusion of CEQA review, the BART Board of Directors certified the Final SEIR and adopted the modified WSX Project on June 26, 2003.

Changes in state transportation funding priorities have caused BART to seek additional sources of funding for the WSX Project. In order to qualify BART for state-administered federal funding (referred to as “federalized” funding), BART and FTA prepared the WSX FEIS to satisfy the requirements of NEPA and other federal environmental laws that apply to federal actions.

FUNDING

The total estimated capital cost for the WSX Project (excluding the optional Irvington Station) is approximately \$678 million (2004 dollars). The estimated capital cost of the WSX Project includes right-of-way, construction, non-construction costs (design, environmental mitigation, construction oversight, insurance, systems engineering, etc.) and vehicles. The optional Irvington Station would not be implemented unless a source of funds is identified. The total cost of the Irvington station was estimated at \$79 million (2004 dollars). Project costs will be refined further as the project moves through the development process of right of way acquisition, final design and construction.

Federal New Starts funding will not be applied to the WSX Project. BART is seeking \$58 million in state funds from the State Transportation Improvement Program, some or all of which may be “federalized” funds. The largest single source of funding comes from the Alameda County 2000 Measure B Transportation Sales Tax through the Alameda County Transportation Improvement Authority, which would provide approximately \$195 million. The language of Measure B stipulates that Measure B funds “may not be used until full funding for the rail connection to Santa Clara is assured.” Additional funding sources include \$111 million from the state Transportation Congestion Relief Program, \$169 million from the Metropolitan Transportation Commission (Regional Measure 1 and Regional Measure 2 Bridge Tolls) and \$145 million from the San Mateo County Transit District (SamTrans). As project costs are further refined, it is expected that funding contributions will be adjusted as necessary.

ALTERNATIVES CONSIDERED

The FEIS fully evaluated two alternatives for the Warm Springs Extension: the No-Build Alternative and the BART Warm Springs Extension Alternative (WSX Alternative). The No-Build Alternative consists of the planned highway and transit systems expected to be in place in the design years 2010 and 2025 if the WSX Alternative is not built (that is, the No-Action Alternative required by NEPA). The future No-Build Alternative is based on the Metropolitan Transportation Commission's long-range transportation plan for the area and includes programmed improvements in bus service. The WSX Alternative, selected by the BART Board of Directors at the conclusion of the SEIR process, consists of a 5.4-mile BART extension from the existing Fremont Station to a proposed station in the Warm Springs district of Fremont, with an optional station at Irvington. The proposed WSX Alternative alignment would generally parallel portions of the Union Pacific Railroad (UP) railroad corridor through Fremont, between Interstate 680 to the east and Interstate 880 to the west. This route reflects a revised alignment and was redesigned after the 1992 EIR. The revisions were made in order to reduce project impacts, and this project alternative was the subject of the 2003 SEIR. Chief among the project revisions is the proposed subway under Fremont Central Park, an alignment segment previously planned as an aerial structure.

A number of additional alignment and technology alternatives, including a Bus Rapid Transit alternative, were evaluated during the CEQA process and found not to satisfactorily meet the WSX Project's purpose and need. Those alternatives were evaluated in detail in the 1992 EIR and 2003 SEIR. The FEIS analysis incorporates the EIR and SEIR analyses by reference and summarizes the reasons for rejection of these alternatives.

DESCRIPTION OF THE ALTERNATIVE

The WSX Alternative would extend south from the existing Fremont BART Station to a proposed new station in the Warm Springs district of the City of Fremont. An optional

station at Irvington is also being considered if additional funding for the station is secured.

The WSX Alternative alignment would generally parallel portions of the Union Pacific railroad corridor, which contains the former Western Pacific (WP) and Southern Pacific (SP) railroad tracks, and Interstates 680 and 880 in southern Alameda County. The initial segment would begin on an embankment at the southern end of the existing elevated Fremont BART Station. The alignment would pass over Walnut Avenue on an aerial structure and descend into a cut-and-cover subway north of Stevenson Boulevard. The alignment would continue southward in the subway structure under Fremont Central Park and the eastern arm of Lake Elizabeth. South of the park, the alignment would surface to run at grade between the former WP and SP alignments north of Paseo Padre Parkway. Paseo Padre Parkway will be reconfigured from an at-grade crossing to a vehicular underpass as part of the Paseo Padre-Washington Boulevard grade separation project being carried out by the City of Fremont. The alignment would pass over Paseo Padre Parkway on a bridge structure, and then continue southward at grade, passing under a grade-separated Washington Boulevard. Washington Boulevard will also be reconfigured as a vehicular overpass as part of the city's grade separation project. From Washington Boulevard, the WSX Alternative alignment would continue at grade along the former WP alignment south to a terminus station at Warm Springs and South Grimmer Boulevards in the Warm Springs district.

The WSX Alternative is composed of 5.4-miles of new trackway, a station at Warm Springs, and ancillary facilities that include traction power, train control, communications, subway ventilation and emergency access structures, and vehicle maintenance facilities. The Warm Springs Station would be a 34-acre multi-modal facility with 2,040 parking spaces and 7 bus bays. The station site plan is designed around an internal circulation system similar to city blocks, so that in the future, the parking area could be redeveloped with transit-oriented development while maintaining the internal street system. (On-site transit-oriented development is not a part of the WSX Alternative and was not analyzed in the FEIS.) Tail tracks would extend approximately 3,000 feet south of the Warm Springs Station to provide train turn back facilities and temporary train storage.

Located just south of the Warm Springs Station adjacent to the tail tracks, the maintenance facility would have rail vehicle lifts and associated shop facilities to accommodate 1 or 2 BART cars and 30 employee parking spaces within a 3-acre, fenced maintenance yard. Twenty-eight additional BART vehicles are proposed as part of the WSX Alternative, but the new vehicles would not be required until full ridership is reached.

Traction power facilities (substations and gap breaker stations) are proposed at six locations adjacent to the alignment: Fremont Station, midway between the south subway portal and Paseo Padre Parkway, Blacow Road, midway between Auto Mall Parkway and South Grimmer Boulevard, Warm Springs Station, and the maintenance facility. A structure for ventilation, pumping, and emergency access would be provided at either one

or two locations along the 1-mile-long subway segment of the alignment in Fremont's Central Park. While most of the ventilation structure(s) would be primarily subterranean, a portion of the structure(s) would be located on the surface.

Communications facilities would include communications antennas (less than 30 feet high) at the two subway tunnel portals and possibly at Irvington. Smaller antennas (16 feet high) would be placed approximately every 2,000 feet for train control. Data processing would be enclosed in train control bungalows at three locations: midway between the south subway portal and Paseo Padre Parkway, the optional Irvington Station site, and Warm Springs Station. A radio communications antenna up to 150 feet high will also be necessary at Warm Springs Station.

If constructed, the 18-acre Irvington Station would be a multi-modal facility with 925 parking spaces and 5 bus bays.

PUBLIC REVIEW PROCESS

The Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) was published in the *Federal Register* on April 6, 2004. Copies of the NOI for the EIS were provided to the California Department of Transportation (Caltrans) and to local agencies, including the Metropolitan Transportation Commission (MTC), the Alameda County Congestion Management Agency (ACCMA), Alameda/Contra Costa Transit Authority (AC Transit), and the Santa Clara Valley Transportation Authority (VTA).

A public scoping meeting for the WSX EIS was held on April 28, 2004, at the Fremont Main Library. Notices were published beforehand in local newspapers announcing the time, date, location, and purpose of the meeting. The newspapers included the Fremont Argus, San Jose Mercury News, Tri-Valley Herald, San Francisco Chronicle, and Contra Costa Times. In addition, invitations to the meeting were mailed to a 6,000-name list of agencies and stakeholders throughout Fremont, southern Alameda County, and northern Santa Clara County. More than 50 people attended the public scoping meeting. The scoping comment period extended from the publication of the NOI on April 6, 2004 through May 17, 2004. Comments received in response to the NOI were documented and a scoping summary report was prepared. At the end of the scoping period, all comments were reviewed and considered as part of the preparation of the Draft EIS (DEIS).

Public agencies were consulted throughout the development of the EIS. BART created a Project Development Team (PDT) that consisted of public officials, BART District representatives, FTA staff, the City of Fremont, Santa Clara Valley Transportation Authority, Metropolitan Transportation Commission, Alameda County Transportation Improvement Authority, California Department of Transportation, Alameda-Contra Costa Transit District, and the Alameda County Congestion Management Agency.

Native American consultation has been conducted through letters sent to Native American Heritage Commission (NAHC) and to individual Native American contacts.

Two responses were received from individual Native Americans who were contacted. Both are members of the Ohlone Tribe and are active in the Native American community, and both are involved in Native American issues throughout the Bay Area. These individuals are concurring parties on the Memorandum of Agreement relating to section 106 issues executed among FTA, BART, and the State Historic Preservation Officer (SHPO). Native American consultation is expected to continue throughout the construction period.

The Notice of Availability for the DEIS was published in the *Federal Register* on March 11, 2005. The 45-day public review period extended through April 25, 2005. During the public review period, the DEIS was placed in public libraries and made available at the BART offices in Oakland. Copies of the DEIS were sent to federal, state, regional and local agencies. Copies were provided to all agencies, community groups, and individuals that requested them. The Executive Summary for the DEIS was available online at BART's web site, and a Braille copy of the Executive Summary was available at the Fremont Central Library and the Metropolitan Transportation Commission /Association of Bay Area Governments (MTC/ABAG) Library. Additional copies and information could be obtained by contacting BART through the project information telephone number or via the BART website.

BART held a public hearing to receive public comments on the DEIS on April 12, 2005 at the Washington Township Veterans Memorial in Fremont, California. The meeting was advertised in local papers, with mailers, and on the BART website. Thirty-five people attended the public comment meeting. Sign language translators were provided at the meeting for the hearing-impaired community. A court reporter recorded the verbal testimony, written comments were accepted at the meeting and also via mail, fax, and email throughout the 45-day review period. Following the close of the public comment period, all substantive written and oral comments on the DEIS were considered. Volume 2 of the Final EIS (FEIS) includes all of the substantive comments on the DEIS and responses to those comments.

Upon completion of the FEIS, FTA published a Notice of Availability for the FEIS on July 14, 2006. At the same time, BART placed Notices of Availability of the FEIS in the same five newspapers with circulation in the project area and on the BART website. Printed copies of the FEIS were placed in the same locations where copies of the DEIS had been previously provided. Copies of the FEIS were provided to all those who commented on the DEIS, public agencies with jurisdiction over various aspects of the WSX Alternative, and other interested parties who requested copies. In addition, letters announcing the availability of the FEIS were sent to those on the WSX Project mailing list. Copies of the document were available by contacting BART through the project information telephone line or the BART website. The Executive Summary of the FEIS was available on the BART website, and a Braille version of the Executive Summary was available at the Fremont Central Library and the MTC/ABAG Library. Comments received during the thirty day FEIS availability period are discussed below.

BASIS FOR DECISION

FTA has determined, in accordance with 40 CFR 1505.2(a), that the WSX Alternative is the environmentally preferred alternative for the following reasons:

Transportation Benefits

The WSX Alternative would have beneficial effects on transportation by enhancing transit opportunities within the project area and helping to reduce overall traffic congestion. The WSX Alternative would result in an increase in new transit trips, particularly for trips destined for, originating in, or passing through southern Alameda County. Transit person trips would increase with the WSX Alternative compared to the No-Build Alternative in both 2010 and 2025. The WSX Alternative would increase new transit ridership by 4,700 daily trips in 2010 and 7,200 daily trips in 2025. The optional Irvington Station would increase new transit ridership to a total of 5,700 and 9,100 daily trips in 2010 and 2025 respectively. This increase in transit trips indicates a shift in use from automobile to transit.

Land Use Benefits

Through its Strategic Plan and System Expansion Criteria, BART encourages intensification of land uses surrounding BART facilities to enhance increased transit opportunities and ridership. The WSX Alternative would encourage transit-oriented development, enhancing opportunities to foster “smart growth” in the vicinity of the proposed station sites.

Air Quality Benefits

By diverting motor vehicle trips to transit trips, the WSX Alternative would lead to a reduction in the emission of reactive organic gases, nitrogen oxides and particulate matter from mobile sources, resulting in regional air quality benefits. Such benefits would result from decreases in automobile and bus vehicle miles traveled (VMT) as compared to No-Build conditions. Implementation of the WSX Alternative also would reduce greenhouse gas emissions. In addition, the WSX Alternative would reduce toxic air contaminants, because such emissions are directly correlated with VMT.

Energy Conservation

The WSX Alternative would result in an overall decrease in Bay Area transportation energy consumption in 2010 and in 2025 compared to No-Build conditions. The decrease in energy consumption would result from a WSX Alternative-related decrease in annual automobile and bus VMT. This decrease in VMT would translate into gains in energy efficiency, which would be a net regional benefit.

Responsive to Project Goals and Objectives

The BART District has adopted goals and objectives in its *BART Strategic Plan* and *Framework for System Expansion*, also considered as goals and objectives of the WSX Project. The WSX Alternative would respond to the following goals and objectives for systemwide expansion:

Improve Public Transportation Service to Increase Mobility. The WSX Alternative would maximize transit ridership and new transit trips compared to the No-Build Alternative. The optional Irvington Station would also provide an additional increase over and above that generated by the WSX Alternative.

Improve Environmental Quality. Increased transit ridership due to the WSX Alternative would result in a corresponding reduction in the number of automobile miles traveled. This would result in regional energy savings and reduce auto emissions.

Compatibility with Adjacent Land Uses and Planned Development. Development of the WSX Alternative would provide access to the transportation system and encourage development surrounding station sites in a manner that supports and enhances local and regional land use and urban development policies and plans.

Provide Transportation Services that Make Efficient and Effective Use of Financial Resources. Other alternatives considered at previous stages of the environmental analysis would require less capital investment and operating cost; however, the WSX Alternative is more effective in delivering the greatest number of new transit trips and related environmental benefits, such as reducing energy consumption and improving air quality.

Provide Transportation Services Equitably to All Segments of the Population. The WSX Alternative would extend the BART system to an area currently under-served by transit. The availability of transit and the proposed station sites, in concert with the City of Fremont's land use planning efforts, would reinforce the social and economic fabric of Fremont's communities, provide growth opportunities in keeping with housing and economic goals, and respond directly to Alameda County growth plans.

Support Community Goals and Institutional Objectives. The WSX Alternative is consistent with regional, local and institutional goals. The WSX Alternative is included in MTC's Regional Transportation Plan, which identifies and prioritizes transit projects, as a Tier 1 rail expansion project. The *Fremont General Plan* specifically reserves the WSX Alternative alignment as a BART corridor, and the WSX Alternative supports the city's goals for enhanced transit service and opportunities for station site development.

Comprehensive Station Design. The proposed Warm Springs and Irvington stations are designed to maximize access from a variety of transportation modes including buses, shuttles, taxis, bicycles, and pedestrians. In addition, station design and station area planning efforts reflect the goals of improving land use and quality of life and having local residents value the system as an integral part of their communities.

Comprehensive Land Use Planning and Potential for Transit-Oriented Development. The WSX Project is intended to enhance opportunities for transit-supportive growth and development. The proposed stations are designed to accommodate future transit-oriented development, both on-site and off-site.

SUMMARY OF IMPACTS

The FEIS evaluated operational and construction-related impacts for each of the following resource areas:

Transportation. Overall, the WSX Alternative would increase transit ridership and decrease automobile use compared to the No-Build Alternative. The level of service at some intersections and freeway ramps would degrade, and there is the potential for the spillover of station parking to residential and commercial areas, as well as construction-period traffic impacts.

Geology, Soils, and Seismicity. Potential impacts could result from fault creep and earthquake-induced ground shaking and ground rupture. Potential impacts would result from expansive soils and soil compression. Impacts on paleontological resources could result from subsurface excavation during construction.

Hazards and Hazardous Materials. Operation of the WSX Alternative would not involve transport, use, or disposal of hazardous materials. There is the potential for exposure of workers or the public to hazardous materials in the soil or groundwater during construction, or during renovation or demolition of existing structures.

Hydrology. The WSX Alternative has the potential to alter infiltration rates, drainage patterns, and amount or rate of surface runoff. The WSX Alternative could result in water quality degradation, loss of flood storage capacity at Tule Pond or Lake Elizabeth, and depletion of local ground water supplies during construction.

Wetlands. The WSX Alternative would result in a loss of wetlands and riparian habitat during construction.

Biological Resources. The WSX Alternative would result in the cumulative loss of ruderal-forb grassland habitat and contribute to regional impacts on the Western burrowing owl. The WSX Alternative would also cause both temporary and permanent disturbance of potential California tiger salamander and California red-legged frog habitat.

Land Use and Planning. The WSX Alternative would have construction-period impacts on land uses adjacent to the alignment in Fremont Central Park.

Parks and Recreation. The WSX Alternative would cause construction-related disruptions to activities in Fremont Central Park.

Population, Employment, and Housing. The WSX Alternative would require acquisitions of property and relocation of residences and businesses. The WSX Alternative would affect approximately 27 parcels. Of the 25 privately owned parcels, 1

is residential and 24 are businesses. If the optional Irvington Station is constructed, an additional 10 residences and four businesses would be displaced.

✓ **Aesthetics.** The WSX Alternative would result in adverse effects on visual quality related to the ventilation structure(s) in Fremont Central Park and sound walls along the project alignment.

Cultural Resources. The WSX Alternative would result in a substantial change to archaeological site ALA-343, which has been determined to be eligible for the National Register of Historic Places (NRHP). Construction of the optional Irvington Station would adversely affect the Ford House and the Gallegos Winery ruins and associated features. Both resources have been determined to be eligible for listing in the NRHP. Both resources would be incorporated into the design of the Irvington Station.

Noise and Vibration. Operational noise from vehicle passby and noise from ancillary facilities, such as the ventilation structure(s), would be mitigated to a less-than-significant level through the construction of sound walls and the use of design standards. Vibration from trains operations would be reduced to the greatest extent practicable. Noise-reducing construction practices would be employed to reduce exposure of noise-sensitive land uses during construction.

Air Quality. The WSX Alternative would result in the net reduction in regional air emissions, which would be a net air quality benefit. Construction of the WSX Alternative would comply with standard, feasible emission control measures.

Energy. Operation of the WSX Alternative would have an adverse effect on peak-period energy demand, for which there is no mitigation measure available. However, the WSX Alternative would result in an overall reduction in regional energy consumption, which would be a net regional benefit.

Utilities and Public Services. The WSX Alternative would have potential conflicts with existing water lines and electrical transmission lines, as well as other utilities. BART would coordinate with other utility providers to arrange utility relocation.

Safety and Security. BART will install the necessary security measures at stations and coordinate with the Fremont Fire Department to ensure patron safety.

Environmental Justice. No Environmental Justice impacts were identified.

COMMENTS AND COORDINATION ON FEIS

The public has been afforded adequate opportunity to comment on the FEIS. The U.S. Environmental Protection Agency (EPA) published the FEIS Notice of Availability in the *Federal Register* on July 14, 2006. Two timely comment letters were received prior to the close of the period of FEIS availability on August 14, 2006, from the California

Department of Transportation (Caltrans) and Mr. Mark Chytilo, representing Transportation Solutions Defense and Education Fund (TRANSDEF). In addition, on August 25, 2006, eleven days after the close of the availability period, Mr. Roy Nakadegawa submitted a comment by email. Mr. Nakadegawa's comment raised no new substantive issues, but disputed numerous factual statements contained in the FEIS response to his previous comments on the DEIS. FTA and BART believe that the factual statements in the FEIS responses are accurate. However, because this comment was untimely and raised no new substantive issues, BART will respond separately to the commenter.

- ✓ Caltrans provided two comments, requesting that mitigation be considered at the intersection of Warm Springs Boulevard and Mission Boulevard and commenting that the FEIS conclusion that the project will improve conditions on state highways appears inconsistent with Tables 4.2-15 and 4.2-16 in the FEIS, which show that Level of Service (LOS) will deteriorate at intersections on certain regional state routes. As stated in the FEIS, mitigation was considered at the intersection of Warm Springs Boulevard and Mission Boulevard but found to be infeasible due to surrounding constraints of existing development. The comment provides no new information suggesting that mitigation would be feasible. Regarding the second comment, Tables 4.2-15 and 4.2-16 illustrate LOS at specified intersections in the absence of mitigation. Mitigation measures discussed in the FEIS would reduce LOS impacts to insignificance, except at the intersection of Warm Springs Boulevard and Mission Boulevard as noted above. In addition, the FEIS analysis does demonstrate an overall improvement to the state highway segments in the study area. In 2010, two state highway segments improve under the WSX Alternative compared to the No Build Alternative, while one segment deteriorates. In 2025, six state highway segments improve under the WSX Alternative compared to the No Build Alternative, and no segment deteriorates.

Mr. Chytilo's comment letter asserted that a Supplemental EIS to the FEIS should be prepared, to respond to purported new information submitted with the letter. The new information consists of (i) a memorandum dated July 14, 2006, prepared by Metropolitan Transportation Commission (MTC) Senior Planner James Corless; (ii) a June 4, 2002 powerpoint presentation on health effects from air pollution associated with freeways; (iii) an October 14, 2004 California Air Resources Board (CARB) health risk assessment for Union Pacific Railroad's Rosville Rail Yard in Roseville, California; and (iv) a transcribed July 24, 2006 voicemail message from Jean Roggenkamp, Deputy Air Pollution Control Officer of the Bay Area Air Quality Management District (BAAQMD). The comment asserts that the discussion in the FEIS of prospects for transit-oriented development (TOD) near the Warm Springs Station is inaccurate, because new information in the MTC memo demonstrates that MTC and the City of Fremont have determined that residential TOD cannot occur in proximity to industrial uses in the station vicinity for health reasons. Accordingly, the comment asserts, the FEIS analysis regarding land use, consistency with local plans and policies, project benefits, the ability of the WSX Alternative to meet the project purposes and need, and the Warm Springs station as a logical terminus, all must be re-evaluated in a Supplemental EIS. FTA finds that these assertions are incorrect.

First, the FEIS does not rely on residential development as the sole form of development in the station area. The WSX Alternative would facilitate and encourage TOD which may or may not emphasize residential development. As stated in the FEIS, the City of Fremont is considering several TOD scenarios including high intensity residential, employment center/ commercial, and mixed use alternatives. Moreover, in a letter dated September 8, 2006, Mr. Corless, author of the July 14, 2006 MTC memo, explained that the study described in the memo was intended to “evaluate a ‘worst case’ planning scenario that assumed no new housing at Warm Springs” and that the reference to planning for non-residential uses in the station area was merely an assumption by MTC planners for purposes of analysis, not reflecting any policy change adopted by the City of Fremont. In addition, in a letter dated August 29, 2006, Jeff Schwab, Planning Director for the City of Fremont, confirmed that the City is still considering the TOD scenarios discussed in the FEIS and the commenter’s claim, that the City has reached a decision that no new housing may be located in the Warm Springs Station area, is incorrect. Therefore, the assumptions in the FEIS regarding Fremont’s plans remain valid. While staff and funding constraints have delayed the City’s progress on station area planning, MTC has indicated that funding will become available for the City to complete its TOD plan in the coming year. Finally, as described in the FEIS, private developers have already put forward mixed-use TOD proposals including residential development, with a “buffer zone” separating proposed residential areas from industrial uses. See *Warm Springs Transit Village – Fremont, California* (December 2004), p. 8, attached to the comments on the DEIS submitted on April 24, 2005 by Warm Springs Transit Village property owners and incorporated into the FEIS record. In sum, the MTC memo does not contain new information requiring re-evaluation of the FEIS analysis or conclusions in a supplemental EIS.

The comment further asserts that the MTC memo and other new information demonstrate a new significant environmental impact, not evaluated in the FEIS, due to potential health risks to future TOD residents induced to live in proximity to existing industrial uses. However, this comment was raised in a letter on the DEIS, signed by Ms. Roggenkamp of BAAQMD and submitted on April 25, 2005. The transcribed voicemail message from Ms. Roggenkamp that is included in Mr. Chytilo’s letter reiterates her previous comment. As stated in the FEIS in response to that comment, while infill development and potential exposure of infill residents to existing sources of air pollution is an issue, the City of Fremont will address potential air quality impacts to sensitive receptors when specific development projects are proposed. Mitigation measures to reduce exposure of infill development residents to existing sources of air pollution must be evaluated in the City’s environmental analysis rather than in the WSX FEIS. Because any specific TOD land use or project decisions by the City will be subject to appropriate environmental review, analysis of TOD-related environmental impacts at this stage would be premature.

As noted above, the specific form that TOD may take in the Warm Springs Station area is speculative at this time and it is not possible to conduct the type of quantitative health risk assessment presented, for example, in CARB’s Roseville Rail Yard study. The commenter presents no evidence that a buffer zone as envisioned by the *Warm Springs*

Transit Village proposal is not feasible at the station site. Although the FEIS considers the potential to encourage future, separate TOD projects to be a benefit of the WSX project, which is designed with the flexibility to accommodate TOD at a later date, the WSX project does not incorporate a TOD element or otherwise assume the existence of TOD as part of the project, e.g., for purposes of ridership projections and air quality modeling. The commenter's objection that "ridership growth from that [TOD] development cannot be considered in evaluating the justification for the project" is therefore misplaced.

Finally, the commenter asserts that CARB's 2004 Roseville Yard study and the 2002 powerpoint presentation on health effects from freeway air pollution constitute new information requiring supplemental environmental analysis. These documents do not constitute new information. Both are dated prior to the March 11 - April 25, 2005 comment period for the DEIS and could have been submitted with the extensive comments by Mr. Chytilo or Mr. David Schonbrunn (also representing TRANSDEF), which included multiple supporting attachments. In addition, the 2002 powerpoint presentation predates the comment period for the Draft SEIR and could have been submitted with Mr. Schonbrunn's extensive comments on that document. While freight rail and freeways were not specifically cited in the FEIS as pollution sources, they do not substantially differ from the industrial sources cited generically and will be similarly addressed by the City's environmental evaluation of future specific TOD projects. Moreover, the Roseville Yard is the largest service and maintenance rail yard in the western United States, with over 30,000 locomotives visiting annually. See Roseville Yard Study, p. 1. That facility is far larger than the small freight rail facility in the Warm Springs station area, which would be expected to present a much smaller health impact.

MEASURES TO MINIMIZE HARM

All practicable means to avoid or minimize environmental harm from the WSX Alternative have been identified in the FEIS. BART will design and construct the WSX Project to incorporate all mitigation measures described in the FEIS.

BART adopted a Mitigation Monitoring and Reporting Plan (MMRP) in 2003 that contains all the mitigation measures identified in the SEIR. The 2003 MMRP has been revised to incorporate the additional mitigation measures identified in the FEIS. The revised MMRP (MMRP-2006) is attached as Attachment A. BART will ensure that the responsible parties implement all mitigation measures provided in the FEIS and the MMRP-2006. The MMRP requires that the BART project manager periodically submit written progress reports to the BART Board about mitigation implementation.

On March 21, 2006, the U.S. Fish and Wildlife Service issued a Biological Opinion (BO) addressing disturbance of potential California tiger salamander and California red-legged frog habitat by the WSX Project. As a condition of the BO, BART has ensured the permanent conservation of off-site habitat for both species by purchasing conservation

credits at the Ohlone Preservation Conservation Bank. These requirements have been incorporated into the MMRP-2006.

FTA will require in any future funding agreement on the WSX Project that BART implement all mitigation measures in accordance with the FEIS and BO. FTA will monitor mitigation implementation through quarterly review of mitigation commitments during final design and engineering, property acquisition, and construction of the WSX Project.

ROLES AND RESPONSIBILITIES

BART was created by the San Francisco Bay Area Rapid Transit District Act, California Public Utilities Code Sections 28500-29757 (the "BART Act") to construct and operate a rapid transit system to serve the metropolitan area surrounding San Francisco Bay. The project covered by this Record of Decision is the extension of the existing Fremont BART line to the Warm Springs district in Fremont, at the southern edge of Alameda County. The BART Act grants BART the powers necessary to design and build the WSX Project, including the power to acquire property, incur indebtedness, relocate utilities, and enter into contracts with public and private entities. In carrying out its authority, BART is responsible for the initial stages of project development, including planning, alternatives analysis, capital cost estimation, and preliminary engineering. BART and FTA are responsible for environmental review of the WSX Project, including compliance with the requirements of NEPA and other federal laws.

BART will award a Design- Build Contract and will oversee the design and construction work of the Design- Build Contractor. BART and FTA will enter into agreements relating to the funding and implementation of the WSX Project. BART will also be responsible for ensuring the implementation of the Mitigation Monitoring and Reporting Plan-2006, as described in detail in Attachment A. Following completion of construction of the WSX Project, BART will operate transit services along the length of the project in conjunction with its existing transit operations.

DETERMINATIONS AND FINDINGS

Environmental Protection (49 USC Sections 5301(e) and 5324(b))

The environmental record for the WSX Project is included in the DEIS and FEIS. Cumulatively, these documents represent the detailed statement required by both NEPA and the Federal Transit Laws, 49 USC Sections 5301(e) and 5324(b), regarding the environmental impacts of the WSX Alternative, any adverse environmental effects which cannot be avoided should the WSX Alternative be implemented, alternatives to the WSX Alternative, and any irreversible and irretrievable impacts on the environment which may be involved in the WSX Alternative should it be implemented. In addition, the state environmental record for the WSX Project is included in the 1992 Draft EIR/Final EIR

and 2003 Draft SEIR/Final SEIR, as well as in the Findings of Fact and Statement of Overriding Considerations adopted by the BART Board on June 26, 2003.

On the basis of the evaluation of social, economic, and environmental impacts as presented in the Final EIS, the Findings of Fact and Statement of Overriding Considerations, the Mitigation Monitoring And Reporting Plan-2006, and the written and oral comments offered by the public and other agencies, FTA has determined, in accordance with 49 USC Section 5324(b), that:

1. An adequate opportunity was afforded for the presentation of views by all parties with a significant economic, social, or environmental interest in the WSX Project and fair consideration has been given to the preservation and enhancement of the environment and to the interests of the community in which the WSX Project is to be located; and

2. All reasonable steps have been taken to minimize the adverse environmental effects of the WSX Project and where adverse environmental effects remain, no feasible and prudent alternative to avoid or further mitigate such effect exists.

Historical And Archaeological Resources

The California State Historic Preservation Officer (SHPO) has determined, following consultation and coordination with FTA and BART, that there will be adverse impacts on certain identified historical properties in the WSX Project corridor. On October 6, 2006, SHPO, FTA, and BART executed a memorandum of agreement (MOA) to address these adverse impacts, in satisfaction of the requirements of Section 106 of the National Historic Preservation Act and its implementing regulations. The MOA is attached to this ROD as Attachment B. Historic preservation mitigation measures are identified in Section 4.12 of the FEIS and those mitigation measures have also been incorporated into the Mitigation Monitoring and Reporting Plan-2006.

Conformity with Air Quality Plans

The federal Clean Air Act (CAA), as amended, requires that transportation projects conform with the State Implementation Plan's (SIP) purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and of achieving expeditious attainment of such standards. The EPA regulation implementing this provision of the CAA (40 CFR Part 93) establishes criteria for demonstrating that a transportation project conforms with applicable air quality plans.

In order to demonstrate conformity with the federally approved SIP, as required by EPA conformity regulations, a project must satisfy a number of conditions established in the regulations. The WSX Project satisfies the EPA conformity requirements, as documented in the FEIS in Section 4.14. In particular, the WSX Project does not

interfere with any Transportation Control Measure. The WSX Project comes from a currently conforming plan and program, being identified in both the 2005 Regional Transportation Plan and the 2007 Transportation Improvement Program for the San Francisco Bay Area, both of which have been determined to conform. The WSX Project will not cause or contribute to any CO hotspots, according to modeling that showed no violation of federal or state CO air quality standards. Particulate matter analysis is not relevant, since the Bay Area is designated attainment or unclassifiable for PM10 and PM2.5. In addition, the BART Board has determined that the potential air quality impacts are less than significant when mitigated in accordance with the Mitigation Monitoring and Reporting Plan.

Section 4(f)/6(f) Finding

Section 4(f) of the Department of Transportation Act of 1966 (49 USC Section 303) affords special protection to parks, recreation areas, wildlife refuges, and historic sites. Impacts assessed under Section 4(f) include: (1) impacts due to permanent taking or acquisition of lands as identified above, and (2) impacts due to "constructive use" or impairment of 4(f) designated land uses due to proximity of a project. Chapter 6 of the FEIS addresses this topic. The FTA has determined, in consultation with the United States Department of Interior and the SHPO, that there are multiple 4(f) properties in the WSX Project area, including publicly owned parks/recreation areas and significant historic sites. FTA has consulted with the City of Fremont, Fremont Unified School District, and the National Park Service and determined that use of certain 4(f) resources may potentially result from the WSX Project. No feasible and prudent alternatives to the use of these resources exist, and the WSX Project includes all possible planning to minimize harm to these resources resulting from such use.

FTA and BART have also consulted with the California Native American Heritage Commission (NAHC) and with individual Native American contacts regarding the potential existence of sacred lands within the WSX Project area. NAHC did not identify any such lands in the WSX Project area. FTA and BART will continue to consult with NAHC and individual Native American contacts throughout the duration of the WSX Project in order to anticipate and evaluate any Native American cultural resource issues that arise.

Section 6(f)(3) of the Land and Water Conservation Fund Act (16 USC Sections 4601-4) protects federal investments in park and recreation resources, requiring that the Secretary of DOT approve the conversion of such resources only if such conversion is in accord with the comprehensive statewide outdoor recreation plan and only upon such conditions deemed necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location. Ventilation structure(s) associated with the WSX Project would potentially affect two portions of 6(f) park and recreation resources within Fremont Central Park. In satisfaction of Section 6(f) and of certain requirements of California law, and pursuant to the BART-City of Fremont Property Exchange Agreement (March 28, 2006), BART will convey to the City of

Fremont a parcel of land to be improved as wetlands for passive use, as replacement for these affected 6(f) resources. The California Department of Parks and Recreation and the National Park Service have concurred in this. This conveyance would be a reasonably equivalent replacement for the 6(f) resources affected by the WSX Project, thereby satisfying the requirements of Section 6(f)(3).

Environmental Justice

Executive Order 12298, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 11, 1994), provides, in pertinent part, that FTA identify and address "disproportionately high and adverse human health or environmental effects" of federally-funded mass transit projects "on minority populations and low-income populations...", and that FTA "conduct its programs, policies, and activities in a manner that ensures that such programs, policies, and activities do not have the effect of subjecting persons...to discrimination...because of their race, color, or national origin." In accordance with the terms of Executive Order 12898 and the guidance set forth in the Presidential Memorandum accompanying the Executive Order, FTA and BART applied the analytical framework of NEPA to assess the effects of the WSX Project on minority and low-income populations in the project area. From these analyses, FTA has determined that minority populations (62 percent) and low-income populations (5 percent of households below the poverty level) in the project area will not be subjected to discrimination through the construction or operation of the WSX Project, and furthermore, that all people within the project area will enjoy significantly improved mobility as a result of the WSX Project. Section 4.18 of the FEIS addresses this subject, providing an overview of the income and minority demographics of the study area and an assessment of the potential impacts on minority or low-income populations in the corridor. The WSX Project would not result in disproportionately high and adverse human health or environmental effects on minority or low-income population groups.

Protection of Children

Executive Order 13045 requires federal agencies carrying out "covered regulatory actions" to identify and assess environmental health and safety risks that may disproportionately affect children. The proposed WSX Project is not a covered regulatory action as defined in Executive Order 13045, which therefore does not directly apply. However, in keeping with the spirit and intent of Executive Order 13045, consideration was given to whether the WSX Project would disproportionately affect children. As documented in Section 4.9 of the FEIS, potential disruptions to park and recreation facilities and programs were considered, including impacts to school playgrounds and athletic fields in the vicinity of the WSX Project. In addition, FEIS Section 4.13 considered noise and vibration impacts in the vicinity of sensitive receptors, including schools, and Section 4.14 addressed air quality impacts. No significant impacts to schools, school playgrounds and athletic fields in the vicinity of the proposed Project were identified. Further, mitigation measures that will be implemented for each of these

types of environmental issues will also mitigate any impacts to schools, school playgrounds and athletic fields. Accordingly, no impacts on the health or safety of children are anticipated. FTA therefore concludes that the WSX Project is consistent with Executive Order 13045.

Floodplain Impact

Executive Order 11988 links the need to protect lives and property with the need to restore and preserve natural and beneficial floodplain values. Specifically, federal agencies are directed to avoid conducting, allowing, or supporting actions on the base flood plain unless the agency finds that the base flood plain is the only practicable alternative location. Similarly, Department of Transportation (DOT) Order 5650.2, which implements Executive Order 11988 and was issued pursuant to NEPA, the National Flood Insurance Act of 1968, and the Flood Disaster Protection Act of 1973, prescribes policies and procedures for ensuring that proper consideration is given to the avoidance and mitigation of adverse flood plain impacts in agency actions, planning programs, and budget requests. As documented in Section 4.5 of the FEIS, the WSX Project does not significantly encroach on a flood plain, and the project will be built in accordance with all state and local flood plain protection standards. FTA therefore concludes that Executive Order 11988 and DOT Order 5650.2 are satisfied.

Wetland Impact

DOT Order 5660.1.A requires DOT to “assure the protection, preservation, and enhancement of the nation’s wetlands to the fullest extent practicable during the planning, construction and operation of transportation facilities and projects.” In addition, in accordance with Executive Order 11990, “new construction located in wetlands shall be avoided unless there is no practicable alternative to the construction and that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such construction.” As discussed in Section 4.6 of the FEIS, certain wetlands will be impacted when the WSX Project is constructed. FTA and BART have determined that there is no feasible or practicable alternative to the WSX Project that would avoid these impacts. Furthermore, the mitigation measures contained in the FEIS and included in the Mitigation Monitoring and Reporting Plan-2006, including plans to minimize wetland impacts and to replace or restore impacted wetland areas, represent all practicable measures to minimize harm to wetlands from the WSX Project. FTA therefore concludes that DOT Order 5660.1.A and Executive Order 11990 are satisfied.

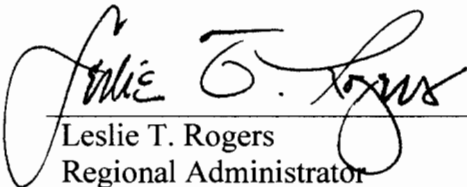
Endangered Species Act

The Endangered Species Act requires federal agencies to ensure that the actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of

threatened or endangered species or result in the destruction or adverse modification of critical habitat for these species. As discussed in Section 4.7 of the FEIS, the WSX Project would temporarily and permanently affect potential habitat for the California tiger salamander and the California red-legged frog, both of which are federally endangered species. The U.S. Fish and Wildlife Service published a Biological Opinion for the WSX Project on March 21, 2006, which identifies conditions related to the WSX Project. BART, as a condition of the BO, purchased conservation credits at the Ohlone Conservation Preservation Bank, which will preserve habitat in perpetuity for both species. BART entered into a Letter of Intent dated April 18, 2006 with the Ohlone Conservation Preservation Bank to purchase the conservation credits. BART completed the purchase of the credits on July 27, 2006, with the Bill of Sale dated August 14, 2006.

NEPA Finding

In accordance with 23 CFR Part 771, FTA finds that all reasonable alternatives and significant impacts on the environment associated with the WSX Project have been evaluated and mitigation measures are described in the FEIS that are to be incorporated into the proposed action. This finding is based on the environmental analyses set forth in the Final EIS and prior studies of the WSX Project (including the Draft EIS, the 1992 Draft EIR/Final EIR and the 2003 Draft SEIR/Final SEIR), and those documents are hereby incorporated by reference into this finding. Furthermore, this finding is premised on BART's obligations to carry out the mitigation measures attached hereto and identified in those documents.



Leslie T. Rogers
Regional Administrator
Federal Transit Administration
Region IX

007 2 4 2006

Date

ATTACHMENTS

Attachment A- Mitigation Monitoring and Reporting Plan - September 2006
Attachment B- SHPO Memorandum of Agreement