

1 JASON A. BEZIS  
State Bar No. 225641

2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]

Complainant

5 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
6 STATE OF CALIFORNIA

In the Matter of	)	FPPC No.: 16/19959 (December 20, 2018 hearing)
	)	
SAN FRANCISCO BAY AREA RAPD TRANSIT DISTRICT (BART),	)	<b>COMPLAINANT’S PUBLIC COMMENT OPPOSING DRAFT STIPULATION, DECISION, AND ORDER</b>
	)	
Respondent.	)	<b>Violation of FPPC Regulation 18420.1</b>
	)	
	)	<b>(Payment by Local Agency for Campaign-Related Communications)</b>

12 This is to serve as Complainant Jason A. Bezis’ public comment opposing the draft stipulation, decision and order to be  
13 considered by Commissioners at the December 20, 2018 hearing:

15 I. Appreciation for FPPC Enforcement Division’s Investigation

16 First, Complainant expresses his appreciation to FPPC Enforcement Division legal staff and investigators for their  
17 diligence over the past two years. Complainant is pleased that the FPPC Enforcement Division opened an investigation and took  
18 action in BART’s misuse of public resources to campaign for the November 2016 bond Measure RR. Complainant believes that  
19 illegal use of public resources to engage in campaign activity is a widespread practice among California public entities that seek  
20 tax increases (especially transportation tax increases). Complainant believes that BART actually is among the more responsible  
21 public entities. Other public entities, such as the Alameda County Transportation Commission in its promotion of its successful  
22 November 2014 Measure BB sales tax increase and the Contra Costa Transportation Authority in its promotion of its failed  
23 November 2016 Measure X sales tax increase, have been much more brazen, yet the FPPC Enforcement Division refused to open  
24 investigations. (In the case of Measure BB, the agency general counsel literally ran the Yes on BB campaign out of his law  
25 office as he simultaneously advised the public agency about the legality of campaign-related expenditures and stalled Measure  
26 BB critics from receiving information from the agency in the weeks before the election; the agency substantially increased the  
27 legal services contract soon after the election.) These practices deserve closer scrutiny by the FPPC, among other authorities.

28 As the Commissioners may be aware, private litigation concerning misuse of public resources to engage in campaign activities has mostly ceased ever since public entities were deemed eligible to use the anti-SLAPP statute against citizen/taxpayer

1 plaintiffs, who cannot afford the risk of paying a public entity’s legal bills. District Attorneys adamantly refuse to investigate  
2 allegations of misappropriation of public funds under Penal Code 424 or Government Code 8314, in part because county  
3 supervisors are not only accused wrongdoers, but also oversee the budgets of District Attorney offices. Some district attorneys  
4 also force citizens to take their allegations first to a local police department (which is reluctant to investigate its own government,  
5 especially its city council) or to the county sheriff (which not only does not have a standard intake process for “public integrity”  
6 concerns, but also flinches when county government is an alleged wrongdoer) for supposed investigation. The State Attorney  
7 General too often defers to District Attorneys, even after they refuse to act. The Attorney General’s office also is somewhat of an  
8 impenetrable fortress to citizens, whose complaints get lost among “consumer complaints” relegated to the so-called Public  
9 Inquiry Unit (which isolates itself from the “public” as much as possible and does not address most of their “inquiries”). With all  
10 other options foreclosed for relief, the FPPC is essentially the only institution that concerned citizens/taxpayers can turn to when  
11 they believe that a public entity has engaged in illegal use of public resources for campaign activity.

12  
13 II. Commissioners Should Remand Matter Back to FPPC Enforcement Division or to Administrative Hearing  
14 for Further Investigation and Explanation About Dual Role of Clifford Moss, LLC as BART Political  
15 Consultant for Measure RR and as Yes on RR Campaign Manager: 1976 FPPC “Fontana” Precedent.

16 Second, Complainant is very concerned by the draft stipulation text, “This Stipulation resolves all factual and legal  
17 issues raised in this matter.” (page 11). Complainant is worried that BART and FPPC personnel are jointly agreeing to sweeping  
18 many important matters under the proverbial carpet in order to avoid addressing them. Complainant believes that unresolved  
19 questions still require answers that the FPPC ought to provide, either by referring the questions back to the Enforcement Division  
20 or by holding an administrative hearing..

21 Clifford Moss, LLC served as both a BART political consultant to Measure RR and served as Yes on RR campaign  
22 manager. Clifford Moss received more than \$240,000 in consulting fees from the Yes on RR campaign, according to Forms 460  
23 filed with Alameda County Registrar of Voters. In marketing materials, Clifford Moss boasts of this dual representation in a two-  
24 page PDF document titled, “KEEPING BART SAFE & RELIABLE Bay Area Rapid Transit’s (BART) Measure RR Success  
25 Story (2016).” It is available on the internet at

26 <https://web.archive.org/web/20181212044447/https://www.cliffordmoss.com/story14> and attached as Exhibit A. This Clifford  
27 Moss marketing document says in part,

28 Enter CliffordMoss in 2015. We joined BART to help guide a deliberate process toward placing a measure on  
the ballot. The foundation of our work was a belief that people support what they help create. BART invited  
key stakeholders and the public, ranging from transit advocates to car commuters and from the business

1 community to social justice groups, to join the conversation. The process included surveys, an in-depth  
2 expenditure plan, and 315 community presentations and stakeholder meetings. CliffordMoss worked with a  
3 qualified pollster to test how voters perceived bond measures of various sizes. Based on the intersection of  
4 interests between what the District needed and what local voters would support, BART placed a \$3.5 billion  
5 bond measure on the November 2016 ballot. With Measure RR officially on the ballot, the campaign phase  
6 began. ... Whether voters were reached by direct mail; a phone call or text message; a door-to-door  
7 volunteer; a TV, radio or newspaper ad; a yard sign or in-station BART ad; or an online banner or video ad,  
8 every message targeted to voters included the same disciplined refrain: **Keep BART safe and reliable.**

9 Clifford Moss openly admits that it engaged in “coalition building” as a BART political consultant, then switched to  
10 “the campaign phase” once Measure RR was “officially on the ballot.” Complainant believes that this is an illegal use of public  
11 resources to engage in campaign activity. As Complainant wrote on page 3 of his October 28, 2016 complaint, BART cannot  
12 legally use public resources to line up supporters for a bond measure “for building the broadest possible coalition in support of  
13 the measure,” as California Attorney Generals have repeatedly ruled. Attorney General Bill Lockyer in 2005 ruled in Opinion 04-  
14 211 (See: <https://oag.ca.gov/system/files/opinions/pdfs/04-211.pdf>):

15 In preparation for submitting a bond measure to the electorate for approval, a [public entity] may not use  
16 district funds to hire a consultant to develop and implement a strategy for building the broadest possible  
17 coalition in support of the measure and the financial support for a campaign by, for example, assisting [public  
18 entity administrators] in scheduling meetings with civic leaders and potential campaign contributors in order  
19 to gauge their support for the bond measure if the purpose or effect of such actions serves to develop a  
20 campaign to promote approval of the bond measure by the electorate.

21 Attorney General Kamala Harris re-affirmed this position in Opinion No. 13-304 in January 2016, stating that a public entity  
22 “violates prohibitions against using public funds to advocate passage of a bond measure by contracting for services related to a  
23 bond election campaign if those services may be fairly characterized as campaign activity.” See:

24 [https://oag.ca.gov/system/files/opinions/pdfs/13-304\\_0.pdf](https://oag.ca.gov/system/files/opinions/pdfs/13-304_0.pdf)

25 Complainant believes that the political consulting work that Yes on RR campaign manager Clifford Moss, LLC  
26 performed as a BART consultant for development of Measure RR is reportable as an independent expenditure by BART  
27 supporting Measure RR or as a contribution to the Yes on RR campaign under two well-established FPPC legal doctrines. First,  
28 under the FPPC’s longstanding 1976 *In re Fontana* precedent, 2 FPPC Ops. 162, the initial campaign statement must include  
contributions received and expenditures made in anticipation of the measure being placed on the ballot, even if such contributions  
and expenditures were made before the governing board actually placed the proposal on the ballot. Therefore, many elements of  
the BART Clifford Moss political consulting contract concerning Measure RR, if not the whole contract amount, must be  
included on FPPC campaign finance disclosure reports concerning Measure RR. Second, Clifford Moss, LLC arguably is a  
“common consultant” between BART and the Yes on RR campaign, as defined by FPPC Regulation 18225.7(d)(3). Clifford  
Moss apparently provided both BART and the Yes on RR campaign with “professional services related to campaign or

1 fundraising strategy for the current campaign.” As such, there is a presumption that the expenditures were coordinated or made  
2 at the behest of the Yes on RR campaign or BART. Under FPPC Regulation 18225.7(g), BART’s political consulting contract  
3 with Clifford Moss arguably is a “contribution” to the Yes on RR campaign as it arguably is a coordinated expenditure.

4 BART has not been forthcoming with Complainant concerning the existence of a contract with Clifford Moss, LLC.  
5 Complainant submitted a Public Records Act request to BART on December 11, 2018 requesting confirmation of the existence of  
6 this contract, with a note that Complainant wished to use this information in this public comment for the FPPC hearing on  
7 December 20<sup>th</sup>. Complainant was promised that some material would be provided by December 19<sup>th</sup>, but that has not yet arrived  
8 as of 5:00 p.m. on December 19<sup>th</sup> as this is document is being filed.

9 Complainant calls for the Commission to either remand the Clifford Moss BART consulting contract matter back to the  
10 Enforcement Division for further investigation and explanation or to an administrative hearing.

11  
12 III. Commissioners Should Remand Matter Back to FPPC Enforcement Division or to Administrative Hearing  
13 for Further Investigation and Explanation About Allegations Concerning BART News Conference of June 9,  
14 2016.

15 Third, the draft stipulation says nothing resolving Complainant’s October 28, 2016 complaint concerning the June 9,  
16 2016 BART-sponsored news conference promoting passage of Measure RR, held after the BART board had placed the measure  
17 on the November 2016 ballot. As Complainant’s October 28, 2016 complaint explained, there is substantial legal authority for  
18 the argument that a public entity may not engage in such activity after its governing body has placed a measure on the ballot. Yet  
19 the draft stipulation is completely silent about the legal propriety of this event or the requirement that BART report such  
20 expenditures as campaign activity (which it clearly was). If any BART consultant (e.g., Clifford Moss, LLC) played any role in  
21 developing or producing this news conference, it raises questions as to when the developing or producing occurred. Any work on  
22 this news conference conducted before the BART board placed the measure on the ballot arguably is a reportable campaign  
23 expenditure under the 1976 FPPC *Fontana* precedent. Commissioners should refer this matter back to the Enforcement Division  
24 for more investigation and explanation or to an administrative hearing.

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1 IV. Commissioners Should Remand Matter Back to FPPC Enforcement Division or to Administrative Hearing  
2 for Further Investigation and Explanation About Allegations Concerning Golden State Warriors/Draymond  
3 Green Video.

4 Fourth, the draft stipulation says nothing resolving Complainant's October 31, 2016 complaint concerning the Golden  
5 State Warriors organization's role in the Measure RR campaign. Reporter Lyanne Melendez of KGO-TV in San Francisco  
6 inquired about this issue in a November 1, 2016 report that is summarized on the KGO-TV website:

7 When asked to explain the similarities [between the Draymond Green video and Yes on RR television  
8 advertisements], the Warriors told ABC7 News, "That's for BART to comment." ABC7 News contacted  
9 BART who said they had nothing to do with it. "You're saying that they produced the video, they paid for the  
10 video and they put it out there and you just took it," asked the reporter. "Yeah, we work with them really  
11 closely, so we asked for a copy, and they gave us a copy," explained Nicholas Josefowitz, BART director for  
12 District 8.

13 If this account is correct, then the FPPC should have investigated the Golden State Warriors organization for a possible  
14 independent expenditure or in-kind contribution to the Yes on RR campaign. Complainant called for this on page 6 of his  
15 October 31, 2016 complaint. The Warriors organization contributed \$5,000 to the Yes on RR campaign on October 4, 2016; no  
16 in-kind contribution or independent expenditure has been reported. Also open is the issue of whether or not Draymond Green  
17 was a paid spokesperson (through exchange of promotional consideration, if not cash) subject to Form 511 filing. The Draymond  
18 Green video apparently was shown on sporting arena video monitors to a captive audience, which makes it akin to a television  
19 spot advertisement (there likely is an imputed value based on charges for similar advertising via that medium). The Draymond  
20 Green used similar taglines/catchphrases as Yes on RR television advertising, as KGO-TV and other television stations illustrated  
21 in news reports. See, e.g., <https://abc7news.com/politics/warriors-draymond-green-video-has-bart-in-political-trouble/1584709/>.  
22 This suggests direct cooperation with either the Yes on RR campaign or BART in its production. It's possible that dual  
23 BART/Yes on RR campaign consultant Clifford Moss, LLC played a role.

24 One could argue that the Warriors/Draymond Green video is entitled to the "republication" presumption of a  
25 coordinated/behested expenditure under FPPC Regulation 18225.7. "The communication relating to a clearly identified candidate  
26 or ballot measure replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication, including  
27 video footage, designed, produced, paid for or distributed by the candidate or committee." BART admits to republishing the  
28 Draymond Green video on its website. It arguably includes a "clearly identified ballot measure" due to use of three  
taglines/catchphrases included in Yes on RR television spots. Mr. Green says, "BART needs to stay safe and reliable ...," which  
matches the Yes on RR campaign committee name and the "disciplined refrain: Keep BART safe and reliable" that the Clifford  
Moss refers to in its marketing materials (attached Exhibit A).

The Commission should refer these issues back to the Enforcement Division and/or hold an administrative hearing.

1 V. Commissioners Should Remand Matter Back to FPPC Enforcement Division or to Administrative Hearing  
2 for Further Investigation and Explanation About Allegations Concerning Apparent Misuse of BART Public  
3 Address System and the Monetary Value of BART Social Media Lists.

4 Fifth, the draft stipulation did not address Complainant's concerns expressed in his complaint of July 4, 2017 about  
5 recorded announcements played over the BART public address system during the weeks leading up to the Measure RR election.  
6 Those arguably are the functional equivalent of radio advertising spots. Although such use of the BART public address system is  
7 rare (it is generally used to announce stations with elevator closures and other BART operational information rather than  
8 promotion), the imputed value could be determined from the value that BART and sponsors place on similar promotional  
9 consideration that BART provides to businesses in its "BARTable" program. Complainant also raised in his complaints, as did  
10 State Senate Steve Glazer, the monetary value of BART's social media lists as they effort involved in creating them might  
11 reportable. Complainant requests that the Commission either refer this issue to the Enforcement Division for further  
12 investigation or that an administrative hearing be held.

13 VI. Commissioners Should Impose a Penalty Near the Maximum End of Range (\$33,000).

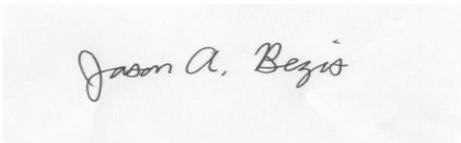
14  
15 Sixth, if Commissioners do not refer the matter back to the Enforcement Division for more investigation and at this  
16 time impose a penalty, then Complainant recommends imposition of a penalty near the maximum end of the range. As discussed  
17 above, Yes on RR campaign manager Clifford Moss, LLC also was a BART political consultant for Measure RR. The absence  
18 of any discussion about the dual role of Clifford Moss, LLC in the draft stipulation suggests an intention to conceal, deceive or  
19 mislead about any role that it played in misuse of BART resources to aid the Yes on RR campaign. The violation very likely was  
20 "deliberate" because a thorough investigation might show that BART political consultant/Yes on RR campaign manager Clifford  
21 Moss, LLC had a role in misuse of BART resources. Complainant also believes that a thorough investigation would show that  
22 BART's violation was part of a pattern; BART acted more responsibly than other public entities during the 2014 Alameda  
23 County Measure BB sales tax increase campaign, but it still misused BART resources to advocate for the measure. Despite the  
24 draft stipulation's contention at the bottom of page nine concerning "the voluntary filing of the delinquent campaign statement,"  
25 the Alameda County Registrar of Voters' office last week told Complainant that no such document had been filed.

26 The draft stipulation characterizes as "fairly small" the \$7,791.66 so far identified as BART independent expenditures  
27 (page 11, line 7). Filings at the Alameda County Registrar of Voters office show that Yes on RR spent \$2.3 million, which  
28 translates into nearly \$2.32 per vote. The No on RR campaign was so small that it was not required to report its finances.

1 Assuming that it spent \$999, it spent \$0.002 (two-tenths of one cent) per vote. The \$7,781,66 amount that BART so far admits to  
2 spending would have been a large sum of money to the No on RR campaign (which essentially spent zero dollars).

3 As an aggravating factor justifying a higher penalty, Complainant stresses that he spent an entire day at the February  
4 11, 2016 BART board meeting informing the board about allegations of past misuse of BART resources to aid the 2014 Alameda  
5 County Measure BB campaign and warning the board and BART administrators and employees about his concerns about the  
6 BART board engaging in misuse of BART resources to support the upcoming bond measure, as the meeting video would show.  
7 Attached Exhibit B is a copy of Complainant's letter of February 11, 2016 that he presented to the BART board at that meeting.  
8 Attached Exhibit C is the BART board meeting minutes for February 11, 2016. Note that the minutes show that Complainant  
9 spoke frequently as that meeting, such as, "Director Raburn brought the matter of Draft Bond Expenditure Program 2016 before  
10 the Board. ...The following individuals addressed the Board. ... Jason Bezis." As Complainant recalls, no BART director or  
11 BART administrator addressed his concerns during or after the meeting. BART was, at best, willfully blind to concerns about  
12 misuse of public resources to engage in Measure RR campaign activity or, at worst, intentionally engaging in illegal campaign  
13 activity to support passage of Measure RR.

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15 Respectfully submitted,

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18 JASON A. BEZIS, December 19, 2018  
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20 Attachments: Exhibits A through C

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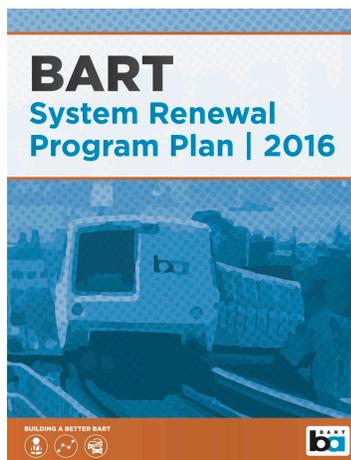
# CliffordMoss.

POLITICAL STRATEGY | COMMUNICATIONS | PUBLIC AFFAIRS

## KEEPING BART SAFE & RELIABLE

### Bay Area Rapid Transit's (BART) Measure RR Success Story (2016)

When BART began service in 1972, it was a leap forward in rail engineering, pioneering the use of space-age materials, autonomous signaling, and at the time, the world's longest underwater tunnel. Decades later, that once revolutionary infrastructure was worn out; phantom electrical issues, faulty signaling switches, and worn out rails were causing delays nearly every day throughout the system. Something had to be done.



*BART created a thorough plan, with stakeholder input, detailing how funds would be used.*

As part of a massive effort to evaluate the state of every single capital asset, BART management calculated over \$9 billion in unmet “fix-it-first” repair needs, but had only found sources for half of that need. Management and the BART Board agreed; they would need to go to the 2 million voters in their three-county district to approve a bond.

Enter CliffordMoss in 2015. We joined BART to help guide a deliberate process toward placing a measure on the ballot. The foundation of our work was a belief that people support what they help create. BART invited key stakeholders and the public, ranging from transit advocates to car commuters and from the business community to social justice groups, to join the conversation. The process included surveys, an in-depth expenditure plan, and 315 community presentations and stakeholder meetings. CliffordMoss

worked with a qualified pollster to test how voters perceived bond measures of various sizes. Based on the intersection of interests between what the District needed and what local voters would support, BART placed a \$3.5 billion bond measure on the November 2016 ballot.

With Measure RR officially on the ballot, the campaign phase began. With a three-county service area covering both dense urban regions (San Francisco, Oakland and Berkeley) as well as many suburban and rural areas, the YES on RR campaign needed to convince two key constituencies—people who rode BART regularly and people who lived far from any station—that a safe and reliable BART system was worth their investment and their vote.



*The YES on RR logo was featured in every targeted message to voters.*



Television and online ads for Measure RR included a transportation safety engineer to stress the importance of keeping BART safe and reliable.

Adding to the complexity of the election environment was a fierce opposition campaign spearheaded by one of the region’s state senators and the editorial board of one of the major local newspapers. It was vital that the YES on RR message rise above the noise of the opposition. Whether voters were reached by direct mail; a phone call or text message; a door-to-door volunteer; a TV, radio or newspaper ad; a yard sign or in-station BART ad; or an online banner or video ad, every message targeted to voters included the same disciplined refrain: **Keep BART safe and reliable.**

A strong field program staffed four offices around the Bay Area for nightly phone banks and weekly walks, including one office focused on Chinese-language calls. In addition, the YES on RR campaign partnered with local measures and candidates to incorporate their volunteers into the RR campaign for a combined effort.



YES on RR campaign volunteers were in the community six days a week, talking to thousands of voters on the phone and door-to-door.

Leaving nothing to chance, in the final four days leading up to Election Day, YES on RR coordinated with six other campaigns across eight offices to unleash a volunteer army that made thousands of reminder phone calls to supporters and left tens of thousands of reminders on voters’ doorknobs. Happily, on Election Night, Measure RR passed with 70.5% support, guaranteeing the funds BART needed to modernize and restore reliability.

# CliffordMoss.

POLITICAL STRATEGY | COMMUNICATIONS | PUBLIC AFFAIRS

[www.cliffordmoss.com](http://www.cliffordmoss.com)

Tom@cliffordmoss.com or Bonnie@cliffordmoss.com

(510) 542-9783

5111 Telegraph Ave. #307, Oakland, CA 94609

**JASON A. BEZIS**

3661-B Mosswood Drive Lafayette, CA 94549-3509  
(925) 962-9643 jbezis@yahoo.com

February 11, 2016

San Francisco Bay Area Rapid Transit District Board of Directors & District Secretary  
Oakland, California HAND DELIVERED AT FEBRUARY 11, 2016 BOARD MEETING  
Re: BART Board Meeting, February 11, 2016, Item 3: Corruption at ACTC: "BB" Election

To the BART Board of Directors & Secretary: (paper copy presented to all nine directors)

The Alameda County Transportation Commission (ACTC), which administers the Measure B and Measure BB sales tax programs, is a creation of the BART Board via a 2010 joint powers agreement. A BART director, currently Rebecca Saltzman, sits on ACTC's governing board.

ACTC is engaged in corrupt practices, as I allege in the attached packet containing materials that I submitted to ACTC meetings on 1/11/16, 1/28/16 and 2/08/16. In cooperation with BART, ACTC illegally spent public funds to conceive, design, publish and distribute campaign literature ("Consider the Future" series) that promoted passage in November 2014 of the Measure BB half-percent sales tax increase. Such expenditure of public funds is impermissible under three California Supreme Court opinions, *Stanson v. Mott* (1976), *Keller v. State Bar* (1989) and *Vargas v. Salinas* (2009), because the literature is not a "fair presentation of the facts" of Measure BB and has the "style, tenor and timing" (individually and collectively) of campaign material (as opposed to permissible "informational" material). ACTC illegally spent \$50,000 of public funds to hire Yes on BB campaign manager Clifford Moss LLC to engage in "coalition building" services, contravening the 1988 *League of Women Voters* court opinion and Attorney General Opinions #04-211 and #13-304. The packet further explains and substantiates my main concerns.

The BART District is hereby informed, by and through your Board, that it is no longer reasonable for the District and any of your agents, especially your representatives serving on the ACTC governing board, to rely upon legal advice from ACTC general counsel Wendel, Rosen, Black & Dean (Wendel Rosen) concerning the drafting and adoption of Measure BB. During the time that Measure BB was drafted and passed through the electoral process (2013-14), Wendel Rosen simultaneously served as legal counsel to the Yes on BB political campaign committee (see Exhibits B, C and D in packet). This concurrent representation of a public entity and a closely associated political campaign is a potential, if not actual, conflict of interest under California Rule of Professional Conduct (for attorneys) No. 3-310. On 1/27/16, ACTC and Wendel Rosen admitted that no "informed written consent" exists that might permit such an arrangement (Exh. AA). Absent such "informed written consent," I believe that the Wendel Rosen firm is barred from further legal representation of ACTC under the rule of "vicarious disqualification" of law firms. I request that your Board undertake all appropriate remedial action forthwith, including direction to BART's representative on the ACTC governing board to explain her "no" vote on a substitute motion to stop the awarding of a \$1.2 million, no-bid services contract to Wendel Rosen at ACTC's 1/28/16 meeting (Item 6.8). Director Saltzman should be removed from the ACTC Board.

Sincerely,

/s/ on original – Jason A. Bezis

JASON A. BEZIS (Attached: BB fact sheet; 1/11/16 packet to ACTC Watchdog Commission; 1/28/16 letter to ACTC governing board; 2/8/16 letter to ACTC Finance & Admin. Committee)

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**  
300 Lakeside Drive, P.O. Box 12688, Oakland, CA 94604-2688

Board of Directors  
Minutes of the 1,753rd Meeting  
February 11, 2016

A regular meeting of the Board of Directors was held February 11, 2016, convening at 9:03 a.m. in the Board Room, 344 20<sup>th</sup> Street, Oakland, California. President Radulovich presided; Kenneth A. Duron, District Secretary.

Directors present: Directors Blalock, Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich.

Absent: None.

President Radulovich announced that the order of order of agenda items would be changed; that Items 5-A, Escalator Status Report, and 5-B, Station Maintenance Standards, would be continued to a future meeting; and that Item 2-F, Award of Invitation for Bid No. 8982, would be removed from Consent Calendar at the request of a member of the public.

Director Mallett requested that Approval of the Minutes of the Regular Meeting of January 14, 2016, be removed from Consent Calendar, as he was not present and would abstain from approval.

Mr. Jason Bezis addressed the Board on Item 2-F.

Item 2-F was replaced onto Consent Calendar.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meetings of January 28, 2016 (Regular); January 28, 2016 (Special); and February 4, 2016 (Special).
2. Resolution Authorizing the Execution of a Project Application for the Fiscal Year 2015-16 Low Carbon Transit Operations Program.
3. Award of Contract No. 15NU-110, Station Access, Parking, Path, and Wayfinding Improvements North Concord and Pittsburg/Bay Point Stations.
4. Award of Invitation for Bid No. 8974, Truck, Track Crew.
5. Award of Invitation for Bid No. 8978, Lining, Brake, Bonded Assembly.
6. Award of Invitation for Bid No. 8982, Motor, Condenser Fan A2/B2.
7. Award of Invitation for Bid No. 8986, Truck, Weld, Heavy Duty.

8. Award of Invitation for Bid No. 8987, Regulators, Ballast, 66" Wide Gauge.
9. Award of Invitation for Bid No. 8988, Turnouts, Concrete, Tie, #10.

Director Raburn made the following motions as a unit. Director Saltzman seconded the motions, which carried by unanimous electronic vote. Ayes - 9: Directors Blalock, Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes - 0.

1. That the Minutes of the Meetings of January 28, 2016 (Regular); January 28, 2016 (Special); and February 4, 2016 (Special), be approved.
2. Adoption of Resolution No. 5309, In the Matter of Authorizing the Execution of a Project Application for the Fiscal Year 2015-2016 Low Carbon Transit Operations Program Additional Rail Cars Project.
3. That the General Manager be authorized to award Contract No. 15NU-110, Station Access, Parking, Path and Wayfinding Improvements, North Concord and Pittsburg/Bay Point, to Sposeto Engineering, Inc., for the Bid price of \$1,331,500.00, pursuant to notification to be issued by the General Manager, and subject to the District's protest procedures and Federal Transit Administration's requirements related to protest procedures.
4. That the General Manager be authorized to award Invitation for Bid No. 8974, for the procurement of Truck, Track Crew, four (4) each, to Golden Gate Truck Center, Oakland, California, in the amount of \$1,267,682.90, including all applicable sales tax, pursuant to notification to be issued by the General Manager.
5. That the General Manager be authorized to award Invitation for Bid No. 8978, an estimated quantity contract, for Lining, Brake, Bonded Assembly, to Carisle Brake & Friction, for the bid price of \$882,667.20, including sales tax, pursuant to notification to be issued by the General Manager, and subject to the District's protest procedures.
6. That the General Manager be authorized to award Invitation for Bid No. 8982, for the procurement of Motor, Condenser Fan A2/B2, to Dahl-Beck Electric, for the bid price of \$542,850.00, including all applicable sales tax, pursuant to notification to be issued by the General Manager, and subject to the District's protest procedures.
7. That the General Manager be authorized to award Invitation for Bid No. 8986, for the procurement of Truck, Weld, Heavy Duty, to Golden Gate Truck Center, Oakland, California, in the amount of \$1,436,720.24, including applicable sales tax, pursuant to notification to be issued by the General Manager.
8. That the General Manager be authorized to award Invitation for Bid No. 8987, for the procurement of Regulators, Ballast 66" Wide Gauge,

two (2) each, to Knox Kershaw Inc., Montgomery, Alabama, in the amount of \$978,720.60, including all applicable sales tax, pursuant to notification to be issued by the General Manager, subject to compliance with the District's protest procedures and Federal Transit Administration's requirements related to protests.

9. That the General Manager be authorized to award Invitation for Bid No. 8988, for the procurement of 5 turnouts, to Voestalpine Nortrak Inc., of Cheyenne, Wyoming, in the amount of \$873,508.87, including sales tax, pursuant to notification by the General Manager, subject to compliance with the District's protest procedures and Federal Transit Administration's requirements related to protests.

(The foregoing six motions were made on the basis of analysis by the staff and certification by the Controller/Treasurer that funds are available for this purpose.)

President Radulovich brought the matter of Approval of the Minutes of January 14, 2016, before the Board. Director Blalock moved that the Minutes of the Meeting of January 14, 2016, be approved. Director Saltzman seconded the motion, which carried by electronic vote. Ayes - 8: Directors Blalock, Josefowitz, Keller, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes - 0. Abstain - 1: Director Mallett.

President Radulovich called for Public Comment.  
Jason Bezis addressed the Board.

Director Saltzman, Chairperson of the Administration Committee, brought the matter of BART Major Projects Stabilization Agreement before the Board. Ms. Carol Isen, Chief Employee Relations Officer, presented the item.

The following individuals addressed the Board.

Andrew Slivka  
Andreas Cluver  
Dante Johnson  
Jason Bezis  
Art Shanks

The item was discussed.

Director Saltzman brought the matter of Warm Springs/ South Fremont BART Station Parking Fees before the Board. Director Raburn moved adoption of Resolution No. 5310, In the Matter of Adopting Parking Fees for the BART Warm Springs/South Fremont Station. Director Blalock seconded the motion, which carried by unanimous electronic vote. Ayes - 9: Directors Blalock, Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes - 0.

Director Saltzman brought the matter of Parking Control Fees at Coliseum Station during Events at O.Co Coliseum and Oracle Arena before the Board. Director Blalock moved adoption of Resolution No. 5311, In the Matter of Adopting Parking Control Fees for the Coliseum BART Station. Director Raburn seconded the motion, which carried by unanimous electronic vote. Ayes - 9: Directors Blalock, Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes - 0.

Director Saltzman brought the matter of Modifications to Parking Citation Fines at BART District Parking Facilities before the Board. Mr. Bob Franklin, Department Manager, Customer Access, presented the item. Director Saltzman requested that increasing the daily fee parking violation fine be delayed until the new parking tracking system was implemented.

Director Mallett exited the Meeting.

Director Blalock moved adoption of Resolution No. 5312, In the Matter Amending Board Resolution No. 2495 (as amended by subsequent Resolutions of the Board of Directors) to Establish Citation Amounts Applicable to Vehicle Parking in District Parking Facilities and to Prohibit the Display of a Fraudulent or Falsified Parking Permit, and that increasing the daily fee parking violation fine be delayed until the new parking tracking system was implemented. President Radulovich seconded the motion, which carried by unanimous electronic vote. Ayes - 8: Directors Blalock, Josefowitz, Keller, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes – 0. Absent – 1: Director Mallett.

Director Keller exited the Meeting.

Director Mallett re-entered the Meeting.

Director McPartland, Chairperson of the Engineering and Operations Committee, brought the matter of Quarterly Performance Report, Second Quarter Fiscal Year 2016 - Service Performance Review, before the Board. Mr. Paul Oversier, Assistant General Manager – Operations, presented the report and noted the District’s performance during the recent National Football League SuperBowl 50 Events. The report was discussed.

Director Raburn, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of Warm Springs/South Fremont BART Station West Side Access Bridge before the Board. Mr. Robert Powers, Assistant General Manager, Planning, Development, and Construction; and Mr. John Rennels, Principal Property Development Officer, presented the item. The item was discussed.

Ms. Jessica von Borck, Assistant City Manager, City of Fremont, addressed the Board.

Director Blalock moved that the General Manager or her designee be authorized to execute an Agreement with the City of Fremont in connection with the Design, Funding, Construction, Ownership, Operation and Maintenance of the Warm Springs/South Fremont BART West Side Access Bridge and Plaza Project. Discussion continued. Director McPartland seconded the motion, which carried by unanimous electronic vote. Ayes - 8: Directors Blalock, Josefowitz, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes – 0. Absent – 1: Director Keller.

Director Raburn brought the matter of 2016 State and Federal Legislative Goals before the Board. Mr. Roddrick Lee, Department Manager, Government and Community Relations, Mr. Paul Fadelli, Legislative Officer, and Mr. Tim Schott, Schott and Lites, presented the District’s 2016 State Legislative Advocacy Program. The item was discussed.

Jason Bezis addressed the Board.

Director Saltzman moved that the Board approve the 2016 state advocacy program as presented by staff. Director McPartland seconded the motion, which carried by unanimous electronic vote. Ayes - 8: Directors Blalock, Josefowitz, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes – 0. Absent – 1: Director Keller.

Mr. Lee, Mr. Fadelli, and Ms. Emily Bacque, CJ Lake, LLC, presented District’s 2016 Federal Legislative Advocacy Program. The item was discussed. Director Saltzman moved that the Board approve the 2016 federal advocacy program as presented by staff. Director Murray seconded the motion, which carried by unanimous electronic vote. Ayes - 8: Directors Blalock, Josefowitz, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes – 0. Absent – 1: Director Keller.

Director Raburn brought the matter of Development Opportunities at Balboa Park Station before the Board. Mr. Sean Brooks, Department Manager, Real Estate and Property Development, and Mr. Tim Chan, Manager of Planning, presented the item. Ms. Teresa Yanga and Mr. Kevin Kitchingham, from the San Francisco Mayor’s Office of Housing & Community Development, addressed the Board.

Jason Bezis addressed the Board.

The item was discussed.

The Board Meeting recessed at 12:40 p.m.

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The Board Meeting reconvened in open session at 1:16 p.m.

Directors present: Directors Blalock, McPartland, Murray, Raburn, Saltzman, and Radulovich.

Absent: None. Directors Josefowitz, Keller, and Mallett entered the Meeting later.

Director Raburn brought the matter of 2016 Regional and Local Funding Opportunities and Efforts before the Board.

Directors Josefowitz and Mallett entered the Meeting.

Mr. Michael Tanner, Manager, Grant Development and Compliance, and Ms. Deidre Heitman, Manager, Special Projects, presented the item.

Director Keller entered the Meeting.

The item was discussed.

Jason Bezis addressed the Board.

Director Raburn brought the matter of Draft Bond Expenditure Program 2016 before the Board. General Manager Grace Crunican, Ms. Tamar Allen, Chief Maintenance and Engineering

Officer, Mr. Robert Mitroff, Chief Planning and Development Officer, and Ms. Rose Poblete, Interim Controller/Treasurer, presented the item. The item was discussed.

The following individuals addressed the Board.

Joel Ramos

Jason Bezis

President Radulovich called for the General Manager's Report.

Ms. Crunican reported on steps she had taken and activities and meetings she had participated in, reiterating the excellent performance by District employees and the system during SuperBowl week.

Mr. David Kutrosky, Managing Director, Capitol Corridor, gave a brief presentation on the draft agenda for the Capitol Corridor Joint Powers Board Meeting of February 17, 2016.

President Radulovich brought the matter of Policy Regarding Divestment from Investments in Thermal Coal before the Board. Director Saltzman requested the term "thermal coal" be replaced by "fossil fuels." Director Raburn moved adoption of the policy as presented. Director Blalock seconded the motion, which carried by unanimous electronic vote. Ayes - 9: Directors Blalock, Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes - 0.

President Radulovich called for Board Member Reports.

Director McPartland reported he had gone to Washington, DC, to give a presentation on the District's earthquake early warning system at the White House, and that he attended regularly scheduled underground safety drills.

Director Blalock reported he had attended the San Joaquin Joint Powers Authority meeting in Modesto.

Director Raburn reported he had attended the League of Women Voters Bay Area Transportation Day event and BART's Lunar New Year celebration.

Jason Bezis addressed the Board.

President Radulovich called for Roll Call for Introductions and In Memoriam.

Director Saltzman requested consideration of implementation of a system like See-Click-Fix in the budget process. Director Josefowitz seconded the request, and Director Raburn was a third endorsement of the request.

Director McPartland requested that staff conduct a survey of rail transit agencies similar to BART to determine information on facilities they provide to public safety agencies for incident command post operations; and that once completed the information be shared with the Fire Liaison Committee, and if appropriate, solicit recommendations. Director Raburn seconded the request.

Jason Bezis addressed the Board.

Director Mallett requested a peer review how other rail transit systems provide and communicate connections to/from stations with an out of service platform elevator, vet ideas with BART Accessibility Task force, and summarize practices/options for BART. Director Keller seconded the request.

Jason Bezis addressed the Board.

President Radulovich announced that the Board would enter into closed session under Items 10-A, 10-B, 10-C (Conference with Legal Counsel – Existing Litigation), Item 10-D (Public Employee Employment/ Appointment), and Item 10-E (Conference with Negotiators) of the regular Meeting agenda, and that the Board would reconvene in open session at the conclusion of that closed session.

The Board Meeting recessed at 3:52 p.m.

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The Board Meeting reconvened in closed session at 3:58 p.m.

Directors present: Directors Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich.

Absent: Director Blalock. Director Josefowitz entered the Meeting later.

Director Josefowitz entered the Meeting.

The Board Meeting recessed at 5:16 p.m.

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The Board Meeting reconvened in open session at 5:17 p.m.

Directors present: Directors Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich.

Absent: Director Blalock.

President Radulovich announced that the Board had concluded its closed session on Items 10-A through 10-E and that there were no announcements to be made on Items 10-A, 10-B, and 10-C.

President Radulovich announced that on the matter of Item 10-D, the Board had voted to appoint Russell Bloom as Interim Independent Police Auditor, effective Monday, February 15, 2016. Ayes - 8: Directors Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes – 0. Absent – 1: Director Blalock.

Mr. Bloom addressed the Board.

President Radulovich brought the matter of Compensation and Benefits for Interim Independent Police Auditor before the Board. Director Raburn moved that the base salary of Russell Bloom while serving as Interim Independent Police Auditor shall be at the annual rate of \$125,502.41; and that during this appointment, the Interim Independent Police Auditor's benefits will be those applicable to non-represented manager, generally. Director Keller seconded the motion, which carried by unanimous electronic vote. Ayes - 8: Directors Josefowitz, Keller, Mallett, McPartland, Murray, Raburn, Saltzman, and Radulovich. Noes – 0. Absent – 1: Director Blalock.

The Meeting was adjourned at 5:20 p.m.

Kenneth A. Duron  
District Secretary