From:	Roland Lebrun
To:	MTC-ABAG Info
Cc:	BART Board; Kimberly Ward
Subject:	MTC Full Board item 9a SB1 amendment
Date:	Tuesday, October 22, 2024 3:45:55 PM
Attachments:	MTC Full Board Item 9a SB1 amendments.pdf BART Silicon Valley Extension Alternate Tunneling Strategy (Concept C).pdf NY State Assembly Bill 2019-A8126A.pdf

External Email

Dear Chair Pedroza and Commissioners,

The intent of the attached letter is to respectfully request that the Commission consider rejecting VTA's request for $75M in SCCP and $25M in LPP-C for the following reasons:

- VTA refused to consider cost-effective design alternatives (**$2.5B+ saving**) for the BART to Silicon Valley Extension
- The project does not have adequate financial oversight
- VTA failed to address multiple issues raised by the California State Auditor (including systemic governance failures)

The letter concludes with a recommendation to refer the matter to the Legislation Committee to introduce legislation modelled after New York's Assembly Bill 2019-A8126A (attached for your convenience) to establish an Authority capable of delivering the BART extension to Silicon Valley and an integrated Diridon station designed to deliver seamless multimodal transfers on time and on budget.

Respectfully presented for your consideration.

Roland Lebrun

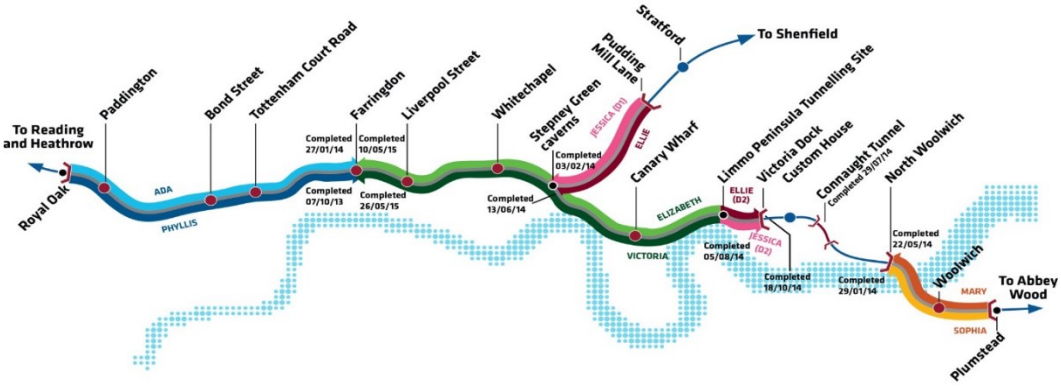
Dear Chair Pedroza and Commissioners,

The intent of this letter is to respectfully request that the Commission consider rejecting VTA's request for $75M in SCCP and $25M in (LPP-C) for the following reasons:

- VTA refused to consider cost-effective design alternatives (**$2.5B+ saving**)
- The project does not have adequate financial oversight
- VTA failed to consider applying for Build America Better (RRIF/TIFIA) loans
- VTA failed to address multiple issues flagged by the California State Auditor (including systemic governance failures)

VTA refused to consider cost-effective design alternatives ($2.5B+ saving)

VTA ignored a proposal to significantly reduce costs by following the example of Crossrail which completed 13 miles of tunneling under Central London in under 3 years by launching a total of 8 TBMs simultaneously.



- VTA's failure to convert BSVII portals from single to twin bores resulted in a "cost explosion" (VTA BSVII Oversight Committee Chair Pat Burt's exact words) of **$400M per portal (total $800M)** over and above the $12.75B budget.
  "*PMOC is concerned with the increase of the cost of the Early Work Package 3 (West Portal/TBM Launch Structure) from $140M estimate in December 2022 to $535M in August 2024 and the impact of the cost increases on the project budget including a major draw from the budget contingency*"
  "PMOC is concerned that the order of magnitude cost saving ideas VTA is considering are not adequate to address the BSVII program funding gap and to allow adequate cost and schedule contingencies" (see "Major Issues and/or Concerns" on page iv).

- The resulting reduction in project timeline (from 2039 to 2035) would have resulted in an **additional $2B saving** at the current burn rate of $40M/month.

The project does not have adequate financial oversight

- VTA have failed to post any FTA Financial Management Oversight Committee (FMOC) reports to date.

- The September 2024 FTA Program Management Oversight (PMOC) report (Table 1 Core Accountability Items on page v) shows (note 1) that the $3.119B in contingency "*Includes $1.657B of Unallocated Contingency*", implying that **the project has already accumulated $1.462B** (nearly 50%) **in approved change orders before construction started** but none of these change orders were ever presented to VTA's Oversight Committee (let alone the full Board) for approval.

VTA failed to consider applying for Build America Better (RRIF/TIFIA) loans

VTA allocated $172.5M for new railcars they will not need for at least 10 years.

BSVII Railcar Procurement - Costs

#	Description	Cost Basis	Unit Cost	Total
1	Production Cost (E-Cars)*	Fixed**	$2,270,000	$108,960,000
2	Spare Parts*	Allowance**	$153,000	$7,344,000
3	Tariff*	Allowance**	$21,850	$1,048,800
4	Other Production and Contract Related Costs	Allowance**	$42,514	$2,040,678
5	Sales Tax	Allowance	10.65%	$12,714,765
6	Management Costs***	Allowance	N/A	$8,144,407
7	Escalation (including sales tax)	Allowance	N/A	$28,556,835
8	Contingency	Allowance	2.17%	$3,747,003
			Total	**$172,556,488**

**Source: BART's Contract No. 40FD-110, BAFO Price Summary Form*
*** Per Unit (48)*
**** 2. Includes BART staff, consultant, and other direct costs.*

6

VTA failed to consider BART's strategy to free up funds spent on new railcars

TIFIA Loan

- Initial Loan Principal Amount $150M
- Not to Exceed Loan Principal Amount $544.6M
- Reimburse BART funds spent on Rail Car Replacement Project
- Use freed up BART funds for BART Police Department Headquarters estimated construction cost of $146.95M
- Project finance strategy minimizes budget and schedule risk

1

VTA failed to address multiple issues flagged by the California State Auditor June 2024 Audit Report including systemic governance failures

- Project Management (page 61)
    - *"VTA does not have procedures for cost estimation."*
    - *"VTA does not have written procedures related to identifying project operation and maintenance costs."*
- Financial Planning and Oversight (page 62)
    - *"VTA stopped holding meetings between its fiscal team and project staff."*
    - ***"VTA does not compare its capital project costs to its original estimates or report variances from the original estimates to the board."***

Recommendation

MTC should consider directing the Legislation Committee to introduce legislation modelled after New York's Gateway Development Commission Act (attached for your convenience) which, when enacted, would establish a Commission responsible for delivering the BART to Silicon Valley extension including an integrated Diridon station within the current $12.75B funding envelope.

Respectfully presented for your consideration.

Roland Lebrun

Assembly Bill A8126A

SIGNED BY GOVERNOR

2019-2020 Legislative Session

Establishes the "Gateway Development Commission Act"

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Signed By Governor

ACTIONS

VIEW ACTIONS (18)

VOTES

VIEW VOTES

BILL AMENDMENTS

A (ACTIVE)

CO-SPONSORS

Steven Otis

Establishes the "Gateway Development Commission Act" which enables such commission to facilitate a passenger rail project between Penn Station, Newark, New Jersey and Penn Station, New York, New York.

2019-A8126A (ACTIVE) - BILL TEXT DOWNLOAD PDF

STATE OF NEW YORK

8126--A

2019-2020 Regular Sessions

IN ASSEMBLY

June 3, 2019

Introduced by M. of A. PAULIN, OTIS -- read once and referred to the Committee on Corporations, Authorities and Commissions -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT establishing the "Gateway Development Commission Act"; to amend the transportation law, in relation to creating the gateway development commission; and providing for the repeal of such provision upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "Gateway Development Commission Act".

§ 2. Gateway Development Commission. 1. Legislative findings and intent. (a) The Legislature finds and declares that: the state of New Jersey and the state of New York and their respective citizens share a common concern to preserve the functionality and strengthen the resiliency of long-distance and commuter rail infrastructure between New

in prolonged service disruptions that would severely damage the econo-

projects necessary to create passenger rail capacity under the Hudson River, rehabilitate passenger rail infrastructure, maintain current levels of long-distance and commuter rail service between the two states and provide additional reliability, safety and security; the citizens of both states will share the benefits of expanded capacity and rehabilitated passenger rail infrastructure between the two states; and there has been a long history of cooperation among state and local governmental entities, Amtrak, and various private organizations and individuals in the two states to ensure the preservation of a variety of passenger rail service options.

(b) The legislature therefore determines that there is a need to endorse and formalize that bi-state cooperative effort to help ensure that the functionality of long-distance and commuter rail infrastructure between New Jersey and New York and thence throughout the Northeast Corridor, is preserved and maintained for the benefit of the economy of New Jersey and New York and for the well-being of present and future generations of citizens in both states; and that the creation of a bi-state commission that shall be a body corporate and politic established by the state of New Jersey and the state of New York, acting in the public interest and exercising essential governmental functions, is an appropriate means to accomplish these very important goals and is not intended to impair, limit, diminish, or otherwise affect any right, power, or jurisdiction of the United States of America or any department, branch, agency, court, bureau, or other instrumentality thereof with respect to any matter, or grant or confer any right or power on such bi-state commission, or any officer or trustee thereof, to regulate commerce between the states.

(c) It is the intention of the legislature that the commission so created constitute an institution which has been established by the states to effectuate a public purpose and is therefore eligible to apply for financial assistance from the United States government, including the agencies thereof.

2. Definitions. Except where different meanings are expressly specified in subsequent provisions of this section, the following terms shall have the following meanings:

(a) "Act" means the Gateway Development Commission act.

(b) "Amtrak" means the National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. § 24101 et. Seq. and the laws of the District of Columbia.

(c) "Board" means the board of commissioners of the commission.

(d) "Commission" shall mean the gateway development commission which is established pursuant to this act.

(e) "Facilitate" means the planning, designing, financing, acquisition, development, redevelopment, expansion, construction, reconstruction, replacement, approval of works, lease, leaseback, licensing,

vision of Commission staff; (iii) in which consideration of Commission business matters are informally discussed without the intent or effect of effectuating any action of the Commission; or (iv) attended by or open to all the members of three or more similar public bodies at a convention or similar gathering.

(h) "Project" means a passenger rail transportation project between Penn Station, Newark, New Jersey and Penn Station, New York, New York currently referred to as the "Gateway Program" consisting of:

(i) phase one of the Project including: the replacement of the existing Portal Bridge; the construction of a tunnel connecting the states of New York and New Jersey and the completion of certain ancillary facilities including construction of concrete casing at Hudson Yards in Manhattan, New York; the rehabilitation of the existing North River Tunnels; all Projects necessary to connect the aforesaid Projects to the contiguous Amtrak Northeast Corridor Facilities; and

(ii) phase two of the Project including: the Portal South Bridge Project; the Sawtooth Bridge replacement Project; the Secaucus Loop Project; the Secaucus Junction renovation and expansion Project; and the Penn Station South Project, and other related Projects, but only if such phase two projects are authorized pursuant to a memorandum of understanding between the Governor of New York, the Governor of New Jersey and Amtrak.

(i) "Public business" means matters which relate in any way, directly or indirectly, to the performance of the functions of the commission or the conduct of its business.

3. Creation of the Commission; purposes. There is hereby created the Gateway Development Commission, a body corporate and politic established by the state of New Jersey and the state of New York, which shall be deemed to be acting in the public interest and exercising essential government functions in taking action hereunder and which shall be a public authority and a government sponsored authority. The purposes of the Commission shall include the following:

(a) Facilitate the Project;

(b) Coordinate activities of governmental entities, Amtrak, and private entities providing assistance to the Project or otherwise regulating the Project, with a view to achieving full funding, and encourage and enable such parties to participate in the effectuation of the Project;

(c) act as a coordinating agency to arrange for cooperation among the federal government, the state of New Jersey, any local government thereof, the state of New York, any local government thereof, any agency, instrumentality, department, commission, or authority of any one or more of the foregoing, any bi-state agency, Amtrak, any individual or private firm, entity or corporation, or with any one or more of them (including by contract among the parties), for and in connection with the Facilitation of the Project for any of the purposes of this act, and to enter into an agreement or agreements (and from time to time to enter into

for the Project. The Commission is hereby intended to qualify for,

York or New Jersey to further passenger rail transportation between states including 49 U.S.C. §24901, et seq.;

(e) take any and all actions authorized by this act which are or may be necessary or appropriate to constitute and maintain itself as an applicant eligible to qualify to apply for and be awarded financial assistance, loans, grants or other funding as may be available for the Project, including that awarded by federal, state, and local governments and the agencies thereof; and

(f) facilitate the Project by making and enforcing such rules and regulations; and

(i) accepting, collecting, and receiving funds pursuant to the provisions of the memorandum of understanding established pursuant to subdivision nineteen of this act, which may include bonded revenues, state appropriations, dedicated revenues, and any other funds or revenues made available pursuant to that memorandum of understanding, and using those funds to provide for the financing, construction or asset management of the project and the payment of, with interest upon, and the amortization and retirement of bonds or other securities or obligations issued or insured for Project purposes, including establishment of prudent reserves, in the same manner that all funds or revenues included in the memorandum of understanding established pursuant to subdivision nineteen of this act may be used for such purposes; and

(ii) establishing, levying, and collecting tolls and fees payable by entities using the Project or any portion thereof, as it may deem necessary or appropriate, provided that any such tolls or fees:

(A) shall not be established at a rate greater than the amount determined by the commission to be necessary to meet the expenses of the financing, construction, or asset management of the Project, including the establishment of prudent reserves;

(B) shall be approved by an affirmative vote of the board, in accordance with the voting requirements provided pursuant to this act, at a meeting duly noticed and held, provided that the commission has complied with subparagraph (iv) of this paragraph;

(C) may be used to provide for the payment of, with interest upon, and the amortization and retirement of bonds or other securities or obligations issued or insured for Project purposes, including establishment of prudent reserves, in the same manner that all funds or revenues included in the memorandum of understanding established pursuant to subdivision nineteen of this act may be used for such purposes;

(D) shall not conflict with applicable federal law and the laws of the state of New York and the state of New Jersey; and

(E) that may be directly or indirectly levied or imposed on or payable by the New Jersey Transit Corporation shall be expressly and specifically authorized pursuant to the memorandum of understanding estab-

(A) Locations for public hearings shall be selected in such a way as

toll or fee, is necessary;

(2) the amount of revenue expected to be generated from the establishment of or increase in the toll or fee; and

(3) a detailed explanation of how the revenues raised from the establishment of or increase in the toll or fee is expected to be spent.

(C) Each hearing shall be attended by at least two commissioners from New York and two commissioners from New Jersey in office at the time of the hearing.

(D) The commission shall hold no more than one public hearing in a single day, and each public hearing shall be scheduled to begin after 6:30 p.m., eastern standard time, on a weekday.

(E) The commission shall ensure that each of the requirements set forth in this paragraph shall be complied with before placing on the meeting agenda of the board any item or matter establishing, levying, or collecting a toll or fee or relating to an increase in any toll or fee.

(g) Officers. The officers of the Commission shall include a chief executive officer, a general counsel, a chief financial officer, a chief ethics and compliance officer, and inspector general whom shall be appointed by the Commission. Such officers shall not be required to be established until the Commission is in receipt of necessary federal funding for purposes of facilitating the Project.

4. Board of commissioners. (a) The Commission shall consist of seven commissioners: three from the state of New York, three from the state of New Jersey, and one directly appointed by Amtrak. The commissioner appointed by Amtrak shall serve to represent Amtrak's interest, as owner-operator or user of the Northeast Corridor, in the work to be undertaken by the Commission. The New York commissioners shall be appointed by the state of New York and the New Jersey commissioners shall be appointed by the state of New Jersey in the manner determined pursuant to the laws of each respective state. Any commissioner appointed to the board shall have experience in one or more of the following areas: transportation, public administration, business management, finance, accounting, law, engineering, land use, urban and

regional planning, management of large capital projects, labor relations, or have experience in some other area of activity central to the mission of the Commission.

(b) The term of each commissioner shall be three years. Each commissioner may be reappointed pursuant to the laws of the state from which the commissioner is appointed or, for the Amtrak appointee, pursuant to any rule or policy adopted by Amtrak. A commissioner may automatically continue to serve following the expiration of that commissioner's term until a successor is appointed and seated unless such action is prohibited by the laws of each respective state or, for the Amtrak appointee, any rule or policy adopted by Amtrak.

appointed the commissioner may appoint a replacement to serve out the

Jersey and the state of New York, respectively, to the same extent as such state indemnifies a public officer for any claim or judgment arising out of such public officer's official duties.

(h) No commissioner, including a co-chairperson, shall serve as any other officer or employee of the Commission while serving as a commissioner.

(i) Oath of Office. The commissioners shall promulgate a commissioner's oath of office in consultation with the chief ethics and compliance officer within ninety days of the effective date of this act. Each commissioner and officer shall also, before entering upon the duties of his or her office, take and subscribe the constitutional oath of office, consistent with the constitutions of both states where practicable, which shall be promulgated within ninety days of the effective date of this act. The oaths of office shall be filed in the office of the Commission within ninety days of such commissioner or officer taking office or ninety days after any such oath of office is promulgated if such promulgation has not occurred.

(j) Commissioner Statement. At the time that a commissioner takes and subscribes the commissioner's oath of office, the commissioner shall execute a statement declaring that the commissioner understands the commissioner's independence and fiduciary obligation to perform duties and responsibilities to the best of the commissioner's abilities, in good faith and with proper diligence and care which an ordinarily prudent person in like position would use under similar circumstances and may take into consideration the views and policies of any elected

officials or bodies and ultimately apply independent judgment in the best interest of the Commission, its mission, and the public, consistent with this enabling statute, mission, and by-laws of the Commission; and that the fiduciary duty to the Commission is derived from and governed by its mission.

(k) Board Training. Individuals appointed to the board shall participate in training approved by the chief ethics and compliance officer regarding their legal, fiduciary, financial and ethical responsibilities as commissioners of the Commission within six months of appointment to the Commission. The commissioners shall participate in continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of commissions or public authorities and adhere to the highest standards of responsible governance.

(l) Recusals. (i) A commissioner shall not vote on or participate in any board or committee discussions or decisions with respect to an item if the commissioner, a member of the commissioner's immediate family, or a business in which the commissioner has an interest, has a direct or indirect financial involvement that may reasonably be expected to impair

or controls ten percent or more of the stock of the corporation, or

(B) The commissioners appointed by the state of New Jersey shall file annual financial disclosure statements as required by New Jersey state law or executive order.

(C) The commissioners appointed by Amtrak shall file annual financial disclosure statements consistent with laws, rules, regulations, and policies associated with filings of financial disclosures by Amtrak employees and officers.

(D) Financial disclosures of officers and employees shall, at a minimum, be required of officers and employees who hold policy-making positions as determined by the commission, and officers and employees whose base salary, either in the current or previous year, exceeds $150,000, which shall be adjusted for inflation annually in accordance with the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government.

5. Organization of the Commission; meetings. (a) The co-chairpersons of the commission shall serve from among the commissioners appointed by the state of New Jersey and the commissioners appointed by the state of

New York and shall include one co-chairperson from New Jersey and one co-chairperson from New York. The commissioner who shall serve as co-chairperson from each state shall be decided in accordance with the laws of each respective state or if the respective state has no laws related to the selection of a co-chairperson then as elected by the commissioners appointed from each respective state.

(b) The commission shall meet regularly as it may determine. Meetings shall be held at such times and places as the co-chairpersons of the commission deem appropriate. To the maximum extent practicable, meetings shall be held on an alternating basis in New Jersey and New York.

(c) The powers of the Commission may be exercised by the commissioners at a meeting duly called and held where at least two New York commissioners, two New Jersey commissioners, and the Amtrak commissioner are present. Action may be taken and motions and resolutions adopted by the Commission at any meeting thereof by the affirmative vote of at least two New York commissioners, two New Jersey commissioners, and the Amtrak commissioner. The commissioners shall adopt bylaws providing for attendance protocols, voting procedures, and other matters related to the conduct of the business of the Commission, including designating officers of the Commission.

(d) The Commission may request the assistance and services of such employees and agents as it may require and as may be made available to it for the purpose of carrying out its duties under this act, which agents may include private consultants and persons employed by or acting as a consultant for the federal government, the state of New Jersey, any local government thereof, the state of New York, any local government thereof, any agency, instrumentality, department, commission or authori-

(ii) adopt a code of conduct applicable to commissioners, officers,

(iv) establish a policy requiring all commissioners, officers, and employees with decision-making authority to maintain records regarding contact with lobbyists. As used in this subparagraph, "contact" means any conversation, in person or by telephonic or other electronic means, or correspondence between any lobbyist engaged in the act of lobbying and any person within the Commission who can make or influence a decision on the subject of the lobbying on the behalf of the Commission, and shall include, at a minimum, all members of the board and all officers of the Commission, "lobbyist" shall have the same meaning as defined in

the laws or, rules or regulations of either state, and "lobbying" shall mean and include any attempt to influence: the adoption or rejection of any rule or regulation having the force and effect of law by the Commission, the outcome of any proceeding by the Commission to establish, levy or collect fees, tolls, charges or fares, the authorization, approval or award of any agreements, contracts or purchase orders valued at $500,000 or more; and

(v) have an efficiency study of the Commission and its operations conducted by an independent entity upon the request of the governors of New York and New Jersey, and if no request is made, no longer than every five years from initiation of Project construction.

(g) Whistleblower Program. (i) The chief ethics and compliance officer shall recommend to the board a whistleblower access and assistance program to be administered by the inspector general that shall include, but not be limited to:

(A) establishing an email address and toll-free telephone, facsimile, and text messaging lines available to employees;

(B) offering advice regarding employee rights under applicable state and federal laws and advice and options available to all persons; and

(C) offering an opportunity for employees to identify concerns regarding any issue at the Commission.

(ii) Any communication between an employee and the inspector general pursuant to this paragraph shall be held strictly confidential by the inspector general, unless the employee specifically waives in writing the right to confidentiality, except that such confidentiality shall not exempt the inspector general from disclosing such information, where appropriate, to the board and/or any law enforcement authority.

(iii) The Commission shall not fire, discharge, demote, suspend, threaten, harass, or discriminate against an employee because of the employee's role as a whistleblower, insofar as the actions taken by the employee are legal.

(iv) As used in this paragraph:

(A) "Employees" means those persons employed at the Commission, including but not limited to: full-time and part-time employees, those employees on probation, temporary employees, officers, and commission-

tions received by the inspector general whether disciplinary action or

civil prosecution by the Commission is appropriate, and whether the matter should be referred to an appropriate governmental agency for further action.

(iv) The inspector general shall prepare and make available to the public written reports of completed investigations, as appropriate and to the extent permitted by law, subject to redactions to protect a need for confidentiality. The release of all or portions of reports may be deferred to protect the confidentiality of ongoing investigations.

(v) The inspector general shall have the power to:

(A) administer oaths or affirmations and examine witnesses under oath;

(B) require the production of any books and papers deemed relevant or material to any investigation, examination, or review;

(C) notwithstanding any law to the contrary, examine and copy or remove documents or records of any kind prepared, maintained, or held by the Commission and its subsidiaries;

(D) interview any officer or employee of the Commission or its subsidiaries on any matter related to the performance of such officer or employee's official duties. To the extent that the terms and conditions of employment of any employee are established by collective negotiations, any interview conducted pursuant to this paragraph must be in accordance with any applicable provisions of the current, or most recent, if expired, collective negotiations agreement covering the terms and conditions of employment of the employee;

(E) monitor the implementation by the Commission of any recommendations made by the inspector general; and

(F) perform any other functions that are necessary or appropriate to fulfill the duties and responsibilities of office.

(i) Open Meetings. (i) All meetings of the Commission shall be open to the public and members of the news media, individually and collectively, for the purpose of observing the full details of all phases of the deliberation, policy-making, and decision-making of the board, except for an executive session initiated upon a majority vote taken in an open meeting pursuant to a motion. Such motion shall identify the general nature of the subjects to be considered in the closed, executive session and, if it is not to take place immediately, state, as closely as possible the time and circumstances for such session and when the matters discussed or acted upon may be disclosed. The board may exclude the public only from that portion of a meeting at which the board discusses any:

(A) matter in which the release of information would impair a right to receive funds from the government of the United States;

(B) material the disclosure of which would constitute an unwarranted invasion of individual or personal privacy;

the Commission is, or may become, a party, or matters falling within the

sion, its mission, and the public;

(H) matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion or disciplining of any specific prospective officer or employee or current officer or employee employed or appointed by the Commission, unless all the individual employees or appointees whose rights could be adversely affected request in writing that the matter or matters be discussed at a public meeting;

(I) deliberation of the Commission occurring after a public hearing that may result in the imposition of a specific civil penalty upon the responding party or the suspension or loss of a license or permit belonging to the responding party as a result of an act or omission for which the responding party bears responsibility; or

(J) information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;

(ii) The Commission shall make meeting agendas available to the public at least seventy-two hours before each meeting of the board and each meeting of any committee. Public notice of the time and place of a meeting shall be provided to appropriate media outlets, shall be conspicuously posted in one or more designated areas, and shall be conspicuously posted via the Commission's official website at least five business days before the meeting.

(iii) The Commission shall make available to the public documents in the following manner: the agenda and public documents pertaining to a board meeting shall be available for public inspection at least 72 hours before each meeting or as soon as practicable at an office of the Commission; and the agenda and public documents pertaining to a board or committee meeting shall be posted on the Commission's website.

(iv) At each public meeting of the Commission, the public shall be allotted thirty minutes, or a reasonable time as determined by the Commission, in order to allow any persons in attendance an opportunity to comment on any topic on the agenda.

(v) The Commission shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, and the vote of each member. The minutes shall be available to the public within two weeks from the date of the meeting to the extent that public disclosure shall not be inconsistent with clause (A) of subparagraph (i) of this paragraph. The minutes shall indicate for each item on the agenda the vote or recusal of each board member in attendance at an open meeting, or an executive session of the board or a committee of the board. Each item on the agenda shall be voted on separately.

(vi) Attendance at an executive session shall be permitted to any member of the Commission and any other persons authorized by the Commission.

(vii) The Commission shall adopt and promulgate appropriate bylaws,

sion. The board may incorporate in its policies conditions under which

(ii) When there is an inconsistency between the law of the state of New York and the law of the state of New Jersey, the law of the state that provided the greatest rights of access shall apply.

(iii) The provisions of article 78 of the civil practice law and rules of the state of New York or P.L. 1963, c. 73 (C. 47:1A-1 et seq.), of the laws of New Jersey, as applicable, shall apply to enforce the provisions of this article.

(iv) The Commission shall adopt and promulgate appropriate bylaws, rules, or regulations concerning the rights of the public to obtain records of the commissioner's activities or public business. Any rules, regulations, or bylaws adopted hereunder shall become part of the minutes of the Commission and be posted on the Commission's website.

(l) Legislative hearings. (i) The Commission, at the request of the Assembly or Senate of the New York state legislature or the General Assembly or Senate of the New Jersey state legislature, may appear before a committee of the requesting state legislative house, upon request by the presiding officer of that state legislative house, to present testimony on any topic or subject requested by the committee or to respond to questions by members of the committee. The Assembly of the New York state legislature, the Senate of the New York state legislature, the General Assembly of the New Jersey state legislature, and the Senate of the New Jersey state legislature shall each be entitled to two such requests per calendar year.

(ii) The Assembly or Senate of the New York state legislature or the General Assembly or Senate of the New Jersey legislature may request attendance at such hearing of any named officer of the Commission.

6. Duties of the Commission. The duties of the Commission shall be to use its efforts to accomplish, at such times as it is appropriate to do so, the following actions, provided that the Commission shall not be in dereliction of its duties so long as it acts in good faith to accomplish such:

(a) Make appropriate application for, and act as a coordinating, distributing, or recipient agency for, federal, state, or private funding and authorizations necessary or appropriate to Facilitate the Project;

(b) Cooperate with other agencies or authorities or departments (federal, state, local, and bi-state), Amtrak, and private parties to Facilitate the Project, including entering into agreements specifying a party's rights and obligations with respect to the Project, to create a Project capable of achieving long-term stability and Full Funding, without obligating the full faith and credit of the federal government, either state or any local government thereof, or any other party, except as explicitly authorized by any party empowered by law to do so;

(c) Adopt bylaws to govern the conduct of its affairs, and adopt rules and submit it, together with any recommendations for state or local

7. Powers of the Commission. The Commission shall have the power to undertake the following:

(a) Facilitate the project, including, but not limited to, through contracts and agreements and other documents and instruments which the Commission is otherwise authorized to make, enter into, execute, and deliver; provided, however, that the Commission shall not have the authority to operate or directly engage in transportation services such that the Commission would be subject to the jurisdiction of the federal Surface Transportation Board;

(b) Sue and be sued in its own name in federal and state courts in Mercer county, New Jersey and New York county, New York, it being understood that the commissioners shall have no obligation or liability for the acts or omissions of the commission;

(c) Accept, receive, disburse, encumber and expend funds from whatever source derived, including, without limitation, federal assistance, grants and loans; state and local government assistance, grants and loans; single state or bi-state agency assistance, grants and loans; and revenues received from the disposition of property; private sources, grants and loans; and Amtrak grants and loans, in each case as may be necessary to accomplish any lawful purpose which the commissioners determine will Facilitate the Project and achieve long-term stability and Full Funding;

(d) Acquire (including, without limitation, by gift, purchase, exchange or condemnation in accordance with the requirements of this act), subdivide, lease, license, take, and hold property of every description and to manage such property and develop any undeveloped property owned, leased, or controlled by it in a manner necessary or appropriate to Facilitate the Project;

(e) Make, procure, enter into, execute and deliver contracts and agreements and other documents and instruments as may be necessary or appropriate to carry out any power of the Commission under this act and to otherwise accomplish any lawful purpose which the commissioners determine will Facilitate the Project, including, without limitation, with the federal government, the state of New Jersey, any local government thereof, the state of New York, with any local government thereof,

with any agency, instrumentality, department, commission or authority of any one or more of the foregoing, any bi-state agency, Amtrak, any individual or private firm, entity or corporation, or with any one or more of them;

(f) Make applications for and accept funding, permits, authorizations and approvals as may be necessary or appropriate to accomplish any lawful purpose which the commissioners determine will Facilitate the Project, including, without limitation, with the federal government, the state of New Jersey, any local government thereof, the state of New

lished, levied, and collected by a Project user, provided that such

sary or appropriate to Facilitate the Project through any combination of means and methods otherwise available to the Commission under this act, regardless of whether such combination is generally available to the state of New Jersey, any local government thereof, the state of New York, any local government thereof, any agency, instrumentality, department, commission or authority of any one or more of the foregoing, or any bi-state agency, and engage and contract with third parties in accordance with such procurement rules and guidelines;

(i) In accordance with subdivision seventeen of this act, dispose of, convey or transfer all or any portion of the Project for value as may be expeditious for the Facilitation of the Project, so long as it has determined that the transferee has or is provided with a sufficient source of financing to acquire, operate, maintain and own the Project;

(j) Issue and guarantee bonds, notes, or other evidence of indebtedness, enter into loan agreements and otherwise borrow funds, or incur indebtedness or other future payment obligations for any corporate purpose, including to effectuate Full Funding, and to assign, pledge, mortgage, secure, encumber and use its funds, assets, properties, and revenues for repayment thereof, to be payable out of the funds, assets, properties, and revenues of the Commission without recourse to taxation, provided that the Commission shall have no power to pledge the full faith and credit of the federal government, the state of New Jersey, any local government thereof, the state of New York, any local government thereof or of Amtrak or the Port Authority of New York and New Jersey in connection with the project, or to impose any obligation for payment of the bonds upon the federal government, the state of New Jersey, any local government thereof, the state of New York, any local government

thereof or of Amtrak or the Port Authority of New York and New Jersey, in each case except as set forth in a binding agreement, or to otherwise commit any party to incur any liability in excess of its contractual obligations in connection with the Project, and provided further that neither the commissioners nor any person executing any bonds issued or guaranteed by the Commission shall be liable personally on such bonds or be subject to any personal liability or accountability by reason of the issuance thereof;

(k) Acquire and hold securities for investment purposes or in connection with the Facilitation of the Project;

(l) Appoint, employ, contract with, and compensate such officers, employees and agents, including engineers, attorneys, consultants, financial advisors, and such other persons or entities as the business of the Commission may require and to engage and dismiss such officers, employees, and agents at will, and fix and provide for the qualification, appointment, removal, term, tenure, compensation, pension, and retirement rights of its officers and employees;

charter or local, with the federal government, with the state of New

Project;

(q) Utilize the existing labor force in the states and foster labor harmony in allowing for adoption of efficient labor work rules and practices during construction of the Project; and

(r) Exercise all other powers as may be necessary or appropriate in furtherance of, and consistent with, the purposes of this act.

8. Exemption from taxes, local laws. (a) The Commission shall be performing essential governmental functions in exercising its powers and functions and in carrying out the provisions of this act and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by either state or any local government thereof, upon any of the property used by it or its agents or contractors for the Facilitation of the Project, or any income or revenue therefrom, including any profit from a sale, lease or exchange, or in connection with the transfer thereof or of any real property interest therein. Any bonds or other securities or obligations issued by the Commission, their transfer and the interest paid thereon or income therefrom, including any profit from a sale or exchange, shall at all times be free from taxation by either state or any subdivision thereof.

(b) The Commission shall, as a matter of policy, conform to the enactments, ordinances, resolutions, and regulations of the respective states and local governments where the Project is located in regard to the construction and maintenance of the Project and in regard to health and fire protection which would be applicable if the Commission were a private corporation, to the extent that the Commission finds it practicable so to do, without interfering with, impairing, or affecting the efficiency of its purposes under this act, or its ability to effectuate the Project upon a self-supporting basis, or its obligations, duties, and responsibilities to the two states, its bondholders, if any, and the general public, but the decision of the Commission as to whether it is practicable so to do shall be controlling. To that end, the Commission shall submit copies of plans and specifications for buildings and structures to the appropriate state and local government officials and shall consult with them with respect thereto, and shall receive their comments and suggestions thereon, but the Commission shall make the final determination as to which comments and suggestions to accept in effectuating the project.

(c) Notwithstanding the provisions of paragraph (a) of this subdivision, the Commission is hereby authorized and empowered, in its discretion, to enter into a voluntary agreement or agreements with any local government whereby the Commission may undertake to pay in lieu of taxes a fair and reasonable sum, if any, annually in connection with any real property acquired and owned by the Commission for any of the purposes of this act, and to provide for the payment as a rental or

such local government shall be devoted to purposes to which taxes may be

governors and legislatures of New York and New Jersey; information regarding the board, Commission officers and executive management; a letter to the board from the chief executive officer of the Commission highlighting important developments; a description of major Commission activities undertaken during the prior year; and a letter to the board from the chief financial officer of the Commission with respect to the consolidated financial statements of the Commission.

(b) a financial section including: an independent auditor's report; management's discussion and analysis; financial statements; its financial reports certified by the co-chairpersons and vice-chairperson of the board, chief executive officer, and chief financial officer of the

Commission, including audited financials in accordance with generally accepted accounting principles, known as GAAP, and the accounting standards issued by the governmental accounting standards board, known as GASB, grant and subsidy programs, current ratings, if any, of its bonds issued by recognized bond rating agencies and notice of changes in such ratings, and long-term liabilities, including leases and employee benefit plans; a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year as part of a schedule of debt issuance that includes the date of issuance, term, amount, interest rate, and means of repayment including all refinancings, calls, refundings, defeasements, and interest rate exchange or other such agreements; and at a minimum a four-year financial plan, including a current and Projected capital budget, and an operating budget report, including an actual versus estimated budget, with an analysis and measurement of financial and operating performance.

(c) a corporate information section providing: a list of all real property of the Commission; a list and full description of real property and personal property that has a sale price of over $10,000 disposed of during the period, including the price received by the Commission and the name of the purchaser for all property sold by the Commission during the period; a compensation schedule that shall include, by position, title and name of the person holding such position or title, the salary, compensation, allowance and/or benefits provided to any officer, director, or employee in a decision making or managerial position of such Commission whose base salary is in excess of $150,000; biographical information, not including confidential personal information, for all directors and officers and employees for whom salary reporting is required; a description of the Commission and its board structure, including names of any committees and committee members, lists of board meetings and attendance, descriptions of major Commission units and subsidiaries, and number of employees; its mission statement, charter, if any, and by-laws; and a description of any material pending liti-

vision. Each independent firm of certified public accountants that

(c) Every financial statement prepared pursuant to this section shall be approved by the board. As a condition to the issuance of the annual financial statements of the Commission, the chief executive officer and

the chief financial officer of the Commission shall be required to make a written certification to that effect that, to the best of their knowledge and belief, the financial and other information in the consolidated financial statements is accurate in all material respects and has been reported in a manner designed to present fairly the Commission's net assets, changes in net assets, and cash flows, in accordance with generally accepted accounting principles and standards referenced in paragraph (a) of this subdivision; and, that on the basis that the cost of internal controls should not outweigh their benefits, the Commission has established a comprehensive framework of internal controls to protect its assets from loss, theft, or misuse, and to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the consolidated financial statements in accordance with generally accepted accounting principles and standards referenced in paragraph (a) of this subdivision.

(d) Notwithstanding any other provision of law to the contrary, the Commission shall not contract with an independent firm of certified public accountants for audit services to the authority if the lead or coordinating audit partner having primary responsibility for the audit, or the audit partner responsible for reviewing the audit, has performed audit services for the two previous fiscal years of the Commission.

(e) The Commission shall not contract with the independent firm of certified public accountants performing the Commission's audit for any non-audit services to such Commission contemporaneously with the audit including:

(i) bookkeeping or other services related to the accounting records or financial statements of such Commission;

(ii) financial information systems design and implementation;

(iii) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

(iv) actuarial services;

(v) internal audit outsourcing services;

(vi) management functions or human services;

(vii) broker or dealer, investment advisor, or investment banking services; and

(viii) legal services and expert services unrelated to the audit.

(f) The Commission shall not contract with an independent firm of certified public accountants for any audit service if the chief executive officer, chief financial officer, or any other person serving in an equivalent position for the Commission, was employed by that independent firm of certified public accountants and participated in any capacity in

twenty, the Commission shall adopt a ten-year capital plan with respect to Project assets, if any, for which the Commission has ongoing maintenance obligations that is developed using a comprehensive planning process and risk-based prioritization that considers asset condition, operational and revenue impact, threat assessment, customer service, regional benefit, and regulatory or statutory requirements. The capital plan shall be dependent upon the availability of sufficient funding and other resources to pursue the capital Projects proposed for the ten-year period. Performance progress and revisions to reflect changes in programs, policies, and Projects and the environment in which the Commission operates by the board, and the capital plan shall be revised periodically as necessary and appropriate, and shall be reviewed with the board annually. The Commission shall publish an annual report on the status of the capital program and such report shall be made publicly available on the Commission's website. Prior to adoption of a capital plan, the Commission shall make the proposed plan available for public review and comments on its public website for at least four weeks prior to approval, and all comments received by the Commission are to be distributed to the board for review prior to consideration of the capital plan.

(b) The Commission shall also provide that major capital Projects are monitored by external engineering consultants. The external engineering consultants shall prepare annual reports to be provided to the board and made available to the public. The annual reports prepared by external engineering consultants shall include, but not be limited to, a comparison of actual and target performance measures including, but not limited to, costs and construction schedules, and a narrative explanation of any discrepancy thereof. For the purposes of this section: "Major capital Project" means an undertaking or program for the acquisition, creation, or development of any crossing, transportation facility, or commerce facility or any part thereof, with an estimated total Project cost in excess of $500,000,000.

13. Operating budget. The Commission shall prepare a detailed annual operating budget beginning with the fiscal year commencing after the effective date of this act. A preliminary annual operating budget shall be made publicly available on the Commission's website each fiscal year and a final annual operating budget shall be made publicly available on the Commission's website each fiscal year. The time with which such preliminary annual operating budget and final annual operating budget shall be made public during each fiscal year shall be determined by the Commission.

14. (a) The minutes of every meeting of the Gateway Development Commission held under or within the purview of this act shall be forthwith transmitted, by and under the certification of the Commission thereof, to the Governor of each state. No action taken at such meeting by any commissioner appointed from each respective state shall have force or effect for a period of ten days, Saturdays, Sundays, and public holidays excepted, after the minutes shall have been so transmitted and

respective state. If the Governor does not return the minutes within

or any such item or material commonly used in construction which is procured by a person, other than a municipality, under contract with the commission.

(ii) "Practicable" means capable of being used without violating the following criteria: performance, availability at a reasonable period of time and maintenance of a satisfactory level of completion.

(iii) "Product" means any material, supply, equipment or construction item or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such product.

(iv) "Secondary materials" means any material recovered from or otherwise destined for the waste stream, including but not limited to, post-consumer material, industrial scrap material, and overstock or obsolete inventories from distributors, wholesalers and other companies as defined in rules and regulations promulgated by the New York commissioner of general services but such term does not include those materials and byproducts generated from, and commonly reused within an original manufacturing process.

(v) "Specification" means any description of the physical or functional characteristics, or of the nature of a material, supply, equipment or construction item. It may include a description of any requirement for inspecting, testing or preparing a material, supply, equipment or construction item for delivery.

(b) Specifications. The Commission shall create and update product specifications to ensure that:

(i) Specifications do not exclude the use of products manufactured from secondary materials or require that products be manufactured from virgin materials only, provided however, the specifications may include such an exclusion if the Commission demonstrates that for a particular end use a product containing secondary materials would not meet necessary performance standards or that the cost of such products exceeds that of similar products manufactured from virgin materials.

(ii) Performance standards, specifications and a product's intended end use are related, and clearly identified when feasible.

(iii) Specifications are not overly stringent for a particular end use or performance standard.

(iv) Specifications incorporate or require the use of secondary materials to the maximum extent practicable without jeopardizing the performance or intended end use of the product; provided however, where the Commission demonstrates that for a particular end use a product containing secondary materials would not meet necessary performance standards or that the cost of such product exceeds that of similar products manufactured from virgin materials, such specifications need not incorporate or require the use of secondary materials.

any political subdivision thereof, a public authority or with any public

sion or official thereof, for goods, work or services, for a period of five years after such refusal.

(d) Disqualification to contract with the Commission. Any person who, when called before a grand jury, head of a state department, temporary state Commission or other state agency of the state of New York or the state of New Jersey, the organized crime task force in the department of law of the state of New York, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the applicable state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract, and any firm, partnership or corporation, of which he or she is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with the Commission or any official of the commission, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed pursuant to the provisions of paragraph (e) of this subdivision. It shall be the duty of the officer conducting the investigation before the grand jury, the head of a state department, the chairman of the temporary state Commission or other state agency of the state of New York or the state of New Jersey, the organized crime task force in the department of law of the state of New York, the head of a city department or other city agency before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership or corporation of which the person so refusing is known to be a member, partner, officer or director, to the commissioner of transportation of the state of New York or the state of New Jersey, or the commissioner of general services as the case may be, and the appropriate departments, agencies and officials of the applicable state, political subdivisions thereof or public authorities with whom the persons so refusing and any firm, partnership or corporation of which he or she is a member, partner, director or officer, is known to

have a contract. However, when such refusal occurs before a body other than a grand jury, notice of refusal shall not be sent for a period of ten days after such refusal occurs. Prior to the expiration of this ten-day period, any person, firm, partnership or corporation which has become liable to the cancellation or termination of a contract or disqualification to contract on account of such refusal may commence a special proceeding at a special term of the supreme court of New York or superior court of New Jersey, held within the judicial district in which

officer thereof to waive immunity when called to testify, as provided in

the cooperation by petitioner with the grand jury or other body at the time of the refusal was such, and the amount and degree of control and financial interest, if any, in the petitioning firm, partnership or corporation by the member, partner, officer or director who refused to waive immunity is such that it will not be in the public interest to cancel or terminate petitioner's contracts or to continue the disqualification, as provided in paragraph (d) of this subdivision. A copy of the petition and accompanying papers shall be served with the notices to be given pursuant to this subdivision.

(ii) Upon the filing of a petition described in subparagraph (i) of this paragraph the court may stay as to petitioner, pending a decision upon the petition, the cancellation or termination of any contracts resulting from such refusal upon such terms as to notice or otherwise as may be just.

(iii) At least two days prior to the return day, the officer who conducted the investigation before the grand jury or other body and the attorney general may file answers to the petition or apply for judgment dismissing the petition as a matter of law. On or before the return day the petitioner may file a reply to the answer.

(iv) Upon the return day the court may, upon the petition and answer and other papers filed, forthwith render such judgment as the case requires, or if a triable issue of fact is duly raised, it shall forthwith be tried before a court sitting without a jury or before a referee. The provisions of statute or rule governing references in an action shall apply to a reference under this subdivision.

(v) The court shall render judgment dismissing the petition on the merits or discontinuing the disqualification upon the ground that the public interest would be served by its discontinuance, and granting such

other relief as to the cancellation or termination of contracts as may be appropriate, but without costs to petitioner.

(f) Statement of non-collusion in bids or proposals to the Commission. (i) Every bid or proposal hereafter made to the Commission or to any official of the Commission, where competitive bidding is utilized, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury:

"1. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

2. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

shall furnish with the bid a signed statement which sets forth in detail

other customers at the same prices being bid, does not constitute, without more, a disclosure.

(iii) Any bid hereafter made to the Commission by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is utilized, and where such bid contains the certification referred to in subparagraph (i) of this paragraph, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

(g) Procurement contracts. (i) Definitions. For the purposes of this subdivision:

(A) "Allowable indirect costs" means those costs incurred by a professional firm that are generally associated with overhead which cannot be specifically identified with a single Project or contract and are considered reasonable and allowable under specific state contract or allowability limits.

(B) "Minority business enterprise" means any business enterprise, including a sole proprietorship, partnership, or corporation: with more than fifty percent of the ownership interest owned by one or more minor-

ity group members or, in the case of a publicly-owned business, where more than fifty percent of the common stock or other voting interests are owned by one or more minority group members; in which the minority ownership is real, substantial, and continuing; in which the minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and authorized to do business in the state of New York or the state of New Jersey, independently owned and operated, and not dominant in its field.

(C) "Minority group member" means a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: black persons having origins in any of the black African racial groups not of Hispanic origin; Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands; or Native American persons having origins in any of the original peoples of North America.

(D) "Professional firm" means any individual or sole proprietorship, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, engineering, or surveying.

(E) "Women-owned business enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation: with more than fifty percent of the ownership interest owned by one or more United

amount of five thousand dollars or more.

contracts for services, a description of those areas of responsibility and oversight requiring the use of personal services and the reasons for the use of personal services in such areas.

(B) Requirements regarding the selection of contractors, which shall include provisions:

(1) for the selection of such contractors on a competitive basis, and provisions relating to the circumstances under which the board may by resolution waive competition; and

(2) setting forth responsibilities of contractors.

(C) An identification of those areas or types of contracts for which minority or women-owned business enterprises may best bid so as to

promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises.

(D) Requirements for providing notice, in addition to any other notice of procurement opportunities, to professional and other organizations that serve minority and women-owned business enterprises providing the types of services procured by the Commission.

(E) The establishment of appropriate goals for participation by minority or women-owned business enterprises in procurement contracts awarded by the Commission and for the utilization of minority and women-owned enterprises as subcontractors and suppliers by entities having procurement contracts with the Commission.

(F) A listing of the types of provisions to be contained in procurement contracts, including provisions concerning the nature and monitoring of the work to be performed, the use of Commission supplies and facilities, the use of Commission personnel and any other provisions.

(G) Provisions regarding procurement contracts which involve former officers or employees of the Commission.

(H) Policies to promote the participation by business enterprises and residents of the state of New York and the state of New Jersey in procurement contracts.

(iv) For the purposes of this paragraph:

(A) "New Jersey business enterprise" means a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the Commission and which are substantially manufactured, produced or assembled in New Jersey, or services which are sought by the Commission and which are substantially performed within New Jersey.

(B) "New Jersey resident" means a natural person who maintains a fixed, permanent, and principal home located within New Jersey and to which such person, whenever temporarily located, always intends to return.

(C) "New York resident" means a natural person who maintains a fixed, permanent and principal home located within New York state and to which

(vi) The Commission shall annually prepare and approve a report on

copies thereof to the New York senate finance committee, New Jersey senate budget committee, the New York assembly ways and means committee, the New Jersey general assembly appropriations committee, and the New

York state authorities budget office. The Commission shall make available to the public copies of its report on procurement contracts upon reasonable request therefor.

(viii) Nothing contained in this paragraph shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of this section.

16. Subsidiaries of the Commission. (a) The commission shall provide notice to the governor of each state, the majority leader of each house of the legislature of each state no less than sixty days prior to the formation of the subsidiary.

(b) The creation of a subsidiary corporation shall be approved by the board.

(c) Within sixty days of the effective date of this act, and on or before the first day of January of each year annually thereafter, any subsidiary corporation, in cooperation with the Commission, shall provide to the governor and legislature of each state a report on the subsidiary corporation. The report shall include for each subsidiary:

(i) the complete legal name, address, and contact information of the subsidiary;

(ii) the structure of the organization of the subsidiary, including the names and titles of each of its members, directors, and officers, as well as a chart of its organizational structure;

(iii) the complete bylaws and legal organization papers of the subsidiary;

(iv) a complete report of the purpose, operations, mission, and Projects of the subsidiary; and

(v) any other information the subsidiary corporation deems important to include in the report.

(d) Sixty days prior to the issuance of any debt by the subsidiary corporation, or the Commission on behalf of the subsidiary corporation, the Commission shall in addition to any other requirements concerning the issuance of debt by the Commission, provide notice to the governor of each state, and the majority leader of each house of the legislature of each state. For purposes of this subdivision, as applicable to New York state "majority leader" shall mean the speaker of the assembly of the New York state legislature or temporary president of the senate of the New York state legislature. For purposes of this section, as applicable to the state of New Jersey "majority leader" shall mean the president of the senate or the speaker of the general assembly of the state of New Jersey.

to an active market for similar real property, shall be made without a

(i) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the real property will remain with the government or any other public entity; or

(ii) the purpose of the transfer is within the purpose, mission, or governing statute of the Commission and a written determination is made by the board that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer, prior to board approval of such a transfer.

(d) The board shall adopt, prior to the appropriation of any property, appropriate rules and regulations concerning disposition, acquisition, and transfer of real property or any interest in real property by the Commission which shall, at a minimum, include a requirement that the following information be made available to the board at the meeting where approval of such a disposition, acquisition or transfer is scheduled:

(i) a full description of the property;

(ii) a description of the purpose of the disposition, acquisition, or transfer;

(iii) a statement of the value to be received from such a disposition, acquisition, or transfer;

(iv) the names of any private parties participating in the disposition, acquisition, or transfer; and

(v) in the case of a property disposition for less than fair market value, an explanation and a written determination by the board that there is no reasonable alternative to the proposed below-market value that would achieve the same purpose of such disposition.

(e) Not less than ten days in advance of any meeting of the board at which the board is to consider an action to authorize the sale of real property owned by the Commission, the chief executive officer of the Commission shall provide public notice of such proposed action along with relevant material terms and provisions of such sale including, but not limited to, the information made available pursuant to paragraph (b) of this subdivision, by posting on the Commission's website.

(f) The chief executive officer may authorize or arrange for contracts for the sale of personal property owned by the Commission upon such terms and conditions as the chief executive officer may deem proper and execute the same on behalf of the Commission where the value of such personal property is not in excess of $1,000,000; provided, however, that personal property valued at more than $250,000 shall not be sold by authority of the chief executive officer other than to the highest bidder after public advertisement. Where the value of such personal property is in excess of $1,000,000, the sale of such property must be authorized by the board upon such terms as the board may deem proper.

(g) The Commission may retain brokers or third-party vendors that facilitate online auctions, or assist in disposing of surplus real and personal property of the port authority.

comptroller at any time or both comptrollers acting together.

the state of New York and the state of New Jersey in determining their total funding for the state commitment to phase one. The governor of New Jersey, the governor of New York and the executive director of the port authority shall execute a memorandum of understanding detailing the timing and source of funding for their commitment to phase one of the Project, and if agreed to in an amendment to a memorandum, for phase two of the Project or portions thereof.

For any toll or fee imposed on an instrumentality of either state, pursuant to a memorandum of understanding executed pursuant to this section, the revenue generated from that toll or fee shall count toward that state's share for purposes of any memorandum of understanding established pursuant to this section.

20. The facilitation of any portion of the Project that is located within New York state shall be designated public work and shall be subject to the respective provisions of New York state labor law that are applicable as a result of such designation. However, nothing herein shall be construed to prevent the compliance with federal law, regulations or other requirements for any portion of the Project anticipated to be funded by federal funding. The facilitation of any portion of the Project that is located within the state of New Jersey shall be designated public work and shall be subject to the respective provisions of New Jersey state labor law that are applicable as a result of such designation. However, nothing herein shall be construed to prevent the compliance with federal law, regulations or other requirements for any portion of the Project anticipated to be funded by federal funding.

§ 3. Subdivisions 1, 2 and 3 of section 14-c of the transportation law, as added by chapter 639 of the laws of 1971, are amended to read as follows:

1. The department of transportation may cooperate and contract with the national railroad passenger corporation OR IF DEEMED NECESSARY, DESIRABLE OR CONVENIENT BY THE COMMISSIONER TO FACILITATE THE PURPOSES OF THIS SECTION, WITH GATEWAY DEVELOPMENT COMMISSION TO THE EXTENT THAT COMMISSION IS SO AUTHORIZED TO ACT UNDER ITS AUTHORIZING STATUTE, for any intercity rail passenger services deemed necessary, convenient or desirable by the commissioner, within the amounts available by appropriation therefor, as such services are made available pursuant to the provisions of the rail passenger service act of nineteen hundred seventy and any acts amendatory or supplemental thereto, subject to the approval of the director of the budget OR PURSUANT TO REIMBURSEMENT AVAILABLE FROM THE GATEWAY DEVELOPMENT COMMISSION, ANY RAILROAD COMPANY, ANY OTHER STATE OR AGENCY, THE FEDERAL GOVERNMENT, ANY PUBLIC AUTHORITY OF THIS STATE OR ANY OTHER STATE OR TWO OR MORE STATES, OR ANY POLITICAL SUBDIVISION OR MUNICIPALITY OF THE STATE. Notwithstanding any inconsistent law, general, special or local, the commissioner, as funds are made available for the purposes hereof, is hereby empowered to contract with such corporation or Commission and to do all other things necessary,

AUTHORIZED TO ACT UNDER ITS AUTHORIZING STATUTE, PROVIDED, HOWEVER, THAT

commissioner is authorized to enter into joint service agreements AND OTHER AGREEMENTS between the state and any railroad company, any other state department or agency, the federal government, the Canadian government, any other state, or agency or instrumentality thereof, any public authority of this state or any other state OR TWO OR MORE STATES, or any political subdivision or municipality of the state, relating to property, buildings, structures, facilities, services, rates, fares, classifications, dividends, allowances or charges (including charges between intercity rail passenger service facilities), or rules or regulations pertaining thereto, for or in connection with or incidental to transportation in part upon intercity rail passenger service facilities. Intercity rail passenger service facilities include the right of way and related trackage, rails, cars, locomotives, or other rolling stock, signal, power, fuel, communication and ventilation systems, power plants, stations, terminals, TUNNELS, storage yards, repair and maintenance shops, yards, equipment and parts, offices and other real estate or personnel used or held for or incidental to the operation, rehabilitation or improvement of any railroad operating intercity rail passenger service or to operate such service, including but not limited to buildings, structures, and rail property.

3. [The] NOTWITHSTANDING ANY OTHER PROVISION OF LAW, GENERAL, SPECIAL, CHARTER OR LOCAL, THE commissioner may on such terms and conditions as he may determine necessary, convenient or desirable, establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair any such intercity rail passenger service facility or any related services and activities, or may provide for such by contract, lease or other arrangement on such terms as the commissioner may deem necessary, convenient or desirable with any agency, corporation or person, including but not limited to any railroad company, any state agency, the federal government, the Canadian government, any other state or agency or instrumentality thereof, any public authority of this or any other state OR TWO OR MORE STATES, or any political subdivision or municipality of the state.

§ 4. Notwithstanding any other provision of law of New York or New Jersey, general, special, charter or local, each state and local government, any agency, instrumentality, department, commission or authority thereof, and any bi-state agency are hereby authorized and empowered to

cooperate with, aid and assist the Commission in effectuating the provisions of this act, as it may be amended or supplemented hereafter.

§ 5. a. There shall be three commissioners of the Commission appointed from this state, in accordance with section two of this act.

b. Notwithstanding the foregoing, the initial three commissioners shall be appointed by the commissioner of the department of transportation to serve for one year of the initial three-year term and the

term of the appointee's predecessor. Each appointment made to fill a

computing the date on which a successor's term expires.

f. Any commissioner from this state may be removed from office and shall be removable by the commissioner of the department of transportation, for inefficiency, breach of fiduciary duty, neglect of duty or misconduct in office, provided, however, that such member shall be given a copy of the charges against him or her and an opportunity of being heard in person, or by counsel, in his or her defense upon not less than ten days' notice.

g. The collective vote of the New York commissioners of the Commission shall be determined by the affirmative vote of at least two of the New York commissioners.

§ 6. Upon the concurrence of the state of New Jersey, the state of New Jersey and the state of New York consent to suits, actions or proceedings of any form or nature at law, in equity, or otherwise (including proceedings to enforce arbitration agreements), against the Commission, and to appeals therefrom and reviews thereof, except as hereinafter provided. The foregoing consent does not extend to: (a) suits, actions, or proceedings upon any causes of action whatsoever accruing before the effective date of this act; (b) suits, actions or proceedings upon any causes of action whatsoever, upon, in connection with, or arising out of any contract, express or implied, entered into or assumed by or assigned to the Commission before the effective date of this act (including any supplement to, or amendment, extension or renewal of any such contract, even if such supplement, amendment, extension or renewal is made on or after the effective date of this act), regardless of whether such cause of action accrued before or after that date; (c) civil suits, actions or proceedings for the recovery of statutory penalties; and (d) suits, actions or proceedings for judgments, orders or decrees restraining, enjoining or preventing the Commission

from committing or continuing to commit any act or acts, other than suits, actions or proceedings by the Attorney General of New Jersey or by the Attorney General of New York, each of whom is hereby authorized to bring such suits, actions or proceedings in his or her discretion on behalf of any person or persons whatsoever who requests the Attorney General to do so, except in the cases otherwise excluded by this act; provided, that in any such suit, action or proceeding, no judgment, order or decree shall be entered except upon at least two days' prior written notice to the Commission of the proposed entry thereof.

The Commission shall be immune from liability as though it were the state of New York, except to the extent that such immunity is waived by the state of New York under section 8 of the New York court of claims act.

§ 7. The Commission shall dissolve following a joint determination by the Governor of New Jersey and the Governor of New York that the Project

§ 9. Severability. (a) If any provision of this act or the application

the purposes of this act.

§ 10. (a) Sections one, two, four, six, seven and eight of this act shall take effect upon the enactment into law by the state of New Jersey of legislation having an identical effect with this act, but if the state of New Jersey shall have already enacted such legislation, sections one, two, four, six, seven and eight of this act shall take effect immediately provided further that sections three, five and nine of this act shall take effect when sections one, two, four, six, seven and eight of this act take effect; provided that the state of New Jersey shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law;

(b) Provided that the Gateway Development Commission shall notify the legislative bill drafting commission upon the occurrence of the intended dissolution pursuant to section seven of this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of

effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law;

(c) This act shall expire and be deemed repealed fifteen years from the effective date herein established, provided, however, that such repeal shall only occur if federal funding that is necessary for purposes of facilitating phase one of the Project has not been granted to the Gateway Development commission; provided further that the Gateway Development commission shall notify the legislative bill drafting commission upon the occurrence of the repeal of the legislation provided for in this act in order that the legislative bill drafting commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law; and

(d) Any amendments to paragraph (c) of this section shall take effect only upon the enactment into law by the state of New Jersey of legislation having an identical effect, but if the state of New Jersey shall have already enacted such legislation, any amendments to paragraph (c) of this section shall take effect immediately.

VIEW LESS

legislation. All comments are subject to review and

nysenate.gov domain are not permitted, and will not be published. Attempts to intimidate and silence contributors or deliberately deceive the public, including excessive or extraneous posting/posts, or coordinated activity, are prohibited and may result in the temporary or permanent banning of the user. Comment moderation is generally performed Monday through Friday. By contributing or voting you agree to the Terms of Participation and verify you are over 13.

Create an account. An account allows you to sign petitions with a single click, officially support or oppose key legislation, and follow issues, committees, and bills that matter to you. When you create an account, you agree to this platform's terms of participation.

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Executive summary

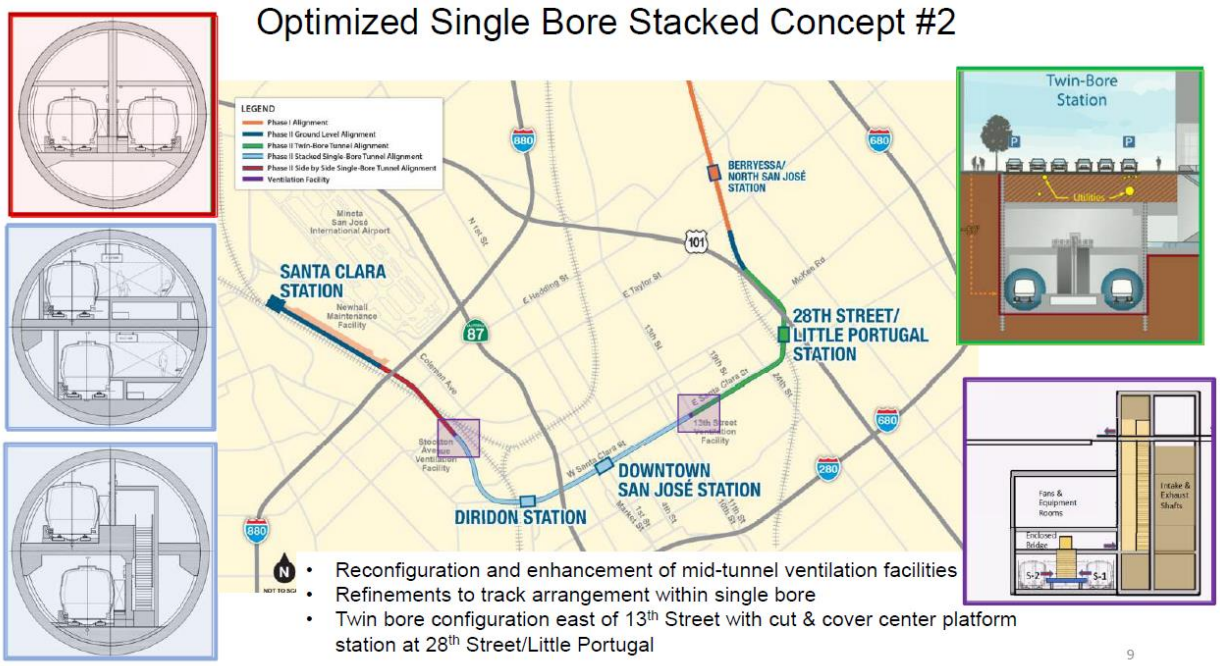
The objective of this document is to introduce a revised BART Silicon Valley Extension tunneling strategy designed to:

- **Address equity issues**
  - **Equitable outcomes for Downtown WEST and Downtown EAST**
  - **Station entrances on BOTH sides of Santa Clara Street** (2007 SEIR)
  - No surface impacts between stations (Crossrail 2007)
- **Increase value capture**
  - **Eliminate all impediments to Over Site Development (OSD)**
- **Reduce risks**
  - 3 separate tunnel contracts (Crossrail 2007/Channel Tunnel Rail Link)
  - Improved fire/life safety (BART Facilities Standards/Arup HS2 2009)
  - **Reduce potential impacts on single-bore tunnel superstructure integrity**
  - **Eliminate all large elevator shafts**
- **Reduce costs**
  - **Eliminate 3.5 miles of single-bore tunneling**
  - **Eliminate all vent shafts and trenches between stations** (Crossrail 2007)
  - **Eliminate all ramps and stacked platforms**
  - Preserve 400 feet of **brand new** Berryessa tail tracks
  - Simultaneous (**3x faster) tunneling** (potentially two years or less)
- **Phased implementation**
  - Additional station entrances integrated with adjacent P3 opportunities

Current strategy	**Revised strategy**
6-Mile Extension: - 1.1 mile single-bore stacked - 3.2 mile single-bore side-by-side - 0.7 mile single-bore transition zone - 1 mile at-grade	6-Mile Extension: - **1.5** mile single-bore **side-by-side** - **3.5** mile **TWIN-bore** side-by-side - **NO transition zones** - 1 mile at-grade
4 Stations: - 3 underground - 1 at-grade	**5 Stations**: - **4 underground** - 1 at-grade
Newhall Yard Maintenance Facility: - Critical for BART operations	Newhall Yard Maintenance Facility: - Critical for BART operations

Background to Revised Tunneling Strategy (Concept #3)

April 17th 2020 Board of Directors Special Meeting:
VTA staff and consultants introduced an alternative known as the "Optimized Single Bore Stacked Concept #2" which included a "**Twin bore configuration east of 13th Street** with cut & cover center platform station at 28th Street/Little Portugal"
http://santaclaravta.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=9516&MeetingID=3331
(slide 9)



Concept #3 builds on Concept #2 by:

- Additionally transitioning to **twin bores between Diridon and the Newhall Portal**
- **Increasing the bore of the Diridon to 13th Street section from 48 feet to 56 feet**
- **<u>Extending the side-by-side tracks section to the entire 5 miles of tunneling</u>**

Tunnel Section 1: Newhall to the Diridon <u>Integrated</u> station box (1.5 miles)

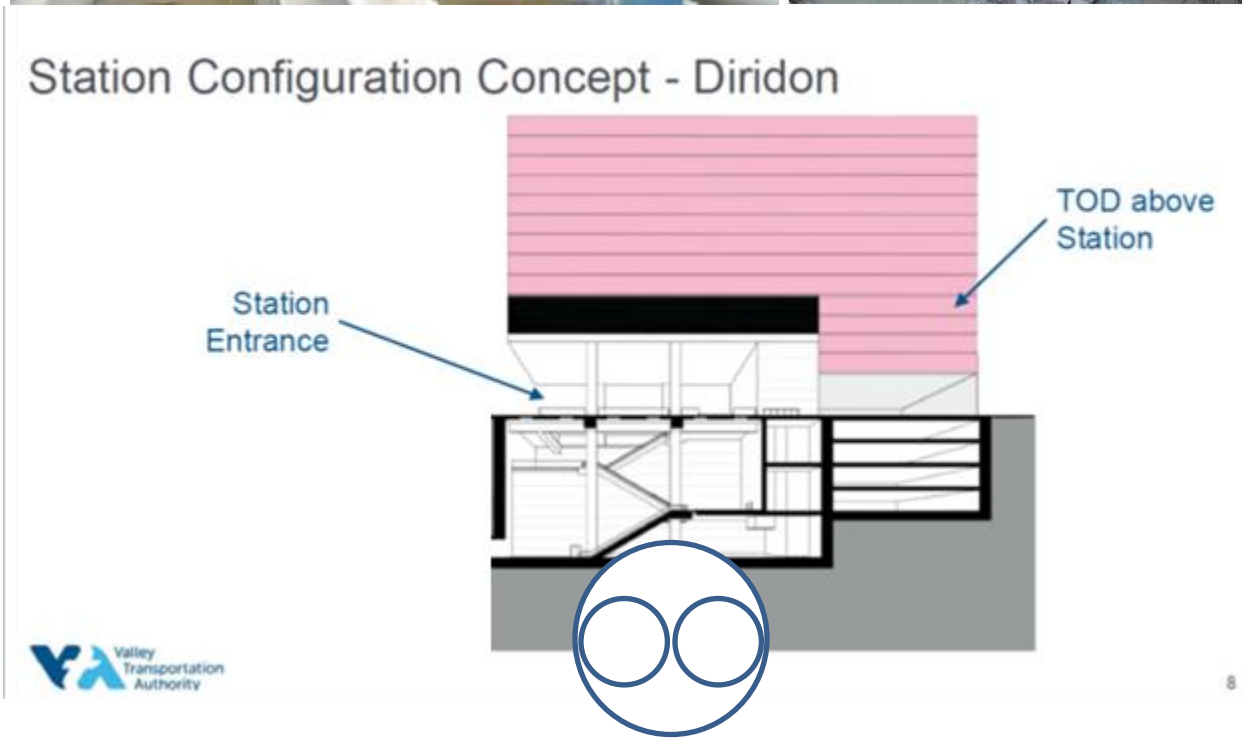
- Twin 22-foot bores with cross-passages every 300 feet (BART Facilities Standards)
- **Elimination of Stockton Avenue emergency platform trench**
- **Elimination of Stockton Avenue ventilation shaft** (Mayor Boris Johnson 2009)
- Evacuation/rescue through adjacent ("non-incident") tunnel (Arup HS2 2009)

Diridon Integrated Station Box

Transition from twin 22-foot bores to a 56-foot single bore *"For twin bored tunnels the spacing of the two bores is assumed to be 0.5 times the TBM or starter chamber diameter to the inside face of the portal cutting, with one tunnel diameter between the bores.* ***This may be reduced if required, particularly for TBM reception****.* (Arup HS2 2009)

White Street (western) headwall

S. Montgomery (eastern) headwall



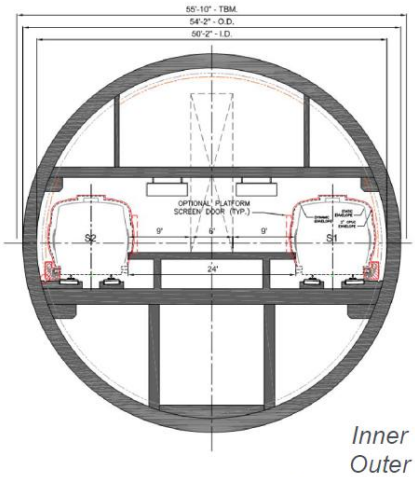
- **Seamless integration with Caltrain, ACE, Capitol Corridor, Amtrak and HSR** (Level +1)
- **Seamless integration with VTA light rail** (Level -2)
- **Seamless integration with the Airport Connector** (Level -4)
- Twin 30-foot <u>outboard</u> platforms **eliminate BART platform overcrowding during peak and after games or special events**

Tunnel Section 2: Diridon to 13th Street (1.5 miles)

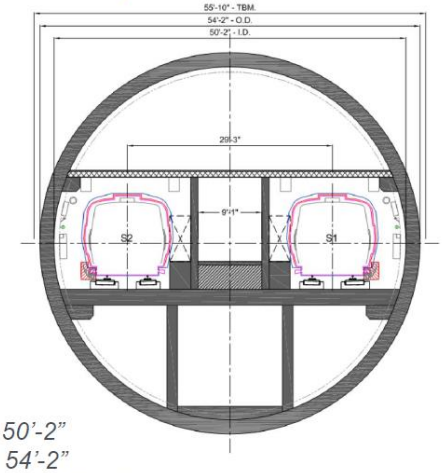
This section includes two identical stations: Downtown and the new 13th Street station

Single-Bore: Center Platform Configuration

Center Platform at Stations



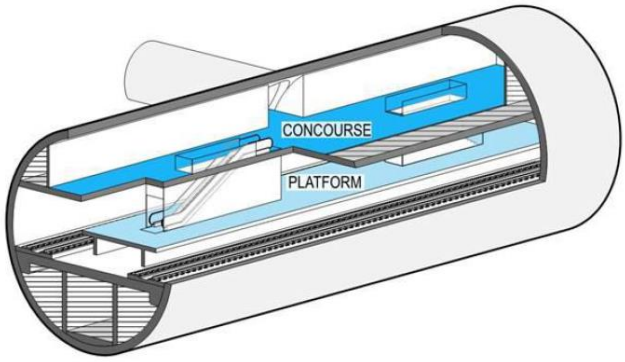
Side-by-Side tracks in Tunnel



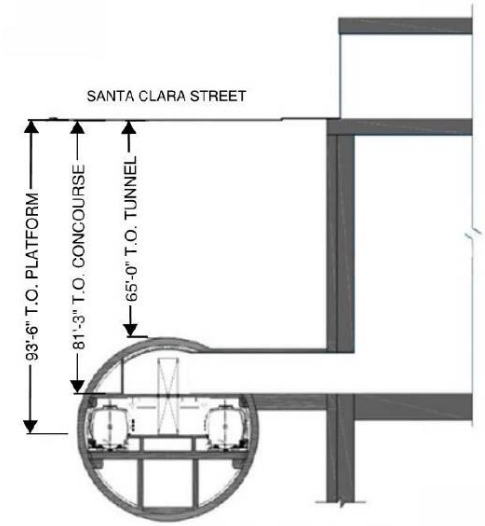
Inner Tunnel Diameter: 50'-2"
Outer Tunnel Diameter: 54'-2"
Tunnel Boring Machine Diameter: 55'-10"

Valley Transportation Authority

Single-Bore: Center Platform Configuration



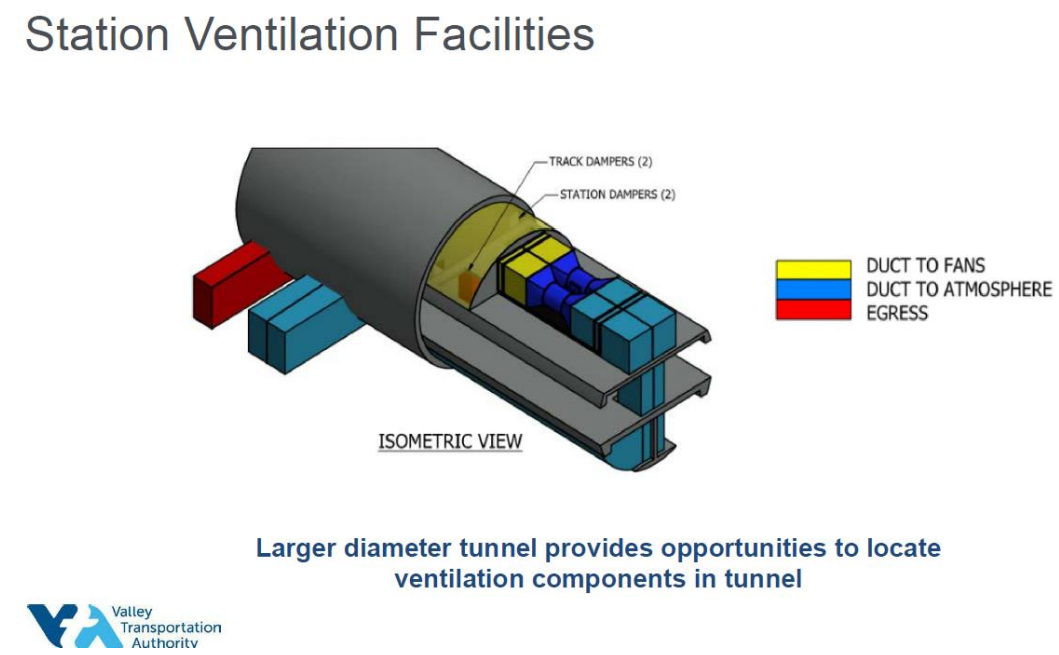
Concourse & Platform in Tunnel



Station Entrance Building

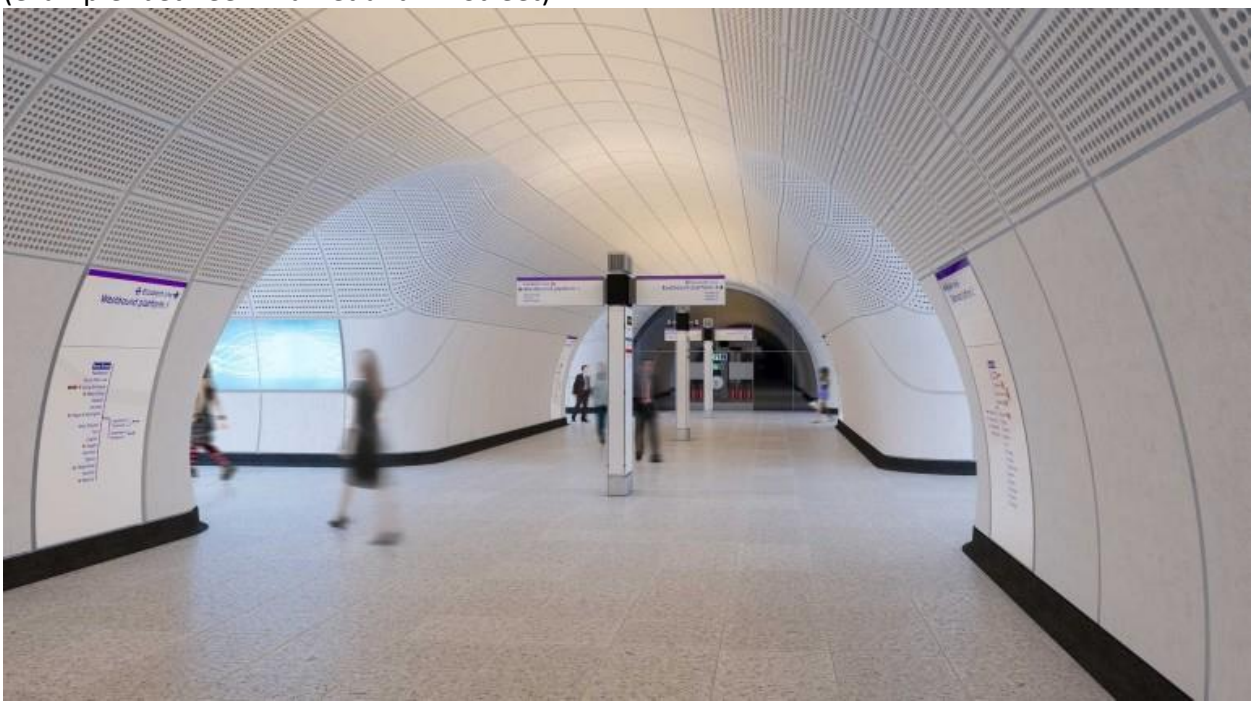
Valley Transportation Authority

Elimination of all vent structures between stations

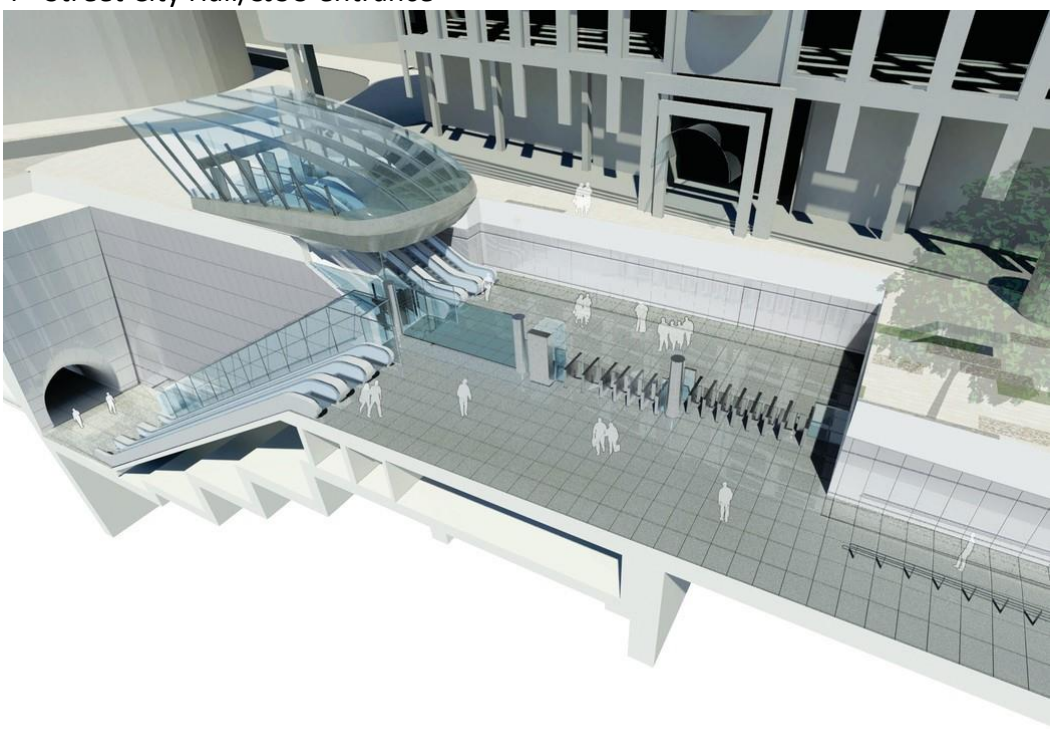


Eliminate potential impacts on single-bore tunnel superstructure integrity

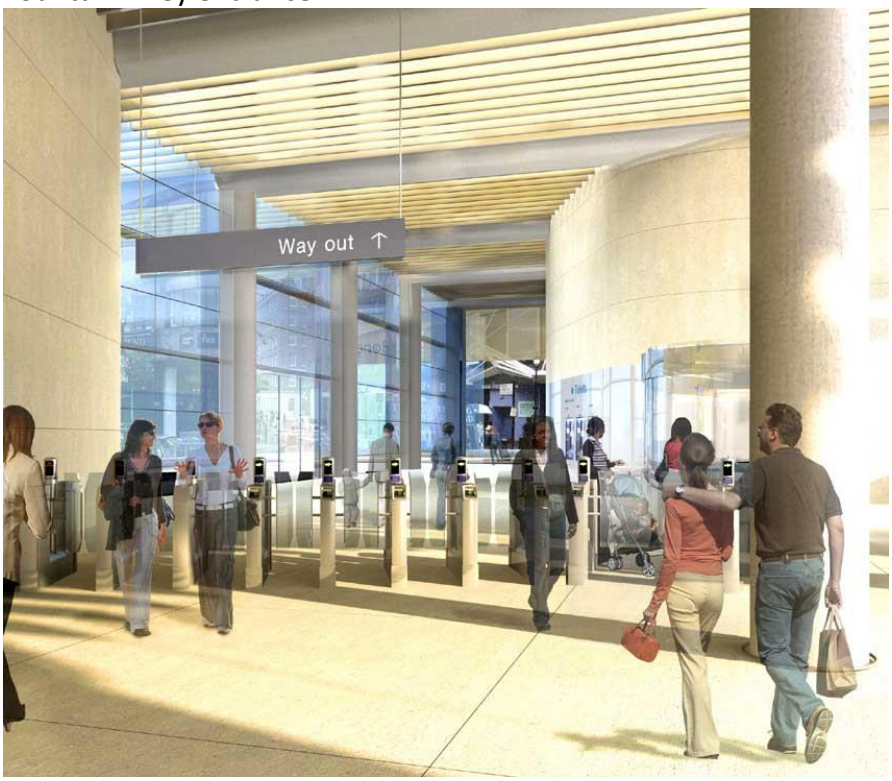
View of the Downtown concourse showing connections to **entrances south (left) and north (right) of Santa Clara Street. Please note that the concourse** can be located anywhere within the tunnel crown and **can exceed the length of the platforms by hundreds of feet if necessary** (example: between Market and 4th Street)



4th Street City Hall/SJSU entrance

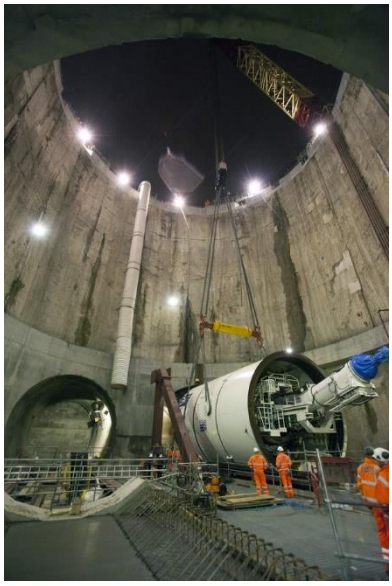


Fountain Alley entrance



13th Street Station

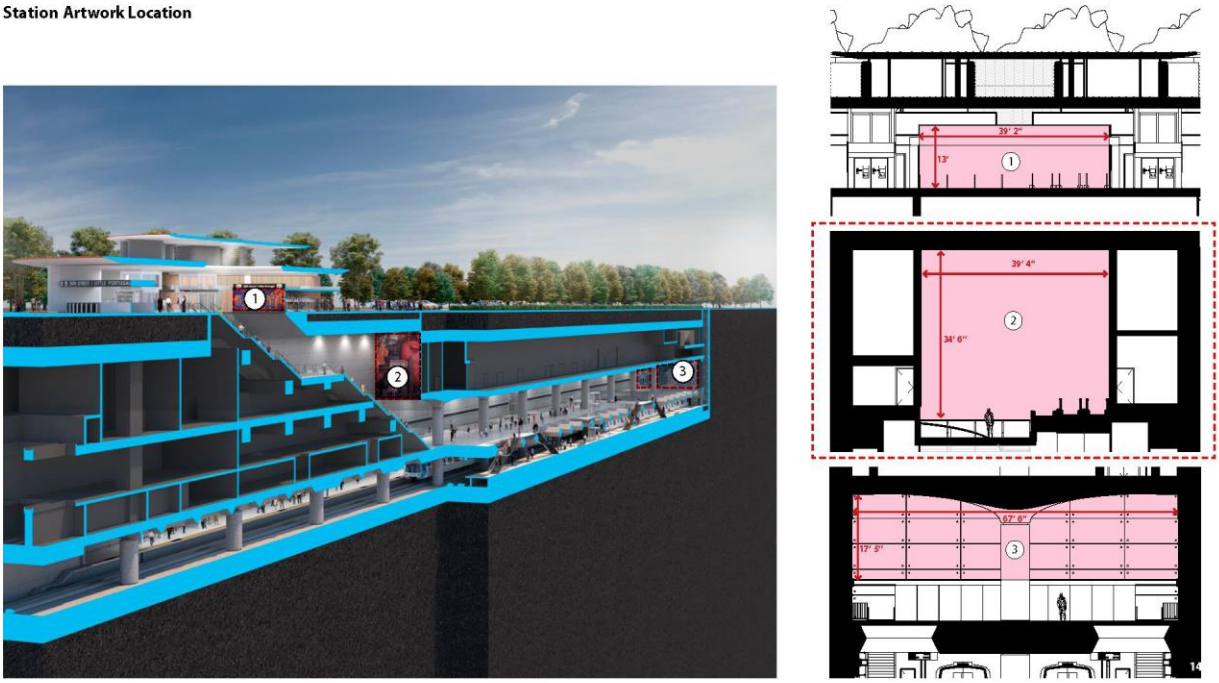
The 13th Street station will be identical to the Downtown station. The only impact on East Santa Clara will be a temporary shaft designed to enable the transition between the 56-foot TBM and the twin 22-foot TBMs when they arrive from the 28th Street station. The location of the shaft will delimit the eastern end of the 13th Street station and will be integrated into the station's eastern headhouse after tunneling completes.



Additional 13th Street station entrances will be integrated into adjacent P3 opportunities as and when they materialize

Tunnel Section 3: 13th Street shaft to Las Plumas portal (2 miles)

- Twin 22-foot bores with cross-passages every 300 feet (BART Facilities Standards)
- Evacuation/rescue through adjacent ("non-incident") tunnel (Arup 2009)
- Smaller tunnel diameters
    - **Lower risks tunneling under Coyote Creek and Highway 101**
    - **Reduce 28th Street station depth by approximately 30 feet**
    - Preserve 400 feet of **brand new** Berryessa tail tracks



References

- Channel Tunnel Rail Link (CTRL) Risk Transfer and Innovation in Project Delivery https://research.gsd.harvard.edu/zofnass/files/2013/05/CTRL.pdf

- **Mayor Boris Johnson Press Release announcing the elimination of 8 Crossrail shafts** https://www.crossrail.co.uk/news/articles/impact-crossrail-construction-to-be-lessened-as-eight-shafts-are-removed-from-tunnel-design https://www.constructionnews.co.uk/civils/contracts-civils/crossrail-shafts-removed-from-central-tunnel-03-04-2009/

- Appendix 1 Arup single and twin-bore tunnel safety studies (HS2 2009)

- Appendix 2 Crossrail 2007 Construction Methodology (Section 4 Environment Impact)