File No. 100288

Committee Item No. ______
Board Item No. 25

COMMITTEE/BOARD OF SUPERVISORS

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OTHER (Use back side if additional space is needed)

☐	☐	Appeal of Determination of Statutory Exemption from Environmental Review for SF Municipal Transportation Agency Transit Transit Reductions and Related Fiscal Emergency
☐	☐	(Other materials were distributed to each member of the Board upon receipt by the
☐	☐	Clerk's Office, and available in File No. 100288)

Completed by: Joy Lamug Date 04/08/10
Completed by: ______ Date ______

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

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BOARD OF SUPERVISORS
SAN FRANCISCO

2010 MAR -2 PM 1:08

BY

David Pilpel
2151 27th Ave
San Francisco CA 94116-1730

President David Chiu and Members
Board of Supervisors
1 Carlton B Goodlett Pl Ste 244
San Francisco CA 94102-4689

Re: Appeal of Environmental Exemption Determination by the Department of City Planning

2 March 2010

Dear President Chiu and Members,

I write as an individual to appeal the environmental determination made by the City Planning Department ("DCP") with respect to a claimed statutory exemption from the California Environmental Quality Act ("CEQA") related to transit service reductions being considered by the Municipal Transportation Agency ("MTA") for implementation on or after 1 May 2010 ("the proposed May 2010 transit service reductions"). This environmental appeal does not directly address the merits of the proposed May 2010 transit service reductions; this appeal addresses the question of whether the claimed statutory exemption from environmental review applies.

To be clear, the determination being appealed is the determination by DCP on 4 February 2010 that the transit service reductions being considered for approval by the MTA Board on 26 February 2010 or 2 March 2010 for implementation on or after 1 May 2010 are covered by the fiscal emergency declared by the MTA Board on 21 April 2009 and are therefore statutorily exempt from environmental review. Please note that there is existing litigation pending that challenges three determinations made in 2009 by DCP and MTA related to transit service changes implemented by MTA on 5 December 2009. The declaration by the MTA Board on 21 April 2009 of a fiscal emergency is also being challenged by implication. However, this appeal does not directly concern the 2009 determinations or 5 December 2009 transit service changes.

I. Summary

Environmental determinations made by DCP are subject to appeal to the Board of Supervisors ("BOS"). The Appellant is directly and substantially affected by the proposed project and has standing to bring this appeal. This appeal may not yet be ripe but would risk being untimely if filed later and thus may need to be held briefly until it is ripe for consideration pursuant to the City Attorney's prior guidance. MTA operates the Municipal Railway (Muni) and DCP makes environmental determinations prior to discretionary actions to approve or carry out projects in San Francisco. The proposed project would reduce Muni transit service by about 10%, a significant reduction without precedent in modern times. There are a number of arguments as to why the environmental exemption should be rejected that are discussed below. In summary, neither DCP nor MTA have demonstrated that the conditions applicable to the claimed statutory exemption from environmental review related to the proposed transit service reductions have been met. These transit service changes, if implemented, would have significant impacts on transportation affecting thousands of travelers in San Francisco and the burden is on DCP and MTA to show that the applicable conditions have been met. The Board of Supervisors is urged to grant this appeal, overturn the claimed exemption, and require DCP to conduct proper environmental review of the proposed May 2010 transit service reductions.

II. Jurisdiction Of The Board Of Supervisors

The BOS hears appeals of environmental determinations made by DCP. The role of the BOS in hearing appeals of environmental exemption determinations is to independently decide if the conditions necessary for the claimed exemption were met. If the BOS decides that the conditions were not met the appeal is granted, the exemption determination is overturned, and DCP is required to conduct further environmental review of the proposed project. The appeal is essentially a *de novo* hearing and does not address the merits of the proposed project, just the question of whether the claimed exemption from environmental review is applicable.

CEQA provides, in California Public Resources Code ("PRC") section 21151 (c), that "[i]f a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any." San Francisco Administrative Code Chapter 31 ("Chapter 31") contains local procedures implementing CEQA. While Chapter 31 discusses exemptions in sections 31.06 to 31.08, Chapter 31 only addresses appeals of categorical exemption determinations directly in section 31.22 (a) (4) related to fees. The BOS Interim Procedures for Filing Appeals of California Environmental Quality Act Environmental Exemptions and Negative Declarations dated 1 September 2006 ("Interim Procedures") also only refers to categorical exemption determination appeals. However, since PRC section 21151 (c) refers to a determination "that a project is not subject to this division [CEQA]" it only makes sense that both categorical and statutory exemption determinations made by a nonelected decisionmaking body within the San Francisco city and county government may be appealed to the San Francisco Board of Supervisors. This appeal is filed accordingly, and a copy of the relevant exemption determination, signed by the issuing department, is attached hereto.

III. Standing Of The Appellant

I am a regular public transit user and daily Muni rider. I am familiar with finance, operations, and planning issues related to MTA and Muni. I have previously been an intern in Muni's Community Affairs, Schedules, and Service Planning units. I have attended numerous meetings of the MTA Board and its predecessor bodies, the Public Transportation Commission ("PTC") and the Public Utilities Commission ("PUC"). I am a past member of the MTA Citizens Advisory Council. I am an active and knowledgeable member of the public as it relates to public transit matters generally and Muni in particular. As a transit activist I believe that I represent many other less active public transit riders who would be adversely affected by the proposed transit service reductions. Although this is a matter of citywide concern, some of the transit services I currently use are planned for reduction or elimination during times when I travel so I am directly and substantially affected by the proposed project.

IV. Timeliness Of This Appeal

DCP made the determination and issued a Certificate of Exemption from Environmental Review on 4 February 2010. I contacted DCP to inquire about the status of the determination on Thursday 18 February 2010. I visited DCP's Planning Information Counter at 1660 Mission Street on Friday 19 February 2010 and could not locate a copy of the subject Certificate of Exemption on the environmental exemption clipboard at 1660 Mission Street. I then visited DCP's main office at 1650 Mission Street, Suite 400, and was given a copy of the subject Certificate of Exemption by DCP's Nannie Turrell and allowed to review the docket file (DCP Case No. 2010.0060E). The docket file contained a letter from MTA, receipts for fees paid, and the signed Certificate of Exemption. The docket file did not contain any detailed project description from MTA or any analysis of the specific transit service reductions proposed. I also received a copy of the Certificate of Exemption by mail on Saturday 20 February 2010.

The MTA Board meeting to consider approving the transit service reductions had been scheduled for Tuesday 16 February 2010 and was later changed to Friday 26 February 2010. The meeting of Friday 26 February 2010 was recessed to 12 Noon on Tuesday 2 March 2010. According to a memorandum dated 22 February 2008 from Deputy City Attorney Elaine Warren to Clerk of the Board of Supervisors Angela Calvillo entitled "Amendments to CEQA Guidelines Affecting Board of Supervisors CEQA Appeal Procedures for Negative Declarations and Exemption Determinations / Determining Whether Appeals are Ripe For Review and Timely Filed" an appeal is ripe and timely between the first and last discretionary actions to approve it.

Since the MTA Board has not yet finalized an action to approve, which I believe would be the first discretionary action related to the project, this appeal may not yet be ripe and may need to be held briefly until the MTA Board action is final, at which point it would become ripe. Since it is not clear at this time whether any other discretionary action is required to implement the project I am appealing the environmental determination now to avoid having this appeal be deemed untimely if filed later. As such, should the MTA Board approve a different project or a different version of the proposed project I reserve the right to amend this appeal accordingly.

Although it is not clear what discretionary actions are required to carry out Muni transit service changes it is clear that certain activities are necessary to realize service changes including conducting a transit operator signup and preparing new passenger marketing materials. The transit service changes that took effect 5 December 2009 were delayed at least twice, so the proposed May 2010 transit service reductions may not necessarily be implemented as planned. Since the full extent of the proposed transit service reductions only became clear in the past few weeks, and since filing an environmental appeal with the BOS has the effect of staying the underlying action while the appeal is pending, the transit service reductions should be postponed.

V. Background

CEQA generally requires environmental review prior to a discretionary action by a public agency in California that may have a negative impact on the environment. CEQA includes exemptions that allow public agencies to take certain actions without conducting environmental review if the public agency and the circumstances meet the specific conditions of the claimed exemption. These are known as categorical exemptions and statutory exemptions. CEQA is codified at PRC section 21000 *et seq.* and its implementing regulations, known as the CEQA Guidelines, are at California Code of Regulations ("CCR") section 15000 *et seq.*

A Transit First Policy has evolved in San Francisco since the 1970's and the current version of this policy is now codified in San Francisco Charter section 8A.115. Put simply, San Francisco favors public transit over other transportation modes by policy whenever transportation policy conflicts arise. San Francisco voters have repeatedly supported policy, governance, and funding measures in support of planning and delivering a high level of quality public transit service in San Francisco regardless of economic or other circumstances.

MTA is a department of the City and County of San Francisco that includes Muni, the Department of Parking and Traffic ("DPT"), and bicycle, pedestrian, taxicab, and related transportation operations, engineering, planning, and support functions. The City and County of San Francisco is a municipal corporation and the only combined city and county in California. San Francisco Charter section 8A.100 *et seq.* govern MTA generally. Proposition E (November 1999) structured and Proposition A (November 2007) restructured MTA as a successor to the PTC, which itself was separated from the PUC by Proposition M (November 1993). Muni was under the jurisdiction of the PUC from 1932 until July 1994.

MTA is responsible for, among other things, adopting a two-year balanced operating budget that includes revenues and expenses. The MTA budget is included in the overall City and County budget as relates to appropriations since only the BOS appropriates funds and funds may not be spent legally other than in amounts and for purposes specified by the annual appropriation ordinance of the City and County. MTA manages its budget throughout the year to remain in balance and may periodically adjust expenses to match actual revenues. Unexpected increases in revenue and expense must be added by a budget amendment and a supplemental appropriation.

Under Proposition A (November 2007), MTA now adopts a new two-year budget in even-numbered years. In April 2008 MTA adopted the Fiscal Year 2008-09 and 2009-10 annual budgets as required. For 2009-10 changes in revenues and expenses produced a projected deficit of $128.9 million that MTA was required to eliminate through a combination of new revenue sources, increases from existing revenue sources, reduction of personnel-related and non-personnel-related expenses, and reduction of services. MTA included transit service reductions as part of the reduction of services. Some routes were eliminated, some had service hours reduced, and some were combined, rerouted, and / or restructured. In Fiscal Year 2008-09 Muni had about 700,000 weekday daily boardings. More specifically, on 7 April 2009 the MTA Board held a hearing to consider a declaration of fiscal emergency. On 21 April 2009 the MTA Board approved, by a 4-3 vote, a declaration of fiscal emergency. On 30 April 2009 the MTA Board approved the 2009-2010 amended Operating Budget and related actions and on 5 December 2009 Muni transit service changes associated with the budget deficit were implemented.

DCP, another department of the City and County of San Francisco, includes a Major Environmental Analysis (MEA) section that is responsible for reviewing environmental applications for projects and determining the appropriate level of environmental review, subject to appeals as described further below. DCP issued a Statutory Exemption determination on 24 April 2009 in connection with the MTA's actions. Chapter 31 includes procedures and fees to implement CEQA and vests primary responsibility for CEQA compliance with DCP and MEA.

The BOS hears appeals of MEA environmental determinations when a neighborhood group or other person disagrees with MEA's determination. The BOS may grant the appeal and overturn MEA's determination with 6 votes and then adopt findings explaining the basis for the BOS action. The Interim Procedures govern the filing of environmental appeals with the BOS.

VI. The Proposed Project

The 2009-2010 amended Operating Budget included revenue and expense assumptions that did not hold and ultimately created a $45.1 million deficit as of 15 October 2009. MTA took certain actions to reduce the deficit to $19.6 million and later $16.9 million. To address the $16.9 million MTA currently proposes to acquire $7 million as a one-time source from the San Francisco County Transportation Authority, make minor changes in revenues and expenses of $5.1 million, and reduce transit service by $28.5 million annually or $4.8 million on 1 May 2010.

DCP asserts that the fiscal emergency declared on 21 April 2009 continues through Fiscal Year 2010 (ending 30 June 2010) and that to address the continuing fiscal emergency and budget shortfall among other things the MTA proposes to reduce transit service by up to 325,000 annual service hours by reducing the frequency and operating hours of most Muni bus routes and rail lines on weekdays, Saturday, and Sunday. DCP claims the details of the reduction of service hours would be established "in the near future" as information is presented to the MTA Board.

While the 5 December 2009 changes were significant enough the proposed May 2010 transit service reductions constitute about 10% of Muni's annual service hours. This is not a minor reduction; proposals include reducing the frequency and operating hours of most Muni bus routes and rail lines on weekdays, Saturday, and Sunday.

VII. Grounds For This Appeal

As more fully set forth below and as may be further articulated prior to and at the appeal hearing, there are several reasons why the claimed statutory exemption does not apply including:

1. The statutory exemption does not apply because MTA is not a publicly owned transit agency within the meaning of PRC section 21080.32 and the statutory exemption must be construed narrowly. The legislative history of that section, rules of statutory construction, and case law support that conclusion. Thus, MTA is not eligible for the claimed statutory exemption.

2. Even if the statutory exemption could apply the working capital calculation is insufficient and the continuing nature of MTA's deficits are an ongoing condition and not a fiscal emergency. Further, DCP apparently did not review the public comments received by MTA on the proposed fiscal emergency in the course of DCP considering its exemption determination.

3. The proposed May 2010 transit service reductions were not the subject of a public hearing held prior to a declaration of fiscal emergency. The 7 April 2009 public hearing did not include the proposed May 2010 transit service reductions, nor did the 21 April 2009 declaration of a fiscal emergency or the 30 April 2009 amended Operating Budget. This is a new project.

4. The likely results of the proposed service reductions are significant. Reducing public transit service by 10% would likely result in more crowding and less reliability, leading to decreased public transit use and increased automobile use. The air quality, traffic, and transportation impacts are likely significant and warrant analysis based on meaningful baseline data.

5. A categorical exemption would not likely apply to this project. Although a categorical exemption is not currently being claimed by DCP for the proposed May 2010 transit service reductions the likelihood of significant environmental impacts argues against it anyway.

6. Other City plans do not anticipate the proposed transit service reductions; they assumed that existing transit services would be maintained or adjusted based on changes in land use, project build out, and other factors. The proposed changes negate any transit improvement mitigations. Transit services that were part of an environmental mitigation measure were not disclosed.

7. The Transit Effectiveness Project (TEP) promised environmental review prior to its approval and implementation. Thousands of San Franciscans participated in TEP meetings and outreach and were promised that no TEP service changes would be considered or implemented prior to environmental review. Nevertheless, MTA now claims that the subject transit service changes are both informed by the TEP but not part of the TEP, which has not had environmental review.

8. The basic purposes of CEQA are being undermined. CEQA aims to inform decisionmakers and the public of the likely environmental impacts of a project, mitigate those impacts where significant, and provide for ongoing public participation prior to a decision to approve a project. All of these purposes are being ignored or undermined here by avoiding environmental review.

9. CEQA provides and case law holds that any doubt about the environmental impacts of a project should be resolved in favor of additional review. A controversial project like making transit service reductions requires further environmental review. Given MTA's ongoing budget deficits additional service reductions will likely be considered and useful baseline data is needed.

VIII. The Statutory Exemption Does Not Apply To MTA

The language of PRC section 21080.32 may seem relatively straightforward. It provides, essentially, that a publicly owned transit agency in California may avoid environmental review of specific actions to increase or initiate revenues or eliminate or reduce transit services if it holds two initial public hearings to address those actions and address its projected working capital one year into the future, responds at a regular public meeting within 30 days to public comments made at the initial public hearings, makes a finding that projected agency revenues are insufficient to cover projected agency expenses one year into the future, and chooses to implement some or all of the actions described and discussed at the initial public hearing. Here, however, the exemption does not apply because MTA is not a "publicly owned transit agency" under PRC section 21080.32 but is part of a "local agency" or a "public agency" under CEQA. There is some legislative history and statutory construction that bears explanation at this point.

CEQA normally requires environmental review as discussed earlier. A previous exemption provided that all public agencies could avoid environmental review of actions taken to eliminate or reduce public services prior to a date certain in response to significant and truly unforeseen reductions in revenues caused by Proposition 13, the 1978 property tax reduction measure. That provision had a sunset date and is no longer effective. In the early 1990's, during a previous economic downturn, California public transit agencies including AC Transit and the Santa Clara Valley Transportation Authority (VTA) saw a significant reduction in revenues and were forced to increase fares (revenues) and reduce transit service (expenses) to balance their budgets. Both agencies faced challenges to the transit service reductions since such reductions were controversial, significant, and had no environmental review prior to their implementation.

In 1993, State Senator Alfred Alquist (D-San Jose), a longtime transit supporter, was persuaded by local officials and the VTA to introduce legislation (SB 199, 1993) to create a new exemption for transit service reductions caused by the failure of agency revenues to cover agency expenses. The bill failed passage in the Senate Natural Resources Committee, its first hearing, and died in that legislative session. In 1995, with more support, Senator Alquist introduced a similar measure (SB 1899, 1995) that ultimately became PRC section 21080.32. As SB 1899 evolved it turned from a broad exemption like the post-Proposition 13 provision to a more narrow exemption for service reductions made by a "publicly owned transit agency" that could project expenses exceeding revenues within one year, described as a "fiscal emergency."

While "publicly owned transit agency" is not defined in CEQA, "public agency" is defined in PRC section 21063 as "any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision." "Local agency" is defined in PRC section 21062 as "any public agency other than a state agency, board, or commission." The legislature thus intended to distinguish a "publicly owned transit agency" from both a "public agency" and a "local agency."

Clearly, a "publicly owned transit agency" would be a smaller, discrete government agency, such as a special district organized under the California Government Code or California Public Utilities Code whose primary purpose is to operate public transit services in California such as AC Transit and BART in the San Francisco Bay Area. It might also include the Golden Gate Bridge, Highway and Transportation District (organized under the California Streets and Highways Code), which operates the Golden Gate Bridge, Golden Gate Ferry transit service, and Golden Gate Transit bus service. However, a "publicly owned transit agency" does not include a city, county, or city and county, even one that operates directly or contracts for public transit service, as that leads back to the broader definition of a "public agency" under PRC section 21063, which the legislature considered including and rejected in amending SB 1899.

The legislature considered allowing the exemption for a larger group of government agencies and chose to limit its application to a smaller group. The final legislative intent was thus to exclude a city, county, or city and county from being a "publicly owned transit agency." The legislature, in balancing competing public interests, chose to enact the fiscal emergency exemption for a publicly owned transit agency, under specific and narrow circumstances and under prescribed conditions, and not to allow any broader reading of the exemption for other agencies, entities, or circumstances since their options would be necessarily different and greater. MTA, a city and county department, is not a "publicly owned transit agency" under CEQA.

IX. MTA Does Not Meet Other Conditions Of The Statutory Exemption

Although a fiscal emergency is not defined in PRC section 21080.32, a procedure is laid out and a crude methodology is described to determine working capital. However, a true fiscal emergency can be described as a one-time, rare, simple failure of a transit agency's revenues to cover its expenses, likely due to a rapid economic downturn. The MTA Board last declared a fiscal emergency in 2005, the only other time MTA has made such a declaration. Moreover, MTA is really a multi-purpose transportation agency and has a variety of revenues and expenses. Some are tied to transit, some to parking, some to other purposes, and some are general, administrative, or overhead. Under Proposition E (November 1999), a Municipal Transportation Fund (MTF) was established with a baseline funding formula based on prior City General Fund Support for Muni. After DPT merged into MTA in 2002 a separate MTF was established for DPT. Eventually, the two were merged into a single MTF that no longer distinguishes between transit- and parking-based revenues. As such, it is now difficult to segregate MTA's revenues.

Further, while fiscal emergency is not defined in CEQA it is somewhat analogous to an emergency, which is defined. PRC section 21060.3 defines emergency as "a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. 'Emergency' includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage." It is not an ongoing concern. The emergency exception under CEQA is "extremely narrow." (*Los Osos Valley Associates v. City of San Luis Obispo* (1994) 30 Cal. App. 4th 1670, 1682) In *Los Osos* the Court also explained that an "emergency" is an "unforeseen situation" that is "not synonymous with expediency, convenience, or best interests" and is "more . . . than merely a general public need." (*Id.* at 1681) In *CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal. App. 4th 529, 536, the Court observed that the definition "limits an emergency to an 'occurrence,' not a condition." Also, although disapproved for other reasons, in *Western Mun. Water Dist. v. Superior Court* (1986) 187 Cal. App. 3d 1104, 1113 the Court held that every element of an emergency must be supported by substantial evidence, e.g., sudden, unexpected, imminent, etc. and that "at a minimum, the administrative record must disclose substantial evidence of every element of the contended exemption." MTA's budget deficits have been ongoing for years and are not new.

Further, MTA's calculation of working capital is not sufficiently clear and does not satisfy the condition of making a finding of a "fiscal emergency" that is supported by substantial evidence. MTA has not shown that its actions fall within the exemption even if the statutory exemption were to apply. Similarly, the MTA staff responses to comments were not adequate to respond to the concerns raised and in many cases deferred meaningful responses until the service plans were better defined. Indeed, the fiscal emergency was proposed at a time when the proposed solutions were not clear and thus comments could not be fully answered. It was not made clear to the public that the public hearing on the proposed fiscal emergency declaration was the single opportunity to make comments and receive a response on MTA's proposed course of action to address its perceived shortfall. In essence, the full and true purpose of the public hearing was not properly described and real alternatives were not meaningfully explored.

Further, DCP apparently did not review the public comments on the fiscal emergency proposal when DCP made its exemption determination in April 2009. The determination of DCP lacks independent review and evidence and appears to just accept MTA's fiscal emergency declaration as the basis for the statutory exemption without further investigation. Indeed, if MTA budget projections, boiled down to a single page and without detailed explanation, are allowed to stand as the basis for this statutory exemption then MTA can essentially manufacture a fiscal emergency anytime it wants by making (and not disclosing) assumptions that drive budget projections. These assumptions include inflation rates, usage projections, inventory management, and timing of revenues, expenses, and grant reimbursements, for example. In summary, MTA did not meet the conditions necessary for a fiscal emergency under CEQA.

X. The Proposed May 2010 Transit Service Reductions Had No Prior Public Hearing

DCP's remarks quotes only part of the regulatory language related to the claimed statutory exemption, CCR section 15285 (a). DCP neglects to mention or discuss CCR section 15285 (b), which states: "When invoking this exemption, the transit agency shall make a specific finding that there is a fiscal emergency. Before taking its proposed budgetary actions and making the finding of fiscal emergency, the transit agency shall hold a public hearing. After this public hearing, the transit agency shall respond within 30 days at a regular public meeting to suggestions made by the public at that initial hearing. The transit agency may make the finding of fiscal emergency only after it has responded to public suggestions."

PRC section 21080.32 (d) (1), which CCR section 15285 is intended to implement and clarify, states: "This section applies only to *actions taken* after the publicly owned transit agency has made a finding that there is a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities, and after the publicly owned transit agency has held a public hearing to consider *those actions*. A publicly owned transit agency that has held such a hearing shall respond within 30 days at a regular public meeting to suggestions made by the public at the initial public hearing. *Those actions* shall be limited to projects defined in subdivision (a) or (b) of Section 21065 which initiate or increase fees, rates, or charges charged for any existing public service, program, or activity; or reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity." (emphasis added)

If PRC section 21080.32 and CCR section 15285 were to apply to MTA, and I am neither conceding nor even suggesting that they do apply, then the specific proposed actions would have to have been the subject of a public hearing prior to a finding (i.e. declaration) of a fiscal emergency and subject to public suggestions and a required response. To be clear, the proposed May 2010 transit service reductions were not the subject of the 7 April 2009 public hearing, were not considered in the 21 April 2009 declaration of a fiscal emergency, and were not included in the 30 April 2009 amended operating budget. The proposed May 2010 transit service reductions are a new project, not tied to any prior actions, and require separate environmental review.

To contradict DCP, the MTA would reduce its transit service by up to 325,000 annual service hours not in response to the existing fiscal emergency declared on 21 April 2009 but as a separate project with independent utility. The fiscal emergency declared on 21 April 2009 does not give carte blanche to any proposal in the next 12 months to reduce service; each service reduction proposal must be separately and specifically evaluated to determine if an exemption may apply. Again to contradict DCP, the proposed May 2010 transit service reductions does not meet the provisions of PRC section 21080.32 and CCR section 15285 and therefore is not statutorily exempt from environmental review. DCP provides no evidence to the contrary.

XI. The Likely Results Of The Proposed Service Reductions Are Significant

The proposed May 2010 transit service reductions would likely result in increased crowding, load factors, longer waits in inclement weather, missed transfers, pass-ups, running time, safety and security concerns, service delays, shift to other transportation modes, standees, and reduction in trip making. While the policy implications are considerable the likely direct, indirect, and cumulative environmental impacts alone warrant additional environmental review.

Although DCP has not carefully reviewed or considered the proposed transit service reductions they are quite significant. As DCP asserts, most Muni bus routes and rail lines would see less service (less frequency or longer headways) on weekdays, Saturday, and Sunday. Some routes would have service starting later and / or ending earlier. This reduces the "span of service hours" from the first trip to the last trip of the day. Many crosstown and community routes would have service reduced below "policy headways" – the minimum level of service for those routes – during several day parts. MTA has not disclosed the number of passengers affected and has not made its federal Title VI review of disproportionate impact publicly available.

DCP's exemption determination issued 4 February 2010, prior to the public release of the proposed weekday service changes and prior to the completion and release of the proposed Saturday and Sunday service changes. DCP's docket file contains only summary information regarding the proposed weekday service changes, no information regarding the proposed weekend service changes, and no detailed analysis, either by MTA or DCP, of the number of passengers affected or even that the total reduction is 325,000 annual service hours or less.

Here, transit system use will intensify on existing trips if the transit service reductions are implemented. The combined effect – the cumulative impacts – of the proposed May 2010 transit service reductions must be analyzed together with the 5 December 2009 service changes since no relevant baseline data exists. CEQA analysis can only be based on actual conditions on the ground, in this case as they existed prior to 5 December 2009 and today, not on speculative projections of transit system use. Existing baseline data may only have limited value in this case.

XII. A Categorical Exemption Would Not Likely Apply To This Project

Since transit service changes will clearly have direct, indirect, and cumulative significant impacts on air quality, traffic, and transportation, they also cannot be categorically exempt from CEQA. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal. 4th 105, 124; *Salmon Protection and Watershed Network v. County of Marin* (2004) 125 Cal. App. 4th 1098, 1107)

Here, thousands of daily travelers will face unavailable, delayed, or degraded transit services. These impacts are significant, avoidable, and irreparable since lost time cannot be replaced. Changes to and unavailability of public transit service lead to increased use of automobiles and other transportation modes with resulting impacts on air quality, congestion, parking, and traffic.

Further, a project cannot be categorically exempt "when the cumulative impact of successive projects of the same type in the same place, over time is significant." (CCR section 15300.2 (b)) Here, DCP has failed to analyze the cumulative impacts of projects of the same type in the same place, over time. "'Cumulative impacts' refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. (a) The individual effects may be changes resulting from a single project or a number of separate projects. (b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (CCR section 15355) CEQA requires a finding that a project "may have a 'significant effect on the environment'" if "[t]he project has possible environmental effects that are individually limited but cumulatively considerable. 'Cumulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (CCR section 15065 (a) (3); PRC section 21083 (b))

The issues of significant effects and cumulative impacts must be considered in determining whether a project is exempt. (*East Peninsula Education Council, Inc. v. Palos Verdes Peninsula Unified School District* (1989) 210 Cal. App. 3d 155, 172-173) Here, these issues have not been considered, the project's impacts are not acknowledged, and no cumulative impacts analysis has been conducted. The service changes are not minor and impacts are likely.

It is likely that the proposed transit service changes will have direct, indirect, and cumulative environmental impacts. A reduction of up to 10% of transit service hours, especially when combined with the 5 December 2009 service changes and other recent policy changes, will likely result in fewer transit riders and is contrary to the Transit First Policy and other adopted public policies. These changes, in turn, will likely lead to increased automobile trips, reduced access to community services, commercial areas, tourist destinations, and other direct, indirect, and cumulative impacts. This level of reduction in transit services, particularly when added to reductions in 1988 and 2005, will likely result in less transit service than in 1979 when Muni began its last major route restructuring and improvement program.

XIII. Other Adopted City Plans Do Not Anticipate These Transit Service Changes

Existing Muni transit services are assumed and relied on in a number of City plans. The Market and Octavia Neighborhood Plan, the Eastern Neighborhoods Plan, the original Mission Bay Plan, plans for Treasure Island and Yerba Buena Island (both interim and long-term), the Presidio, South Bayshore Redevelopment Plan, Bayview Hunters Point Plan, Western SoMa plans, Glen Park Plan, Balboa Park Station Area Plan, Japantown Better Neighborhood Plan, and any number of other plans either assumed a certain level of transit service, included as mitigation measures minimum or enhanced transit service, or even committed San Francisco to certain transit service improvements in connection with planned development. PRC section 21080.32 (c) excludes such service changes from the proposed statutory exemption. MTA did not disclose what services are covered by mitigation measures or other environmental protections and thus did not properly frame the range of services potentially subject to reduction or elimination. Further, the MTA Board resolution adopting the 2009-10 Amended Operating Budget includes no severability clause; thus, if the service reductions include any service protected by mitigation measures or other environmental protections then none of the service reductions may be implemented without environmental review.

Cumulative impacts analysis therefore requires at a minimum that DCP analyze the likely changes resulting from both the transit service reductions and enhancements as well as changes resulting from closely related past, present, and reasonably foreseeable probable future projects that may appear individually minor but collectively significant taking place over a period of time. (see, *e.g., Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal. App. 4th 98, 116-121; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 718-724; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal. App. 3d 61, 72-77; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 868-872 [abuse of discretion and prejudicial error to exclude cumulative impacts analysis]) Here, numerous other projects combine with the effects of the transit service changes to make the already-significant impacts even more severe.

XIV. The TEP Promised Environmental Review Prior To Approval

The TEP, the system-wide review of transit service initiated in 2006, was supposed to result in service improvements by redirecting resources from less productive to more productive routes while improving reliability and increasing speed without compromising passenger or employee safety. Here, the continued reduction of transit service in the manner proposed would likely stop or at least considerably slow down TEP implementation. Indeed, the additional funds made available under Proposition A (November 2007) are restricted for use in improving service and not for maintaining or reducing it. It is not clear how the MTA 2009-10 Amended Operating Budget addresses the use of those funds given the proposed net service reductions.

Environmental review was specifically promised prior to TEP approval and implementation. Thousands of San Franciscans participated in TEP meetings and outreach and were assured in 2008 that no TEP service changes would be finalized, considered, or implemented prior to environmental review. Nevertheless, MTA again claims that the transit service changes that are the subject of this appeal are both informed by TEP data but not part of TEP implementation. These two statements seem somewhat in conflict. Further, DCP claims to have no records related to TEP in response to two public records requests in 2009. Either DCP is not acknowledging that it has TEP data or DCP is making environmental determinations without using TEP data that MTA has. In any event, the TEP has received no environmental review.

XV. The Basic Purposes Of CEQA Are Being Undermined

The main purpose of CEQA is not only to protect the environment but also to inform the public and responsible officials and promote analysis of environmental impacts prior to discretionary actions to approve projects. All exemptions are read narrowly to facilitate such analysis. That important public purpose is ignored or undermined if MTA is allowed to create circumstances that might qualify as a fiscal emergency, declare that such an emergency exists, take actions that MTA desires to implement certain budget reductions, ignore other revenue and expense options, and ultimately exempt all of these policy choices from environmental review.

Since no environmental review has occurred the likely impacts of the service changes are undisclosed and unmitigated, defeating core CEQA mandates. Since operating, ridership, and schedule details regarding the service changes have not been made available questions about disproportionate impact on low income and minority communities cannot be answered. Public presentations have included summary information about the transit service changes but have also made clear that the important decisions about the service changes have already been made. Hence, no meaningful public participation has occurred to inform the decisionmaking process.

CEQA is interpreted broadly to "afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal. 3d 247, 259) CEQA embodies California policy that "the long-term protection of the environment shall be the guiding criterion in public decisions." (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 74) CEQA "protects not only the environment but also informed self-government." (CCR section 15003; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376, 392) "Strict construction allows CEQA to be interpreted in a manner affording the fullest possible environmental protections within the reasonable scope of statutory language." (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 966) "It also comports with the statutory directive that exemptions may be provided only for projects which have been determined not to have a significant environmental effect." (*Id.* at 966; PRC section 21084 (a); *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal. App. 4th 1165, 1192)

XVI. Any Doubt About A Project Should Be Resolved In Favor Of Additional Review

A controversial project like making significant transit service reductions strongly argues for further environmental review. Given MTA's ongoing budget deficits additional service reductions will continue to be considered and useful baseline data is needed. Until MTA and the City as a whole addresses the structural deficit with stable revenue sources and better cost controls DCP must be able to independently analyze MTA service change proposals and be able to determine the likely environmental impacts prior to any action taken.

Courts have also found, and the legislature intended, that exemptions from environmental review should be construed narrowly and that any doubts should be resolved in favor of conducting environmental review and not exempting projects from such review. In *County of Amador, supra,* 76 Cal. App. 4th at 966, the Court noted: "In keeping with general principles of statutory construction, exemptions are construed narrowly and will not be unreasonably expanded beyond their terms." An agency asserting a statutory exemption has "the burden of showing that legislative history evidences a purpose or intent other than that expressed by the literal meaning of the statutory language." (*East Peninsula, supra,* 210 Cal. App. 3d at 170) In granting exemptions agencies must proceed in the manner prescribed by CEQA. (*Id.* at 174) An exemption may be applied "'Only with a considered awareness of the purposes and policy behind this law, and a careful analysis of the proposed project.'" (*Id.,* citing *Dehne v. County of Santa Clara* (1981) 115 Cal. App. 3d 827, 842-843) Failure to meet the exemption criteria is a failure to comply with CEQA's requirements and an abuse of discretion. (*East Peninsula, supra,* at 174)

XVII. Conclusion

MTA is not a separate public agency; it is a department of the City and County of San Francisco. As such, it is not a publicly owned transit agency within the meaning of PRC section 21080.32. MTA has a broader menu of policy choices to address budget shortfalls than public agencies such as AC Transit and BART which have much more limited purposes and abilities to raise revenues through taxes, user fees, or other methods. Further, the Mayor and the BOS have a wide range of ways to increase revenues and reduce expenses in the City and County and can choose, for example, to fund more transit instead of other City services. MTA's proposed May 2010 transit service reductions are significant, certainly affect thousands of people, and need further environmental review to assess the likely effects of the proposed changes.

DCP's determination that the proposed May 2010 transit service reductions are statutorily exempt from environmental review should be rejected, this appeal should be granted, and further environmental review should be required prior to further consideration of the proposed May 2010 transit service reductions by the MTA Board. I look forward to your careful consideration of this appeal and the issues raised. Thank you for taking the time to review this matter.

Sincerely,

David Pilpel

Attachment

cc: John Rahaim, Director, City Planning Department
Bill Wycko, Environmental Review Officer, City Planning Department
Nannie Turrell, Environmental Planner, City Planning Department
Viktoriya Wise, Environmental Planner, City Planning Department
Nathaniel Ford, Director, Municipal Transportation Agency
Sonali Bose, Chief Financial Officer, Municipal Transportation Agency
John Haley, Director of Transit, Municipal Transportation Agency
Julie Kirschbaum, TEP Program Manager, Municipal Transportation Agency
Kate Stacy, Deputy City Attorney (Land Use Team Leader), City Attorney's office
Elaine Warren, Deputy City Attorney (Land Use Team), City Attorney's office
Julia Friedlander, Deputy City Attorney (Transportation Team Ldr.), City Attorney's office
John Kennedy, Deputy City Attorney (Transportation Team), City Attorney's office

SAN FRANCISCO
PLANNING DEPARTMENT

Certificate of Determination
EXEMPTION FROM ENVIRONMENTAL REVIEW

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Case No.:	**2010.0060E**
Project Title:	**SFMTA Fiscal Emergency**
Zoning:	Various Locations throughout San Francisco
Block/Lot:	Various Locations throughout San Francisco
Lot Size:	Not Applicable
Project Sponsor	Sonali Bose, SFMTA Director of Finance and CFO (415) 701-4617
Staff Contact:	Viktoriya Wise – (415) 575-9049 Viktoriya.wise@sfgov.org

PROJECT DESCRIPTION:

On April 7, 2009 the San Francisco Municipal Transportation Agency (SFMTA) Board held a hearing to consider a declaration of fiscal emergency in accordance with the use of a statutory exemption authorized by the California Environmental Quality Act, California Public Resources Code § 21000 *et seq.* ("CEQA"), § 21080.32 and CEQA State Guidelines, 14 California Code of Regulations ("CEQA Guidelines"), § 15285. On April 21, 2009, the SFMTA Board approved Resolution 09-064 in which SFMTA declared that it found a fiscal emergency existed within the definition of CEQA § 21080.32. (See next page)

EXEMPT STATUS:

Statutorily Exempt as provided in California Public Resources Code Section 21080.32 and CEQA Guidelines Sections 15285.

REMARKS:

(See next page)

DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and Local requirements.

Bill Wycko
Environmental Review Officer

February 4, 2010
Date

cc: Julie Kirschbaum, SFMTA
Lorraine Fuqua, SFMTA
Sonali Bose, SFMTA
Nannie Turrell, MEA Division
Virna Byrd, MDF

John Kennedy, City Attorney
Kate Stacy, City Attorney
Board of Supervisors

PROJECT DESCRIPTION (continued):

Subsequent to the declaration of the fiscal emergency and compliance with the requirements set forth in CEQA, the Planning Department issued a Statutory Exemption determination in support of actions proposed by SFMTA to address the budget deficit on April 24, 2009. On April 30, 2009, the SFMTA Board approved the 2009-2010 amended Operating Budget and related actions, and on December 5, 2009, Muni service changes associated with the budget deficit were implemented.

The fiscal emergency declared on April 21, 2009 continues through the Fiscal Year (FY) 2010. The SFMTA is facing a budget shortfall in its current FY, which ends on June 30, 2010. To address the continuing fiscal emergency, among other things, the SFMTA is proposing to reduce service by up to 325,000 annual service hours through modifications to most of the Muni bus routes and rail lines. In order to achieve an overall reduction in 325,000 annual service hours, the SFMTA proposes to reduce the frequencies and hours of operation of most Muni bus routes and rail lines. Changes would include, but are not limited to, reducing frequencies and hours of operation that would affect weekday, Saturday and Sunday service. The details of the reduction of service hours would be established in the near future as the SFMTA presents more information to its Board of Directors.

REMARKS:

Public Resources Code Section 21080.32 and CEQA Guidelines Section 15285 provide for a statutory exemption for Transit Agency Responses to Revenue Shortfalls. Section 15285 states that "CEQA does not apply to actions taken on or after July 1, 1995 to implement budget reductions made by a publicly owned transit agency as a result of a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities." Actions shall be limited to those directly undertaken by or financially supported in whole or in part by the transit agency, including actions which reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity. The SFMTA would reduce its transit service by up to 325,000 annual service hours in response to the existing fiscal emergency declared on April 21, 2009. This action meets the provisions of Public Resources Code Section 21080.32 and CEQA Guidelines Section 15285 and therefore is statutorily exempt from environmental review.

orig: Joy
c: COB, Leg Dep.

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

KATE HERRMANN STACY
Deputy City Attorney

Direct Dial: (415) 554-4617
Email: kate.stacy@sfgov.org

MEMORANDUM

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2010 MAR -9 PM 1:22
BY ___

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Kate H. Stacy
Deputy City Attorney

DATE: March 9, 2010

RE: Appeal of Determination of Statutory Exemption From Environmental Review for San Francisco Municipal Transportation Agency Transit Service Reductions and Related Fiscal Emergency

---

You have asked for our advice on the timeliness of an appeal to the Board of Supervisors by David Pilpel on March 2, 2010, of the Planning Department's determination that the San Francisco Municipal Transportation Agency Transit Service Reductions are statutorily exempt from environmental review under the California Environmental Quality Act ("CEQA"). The Appellant provided a copy of the statutory exemption determination issued by the Planning Department on February 4, 2010.

The San Francisco Municipal Transportation Agency approved transit service reductions on February 26, 2010, and informed the public that it would hold its decision in abeyance for 20 days after February 26, 2010, for members of the public to appeal the environmental exemption determination to the San Francisco Board of Supervisors. This appeal was filed within that 20-day period and the decision is not yet final. Accordingly, the appeal is timely. We recommend that you so advise the Appellant.

Please let us know if we may be of further assistance.

cc: Rick Caldeira, Deputy Director, Clerk of the Board
Cheryl Adams, Deputy City Attorney
John Rahaim, Director, Planning Department
Larry Badiner, Zoning Administrator, Planning Department
Bill Wycko, Environmental Review Officer, Planning Department
Elaine Forbes, Chief Administrative Officer, Planning Department
AnMarie Rodgers, Planning Department
Tara Sullivan, Planning Department
Nannie Turrell, Planning Department
Viktoriya Wise, Planning Department

#25
File 100288

SAN FRANCISCO
PLANNING DEPARTMENT

MEMO

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APPEAL OF STATUTORY EXEMPTION

Citywide

DATE:	April 6, 2010
TO:	President David Chiu, and Members of the Board of Supervisors
FROM:	Bill Wycko, Environmental Review Officer – (415) 575-9048 Viktoriya Wise, Senior Planner – (415) 575-9059
RE:	BOS File No. 10-0288, Planning Department Case No. 2010.0060E Appeal of Statutory Exemption for SFMTA Fiscal Emergency-Related Service Changes
HEARING DATE:	April 13, 2010
ATTACHMENTS:	A – Certificate of Exemption from Environmental Review (February 4, 2010) B – Appeal Letter (March 2, 2010) C – SFMTA Board Resolution 09-064 – Declaration of Fiscal Emergency (April 21, 2009)

PROJECT SPONSOR: Sonali Bose, Director of Finance and CFO, SFMTA

APPELLANT: David Pilpel, San Francisco Resident

INTRODUCTION:

This memorandum and the attached documents are a response to the letter of appeal to the Board of Supervisors (the "Board") regarding the Planning Department's issuance of a Statutory Exemption Certificate under the California Environmental Quality Act ("CEQA") for a San Francisco Municipal Transportation Agency ("SFMTA") project that would reduce service by up to 325,000 annual service hours through modifications to a majority of the Muni bus routes and rail lines (the "Project").

The Department, pursuant to California Public Resources Code ("PRC") § 21080.32 and Article 18 of the *CEQA Guidelines* (Statutory Exemptions), issued a Statutory Exemption Certificate for the Project on February 4, 2010, finding that the Project meets the requirements of a statutory exemption under § 15285 of the *CEQA Guidelines*, and therefore qualifies for an exemption from environmental review (see Attachment A). Projects that are determined to be statutorily exempt from environmental review do not require consideration of their impacts on the physical environment.

The decision before the Board is whether to uphold the Planning Department's decision to issue a statutory exemption and deny the appeal, or to overturn the Planning Department's decision to issue a statutory exemption and return the project to staff for additional environmental review based on a determination that a statutory exemption does not apply to this project.

PROJECT DESCRIPTION:

In order for the SFMTA to meets its Fiscal Year ("FY") 2009/2010 budget, the agency is proposing to reduce service by up to 325,000 annual service hours through modifications to most of the Muni bus routes and rail lines. In order to achieve an overall reduction in 325,000 annual service hours, the SFMTA proposes to reduce the frequencies and hours of operation of a majority of its Muni bus routes and rail lines. Changes would include, but are not limited to, reducing frequencies and hours of operation that would affect weekday, Saturday and Sunday service. It is anticipated that the Project would be implemented in May of 2010.

BACKGROUND:

On April 7, 2009 the SFMTA Board held a hearing to consider a declaration of fiscal emergency in accordance with the use of a statutory exemption authorized by the California Environmental Quality Act, which allows for a government agency to declare a 'fiscal emergency' and take actions to address the fiscal emergency without undertaking environmental review.[1] On April 21, 2009, the SFMTA responded to comments made and suggestions submitted at the April 7, 2009 hearing and approved Resolution 09-064, which declared that a fiscal emergency existed as defined in CEQA § 21080.32.

Subsequent to the declaration of the fiscal emergency and compliance with the requirements set forth in CEQA, on April 24, 2009 the Planning Department issued a Statutory Exemption Certificate for the actions proposed by SFMTA to address the budget deficit. On April 30, 2009, the SFMTA Board approved the FY 2009/2010 amended Operating Budget and related actions, and on December 5, 2009, Muni service changes associated with the budget deficit were implemented.

The fiscal emergency declared by SFMTA on April 21, 2009 continues through the FY 2010. The SFMTA is facing a budget shortfall in its current fiscal year, which ends on June 30, 2010. To address the continuing fiscal emergency, the SFMTA is proposing the Project described above, as well as other actions not on appeal here.

CEQA GUIDELINES:

Article 18 of the *CEQA Guidelines* describes the exemptions from CEQA that have been granted by the California State Legislature. That is, the State Legislature has prescribed that particular acts or actions shall be exempt from environmental review. If a project meets one of the enumerated "statutory exemptions", then the project is deemed to be statutorily exempt from CEQA and no further review is required. Projects that are determined to be statutorily exempt from environmental review do not require consideration of their impacts on the physical environment. In other words, a project could result in substantial impacts to the environment and still be considered statutorily exempt.

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[1] California Public Resources Code § 21000 *et seq.*, § 21080.32 and CEQA State Guidelines, 14 California Code of Regulations, § 15285.

One such exemption addresses transit agencies that are responding to revenue shortfalls. Specifically, *CEQA Guidelines* § 15285 as well as PRC § 21080.32 state that CEQA does not apply to actions taken to implement budget reductions made by a publicly owned transit agency as a result of a fiscal emergency. The *CEQA Guidelines* go on to state that such actions may include reduction or elimination of an existing transit service. In order to qualify for this particular exemption from environmental review, the following set of criteria must be met.:

a. The exemption does not apply to actions of the Los Angeles County Metropolitan Transportation Authority;

b. The exemption does not apply to any action to reduce or eliminate a transit service, facility, program, or activity that was approved or adopted as a mitigation measure in any environmental document authorized by PRC Division 13, *Environmental Quality* or the National Environmental Policy Act (NEPA) or to any state or federal requirement that is imposed for the protection of the environment;

c. The exemption applies only to actions taken after the publicly owned transit agency has made a finding that there is a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities; and

d. The exemption applies only if before taking its proposed budgetary action and making a finding of fiscal emergency, the transit agency holds a public hearing. After this public hearing, the transit agency shall respond within 30 days at a regular public hearing to suggestions made by the public at that initial hearing. The transit agency may make the finding of fiscal emergency only after it has responded to the public suggestions.

The actions proposed by the publicly owned transit agency shall be limited to projects defined in subdivision (a) or (b) of PRC § 21065 which initiate or increase fees, rates, or charges charged for any existing public service, program, or activity; or reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity.

Public Resource Code § 21080.32 provides a definition of a fiscal emergency as applied to this statutory exemption. Section 21080.32(d)(2) states that a fiscal emergency occurs when the agency is "projected to have a negative working capital within one year from the date that the agency makes the finding that there is a fiscal emergency pursuant to this section. Working capital shall be determined by adding together all unrestricted cash, unrestricted short-term investments, and short-term unrestricted accounts receivable and then subtracting unrestricted accounts payable. Employee retirement funds, including Internal Revenue Code Section 457 deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, workers' compensation reserves, and insurance reserves, shall not be factored into the formula for working capital." As part of its response to this appeal, it is anticipated that the SFMTA will be providing more detailed information regarding compliance with this definition.

In making its determination of whether the SFMTA's actions were statutorily exempt under CEQA, the Planning Department evaluated whether the Project met the criteria outlined above. Under CEQA, if the criteria are satisfied, then a project is deemed exempt by law without giving consideration to whether or not it may result in adverse physical changes to the environment. The Planning Department determined that:

a. SFMTA is not the Los Angeles County Metropolitan Transportation Agency;

b. The Project would not eliminate transit service that was adopted as a mitigation measure (see Response #6 on page 8);

c. The SFMTA Board declared a fiscal emergency pursuant to PRC § 21080.32(d)(2) (see Response #2 on page 5); and

d. The SFMTA held the appropriate public hearings pursuant to PRC § 21080.32(d)(1) (see Response #3 on page 6).

Accordingly, the Planning Department determined that the Project met the requirements of Section 15825 and was statutorily exempt from CEQA and thus, did not require further environmental review.

APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES:

The concerns raised in the March 2, 2010 Appeal Letter (see Attachment B) are cited in a summary below and are followed by the Planning Department's responses.

Issue #1: The statutory exemption does not apply because SFMTA is not a publicly owned transit agency within the meaning of PRC § 21080.32 and the statutory exemption must be construed narrowly. The legislative history of that section, rules of statutory construction, and case law support that conclusion. Thus, SFMTA is not eligible for the claimed statutory exemption.

Response #1: Appellant's argument is without merit. In 1996, Senate Bill 1899 created a statutory exemption from CEQA for "publicly owned transit agencies." The statute does not define the term "publicly owned transit agencies." It is self-evident that the SFMTA is a publicly owned transit agency under the plain meaning of the term. The SFMTA and the City and County of San Francisco are both public bodies. Under Chapter 8A of the San Francisco Charter, SFMTA has responsibility for providing transit service in the City and County of San Francisco. Assets of the SFMTA are publicly owned or leased, and the SFMTA derives its authority from City and State law.

Contrary to Appellant's assertion, there is no evidence in either the legislative history or subsequent case law that indicates that the term "publicly owned transit agency" was intended to exclude any local transit agency other than the Los Angeles County Metropolitan Transportation Agency. Further, there is no evidence to suggest that the statutory exemption was not intended to apply to transit agencies operating within a city and county in California.

Senate Bill 1899 originally extended to any public agency. Subsequent amendments to the bill narrowed the exemption to apply only to "publicly owned transit agencies." The legislative intent was to narrow the statutory exemption from applying to actions taken by *any* public agency to actions taken by a public *transit* agency. The amendments to SB 1899 were not intended to distinguish between a "publicly owned transit agency" versus a publicly owned transit agency that also happens to be a part of a city and county. The Appellant asserts that "the legislature thus intended to distinguish a "publicly owned transit agency" from both a "public agency" and a "local agency". While the amendments to SB 1899 indeed made a distinction between a 'public agency' and a 'publicly owned transit agency', they did not specify that a publicly owned transit agency was limited to independent public transit agencies that are not part of a city, county, or a city and county. Thus, the Appellant's argument that the legislative intent of SB 1899 was to apply to smaller, discrete transit government agencies and not transit agencies that are also part of a city and county is without any support in the legislative history.

In conclusion, PRC § 21080.32 is clear in that it applies to publicly owned transit agencies and, legislative history aside, it is obvious that SFMTA is indeed a publicly owned transit agency.

Issue #2: The working capital calculation is insufficient and the continuing nature of MTA's deficits is an ongoing condition and not a fiscal emergency. Further, the Planning Department did not review the public comments received by SFMTA on the proposed fiscal emergency in the course of its consideration of whether the Project is statutorily exempt.

Response #2: The appellant asserts that SFMTA's deficit is an ongoing condition and not a fiscal emergency. SFMTA made the calculations required under CEQA to make a determination that a fiscal emergency exists. The fact that the fiscal emergency lasts a long time does not change the fact that it meets the definition of "fiscal emergency" under CEQA. The Planning Department does not re-evaluate SFMTA's calculations to make a determination that a fiscal emergency exists at SFMTA. The Planning Department relied on Resolution 09-064 approved by the SFMTA Board on April 21, 2009, which declared that the SFMTA Board found a fiscal emergency existed within the definition of CEQA § 21080.32 (see Attachment C). That Resolution and the associated calendar item contain the calculations required by CEQA. The Planning Department is not required to check the calculations for correctness, nor would it be appropriate to do so.

As discussed above, § 21080.32(d)(2) states that a fiscal emergency occurs when the agency is "projected to have a negative working capital within one year from the date that the agency makes the finding that there is a fiscal emergency pursuant to this section. Working capital shall be determined by adding together all unrestricted cash, unrestricted short-term investments, and short-term unrestricted accounts receivable and then subtracting unrestricted accounts payable. Employee retirement funds, including Internal Revenue Code Section 457 deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, workers' compensation reserves, and insurance reserves, shall not be factored into the formula for working capital."

As detailed in the April 21, 2009 Resolution 09-064 and the accompanying calendar item, the SFMTA's operating budget was used as the basis for the working capital calculation by including all projected operating revenues and subtracting projected operating expenditures. The operating budget figures do not include any restricted items except funds specifically designated for paratransit. All other funds can be used for operating needs as approved in the budget by the SFMTA Board of Directors. The operating budget does not include any retirement funds, deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, worker's compensation reserves, and insurance reserves.

Furthermore, PRC § 21080.32 provides that a transit agency can make a finding that a fiscal emergency exists for the purpose of increasing fees, rates or charges or reducing transit service if the agency is projected to have negative working capital within one year from the date that the agency makes the finding. This language indicates that the transit agency anticipates that a fiscal emergency will continue to exist for twelve months after the agency has made the finding and can implement further transit service reduction based on this prior determination.

While it is correct that the transit system has had a long standing structural deficit, the unprecedented loss of revenue over the past several years from the global economic downturn has impacted the SFMTA budget significantly. Over the last two fiscal years, SFMTA has lost over $230 million, which has resulted in the budgetary pressures above and beyond the long standing structural deficit. During this period, the SFMTA has had to use up almost its entire fund balance to offset the decline in revenues. Therefore, the significant loss of revenues over such a short period plus the need to use fund balance indicates that a fiscal emergency indeed exists.

Finally, the Planning Department is not required to review public comments received by the SFMTA on the proposed fiscal emergency or to review the adequacy of the responses provided by SFMTA to those comments as part of the consideration of whether the Project is statutorily exempt. The Planning Department confirmed that SFMTA had responded to the comments made on April 7, 2009 as part of the April 21, 2009 calendar item and therefore, determined that CEQA § 21080.32(d)(1) was satisfied.

Issue #3: The proposed May 2010 transit service reductions were not the subject of a public hearing held prior to a declaration of a fiscal emergency. The April 7, 2009 public hearing did not include the proposed May 2010 transit service reductions, nor did the April 21, 2009 declaration of a fiscal emergency or the April 30, 2009 hearing on the amended Operating Budget. This is a new project.

Response #3: As detailed above, *CEQA Guidelines* § 15285(b) provides guidance on the public hearings necessary when invoking this statutory exemption. Specifically, § 15285(b) states that:

> "Before taking its proposed budgetary actions and making the finding of fiscal emergency, the transit agency shall hold a public hearing. After this public hearing, the transit agency shall respond within 30 days at a regular public meeting to suggestions made by the public at that initial hearing. The transit agency may make the finding of fiscal emergency only after it has responded to public suggestions."

On April 7, 2009, the SFMTA Board held a public hearing on the FY 2009/2010 budget and fiscal emergency. On April 21, 2009, within the required 30 days of the April 7, 2009 hearing, the SFMTA Board held another public hearing on the fiscal emergency. The calendar item prepared for that hearing responded to public comments made during the April 7, 2009 hearing.[2] As such, the public hearing criterion set forth in *CEQA Guidelines* § 15285(b) was satisfied.

A review of the FY 2010 budget was conducted in November-December 2009 and the SFMTA determined that additional modifications would be necessary to address the continuing fiscal emergency, in addition to the original amended Operating Budget that was passed on April 30, 2009 On January 29, 2010, the SFMTA Board held a public hearing regarding the Project. The discussion included a PowerPoint presentation indicating a possible reduction in the level of transit service. At this hearing, SFMTA staff orally responded to comments and suggestions made by the public regarding the proposed service reductions. The SFMTA held two Town Hall meetings regarding the proposed transit service reductions on February 6, 2010 and February 9, 2010. At these Town Hall meetings, SFMTA staff responded to some of the comments and suggestions made by the public regarding the proposed service reductions. On February 26, 2010, the SFMTA Board held a public hearing regarding the Project. At that hearing SFMTA staff presented a PowerPoint presentation that addressed many of the themes from the comments submitted by the public in response to the proposed service cuts.

Given the fact that SFMTA responded to the public comments received during the April 7, 2009 fiscal emergency hearing, the Planning Department determined that *CEQA Guidelines* § 15285(b)

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[2] SFMTA Resolution 09-064 and the accompanying calendar item, April 21, 2009, pp. 6 – 44, available on line: http://www.sfmta.com/cms/cmta/documents/4-21-09Item12EmergencyDeclaration.pdf.

and PRC § 21080.32(d)(1) were satisfied and therefore, a determination that the Project is statutorily exempt from environmental review was appropriate.

Issue #4: The likely results of the proposed service reductions are significant. Reducing public transit service by 10 percent would likely result in more crowding and less reliability, leading to decreased public transit use and increased automobile use. The air quality, traffic, and transportation impacts are likely significant and warrant analysis based on meaningful baseline data.

Response #4: As discussed above, the California State Legislature has identified a limited number of projects that are statutorily exempt from environmental review. These projects are enumerated in Article 18: Statutory Exemptions, of the *CEQA Guidelines* and generally require a very specific set of circumstances for them to apply. As long as a project fits within the definitions of a particular statutory exemption, it does not require environmental review -- irrespective of whether it has the potential to result in significant physical environmental impacts. In other words, in making a determination of whether a project is statutorily exempt, no consideration is given to whether a project would have adverse affects on the physical environment.

Article 18: Statutory Exemptions, is not to be confused with Article 19: Categorical Exemptions, of the *CEQA Guidelines*. Article 19 of the *CEQA Guidelines* and Planning Commission Resolution No. 14952, which relates to this Article, set forth thirty three *types* of projects, as opposed to *specific* projects, that can be exempt from environmental review provided they comply with *CEQA Guidelines* § 15300.2, which lists circumstances under which a categorical exemption would not be appropriate. Such circumstances include, but are not limited to, the potential for a project to result in cumulative impacts, significant effects on the environment due to unusual circumstances, impacts on historic resources, impacts on scenic highways, etc. In determining whether a project is categorically exempt from CEQA, consideration is given to the potential of that project to result in significant physical environmental impacts. That is not the case in making a determination of whether a project is statutorily exempt.

The Planning Department routinely categorically exempts numerous projects because they fit within one or more of the thirty three classes of projects identified in Article 19 of the *CEQA Guidelines*. It is quite rare, on the other hand, that the Planning Department issues a statutory exemption because few projects meet the very specific definitions set forth in Article 18: Statutory Exemptions of the *CEQA Guidelines*.

A statutory exemption pursuant to *CEQA Guidelines* § 15285 as well as PRC § 21080.32 does not require consideration of whether a project would have an adverse effect on the environment. As such, this criterion was not used in determining whether the Project was statutorily exempt and is expressly not required to be evaluated as part of a statutory exemption.

Issue #5: A categorical exemption would not be applicable to the Project. Although a categorical exemption is not currently being claimed by the Planning Department for the Project, the likelihood of significant environmental impacts argues against it anyway.

Response #5: The appellant is correct in noting that the Planning Department did not exempt the Project under Article 19: Categorical Exemptions of the *CEQA Guidelines*. As articulated in Response #4 above, there is a critical difference between statutory and categorical exemptions.

The Project was appropriately determined to be exempt from environmental review under a statutory exemption.

Issue #6: Other City plans do not anticipate the proposed transit service reductions; they assumed that existing transit services would be maintained or adjusted based on changes in land use, project build out, and other factors. The proposed changes negate any transit improvement mitigations. Transit services that were part of an environmental mitigation measure were not disclosed.

Response #6: The question of whether the proposed service changes negate any transit adopted mitigation measures identified in City plans relates to one of the criteria that must be met in order for a project to qualify for a statutory exemption under PRC § 21080.32. As discussed above, the statutory exemption cannot be used for a project that proposes to reduce or eliminate service that was adopted as a mitigation measure pursuant to CEQA and/or NEPA.

The City has a number of adopted area plans with accompanying CEQA documentation. Specifically, the City has adopted the Rincon Hill Plan, the Transbay Redevelopment Plan, the Market and Octavia Neighborhood Plan, the Eastern Neighborhoods Rezoning Area Plans ("EN Plans") and the Balboa Park Station Area Plan. A number of the Environmental Impact Reports ("EIRs") for these plans identified significant transit impacts and proposed transit-related mitigation measures. However, the implementation of transit mitigation measures in all cases was deemed uncertain because at the time of plan adoption there was no guarantee that SFMTA would be able to implement them. Accordingly, transit impacts were identified as 'significant and unavoidable' – a CEQA term used to identify an impact that cannot or may not be mitigated.

An example of this can be found in the Balboa Park Station Area Plan EIR, which found that the Plan would result in a significant impact on the K-Ingleside Metro line because it would contribute a substantial number of riders to a line that is expected to operate above capacity in the future. The Balboa Park Station Area Plan EIR stated that transit impacts could potentially be mitigated by increasing capacity on the K-Ingleside by running double trains or by adding more frequent service, or perhaps by collecting transit impact fees to fund the purchase and operation of additional cars or service. However, the EIR also acknowledged that there was no assurance that these measures could be funded or implemented by SFMTA and therefore, found the impact on transit to be significant and unavoidable.[3]

A similar conclusion was reached in the EN Plans EIR, which identified a transit impact and set forth a number of measures that could be implemented to accommodate the additional transit demand generated by the EN Plans. However, the EIR also stated that, "absent the identification of a new funding for Muni, to supplement the City's Transit Impact Development Fee program for non-residential uses, it is unlikely that Muni would be able to accommodate projected transit demand within the Eastern Neighborhoods and the remainder of the City."[4] Therefore, impacts to transit were considered significant and unavoidable.

In conclusion, the City does not have any adopted mitigation measures that commit SFMTA to providing a particular level of service in order to mitigate a transit impact identified in an EIR. As such, the Project does not constitute an action that would reduce or eliminate a transit service,

[3] Balboa Park Station Area Plan Final EIR, San Francisco Planning Department, Case No. 2004.1059E, December 4, 2008, page 339.

[4] Eastern Neighborhoods Rezoning and Area Plans FEIR, San Francisco Planning Department, Case No. 2004.0160E, August 7, 2008, page 528.

facility, program, or activity that was approved or adopted as a mitigation measure in any environmental document and therefore, meets one of the criterions set forth PRC § 21080.32(c).

Issue #7: The Transit Effectiveness Project ("TEP") promised environmental review prior to its approval and implementation. Thousands of San Franciscans participated in TEP meetings and outreach and were promised that no TEP service changes would be considered or implemented prior to environmental review. Nevertheless, SFMTA now claims that the subject transit service changes are both informed by the TEP but not part of the TEP, which has not had environmental review.

Response #7: The TEP is a comprehensive operational analysis of the Muni system and is the first Muni system-wide evaluation in a generation. The service changes that the SFMTA Board of Directors approved in February 2010 used analytic tools that were developed during the TEP, but do not represent the implementation of the TEP. For example, the TEP was instrumental in procuring automatic passenger counters ("APCs") on 30 percent of the SFMTA bus fleet. Data from these APCs were used to develop frequency reduction proposals that minimized crowding. In other words, the TEP included a substantial data collection effort and the information that was collected informed SFMTA's proposal as to which lines should have longer headways. However, the Project itself is not implementing the TEP.

The TEP planning phase concluded in October 2008 with the SFMTA Board of Directors' endorsement of staff recommendations for the purpose of environmental review. The SFMTA plans to start the TEP environmental assessment in the summer of 2010. This fiscal emergency action resulted from a substantial decrease in revenues and exists separate from any potential implementation of TEP actions in the future.

Issue #8: The basic purposes of CEQA are being undermined. CEQA aims to inform decision makers and the public of the likely environmental impacts of a project, mitigate those impacts where significant, and provide for ongoing public participation prior to a decision to approve a project. All of these purposes are being ignored or undermined here by avoiding environmental review.

Response #8: CEQA expressly allows certain projects to be statutorily exempt from environmental review, irrespective of any environmental impacts, even significant ones. For reasons outlined on page 3 of this document, the Project was determined to be statutorily exempt from CEQA. As such, the Project is in compliance with all applicable CEQA regulations. The Planning Department does not believe that its determination has somehow undermined CEQA's basic premise.

Issue #9: CEQA provides and case law holds that any doubt about the environmental impacts of a project should be resolved in favor of additional review. A controversial project like making transit service reductions requires further environmental review. Given SFMTA's ongoing budget deficits, additional service reductions will likely be considered and useful baseline data is needed.

Response #9: As discussed in detail throughout this document, the California State Legislature has allowed for certain projects to be exempt from environmental review, irrespective of any environmental impacts, even significant ones. The Project squarely falls within the definition of a statutory exemption and therefore does not require further environmental review.

Whether additional service reductions are likely to occur in the future is speculative and irrelevant to the proposed Project and its environmental review, for purposes of this appeal.

Issue #10: The SFMTA's fiscal emergency is not an emergency at all, as contemplated by CEQA, Public Resources Code § 21060.3 and *CEQA Guidelines* § 15269.

Response #10: The Appellant misunderstands the nature of the "emergency" exemption upon which the Planning Department relied. The Appellant cites a separate and distinct emergency exemption provided in CEQA that contemplates actions undertaken to respond to or avert a natural disaster and other similar kinds of life/safety emergencies.[5]

The Appellant also cites various court decisions interpreting this separate emergency exemption, which addresses emergency actions undertaken to avert or remedy natural disasters like fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslides. Appellant's arguments and legal citations are not relevant to the fiscal emergency being considered under this appeal.

In contrast, the Planning Department determined that SFMTA's actions are statutorily exempt from CEQA under a different kind of emergency – a fiscal emergency, which is clearly defined in PRC § 21080.32 and *CEQA Guidelines* § 15285. CEQA defines a fiscal emergency to mean that "the transit agency is projected to have negative working capital within one year from the date that the agency finds that a fiscal emergency exists." CEQA further defines its terms: "working capital is defined as the sum of all unrestricted cash, unrestricted short term investments, and unrestricted short-term accounts receivable, minus unrestricted accounts payable. Employee retirement funds, including deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, workers' compensation reserves and insurance reserves, and insurance reserves shall not be included as working capital." As discussed in Response #2 on page 5 of this document, the SFMTA declaration of fiscal emergency met the definition of fiscal emergency as set forth in PRC § 21080.32(d)(2).

Appellants' citations to CEQA and case law do not relate to the statutory exemption used to exempt the Project from environmental review. There is no language in PRC § 21080.32 or *CEQA Guidelines* § 15285 that is similar to the natural disaster emergency exemption, nor is there any requirement that the fiscal emergency be "sudden" or "unexpected." The Planning Department found that SFMTA's actions met the requirements for determination of fiscal emergency in CEQA, PRC § 21080.32 and *CEQA Guidelines* § 15285.

Issue #11: It was not made clear to the public that the public hearing on the proposed fiscal emergency declaration was the single opportunity to make comments and receive a response on SFMTA's proposed course of action to address its perceived shortfall. In essence, the full and true purpose of the pubic hearing was not property described and real alternatives were not meaningfully explored.

Response #11: As discussed in Response #3 on page 6, on April 7, 2009, the SFMTA Board held a public hearing on the FY 2009/2010 budget and fiscal emergency. On April 21, 2009, within the required 30 days of the April 7, 2009 hearing, the SFMTA Board held another public hearing on the fiscal emergency. The calendar item prepared for that hearing responded to public comments made during the April 7, 2009 hearing. As such, the criterion that the transit agency hold a public

[5] Public Resources Code § 21060.3.

hearing and respond to the suggestions made at the initial public hearing on the fiscal emergency was satisfied.

It's important to note that the SFMTA has held numerous hearings related to the FY 2009/2010 fiscal emergency and the associated service changes. Specifically, on April 7, 2009, the SFMTA Board of Directors held a public hearing prior to making a finding of fiscal emergency in accordance with PRC § 21080.32 and the *CEQA Guidelines*. On April 21, 2009, the SFMTA Board approved Resolution 09-064, after responding to comments made by the public at the April 7th public hearing, and declared that a fiscal emergency existed based on the agency's projection of negative working capital within one year of April 21, 2009. On April 30, 2009, the SFMTA Board approved the FY2009/2010 amended Operating Budget which included transit service reductions that were implemented on December 5, 2009, in response to the fiscal emergency. On January 29, 2010, the SFMTA held a hearing regarding the Project. The discussion included a PowerPoint presentation indicating a possible reduction in the level of transit service. At this hearing, SFMTA staff orally responded to comments and suggestions made by the public regarding the proposed service reductions. On February 6, 2010 and February 9, 2010, the SFMTA held two Town Hall meetings regarding the Project. At these Town Hall meetings, SFMTA staff responded to some of the comments and suggestions made by the public regarding the proposed service reductions. On February 26, 2010, the SFMTA Board held a public hearing regarding the Project during which the SFMTA staff presented a PowerPoint presentation that addressed many of the themes from the comments submitted by the public in response to the proposed service cuts.

Issue #12: The Planning Department's determination was issued prior to the public release of the proposed weekday service changes and prior to the completion and release of the proposed Saturday and Sunday service changes. The Planning Department's file contains only summary information regarding the proposed weekday service changes, no information regarding the proposed weekend service changes, and no detailed analysis either by SFMTA or Planning on the number of passengers affected or even that of the total reduction in 325,000 hours of annual service. The Planning Information Counter at 1660 Mission Street did not have a copy of the subject Certificate of Statutory Exemption on February 19, 2010.

Response #12: This information is not relevant to this statutory exemption. The criteria used to determine whether a project is statutorily exempt pursuant to PRC Section 21080.32 include the following:

a. is the publicly owned transit agency the Los Angeles county Metropolitan Transportation Agency;

b. would the Project result in reduction or elimination of service adopted as mitigation measures;

c. has the publicly owned transit agency made a finding of fiscal emergency; and

d. has the publicly owned transit agency held the required public hearing and responded to comments received at that hearing.

Consideration of these criteria does not require knowledge of the details of the Project beyond the type of actions that are being proposed. In other words, in order to determine if the statutory exemption applied, the Planning Department was only required to know whether the Project would change fees, rates, or charges for any existing public service, program, or activity and whether the Project would reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity. The application of the statutory exemption is not dependent on the details of the service changes and would apply equally whether SFMTA proposed to reduce service by 1,000 annual service hours or by 325,000 annual service hours.

Further, the statutory exemption would apply irrespective of which tools (i.e., reduction of service on weekdays vs. weekends, reduction of service by increases in headways, reduction of service by not operating a particular line during certain hours, etc.) the SFMTA chose to implement the desired annual reduction in service hours. Given that the Project is statutorily exempt, the Planning Department is not required to analyze its impact on the number of affected passengers or on any aspects of the physical environment.

The Planning Department posts all of its environmental determinations on a Bulletin Board adjacent to the Planning Department's Information Center at 1660 Mission Street. That the Appellant did not find the subject statutory exemption at this location on February 19, 2010 could have been a result of either oversight on the part of Planning Department staff or a result of this document being taken by another member of the public.[6] Since the receipt of the Appeal Letter, Planning Department staff has ensured that the statutory exemption is posted at the Planning Information Center's Bulletin Board. The Appellant was provided a copy of the statutory exemption by staff on the same day that he visited the Planning Information Center and was subsequently mailed a copy of the document to his home address. Additionally, the SFMTA issued a *Notice of Appeal Process for Environmental Exemption Determinations Made By The San Francisco Municipal Transportation Agency and the Department of City Planning* on February 22, 2010 and published it on the SFMTA website. That same week this notice was provided to the Appellant in hardcopy by SFMTA. The notice stated that the Planning Department had determined the Project to be statutorily exempt and it set out an appeal process of this CEQA determination.

CONCLUSION

The Appellant asserts that the Planning Department has not demonstrated that the conditions applicable to the claimed statutory exemption from environmental review related to the Project have been met. As stated on page 3 of the Appeal Letter, "CEQA includes exemptions that allow public agencies to take certain actions without conducting environmental review if the public agency and the circumstances meet the specific conditions of the claimed exemption." The Planning Department agrees with this statement and has determined that the Project meets the specific conditions of a statutory exemptions set fort in PRC § 21080.32. Specifically, the SFMTA Board declared a fiscal emergency for the FY 2009/2010; the Project would not reduce or eliminate transit service that was adopted as a mitigation measure; and the SFMTA held the required public hearings and responded to comments within the appropriate timeframe. Accordingly, the Planning Department has appropriately determined that the Project is statutorily exempt per PRC § 21080.32 and *CEQA Guidelines* § 15285. The Planning Department respectfully requests that the Board deny the appeal.

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[6] While the place where the Planning Department posts its environmental determinations is called a Bulletin Board, it is actually a binder accessible to all members of the public to take documents from and make copies without having to "sign documents out".

Attachment A

Certificate of Exemption from Environmental Review
(February 4, 2010)

SAN FRANCISCO
PLANNING DEPARTMENT

Certificate of Determination
EXEMPTION FROM ENVIRONMENTAL REVIEW

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Case No.:	**2010.0060E**
Project Title:	**SFMTA Fiscal Emergency**
Zoning:	Various Locations throughout San Francisco
Block/Lot:	Various Locations throughout San Francisco
Lot Size:	Not Applicable
Project Sponsor	Sonali Bose, SFMTA Director of Finance and CFO (415) 701-4617
Staff Contact:	Viktoriya Wise – (415) 575-9049 Viktoriya.wise@sfgov.org

PROJECT DESCRIPTION:

On April 7, 2009 the San Francisco Municipal Transportation Agency (SFMTA) Board held a hearing to consider a declaration of fiscal emergency in accordance with the use of a statutory exemption authorized by the California Environmental Quality Act, California Public Resources Code § 21000 *et seq.* ("CEQA"), § 21080.32 and CEQA State Guidelines, 14 California Code of Regulations ("CEQA Guidelines"), § 15285. On April 21, 2009, the SFMTA Board approved Resolution 09-064 in which SFMTA declared that it found a fiscal emergency existed within the definition of CEQA § 21080.32. (See next page)

EXEMPT STATUS:

Statutorily Exempt as provided in California Public Resources Code Section 21080.32 and CEQA Guidelines Sections 15285.

REMARKS:

(See next page)

DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and Local requirements.

Bill Wycko
Environmental Review Officer

February 4, 2010
Date

cc: Julie Kirschbaum, SFMTA
Lorraine Fuqua, SFMTA
Sonali Bose, SFMTA
Nannie Turrell, MEA Division
Virna Byrd, MDF

John Kennedy, City Attorney
Kate Stacy, City Attorney
Board of Supervisors

PROJECT DESCRIPTION (continued):

Subsequent to the declaration of the fiscal emergency and compliance with the requirements set forth in CEQA, the Planning Department issued a Statutory Exemption determination in support of actions proposed by SFMTA to address the budget deficit on April 24, 2009. On April 30, 2009, the SFMTA Board approved the 2009-2010 amended Operating Budget and related actions, and on December 5, 2009, Muni service changes associated with the budget deficit were implemented.

The fiscal emergency declared on April 21, 2009 continues through the Fiscal Year (FY) 2010. The SFMTA is facing a budget shortfall in its current FY, which ends on June 30, 2010. To address the continuing fiscal emergency, among other things, the SFMTA is proposing to reduce service by up to 325,000 annual service hours through modifications to most of the Muni bus routes and rail lines. In order to achieve an overall reduction in 325,000 annual service hours, the SFMTA proposes to reduce the frequencies and hours of operation of most Muni bus routes and rail lines. Changes would include, but are not limited to, reducing frequencies and hours of operation that would affect weekday, Saturday and Sunday service. The details of the reduction of service hours would be established in the near future as the SFMTA presents more information to its Board of Directors.

REMARKS:

Public Resources Code Section 21080.32 and CEQA Guidelines Section 15285 provide for a statutory exemption for Transit Agency Responses to Revenue Shortfalls. Section 15285 states that "CEQA does not apply to actions taken on or after July 1, 1995 to implement budget reductions made by a publicly owned transit agency as a result of a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities." Actions shall be limited to those directly undertaken by or financially supported in whole or in part by the transit agency, including actions which reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity. The SFMTA would reduce its transit service by up to 325,000 annual service hours in response to the existing fiscal emergency declared on April 21, 2009. This action meets the provisions of Public Resources Code Section 21080.32 and CEQA Guidelines Section 15285 and therefore is statutorily exempt from environmental review.

Attachment B

Appeal Letter
(March 2, 2010)

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BY [signature]

David Pilpel
2151 27th Ave
San Francisco CA 94116-1730

President David Chiu and Members
Board of Supervisors
1 Carlton B Goodlett Pl Ste 244
San Francisco CA 94102-4689

Re: Appeal of Environmental Exemption Determination by the Department of City Planning

2 March 2010

Dear President Chiu and Members,

I write as an individual to appeal the environmental determination made by the City Planning Department ("DCP") with respect to a claimed statutory exemption from the California Environmental Quality Act ("CEQA") related to transit service reductions being considered by the Municipal Transportation Agency ("MTA") for implementation on or after 1 May 2010 ("the proposed May 2010 transit service reductions"). This environmental appeal does not directly address the merits of the proposed May 2010 transit service reductions; this appeal addresses the question of whether the claimed statutory exemption from environmental review applies.

To be clear, the determination being appealed is the determination by DCP on 4 February 2010 that the transit service reductions being considered for approval by the MTA Board on 26 February 2010 or 2 March 2010 for implementation on or after 1 May 2010 are covered by the fiscal emergency declared by the MTA Board on 21 April 2009 and are therefore statutorily exempt from environmental review. Please note that there is existing litigation pending that challenges three determinations made in 2009 by DCP and MTA related to transit service changes implemented by MTA on 5 December 2009. The declaration by the MTA Board on 21 April 2009 of a fiscal emergency is also being challenged by implication. However, this appeal does not directly concern the 2009 determinations or 5 December 2009 transit service changes.

I. Summary

Environmental determinations made by DCP are subject to appeal to the Board of Supervisors ("BOS"). The Appellant is directly and substantially affected by the proposed project and has standing to bring this appeal. This appeal may not yet be ripe but would risk being untimely if filed later and thus may need to be held briefly until it is ripe for consideration pursuant to the City Attorney's prior guidance. MTA operates the Municipal Railway (Muni) and DCP makes environmental determinations prior to discretionary actions to approve or carry out projects in San Francisco. The proposed project would reduce Muni transit service by about 10%, a significant reduction without precedent in modern times. There are a number of arguments as to why the environmental exemption should be rejected that are discussed below. In summary, neither DCP nor MTA have demonstrated that the conditions applicable to the claimed statutory exemption from environmental review related to the proposed transit service reductions have been met. These transit service changes, if implemented, would have significant impacts on transportation affecting thousands of travelers in San Francisco and the burden is on DCP and MTA to show that the applicable conditions have been met. The Board of Supervisors is urged to grant this appeal, overturn the claimed exemption, and require DCP to conduct proper environmental review of the proposed May 2010 transit service reductions.

II. Jurisdiction Of The Board Of Supervisors

The BOS hears appeals of environmental determinations made by DCP. The role of the BOS in hearing appeals of environmental exemption determinations is to independently decide if the conditions necessary for the claimed exemption were met. If the BOS decides that the conditions were not met the appeal is granted, the exemption determination is overturned, and DCP is required to conduct further environmental review of the proposed project. The appeal is essentially a *de novo* hearing and does not address the merits of the proposed project, just the question of whether the claimed exemption from environmental review is applicable.

CEQA provides, in California Public Resources Code ("PRC") section 21151 (c), that "[i]f a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any." San Francisco Administrative Code Chapter 31 ("Chapter 31") contains local procedures implementing CEQA. While Chapter 31 discusses exemptions in sections 31.06 to 31.08, Chapter 31 only addresses appeals of categorical exemption determinations directly in section 31.22 (a) (4) related to fees. The BOS Interim Procedures for Filing Appeals of California Environmental Quality Act Environmental Exemptions and Negative Declarations dated 1 September 2006 ("Interim Procedures") also only refers to categorical exemption determination appeals. However, since PRC section 21151 (c) refers to a determination "that a project is not subject to this division [CEQA]" it only makes sense that both categorical and statutory exemption determinations made by a nonelected decisionmaking body within the San Francisco city and county government may be appealed to the San Francisco Board of Supervisors. This appeal is filed accordingly, and a copy of the relevant exemption determination, signed by the issuing department, is attached hereto.

III. Standing Of The Appellant

I am a regular public transit user and daily Muni rider. I am familiar with finance, operations, and planning issues related to MTA and Muni. I have previously been an intern in Muni's Community Affairs, Schedules, and Service Planning units. I have attended numerous meetings of the MTA Board and its predecessor bodies, the Public Transportation Commission ("PTC") and the Public Utilities Commission ("PUC"). I am a past member of the MTA Citizens Advisory Council. I am an active and knowledgeable member of the public as it relates to public transit matters generally and Muni in particular. As a transit activist I believe that I represent many other less active public transit riders who would be adversely affected by the proposed transit service reductions. Although this is a matter of citywide concern, some of the transit services I currently use are planned for reduction or elimination during times when I travel so I am directly and substantially affected by the proposed project.

IV. Timeliness Of This Appeal

DCP made the determination and issued a Certificate of Exemption from Environmental Review on 4 February 2010. I contacted DCP to inquire about the status of the determination on Thursday 18 February 2010. I visited DCP's Planning Information Counter at 1660 Mission Street on Friday 19 February 2010 and could not locate a copy of the subject Certificate of Exemption on the environmental exemption clipboard at 1660 Mission Street. I then visited DCP's main office at 1650 Mission Street, Suite 400, and was given a copy of the subject Certificate of Exemption by DCP's Nannie Turrell and allowed to review the docket file (DCP Case No. 2010.0060E). The docket file contained a letter from MTA, receipts for fees paid, and the signed Certificate of Exemption. The docket file did not contain any detailed project description from MTA or any analysis of the specific transit service reductions proposed. I also received a copy of the Certificate of Exemption by mail on Saturday 20 February 2010.

The MTA Board meeting to consider approving the transit service reductions had been scheduled for Tuesday 16 February 2010 and was later changed to Friday 26 February 2010. The meeting of Friday 26 February 2010 was recessed to 12 Noon on Tuesday 2 March 2010. According to a memorandum dated 22 February 2008 from Deputy City Attorney Elaine Warren to Clerk of the Board of Supervisors Angela Calvillo entitled "Amendments to CEQA Guidelines Affecting Board of Supervisors CEQA Appeal Procedures for Negative Declarations and Exemption Determinations / Determining Whether Appeals are Ripe For Review and Timely Filed" an appeal is ripe and timely between the first and last discretionary actions to approve it.

Since the MTA Board has not yet finalized an action to approve, which I believe would be the first discretionary action related to the project, this appeal may not yet be ripe and may need to be held briefly until the MTA Board action is final, at which point it would become ripe. Since it is not clear at this time whether any other discretionary action is required to implement the project I am appealing the environmental determination now to avoid having this appeal be deemed untimely if filed later. As such, should the MTA Board approve a different project or a different version of the proposed project I reserve the right to amend this appeal accordingly.

Although it is not clear what discretionary actions are required to carry out Muni transit service changes it is clear that certain activities are necessary to realize service changes including conducting a transit operator signup and preparing new passenger marketing materials. The transit service changes that took effect 5 December 2009 were delayed at least twice, so the proposed May 2010 transit service reductions may not necessarily be implemented as planned. Since the full extent of the proposed transit service reductions only became clear in the past few weeks, and since filing an environmental appeal with the BOS has the effect of staying the underlying action while the appeal is pending, the transit service reductions should be postponed.

V. Background

CEQA generally requires environmental review prior to a discretionary action by a public agency in California that may have a negative impact on the environment. CEQA includes exemptions that allow public agencies to take certain actions without conducting environmental review if the public agency and the circumstances meet the specific conditions of the claimed exemption. These are known as categorical exemptions and statutory exemptions. CEQA is codified at PRC section 21000 *et seq.* and its implementing regulations, known as the CEQA Guidelines, are at California Code of Regulations ("CCR") section 15000 *et seq.*

A Transit First Policy has evolved in San Francisco since the 1970's and the current version of this policy is now codified in San Francisco Charter section 8A.115. Put simply, San Francisco favors public transit over other transportation modes by policy whenever transportation policy conflicts arise. San Francisco voters have repeatedly supported policy, governance, and funding measures in support of planning and delivering a high level of quality public transit service in San Francisco regardless of economic or other circumstances.

MTA is a department of the City and County of San Francisco that includes Muni, the Department of Parking and Traffic ("DPT"), and bicycle, pedestrian, taxicab, and related transportation operations, engineering, planning, and support functions. The City and County of San Francisco is a municipal corporation and the only combined city and county in California. San Francisco Charter section 8A.100 *et seq.* govern MTA generally. Proposition E (November 1999) structured and Proposition A (November 2007) restructured MTA as a successor to the PTC, which itself was separated from the PUC by Proposition M (November 1993). Muni was under the jurisdiction of the PUC from 1932 until July 1994.

MTA is responsible for, among other things, adopting a two-year balanced operating budget that includes revenues and expenses. The MTA budget is included in the overall City and County budget as relates to appropriations since only the BOS appropriates funds and funds may not be spent legally other than in amounts and for purposes specified by the annual appropriation ordinance of the City and County. MTA manages its budget throughout the year to remain in balance and may periodically adjust expenses to match actual revenues. Unexpected increases in revenue and expense must be added by a budget amendment and a supplemental appropriation.

Under Proposition A (November 2007), MTA now adopts a new two-year budget in even-numbered years. In April 2008 MTA adopted the Fiscal Year 2008-09 and 2009-10 annual budgets as required. For 2009-10 changes in revenues and expenses produced a projected deficit of $128.9 million that MTA was required to eliminate through a combination of new revenue sources, increases from existing revenue sources, reduction of personnel-related and non-personnel-related expenses, and reduction of services. MTA included transit service reductions as part of the reduction of services. Some routes were eliminated, some had service hours reduced, and some were combined, rerouted, and / or restructured. In Fiscal Year 2008-09 Muni had about 700,000 weekday daily boardings. More specifically, on 7 April 2009 the MTA Board held a hearing to consider a declaration of fiscal emergency. On 21 April 2009 the MTA Board approved, by a 4-3 vote, a declaration of fiscal emergency. On 30 April 2009 the MTA Board approved the 2009-2010 amended Operating Budget and related actions and on 5 December 2009 Muni transit service changes associated with the budget deficit were implemented.

DCP, another department of the City and County of San Francisco, includes a Major Environmental Analysis (MEA) section that is responsible for reviewing environmental applications for projects and determining the appropriate level of environmental review, subject to appeals as described further below. DCP issued a Statutory Exemption determination on 24 April 2009 in connection with the MTA's actions. Chapter 31 includes procedures and fees to implement CEQA and vests primary responsibility for CEQA compliance with DCP and MEA.

The BOS hears appeals of MEA environmental determinations when a neighborhood group or other person disagrees with MEA's determination. The BOS may grant the appeal and overturn MEA's determination with 6 votes and then adopt findings explaining the basis for the BOS action. The Interim Procedures govern the filing of environmental appeals with the BOS.

VI. The Proposed Project

The 2009-2010 amended Operating Budget included revenue and expense assumptions that did not hold and ultimately created a $45.1 million deficit as of 15 October 2009. MTA took certain actions to reduce the deficit to $19.6 million and later $16.9 million. To address the $16.9 million MTA currently proposes to acquire $7 million as a one-time source from the San Francisco County Transportation Authority, make minor changes in revenues and expenses of $5.1 million, and reduce transit service by $28.5 million annually or $4.8 million on 1 May 2010.

DCP asserts that the fiscal emergency declared on 21 April 2009 continues through Fiscal Year 2010 (ending 30 June 2010) and that to address the continuing fiscal emergency and budget shortfall among other things the MTA proposes to reduce transit service by up to 325,000 annual service hours by reducing the frequency and operating hours of most Muni bus routes and rail lines on weekdays, Saturday, and Sunday. DCP claims the details of the reduction of service hours would be established "in the near future" as information is presented to the MTA Board.

While the 5 December 2009 changes were significant enough the proposed May 2010 transit service reductions constitute about 10% of Muni's annual service hours. This is not a minor reduction; proposals include reducing the frequency and operating hours of most Muni bus routes and rail lines on weekdays, Saturday, and Sunday.

VII. Grounds For This Appeal

As more fully set forth below and as may be further articulated prior to and at the appeal hearing, there are several reasons why the claimed statutory exemption does not apply including:

1. The statutory exemption does not apply because MTA is not a publicly owned transit agency within the meaning of PRC section 21080.32 and the statutory exemption must be construed narrowly. The legislative history of that section, rules of statutory construction, and case law support that conclusion. Thus, MTA is not eligible for the claimed statutory exemption.

2. Even if the statutory exemption could apply the working capital calculation is insufficient and the continuing nature of MTA's deficits are an ongoing condition and not a fiscal emergency. Further, DCP apparently did not review the public comments received by MTA on the proposed fiscal emergency in the course of DCP considering its exemption determination.

3. The proposed May 2010 transit service reductions were not the subject of a public hearing held prior to a declaration of fiscal emergency. The 7 April 2009 public hearing did not include the proposed May 2010 transit service reductions, nor did the 21 April 2009 declaration of a fiscal emergency or the 30 April 2009 amended Operating Budget. This is a new project.

4. The likely results of the proposed service reductions are significant. Reducing public transit service by 10% would likely result in more crowding and less reliability, leading to decreased public transit use and increased automobile use. The air quality, traffic, and transportation impacts are likely significant and warrant analysis based on meaningful baseline data.

5. A categorical exemption would not likely apply to this project. Although a categorical exemption is not currently being claimed by DCP for the proposed May 2010 transit service reductions the likelihood of significant environmental impacts argues against it anyway.

6. Other City plans do not anticipate the proposed transit service reductions; they assumed that existing transit services would be maintained or adjusted based on changes in land use, project build out, and other factors. The proposed changes negate any transit improvement mitigations. Transit services that were part of an environmental mitigation measure were not disclosed.

7. The Transit Effectiveness Project (TEP) promised environmental review prior to its approval and implementation. Thousands of San Franciscans participated in TEP meetings and outreach and were promised that no TEP service changes would be considered or implemented prior to environmental review. Nevertheless, MTA now claims that the subject transit service changes are both informed by the TEP but not part of the TEP, which has not had environmental review.

8. The basic purposes of CEQA are being undermined. CEQA aims to inform decisionmakers and the public of the likely environmental impacts of a project, mitigate those impacts where significant, and provide for ongoing public participation prior to a decision to approve a project. All of these purposes are being ignored or undermined here by avoiding environmental review.

9. CEQA provides and case law holds that any doubt about the environmental impacts of a project should be resolved in favor of additional review. A controversial project like making transit service reductions requires further environmental review. Given MTA's ongoing budget deficits additional service reductions will likely be considered and useful baseline data is needed.

VIII. The Statutory Exemption Does Not Apply To MTA

The language of PRC section 21080.32 may seem relatively straightforward. It provides, essentially, that a publicly owned transit agency in California may avoid environmental review of specific actions to increase or initiate revenues or eliminate or reduce transit services if it holds two initial public hearings to address those actions and address its projected working capital one year into the future, responds at a regular public meeting within 30 days to public comments made at the initial public hearings, makes a finding that projected agency revenues are insufficient to cover projected agency expenses one year into the future, and chooses to implement some or all of the actions described and discussed at the initial public hearing. Here, however, the exemption does not apply because MTA is not a "publicly owned transit agency" under PRC section 21080.32 but is part of a "local agency" or a "public agency" under CEQA. There is some legislative history and statutory construction that bears explanation at this point.

CEQA normally requires environmental review as discussed earlier. A previous exemption provided that all public agencies could avoid environmental review of actions taken to eliminate or reduce public services prior to a date certain in response to significant and truly unforeseen reductions in revenues caused by Proposition 13, the 1978 property tax reduction measure. That provision had a sunset date and is no longer effective. In the early 1990's, during a previous economic downturn, California public transit agencies including AC Transit and the Santa Clara Valley Transportation Authority (VTA) saw a significant reduction in revenues and were forced to increase fares (revenues) and reduce transit service (expenses) to balance their budgets. Both agencies faced challenges to the transit service reductions since such reductions were controversial, significant, and had no environmental review prior to their implementation.

In 1993, State Senator Alfred Alquist (D-San Jose), a longtime transit supporter, was persuaded by local officials and the VTA to introduce legislation (SB 199, 1993) to create a new exemption for transit service reductions caused by the failure of agency revenues to cover agency expenses. The bill failed passage in the Senate Natural Resources Committee, its first hearing, and died in that legislative session. In 1995, with more support, Senator Alquist introduced a similar measure (SB 1899, 1995) that ultimately became PRC section 21080.32. As SB 1899 evolved it turned from a broad exemption like the post-Proposition 13 provision to a more narrow exemption for service reductions made by a "publicly owned transit agency" that could project expenses exceeding revenues within one year, described as a "fiscal emergency."

While "publicly owned transit agency" is not defined in CEQA, "public agency" is defined in PRC section 21063 as "any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision." "Local agency" is defined in PRC section 21062 as "any public agency other than a state agency, board, or commission." The legislature thus intended to distinguish a "publicly owned transit agency" from both a "public agency" and a "local agency."

Clearly, a "publicly owned transit agency" would be a smaller, discrete government agency, such as a special district organized under the California Government Code or California Public Utilities Code whose primary purpose is to operate public transit services in California such as AC Transit and BART in the San Francisco Bay Area. It might also include the Golden Gate Bridge, Highway and Transportation District (organized under the California Streets and Highways Code), which operates the Golden Gate Bridge, Golden Gate Ferry transit service, and Golden Gate Transit bus service. However, a "publicly owned transit agency" does not include a city, county, or city and county, even one that operates directly or contracts for public transit service, as that leads back to the broader definition of a "public agency" under PRC section 21063, which the legislature considered including and rejected in amending SB 1899.

The legislature considered allowing the exemption for a larger group of government agencies and chose to limit its application to a smaller group. The final legislative intent was thus to exclude a city, county, or city and county from being a "publicly owned transit agency." The legislature, in balancing competing public interests, chose to enact the fiscal emergency exemption for a publicly owned transit agency, under specific and narrow circumstances and under prescribed conditions, and not to allow any broader reading of the exemption for other agencies, entities, or circumstances since their options would be necessarily different and greater. MTA, a city and county department, is not a "publicly owned transit agency" under CEQA.

IX. MTA Does Not Meet Other Conditions Of The Statutory Exemption

Although a fiscal emergency is not defined in PRC section 21080.32, a procedure is laid out and a crude methodology is described to determine working capital. However, a true fiscal emergency can be described as a one-time, rare, simple failure of a transit agency's revenues to cover its expenses, likely due to a rapid economic downturn. The MTA Board last declared a fiscal emergency in 2005, the only other time MTA has made such a declaration. Moreover, MTA is really a multi-purpose transportation agency and has a variety of revenues and expenses. Some are tied to transit, some to parking, some to other purposes, and some are general, administrative, or overhead. Under Proposition E (November 1999), a Municipal Transportation Fund (MTF) was established with a baseline funding formula based on prior City General Fund Support for Muni. After DPT merged into MTA in 2002 a separate MTF was established for DPT. Eventually, the two were merged into a single MTF that no longer distinguishes between transit- and parking-based revenues. As such, it is now difficult to segregate MTA's revenues.

Further, while fiscal emergency is not defined in CEQA it is somewhat analogous to an emergency, which is defined. PRC section 21060.3 defines emergency as "a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. 'Emergency' includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage." It is not an ongoing concern. The emergency exception under CEQA is "extremely narrow." (*Los Osos Valley Associates v. City of San Luis Obispo* (1994) 30 Cal. App. 4th 1670, 1682) In *Los Osos* the Court also explained that an "emergency" is an "unforeseen situation" that is "not synonymous with expediency, convenience, or best interests" and is "more . . . than merely a general public need." (*Id.* at 1681) In *CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal. App. 4th 529, 536, the Court observed that the definition "limits an emergency to an 'occurrence,' not a condition." Also, although disapproved for other reasons, in *Western Mun. Water Dist. v. Superior Court* (1986) 187 Cal. App. 3d 1104, 1113 the Court held that every element of an emergency must be supported by substantial evidence, e.g., sudden, unexpected, imminent, etc. and that "at a minimum, the administrative record must disclose substantial evidence of every element of the contended exemption." MTA's budget deficits have been ongoing for years and are not new.

Further, MTA's calculation of working capital is not sufficiently clear and does not satisfy the condition of making a finding of a "fiscal emergency" that is supported by substantial evidence. MTA has not shown that its actions fall within the exemption even if the statutory exemption were to apply. Similarly, the MTA staff responses to comments were not adequate to respond to the concerns raised and in many cases deferred meaningful responses until the service plans were better defined. Indeed, the fiscal emergency was proposed at a time when the proposed solutions were not clear and thus comments could not be fully answered. It was not made clear to the public that the public hearing on the proposed fiscal emergency declaration was the single opportunity to make comments and receive a response on MTA's proposed course of action to address its perceived shortfall. In essence, the full and true purpose of the public hearing was not properly described and real alternatives were not meaningfully explored.

Further, DCP apparently did not review the public comments on the fiscal emergency proposal when DCP made its exemption determination in April 2009. The determination of DCP lacks independent review and evidence and appears to just accept MTA's fiscal emergency declaration as the basis for the statutory exemption without further investigation. Indeed, if MTA budget projections, boiled down to a single page and without detailed explanation, are allowed to stand as the basis for this statutory exemption then MTA can essentially manufacture a fiscal emergency anytime it wants by making (and not disclosing) assumptions that drive budget projections. These assumptions include inflation rates, usage projections, inventory management, and timing of revenues, expenses, and grant reimbursements, for example. In summary, MTA did not meet the conditions necessary for a fiscal emergency under CEQA.

X. The Proposed May 2010 Transit Service Reductions Had No Prior Public Hearing

DCP's remarks quotes only part of the regulatory language related to the claimed statutory exemption, CCR section 15285 (a). DCP neglects to mention or discuss CCR section 15285 (b), which states: "When invoking this exemption, the transit agency shall make a specific finding that there is a fiscal emergency. Before taking its proposed budgetary actions and making the finding of fiscal emergency, the transit agency shall hold a public hearing. After this public hearing, the transit agency shall respond within 30 days at a regular public meeting to suggestions made by the public at that initial hearing. The transit agency may make the finding of fiscal emergency only after it has responded to public suggestions."

PRC section 21080.32 (d) (1), which CCR section 15285 is intended to implement and clarify, states: "This section applies only to *actions taken* after the publicly owned transit agency has made a finding that there is a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities, and after the publicly owned transit agency has held a public hearing to consider *those actions*. A publicly owned transit agency that has held such a hearing shall respond within 30 days at a regular public meeting to suggestions made by the public at the initial public hearing. *Those actions* shall be limited to projects defined in subdivision (a) or (b) of Section 21065 which initiate or increase fees, rates, or charges charged for any existing public service, program, or activity; or reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity." (emphasis added)

If PRC section 21080.32 and CCR section 15285 were to apply to MTA, and I am neither conceding nor even suggesting that they do apply, then the specific proposed actions would have to have been the subject of a public hearing prior to a finding (i.e. declaration) of a fiscal emergency and subject to public suggestions and a required response. To be clear, the proposed May 2010 transit service reductions were not the subject of the 7 April 2009 public hearing, were not considered in the 21 April 2009 declaration of a fiscal emergency, and were not included in the 30 April 2009 amended operating budget. The proposed May 2010 transit service reductions are a new project, not tied to any prior actions, and require separate environmental review.

To contradict DCP, the MTA would reduce its transit service by up to 325,000 annual service hours not in response to the existing fiscal emergency declared on 21 April 2009 but as a separate project with independent utility. The fiscal emergency declared on 21 April 2009 does not give carte blanche to any proposal in the next 12 months to reduce service; each service reduction proposal must be separately and specifically evaluated to determine if an exemption may apply. Again to contradict DCP, the proposed May 2010 transit service reductions does not meet the provisions of PRC section 21080.32 and CCR section 15285 and therefore is not statutorily exempt from environmental review. DCP provides no evidence to the contrary.

XI. The Likely Results Of The Proposed Service Reductions Are Significant

The proposed May 2010 transit service reductions would likely result in increased crowding, load factors, longer waits in inclement weather, missed transfers, pass-ups, running time, safety and security concerns, service delays, shift to other transportation modes, standees, and reduction in trip making. While the policy implications are considerable the likely direct, indirect, and cumulative environmental impacts alone warrant additional environmental review.

Although DCP has not carefully reviewed or considered the proposed transit service reductions they are quite significant. As DCP asserts, most Muni bus routes and rail lines would see less service (less frequency or longer headways) on weekdays, Saturday, and Sunday. Some routes would have service starting later and / or ending earlier. This reduces the "span of service hours" from the first trip to the last trip of the day. Many crosstown and community routes would have service reduced below "policy headways" – the minimum level of service for those routes – during several day parts. MTA has not disclosed the number of passengers affected and has not made its federal Title VI review of disproportionate impact publicly available.

DCP's exemption determination issued 4 February 2010, prior to the public release of the proposed weekday service changes and prior to the completion and release of the proposed Saturday and Sunday service changes. DCP's docket file contains only summary information regarding the proposed weekday service changes, no information regarding the proposed weekend service changes, and no detailed analysis, either by MTA or DCP, of the number of passengers affected or even that the total reduction is 325,000 annual service hours or less.

Here, transit system use will intensify on existing trips if the transit service reductions are implemented. The combined effect – the cumulative impacts – of the proposed May 2010 transit service reductions must be analyzed together with the 5 December 2009 service changes since no relevant baseline data exists. CEQA analysis can only be based on actual conditions on the ground, in this case as they existed prior to 5 December 2009 and today, not on speculative projections of transit system use. Existing baseline data may only have limited value in this case.

XII. A Categorical Exemption Would Not Likely Apply To This Project

Since transit service changes will clearly have direct, indirect, and cumulative significant impacts on air quality, traffic, and transportation, they also cannot be categorically exempt from CEQA. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal. 4th 105, 124; *Salmon Protection and Watershed Network v. County of Marin* (2004) 125 Cal. App. 4th 1098, 1107)

Here, thousands of daily travelers will face unavailable, delayed, or degraded transit services. These impacts are significant, avoidable, and irreparable since lost time cannot be replaced. Changes to and unavailability of public transit service lead to increased use of automobiles and other transportation modes with resulting impacts on air quality, congestion, parking, and traffic.

Further, a project cannot be categorically exempt "when the cumulative impact of successive projects of the same type in the same place, over time is significant." (CCR section 15300.2 (b)) Here, DCP has failed to analyze the cumulative impacts of projects of the same type in the same place, over time. "'Cumulative impacts' refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. (a) The individual effects may be changes resulting from a single project or a number of separate projects. (b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (CCR section 15355) CEQA requires a finding that a project "may have a 'significant effect on the environment'" if "[t]he project has possible environmental effects that are individually limited but cumulatively considerable. 'Cumulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (CCR section 15065 (a) (3); PRC section 21083 (b))

The issues of significant effects and cumulative impacts must be considered in determining whether a project is exempt. (*East Peninsula Education Council, Inc. v. Palos Verdes Peninsula Unified School District* (1989) 210 Cal. App. 3d 155, 172-173) Here, these issues have not been considered, the project's impacts are not acknowledged, and no cumulative impacts analysis has been conducted. The service changes are not minor and impacts are likely.

It is likely that the proposed transit service changes will have direct, indirect, and cumulative environmental impacts. A reduction of up to 10% of transit service hours, especially when combined with the 5 December 2009 service changes and other recent policy changes, will likely result in fewer transit riders and is contrary to the Transit First Policy and other adopted public policies. These changes, in turn, will likely lead to increased automobile trips, reduced access to community services, commercial areas, tourist destinations, and other direct, indirect, and cumulative impacts. This level of reduction in transit services, particularly when added to reductions in 1988 and 2005, will likely result in less transit service than in 1979 when Muni began its last major route restructuring and improvement program.

XIII. Other Adopted City Plans Do Not Anticipate These Transit Service Changes

Existing Muni transit services are assumed and relied on in a number of City plans. The Market and Octavia Neighborhood Plan, the Eastern Neighborhoods Plan, the original Mission Bay Plan, plans for Treasure Island and Yerba Buena Island (both interim and long-term), the Presidio, South Bayshore Redevelopment Plan, Bayview Hunters Point Plan, Western SoMa plans, Glen Park Plan, Balboa Park Station Area Plan, Japantown Better Neighborhood Plan, and any number of other plans either assumed a certain level of transit service, included as mitigation measures minimum or enhanced transit service, or even committed San Francisco to certain transit service improvements in connection with planned development. PRC section 21080.32 (c) excludes such service changes from the proposed statutory exemption. MTA did not disclose what services are covered by mitigation measures or other environmental protections and thus did not properly frame the range of services potentially subject to reduction or elimination. Further, the MTA Board resolution adopting the 2009-10 Amended Operating Budget includes no severability clause; thus, if the service reductions include any service protected by mitigation measures or other environmental protections then none of the service reductions may be implemented without environmental review.

Cumulative impacts analysis therefore requires at a minimum that DCP analyze the likely changes resulting from both the transit service reductions and enhancements as well as changes resulting from closely related past, present, and reasonably foreseeable probable future projects that may appear individually minor but collectively significant taking place over a period of time: (see, *e.g.*, *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal. App. 4th 98, 116-121; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 718-724; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal. App. 3d 61, 72-77; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 868-872 [abuse of discretion and prejudicial error to exclude cumulative impacts analysis]) Here, numerous other projects combine with the effects of the transit service changes to make the already-significant impacts even more severe.

XIV. The TEP Promised Environmental Review Prior To Approval

The TEP, the system-wide review of transit service initiated in 2006, was supposed to result in service improvements by redirecting resources from less productive to more productive routes while improving reliability and increasing speed without compromising passenger or employee safety. Here, the continued reduction of transit service in the manner proposed would likely stop or at least considerably slow down TEP implementation. Indeed, the additional funds made available under Proposition A (November 2007) are restricted for use in improving service and not for maintaining or reducing it. It is not clear how the MTA 2009-10 Amended Operating Budget addresses the use of those funds given the proposed net service reductions.

Environmental review was specifically promised prior to TEP approval and implementation. Thousands of San Franciscans participated in TEP meetings and outreach and were assured in 2008 that no TEP service changes would be finalized, considered, or implemented prior to environmental review. Nevertheless, MTA again claims that the transit service changes that are the subject of this appeal are both informed by TEP data but not part of TEP implementation. These two statements seem somewhat in conflict. Further, DCP claims to have no records related to TEP in response to two public records requests in 2009. Either DCP is not acknowledging that it has TEP data or DCP is making environmental determinations without using TEP data that MTA has. In any event, the TEP has received no environmental review.

XV. The Basic Purposes Of CEQA Are Being Undermined

The main purpose of CEQA is not only to protect the environment but also to inform the public and responsible officials and promote analysis of environmental impacts prior to discretionary actions to approve projects. All exemptions are read narrowly to facilitate such analysis. That important public purpose is ignored or undermined if MTA is allowed to create circumstances that might qualify as a fiscal emergency, declare that such an emergency exists, take actions that MTA desires to implement certain budget reductions, ignore other revenue and expense options, and ultimately exempt all of these policy choices from environmental review.

Since no environmental review has occurred the likely impacts of the service changes are undisclosed and unmitigated, defeating core CEQA mandates. Since operating, ridership, and schedule details regarding the service changes have not been made available questions about disproportionate impact on low income and minority communities cannot be answered. Public presentations have included summary information about the transit service changes but have also made clear that the important decisions about the service changes have already been made. Hence, no meaningful public participation has occurred to inform the decisionmaking process.

CEQA is interpreted broadly to "afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal. 3d 247, 259) CEQA embodies California policy that "the long-term protection of the environment shall be the guiding criterion in public decisions." (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 74) CEQA "protects not only the environment but also informed self-government." (CCR section 15003; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376, 392) "Strict construction allows CEQA to be interpreted in a manner affording the fullest possible environmental protections within the reasonable scope of statutory language." (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 966) "It also comports with the statutory directive that exemptions may be provided only for projects which have been determined not to have a significant environmental effect." (*Id.* at 966; PRC section 21084 (a); *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal. App. 4th 1165, 1192)

XVI. Any Doubt About A Project Should Be Resolved In Favor Of Additional Review

A controversial project like making significant transit service reductions strongly argues for further environmental review. Given MTA's ongoing budget deficits additional service reductions will continue to be considered and useful baseline data is needed. Until MTA and the City as a whole addresses the structural deficit with stable revenue sources and better cost controls DCP must be able to independently analyze MTA service change proposals and be able to determine the likely environmental impacts prior to any action taken.

Courts have also found, and the legislature intended, that exemptions from environmental review should be construed narrowly and that any doubts should be resolved in favor of conducting environmental review and not exempting projects from such review. In *County of Amador, supra,* 76 Cal. App. 4th at 966, the Court noted: "In keeping with general principles of statutory construction, exemptions are construed narrowly and will not be unreasonably expanded beyond their terms." An agency asserting a statutory exemption has "the burden of showing that legislative history evidences a purpose or intent other than that expressed by the literal meaning of the statutory language." (*East Peninsula, supra,* 210 Cal. App. 3d at 170) In granting exemptions agencies must proceed in the manner prescribed by CEQA. (*Id.* at 174) An exemption may be applied "'Only with a considered awareness of the purposes and policy behind this law, and a careful analysis of the proposed project.'" (*Id.,* citing *Dehne v. County of Santa Clara* (1981) 115 Cal. App. 3d 827, 842-843) Failure to meet the exemption criteria is a failure to comply with CEQA's requirements and an abuse of discretion. (*East Peninsula, supra,* at 174)

XVII. Conclusion

MTA is not a separate public agency; it is a department of the City and County of San Francisco. As such, it is not a publicly owned transit agency within the meaning of PRC section 21080.32. MTA has a broader menu of policy choices to address budget shortfalls than public agencies such as AC Transit and BART which have much more limited purposes and abilities to raise revenues through taxes, user fees, or other methods. Further, the Mayor and the BOS have a wide range of ways to increase revenues and reduce expenses in the City and County and can choose, for example, to fund more transit instead of other City services. MTA's proposed May 2010 transit service reductions are significant, certainly affect thousands of people, and need further environmental review to assess the likely effects of the proposed changes.

DCP's determination that the proposed May 2010 transit service reductions are statutorily exempt from environmental review should be rejected, this appeal should be granted, and further environmental review should be required prior to further consideration of the proposed May 2010 transit service reductions by the MTA Board. I look forward to your careful consideration of this appeal and the issues raised. Thank you for taking the time to review this matter.

Sincerely,

David Pilpel

Attachment

cc: John Rahaim, Director, City Planning Department
Bill Wycko, Environmental Review Officer, City Planning Department
Nannie Turrell, Environmental Planner, City Planning Department
Viktoriya Wise, Environmental Planner, City Planning Department
Nathaniel Ford, Director, Municipal Transportation Agency
Sonali Bose, Chief Financial Officer, Municipal Transportation Agency
John Haley, Director of Transit, Municipal Transportation Agency
Julie Kirschbaum, TEP Program Manager, Municipal Transportation Agency
Kate Stacy, Deputy City Attorney (Land Use Team Leader), City Attorney's office
Elaine Warren, Deputy City Attorney (Land Use Team), City Attorney's office
Julia Friedlander, Deputy City Attorney (Transportation Team Ldr.), City Attorney's office
John Kennedy, Deputy City Attorney (Transportation Team), City Attorney's office

Attachment C

SFMTA Board Resolution 09-064 – Declaration of Fiscal Emergency

(April 21, 2009)

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 09-064

WHEREAS, The San Francisco Municipal Transportation Agency "SFMTA" faces a severe fiscal challenge resulting from the economic downturn; and

WHEREAS, The SFMTA is considering reduction in transit service and increases to various fares, fees, fines, rates and charges that support transit service; and

WHEREAS, Reductions in transit service normally require an evaluation of the potential environmental impact of such reductions under the California Environmental Quality Act (CEQA); and

WHEREAS, CEQA provides a statutory exemption for the reduction or elimination of existing transit service, facilities, programs, or activities by an Agency as a result of a declared fiscal emergency caused by the failure of Agency revenues to adequately fund programs, facilities and operations; and

WHEREAS, A fiscal emergency exists when an agency is projected to have "negative working capital" within one year from the date that the agency finds that a fiscal emergency exists; and

WHEREAS, California Public Resources Code section 21080.32(d)(2) provides that, in calculating the available working capital, an agency is to add together all unrestricted cash, unrestricted short-term investments, and unrestricted short-term accounts receivable and then subtract unrestricted accounts payable and that reserves shall not be included in this calculation; and

WHEREAS, Analysis of SFMTA's negative working capital for 2009-2010 identifies a shortfall of approximately $112 million and $91 million at the end of April 2010; and

WHEREAS, On April 7, 2009, the SFMTA Board of Directors held a noticed public hearing on the proposed declaration of fiscal emergency; and

WHEREAS, On April 21, 2009, the SFMTA responded to comments and suggestions made by the public at the April 7, 2009 meeting and received through April 10, 2009, at a regularly scheduled SFMTA Board of Directors meeting; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors declares a fiscal emergency exists caused by the failure of agency revenues to adequately fund agency programs and facilities pursuant to California Public Resources Code section 21080.32 and California Environmental

Quality Act implanting guidelines, Title 14 of the California Code of Regulations section 15285; and be it further

RESOLVED, That pursuant to section 21080.32 of the California Public Resources Code and Section 15285 of Title 14 of the California Code of Regulations, the SFMTA Board of Directors finds that the SFMTA faces a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs, facilities and operations; and be it further

RESOLVED, That the SFMTA Board of Directors finds it necessary to increase certain fees, rates or charges that support public transit service as well as to reduce or eliminate certain public transit services and that such increases in fees, rates or charges and such service reductions are statutorily exempt from review under CEQA; and finally be it further

RESOLVED, That the SFMTA Board of Directors finds that the reduction or elimination of the availability of existing service are statutorily exempt from CEQA review.

I hereby certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of APR 21 2009.

R. Boomer

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

MEMORANDUM

Date: April 6, 2010

To: President David Chiu, and Members of the Board of Supervisors

From: Nathaniel P. Ford, Sr., SFMTA Executive Director/CEO
Sonali Bose, Director of Finance & Information Technology/CFO

Re: BOS File No. 10-0288, Planning Department Case No. 2010.0060E
Appeal of Statutory Exemption for SFMTA Fiscal Emergency-Related Service Changes

Hearing Date: April 13, 2010

cc: **Bill Wycko, Environmental Review Officer**
Viktoriya Wise, Planning Department

Project Sponsor: San Francisco Municipal Transportation Agency

Appellant: David Pilpel, an individual

INTRODUCTION

This memorandum responds to the appeal filed by David Pilpel on March 2, 2010, to the San Francisco Board of Supervisors (Board) regarding the fiscal emergency statutory exemption determination issued by the Planning Department on February 4, 2010, to support the proposed San Francisco Municipal Transportation Agency (SFMTA) transit service reductions approved by the SFMTA Board of Directors on February 26, 2010.

In 1996, the California State Legislature recognized that environmental review was interfering with the ability of public transit agencies to make essential service cuts or fare increases where they simply do not have the resources to maintain the status quo. The State Legislature concluded that it is essential for public transit agencies to have the capacity to make cuts when fiscal conditions and prudent financial management demand it without regard to any impacts the cuts may have on the environment. It is very clear that the SFMTA met this standard. There is not enough revenue to meet the expenses for Fiscal Year (FY) 2010 without taking action to balance the SFMTA's budget.

CHRONOLOGY OF FISCAL EMERGENCY STATUTORY EXEMPTION DETERMINATION AND FEBRUARY 26, 2010 SERVICE REDUCTIONS

Pursuant to the Charter, the SFMTA Board approved a two-year budget for the first time for FY 2009 and 2010 in April 2008. During FY 2009 as a result of the economy, revenues began to decline. The SFMTA was able to manage FY 2009 given the budget balancing actions taken mid-year such as freezing positions and other expenditure line items. However, due to the dire fiscal situation projected for FY 2010, the SFMTA had to open the second year of the two-year budget to address the $129 million deficit. The chart below highlights the lost revenue for FY 2009 and 2010.

	Lost Revenue FY 2009	Lost Revenue FY 2010
State Transit Assistance (operating and capital)	$65.0	$65.0
Other State Grants	$22.0	$12.0
General Fund	$19.2	$24.3
Citations	$6.2	$6.0
Advertising Revenues		$6.2
Off and On Street Parking		$6.7
TOTAL LOST REVENUE	$112.40	$120.20

The SFMTA faced a significant loss of revenue as did most other transit systems in the nation. Attachment 1 is a document from the American Public Transportation Association (APTA) summarizing the impact of the recession on transit systems. The document indicates: "facing declines in revenue from state and local sources, public transit agencies have been forced to take drastic action including layoffs, service cuts, and fare increases." Both AC Transit in the East Bay and Caltrain also declared fiscal emergencies for FY 2010.

Finally, the SFMTA's financial condition is impacted by a decline in revenues from the City's General Fund. As the chart above indicates, the decline in General Fund revenues resulted in over $40 million in lost revenue for the SFMTA for FY 2009 and 2010.

On April 7, 2009, the SFMTA Board of Directors held a public hearing prior to declaring a fiscal emergency in accordance with California Public Resources Code section 21080.32 and California Environmental Quality Act implementing guidelines, Title 14 of the California Code of Regulations section 15285 (CEQA Guidelines).

On April 21, 2009, the SFMTA Board approved Resolution 09-064, after responding to comments made by the public at the April 7 public hearing, and declared that a fiscal emergency existed based on the agency's projection of negative working capital within one year of April 21, 2009. The April 7 SFMTA Board calendar item that contains the analysis and calculations regarding the fiscal emergency and the April 21 SFMTA Board calendar item that contains the responses to public comments; and the Resolution are attached to this memorandum as Attachments 2, 3 and 4 respectively.

On April 24, 2009, as the lead environmental agency for the City, the Planning Department issued a Certificate of Determination, finding that the statutory exemption of Public Resources Code Section 21080.32 and CEQA Guidelines applied to the SFMTA's finding that a fiscal emergency existed and that the proposed service reductions and fee changes were necessary actions to respond to that fiscal emergency.

On April 30, 2009, the SFMTA Board approved an FY 2010 amended Operating Budget which included transit service reductions that were implemented on December 5, 2009, in response to the fiscal emergency.

On November 3, 2009, SFMTA staff presented the budget, projecting a $129 million deficit remaining for Fiscal Year 2010. The November 3, 2009, SFMTA Board PowerPoint presentation is attached as Attachment 5.

On January 29, 2010, the SFMTA held a hearing regarding additional service reductions. The discussion included a PowerPoint presentation indicating a possible reduction in the level of transit service of approximately 313,000 annual service hours. The January 29, 2010, SFMTA Board PowerPoint document discussing the FY 2010 Year-end Budget including proposed reductions in transit service is attached as Attachment 6.

On February 4, 2010, the Planning Department issued a Certificate of Determination stating that "the fiscal emergency declared on April 21, 2009 continues through the Fiscal Year (FY) 2010. The SFMTA is facing a budget shortfall in its current FY, which ends on June 30, 2010." The Certificate of Determination found that "the SFMTA would reduce its transit service by up to 325,000 annual service hours in response to the existing fiscal emergency declared on April 21, 2009. This action meets the provisions of Public Resources Code Section 21080.32 and CEQA

Guidelines Section 15285 and therefore is statutorily exempt from environmental review."

The SFMTA held two Town Hall meetings regarding the proposed transit service reductions on February 6, 2010 and February 9, 2010. At these Town Hall meetings, SFMTA staff responded to some of the comments and suggestions made by the public regarding the proposed service reductions.

On February 22, 2010, the SFMTA notified the public on its website that it would hold in abeyance any February 26 decision to reduce annual service hours for 20 days in order to allow a member of the public to appeal the statutory exemption determination to the Board of Supervisors.

On February 26, 2010, the SFMTA Board held a public hearing regarding the proposed service reductions and approved an overall reduction of approximately 313,000 annual service hours. SFMTA staff presented a PowerPoint presentation that addressed many of the themes from the comments submitted by the public in response to the proposed service cuts. At that time, the SFMTA Board approved the proposed service reductions and approved an overall reduction of approximately 313,000 annual service hours.

This appeal ensued.

INTRODUCTION

Over the last two fiscal years, the SFMTA has incurred over $230 million in lost revenue due to the economic downturn and loss of state funding which has resulted in a serious budgetary crisis. During this two-year period, the SFMTA has expended almost all of its fund balance to offset the sharp decline in revenues.

As stated previously, state law provides a statutory exemption which permits the SFMTA to declare a fiscal emergency in order to exempt from environmental review fare increases and transit service reductions. Given the size of the SFMTA's budget deficit -- $129 million for FY 2010 -- and the fact that Municipal Railway costs are approximately 90 percent of SFMTA's total costs, addressing the $129 million budget deficit mandated increases to Municipal Railway revenues and reductions in Municipal Railway costs. The budget gap cannot be closed without reducing the level of transit service.

SFMTA'S RESPONSE TO ISSUES RAISED IN THE APPEAL

The SFMTA responds to specific issues raised in the appeal that pertain to the Agency's determination that a fiscal emergency existed for FY 2009-2010. Issues that are relevant to the Planning Department's issuance of the Certificate of

Determination on February 4, 2010 will be responded to under separate cover by the Planning Department.

Issue No. 1: *"The MTA is not a publicly-owned transit agency"*

Appellant's argument is without merit. In 1996, SB 1899 created a statutory exemption from California Environmental Quality Act (CEQA) for "publicly owned transit agencies." The statute does not define the term "publicly owned transit agencies." It is self-evident that the SFMTA is a publicly owned transit agency under the plain meaning of the term. The SFMTA and the City are both public bodies. Under Chapter 8A of the San Francisco Charter, SFMTA has responsibility for providing transit service in the City and County of San Francisco. Assets of the SFMTA are publicly owned or leased, and the SFMTA derives its authority from City and State law.

The Appellant asserts that because the SFMTA is a department of the City pursuant to the City's Charter, it is not also a publicly owned transit agency within the meaning of the statute. Contrary to Appellant's assertion, there is no evidence in either the legislative history or any subsequent case law that indicates that the term "publicly owned transit agency" was intended to exclude any local transit agency other than the Los Angeles County Metropolitan Transportation Agency. Further, there is no evidence to suggest that the exemption was not intended to apply to transit agencies operating within a city and county in California.

Senate Bill 1899 originally extended to any public agency. Subsequent amendments to the bill narrowed the exemption to apply only to "publicly owned transit agencies." The legislative intent was to narrow the statutory exemption from applying to actions taken by *any* public agency to actions taken by a public *transit* agency. The amendments to SB 1899 were not intended to distinguish between a "publicly owned transit agency" versus a "publicly owned transit agency" that also happens to be a part of a city and county. The Appellant asserts that "the legislature thus intended to distinguish a "publicly owned transit agency" from both a "public agency" and a "local agency." While the amendments to SB 1899 indeed made a distinction between a 'public agency' and a 'publicly owned transit agency,' they did not specify that a publicly owned transit agency was limited to independent public transit agencies that are not part of a city, county, or a city and county. Thus, the Appellant's argument that the legislative intent of SB 1899 was to apply to smaller, discrete transit government agencies and not transit agencies that are also part of a city and county is without any support in the legislative history.

Issue No. 2: *"The working capital calculation is insufficient and the continuing nature of MTA's deficit are an ongoing condition and not a fiscal emergency"*

Appellant's argument is without merit. The SFMTA demonstrated negative working capital within the next twelve months when it declared that a fiscal emergency existed in April, 2009. This demonstration is precisely what the statutory exemption requires.

A. *The SFMTA's Determination of Negative Working Capital Met the Statutory Requirement*

California Public Resource Code section 21080.32(d)(2) defines the term "fiscal emergency" to mean that "the agency is projected to have negative working capital within one year from the date the agency makes the finding that there is a fiscal emergency pursuant to this section."

Under the precise definition of the statutory exemption, negative working capital is determined by adding together all unrestricted cash, unrestricted short-term investments, and unrestricted short-term accounts receivable and then subtracting unrestricted accounts payable. Employee retirement funds, including Internal Revenue Code Section 457 deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, workers' compensation reserves, and insurance reserves, are not included in the calculation of negative working capital.

SFMTA's operating budget was used as the basis for the negative working capital calculation by including all projected operating revenues and subtracting projected operating expenditures but not including any restricted revenues or restricted expenditures. In calculating the available working capital, the SFMTA added all unrestricted cash, unrestricted short-term investments, and unrestricted short-term accounts receivable and then subtracted unrestricted accounts payable. Grant funds and related expenditures were not included in the analysis. Capital projects, special revenue funds and Paratransit revenues and expenditures were likewise excluded. Finally, employee retirement funds, deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, worker's compensation reserves, and insurance reserves were excluded from this calculation.

On April 7, 2009 and April 21, 2009, SFMTA staff presented information indicating that the SFMTA projected negative working capital, as defined by California Public Resource Code section 21080.32(d)(2), in the amount of $91.0 million at the end of April, 2010. The projected negative working capital calculation increased to $112.5 million by June 30, 2010. As a result, the SFMTA demonstrated negative working capital as defined by California Public Resource Code section 21080.32(d)(2) in the amount set forth above.

B. *The SFMTA Declared that a Fiscal Emergency Existed and Complied with the Process Required by State Law*

California Public Resource Code section 21080.32 and the CEQA Guidelines require that the SFMTA (1) determine that the agency is projected to have negative working capital within one year from the date that the agency makes a finding of fiscal emergency, (2) hold a public hearing prior to declaring a fiscal emergency, (3) respond within 30 days to suggestions made by the public at the initial public hearing, and (4) if appropriate, based on the first three steps, declare that a fiscal emergency exists.

The SFMTA complied with all the statutory requirements. First, the agency projected negative working capital of $91.0 million at the end of April, 2010. Second, on April 7, 2009 prior to declaring that a fiscal emergency existed, the SFMTA held a public hearing on the finding. Third, within 30 days of the April 7, 2010 hearing, the SFMTA responded to suggestions made by the public concerning the proposed fiscal emergency declaration either at the April 7, 2010 SFMTA Board meeting or submitted through April 10, 2009. Fourth, on April 21, 2009, the SFMTA declared that a fiscal emergency existed based on the agency's projection of negative working capital.

Issue No. 3: ***"The fiscal emergency hearing in April 2009 did not include a discussion of the May 1, 2010 modifications"***

Appellant's argument assumes a requirement that all actions responding to a fiscal emergency must occur at the same time. This requirement does not exist within CEQA, nor would it be practical to implement. There is no legal requirement that the SFMTA must have discussed the transit service reductions approved on February 26, 2010, at the hearing on April 21, 2009 when the SFMTA Board approved the fiscal emergency.

California Public Resources Code section 21080.32 and the CEQA Guidelines provide that a transit agency can make a finding that a "fiscal emergency" exists for the purpose of reducing transit service if the agency is projected to have negative working capital within one year from the date that the agency makes the finding. This language indicates that the transit agency anticipates that a fiscal emergency will continue to exist for 12 months after the agency has made the finding and can implement further transit service reductions based on this prior determination. The legislative history of the bill indicates that the actions taken by a public transit agency set forth in the statute are statutorily exempt from CEQA if the agency has: (1) made a finding that there is a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities; and (2) has held a public hearing to consider the effects of the actions it plans to take in response to the fiscal emergency. *Assembly Natural Resource Committee SB 1899 Bill Analysis*, April 23, 1996, p. 2. There is no requirement that these two actions occur at the same time. Further, there is no requirement that the SFMTA declare a new fiscal emergency every time the agency must increase fares or reduce transit service during a 12 month period in response to a on-going fiscal crisis.

In fact, the legislative history of this statutory exemption indicates that the statute was intended to *facilitate* rapid public transit agency responses to budgetary shortfalls. (emphasis added.) Sponsors of the legislation, the Santa Clara County Transportation Agency and the Metropolitan Transportation Commission, captured the motivation behind the exemption when they stated that "while [reducing service] may qualify as a project triggering CEQA review, the review is pointless because the agency cannot choose to continue providing the same services at the same rates." *Assembly Natural Resources Committee SB 1899 Bill Analysis*, July 1, 1996, p. 3.

Issue No. 4: *"MTA should postpone any implementation of the service cuts until this appeal is resolved at the Board"*

The Planning Department's Certificate of Determination found that the proposed transit service reduction of up to 325,000 annual service hours fell within the statutory exemption provided by California Resources Code section 21080.32 and CEQA Guidelines Section 15285. Based on the statutory exemption, the SFMTA Board approved the transit service reductions on February 26, 2010. Unless the statutory exemption is determined to be invalid, the SFMTA may proceed with implementation.

Issue No. 5: *"The Transit Effectiveness Project (TEP) promised environmental review prior to its approval and implementation. . . The MTA now claims that the subject transit service changes are both informed by the TEP but [are] not part of the TEP, which has had no environmental review"*

The Transit Effectiveness Project (TEP) is a comprehensive operational analysis of the Muni system and is the first Muni systemwide evaluation in a generation. The service changes that the SFMTA Board of Directors approved on February 26, 2010 used analytic tools that were developed during the TEP, but did not represent the implementation of the TEP. For example, the TEP was instrumental in procuring automatic passenger counters (APCs) on 30 percent of the SFMTA bus fleet. Data from these APCs were used to develop frequency reduction proposals that minimized crowding. The TEP planning phase concluded in October 2008 with the SFMTA Board of Directors' endorsement of staff recommendations for the purpose of environmental review. The TEP environmental review is expected to be completed in the next 18 to 24 months.

CONCLUSION

It is clear that the fiscal emergency statutory exemption was intended to *facilitate* - not impede - rapid public transit agency responses to budgetary shortfalls. Since the SFMTA met all the statutory requirements in declaring that a fiscal emergency existed and implemented transit service reductions in response to a declared fiscal emergency, this appeal is without merit. The SFMTA recommends that the Board of

Supervisors uphold the fiscal emergency statutory exemption determination issued by the Planning Department on February 4, 2010, regarding the proposed transit service reductions approved by the SFMTA Board of Directors on February 26, 2010.

Attachments:

1. Impacts of the Recession on Public Transportation Agencies, March 2010. American Public Transportation Association (APTA)
2. April 7, 2009 Public Hearing Fiscal Emergency, SFMTA Board Calendar Item
3. April 21, 2009 Fiscal Emergency Declaration, SFMTA Board Calendar Item
4. April 21, 2009 Fiscal Emergency Declaration, SFMTA Board Resolution
5. November 3, 2009 Powerpoint Presentation on the SFMTA FY 2010 Budget
6. January 29, 2010, SFMTA Board PowerPoint on the SFMTA FY 2010 Budget including proposed reductions in transit service

AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION

Impacts of the Recession on Public Transportation Agencies

Survey Results

March 2010

APTA
1666 K St. NW
Washington, DC 20006
www.apta.com

Impacts of the Recession on Transit Agencies

March 2010

Executive Summary and Key Findings

Public transportation agencies across the United States are in the midst of unprecedented budgetary challenges as a result of the current recession. Transit agencies have been forced to cut service, lay off employees, raise fares, slow capital improvements and take many other actions to survive. More troubling is that this comes at a time when transit use is at near modern record levels. This report, based on a March 2010 survey, provides a national perspective on the extent to which the current recession is affecting public transit agencies and the tens of millions of Americans who use their services.

The survey asked APTA member transit agencies to report on actions they have taken since January 1, 2009 in response to the economic downturn and those actions anticipated in the near future. 151 transit agencies responded; these agencies carry more than 80 percent of all public transportation riders in the United States. The results show that service cuts, fare increases, and reductions in staff, benefits, and pay are faced by a large number of transit agencies due to declining revenues. The impacts were most severe among the larger public transportation agencies.

The survey found the following:

- Revenue decline is widespread, with 90 percent of public transit agencies reporting flat or decreased local funding and 89 percent reporting flat or decreased state funding.
- Budgetary pressures are increasing with seven out of ten agencies (69%) projecting budget shortfalls in the coming year.
- Despite actions taken to address budgetary issues, 11 transit agencies project shortfalls in excess of 20 percent, and the cumulative projected shortfall among participating transit agencies is almost $2 billion.
- More than 8 out of 10 transit agencies (84%) have cut service or raised fares or are considering either of those actions for the future, with nearly three in five agencies (59%) having already cut service or raised fares.
- Larger transit agencies were more likely to have a decrease in local, regional, or state funding, or fare revenue than other transit agencies. Among larger agencies, more than half (54%) have already increased fares, and two in three (66%) have cut service. Nearly all (97%) of larger agencies have cut service or raised fares or are considering doing so in the future.
- More than half of all transit agencies (53%) have eliminated positions and one in three (32%) have laid off employees. Among larger transit agencies, the cuts in staff have been more common, with four out of five (80%) reducing positions and more than half (57%) laying off employees.

Meanwhile, public transportation agencies across the country continue to seek solutions and do all they can to provide critical service to connect people to jobs and help support an economic resurgence. Given current economic trends, most see heightening pressures in the months ahead as agencies face unprecedented budgetary challenges. In order to protect vital public transit service, state, local and federal partners must provide critical funding to help transit agencies move beyond the immediate economic crisis.

Introduction

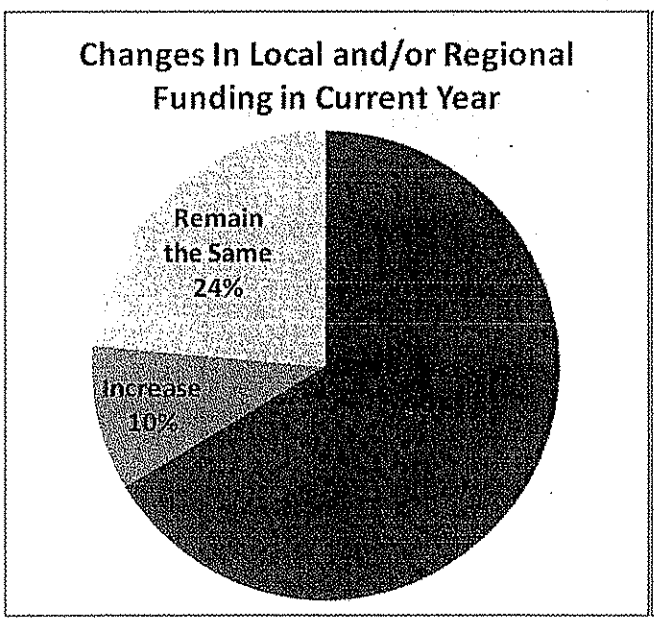
In March 2010, APTA conducted a survey of its members to understand the effects of the recession on public transportation agencies across the country and their riders. The focus of this survey is on actions taken by agencies since January 1, 2009 in response to the economic downturn and those actions anticipated in the near future. While some transit agencies took similar actions in 2008, primarily as a result of surging fuel costs that strained agency budgets, the goal of this survey is to isolate the effects of the recent economic decline. 151 agencies responded, representing agencies that carry more than 80 percent of all public transportation riders in the United States. The results show that declining revenue, service cuts, fare increases, and reductions in staff, benefits, and pay are faced by a large number of transit agencies with the impacts most severe among the larger agencies.

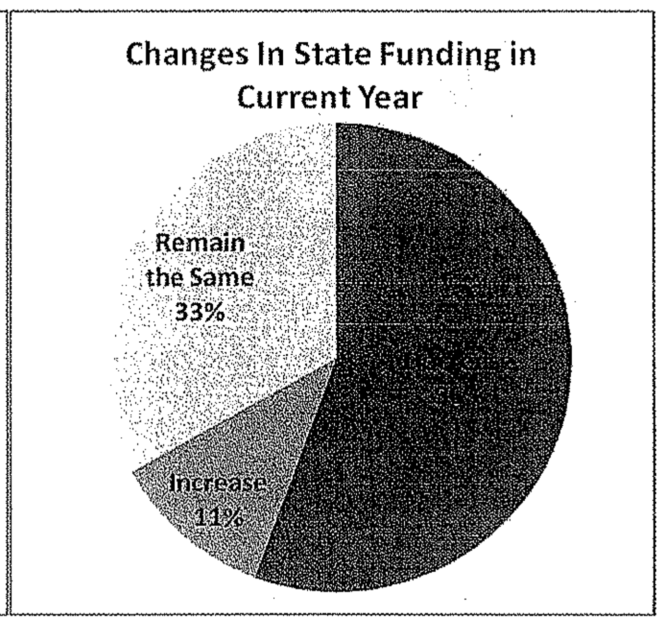
Profile of Survey Respondents:

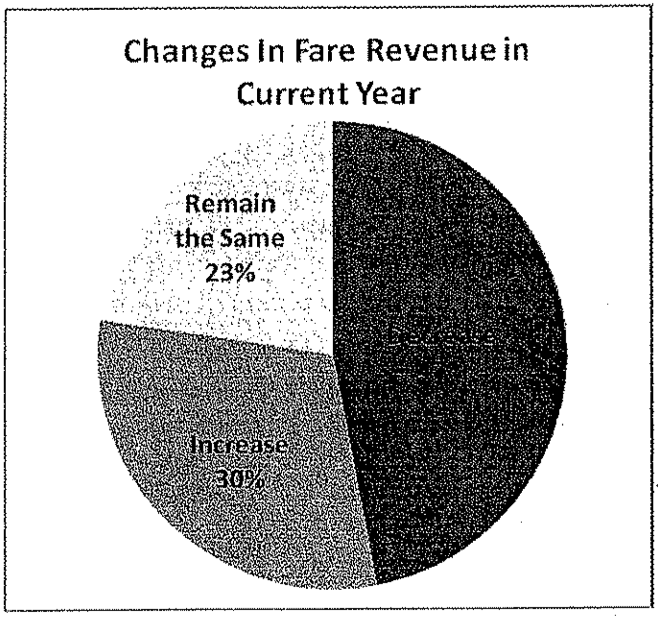
- 151 APTA members representing agencies carrying more than 80 percent of public transportation riders in the nation; including 22 light rail operators, 18 commuter rail operators, and 10 heavy rail operators
- 19 of the top 25 agencies responded (based on ridership)

Recession Affecting Agency Revenues

Public transit agencies rely on three primary revenue sources to fund agency operations: 1) local/regional revenue (collected through various tax and funding structures), 2) state revenue, and 3) transit fares. Transit agencies serving urbanized areas of 200,000 or less in population, or serving rural areas may use a portion of their federal formula funding for operating assistance. The survey results indicate that agencies have almost universally faced declines in revenue from state and local funding sources. In total, 90 percent of agencies are facing flat or declining local and/or regional funding in the current year and 89 percent are facing flat or declining state revenue. Many transit agencies have responded to declining revenues, in part, by increasing fares, which has resulted in higher fare revenue for approximately one in three agencies.

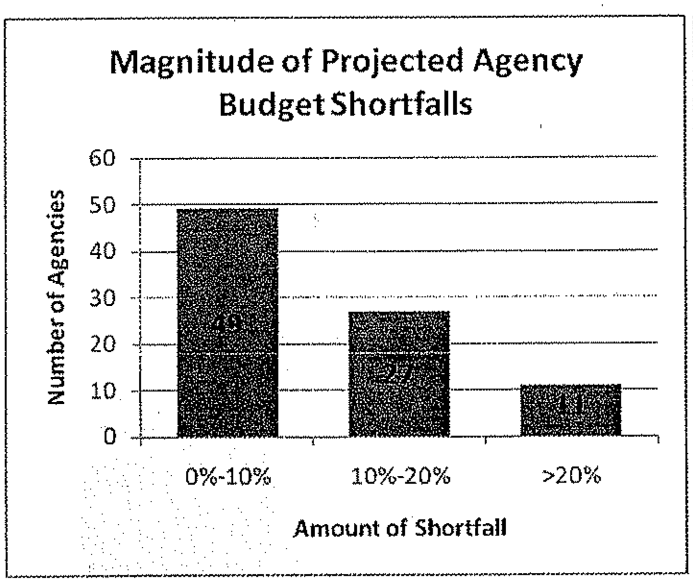


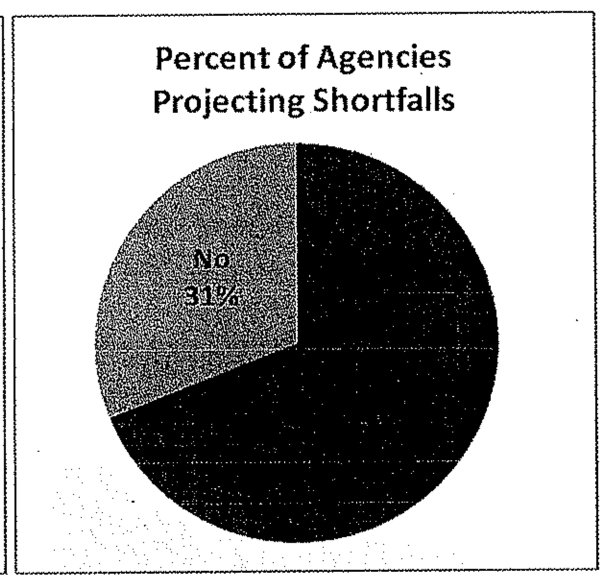




Projected Budget Shortfalls

While many transit agencies are facing challenges in the current budget year, revenue forecasts suggest that transit agencies will continue to face challenges in the upcoming budget year. Nearly seven in ten (69%) transit agencies report that they currently face projected shortfalls for the upcoming budget year. In some cases, projected shortfalls are large with eleven agencies predicting a shortfall of more than 20 percent. Five transit agencies are reporting projected budget shortfalls in excess of $100 million. In total, survey participants reported a projected shortfall of nearly $2 billion in the upcoming year.





Benefits of Funding from the American Recovery and Reinvestment Act

The American Recovery and Reinvestment Act (ARRA), signed in February 2009, provided $8.4 billion in capital funding for public transportation projects. Public transit agencies around the country immediately began to program these funds for immediate use. A July 2009 amendment to ARRA permitted transit agencies to use up to 10% of their allocated ARRA funds for operations. By that time, many agencies had already programmed all their ARRA funds. Nevertheless, approximately a third of agencies (31%) report that they were able to take advantage of this flexibility.

Actions Taken to Address Agency Transit Agency Budget Shortfalls

Transit agencies have taken a number of actions to address budget shortfalls including cutting service, laying off employees, raising fares, shifting funds from capital investments to operations and using agency funding reserves. In total, three out of four (74%) transit agencies have either implemented service cuts or have service cuts under consideration. Similarly, almost three out of four (73%) transit agencies have either raised fares or are considering fare increases in the future. Almost half of transit agencies (49%) have been forced to transfer funds from capital to operations and 40 percent have drawn from reserve funds. This potentially may have a long term effect on the condition of agency assets. The tables below outline the actions transit agencies have taken since January 1, 2009, have approved, or are considering as future responses to budget constraints:

Transit Agency Actions to Address Recession Impacts

	Implemented Since January 1, 2009, or Approved for Implementation	Considering Future Action	Implemented AND Considering additional Future Action	Implemented OR Considering for Future Action
Service Cuts:	44%	53%	23%	74%
Reduction in Peak-Period Service	*32%*	*34%*	*10%*	*56%*
Elimination or Reduction in Off-Peak Service	*35%*	*38%*	*11%*	*62%*
Reduction in Geographic Coverage of Service	*15%*	*30%*	*5%*	*40%*
Fare Increase	44%	34%	5%	73%
Fare Increase AND Service Cuts	28%	23%	4%	48%
Fare Increase OR Service Cuts	59%	61%	36%	84%
Transfer of funds from capital use to operations	49%	18%	13%	54%
Use of Reserves	40%	23%	7%	56%

Public transit agencies have been forced to take a number of actions within the agency to address budget shortfalls including actions related to employee pay, benefits and total employment. More than half of the transit agencies report a reduction in the number of positions, sometimes achieved through attrition, but also through layoffs. Approximately one in three has conducted layoffs and almost half have either already conducted layoffs or are considering doing so in the future.

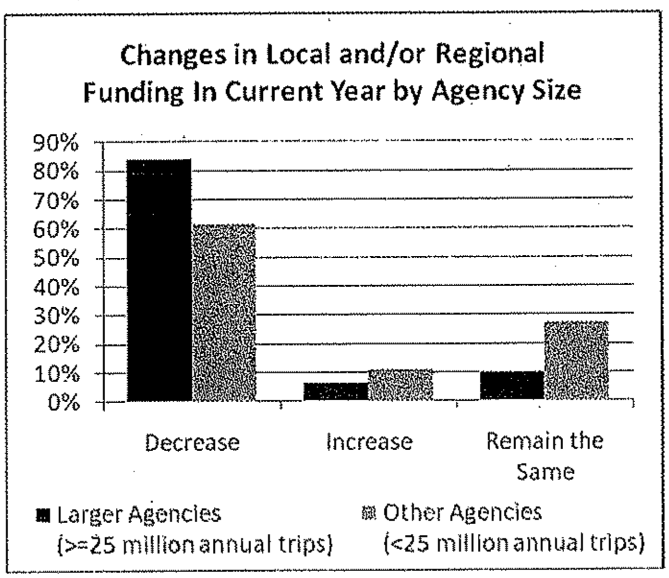
Agency Personnel Actions to Address Recession Impacts

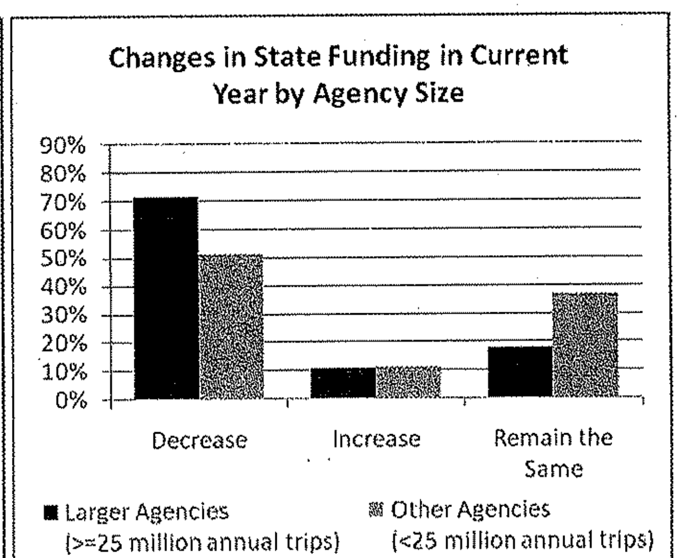
	Implemented Since January 1, 2009, or Approved for Implementation	Considering Future Action	Implemented AND Considering additional Future Action	Implemented OR Considering for Future Action
Hiring Freeze	41%	18%	5%	54%
Furloughs: Non-Union	23%	16%	3%	36%
Furloughs: Union	11%	15%	1%	25%
Salary Freeze or reduction: Non-Union	52%	20%	9%	62%
Salary Freeze or reduction: Union	23%	22%	3%	42%
Reduction in Benefits: Non-Union	25%	25%	4%	46%
Reduction in Benefits: Union	17%	25%	3%	38%
Reduction in Positions	53%	30%	15%	68%
Layoffs	32%	22%	7%	47%

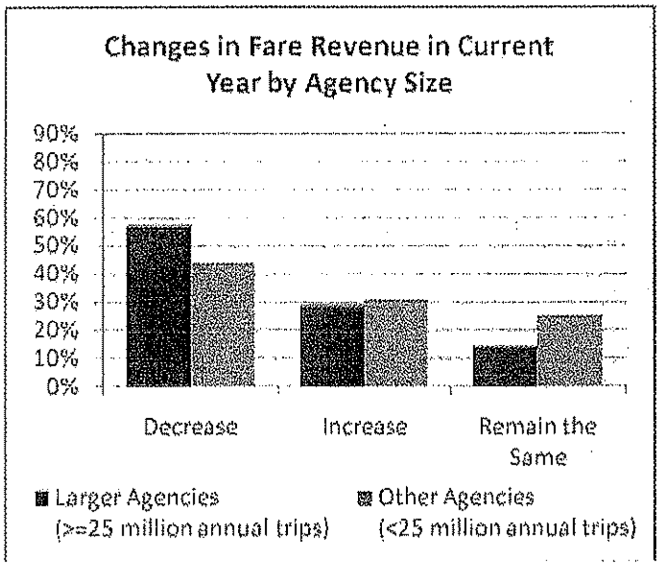
Largest Agencies Impacted Most:

While the national totals show the breadth of the recessions' impact on the transit agency, survey results indicate that agencies providing more than 25 million annual trips a year are experiencing the most severe impact. A higher proportion of larger agencies are facing declines in local and state revenue. Few transit agencies of any size have seen increases in local or state revenue.

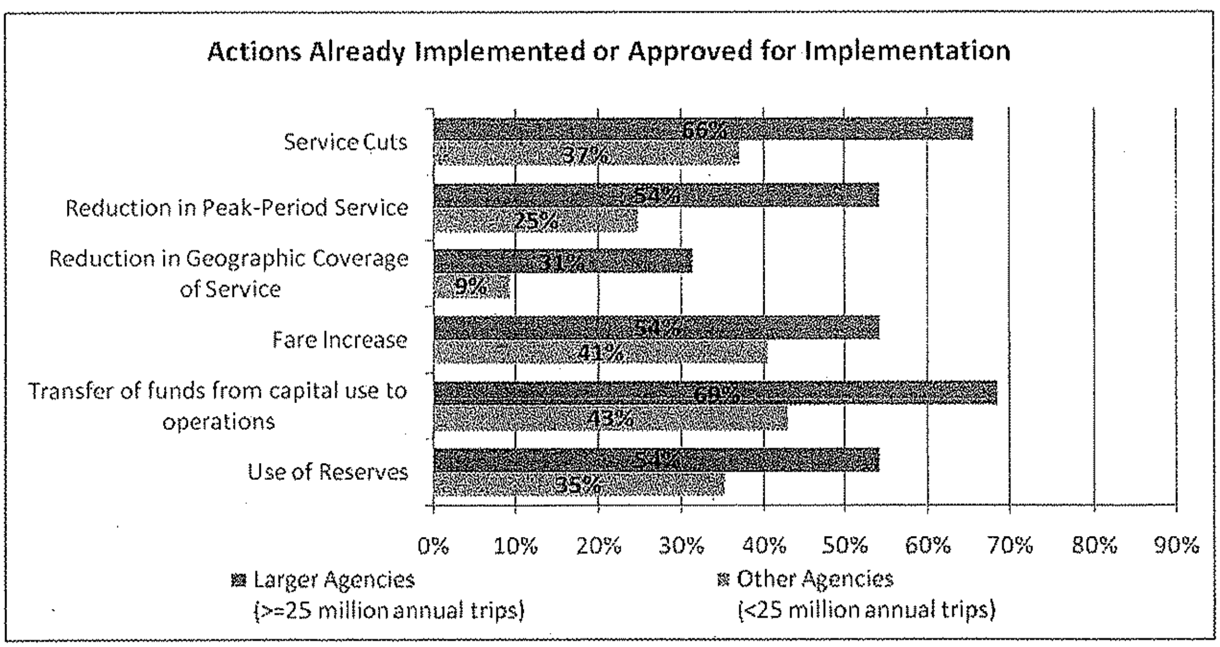
Changes in Funding Levels by Size of Agency Operations:



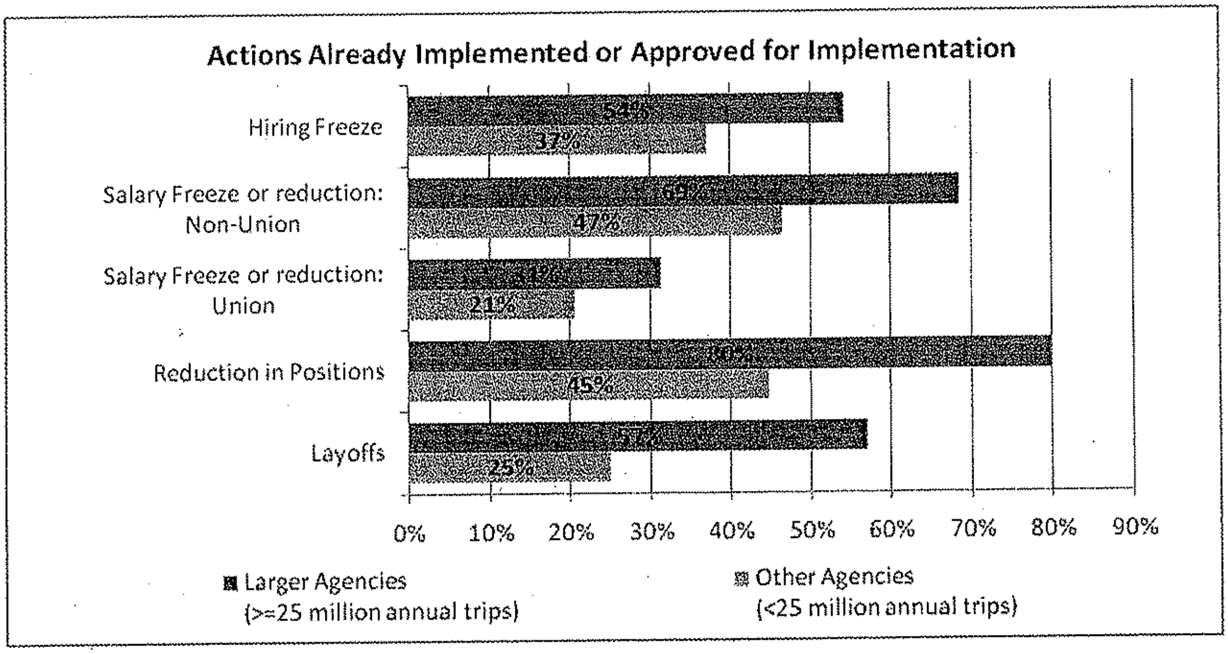




Larger public transportation agencies have also been forced to take more actions in the areas of services cut and fare increases. More than half of larger transit agencies (54%) have cut peak period service and one in three (31%) have reduced the geographic coverage of service. Almost seven in ten have transferred funds from capital to operations. Finally, more than half of larger transit agencies (54%) have been forced to dip into agency funding reserves.



Internal actions have also been more substantial among larger agencies with 80 percent reporting a reduction in the number of positions. While some agencies have likely achieved a reduction in workforce through attrition, almost six in ten report that they have had layoffs. Almost seven in ten (69%) report a salary freeze or reduction among non-union employees and approximately one-third (31%) have done the same for union employees.



While a number of agencies report that they have been forced to eliminate some positions or conduct layoffs, some of the more notable actions include:

- 7 agencies had 100 or more layoffs
- 4 of those had more than 250 layoffs

Conclusion

Public transportation agencies across the country continue to seek financial solutions and do all they can to provide critical service to connect people to jobs and help support an economic resurgence. Given current economic trends, most see heightening pressures in the months ahead as agencies face unprecedented budgetary challenges. Facing declines in revenue from state and local sources, public transit agencies have been forced to take drastic action including layoffs, service cuts, and fare increases. Public transportation agencies have also confronted the difficult challenge of reducing payrolls and employee benefits as they continue to face financial challenges seen in continuing projections for budgetary shortfalls. These cutbacks are happening as public transportation is reaching levels of popularity not seen in half a century: despite high unemployment, 2009 saw the second-highest ridership in fifty-three years. In order to protect this vital transit service, state, local and federal partners must provide critical funding to help public transit agencies move beyond the immediate economic crisis.

THIS PRINT COVERS CALENDAR ITEM NO. : ______________

MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco

DIVISION: Finance & Information Technology

BRIEF DESCRIPTION:
Public Hearing before the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors on Tuesday, April 7, 2009, to consider a declaration of fiscal emergency for the 2009-2010 fiscal year under California Public Resources Code section 21080.32 and California Environmental Quality Act implementing guidelines, Title 14 of the California Code of Regulations section 15285. The SFMTA must respond within 30 days of the public hearing to suggestions made by the public and plans to do so at the April 21, 2009 Board meeting. After responding to these comments, the SFMTA Board may make a finding that a fiscal emergency exists for the SFMTA caused by the failure of agency revenues to adequately fund agency programs, facilities, and operations.

SUMMARY:
- The 2009-2010 Amended Proposed Operating Budget projects a $128.9 million deficit due mainly to a global economic downturn as presented to the SFMTA Board on March 17, 2009. There are various options under discussion by the SFMTA Board of Directors to address this deficit including a reduction in transit service and increases to various fares, fees, fines, rates and charges that support transit service.
- Reductions in transit service and increases to fares, fees, fines, rates and charges that support transit service are subject to the California Environment Quality Act (CEQA). CEQA provides a statutory exemption from environmental review for the reduction or elimination of transit service and increases to fares, fees, fines, rates and charges that support transit service if implemented as a result of a declared fiscal emergency caused by the failure of the revenues to adequately fund agency programs, facilities, and operations.
- A "fiscal emergency" means that the agency is projected to have negative working capital within one year from the date that the agency makes the finding that fiscal emergency exists.
- In accordance with California Public Resources Code section 21080.32 and California Environmental Quality Act implementing guidelines, Title 14 of the California Code of Regulations section 15285, the SFMTA Board of Directors must hold a public hearing to receive public testimony regarding the proposed declaration of fiscal emergency.
- Responses to any comments made by the public will be scheduled for the April 21, 2009, SFMTA Board Meeting.
- At the April 21, 2009, SFMTA Board meeting, the SFMTA Board of Directors will be asked to declare a "fiscal emergency" for 2009-2010 under California Public Resources Code section 21080.32 and California Environmental Quality Act implementing guidelines, Title 14 of the California Code of Regulations section 15285.

ENCLOSURES:

APPROVALS:		**DATE**
DIRECTOR OF DIVISION		
PREPARING ITEM	______________	______
FINANCE	______________	______
EXECUTIVE DIRECTOR/CEO	______________	______
SECRETARY	______________	______

ASSIGNED MTAB CALENDAR DATE: ______________

Purpose

Addressing the SFMTA 2009-2010 budget deficit of $128.9 million will possibly include service reductions and increases to fares, fees, fines, rates and charges that support transit service. These options are subject to CEQA unless a statutory exemption exists. California Public Resources Code Section 21080.32 provides a statutory exemption that a reduction or elimination of transit service and increases to fares, fees, fines, rates, and charges that support transit service can be implemented as a result of a declared "fiscal emergency" caused by the failure of the revenues to adequately fund agency programs, facilities, and operations without further environmental review. The agency is required to hold a public hearing and respond to comments and suggestions made by the public prior to declaring that a "fiscal emergency" exists. The purpose of this item is to initiate a public hearing before the SFMTA Board of Directors to consider a declaration of fiscal emergency for the 2009-20010 fiscal year under California Public Resources Code section 21080.32.

Goal

Approval of the proposed resolution will support:

- Goal 4 of the SFMTA's Strategic Plan, Financial Capacity, which is to ensure financial stability and effective resource allocation; and

- Goal 3 of the SFMTA's Strategic Plan, External Affairs/Community Relations, which is to improve the customer experience, community value and enhance the image of the SFMTA.

Description

On March 17, 2009, the SFMTA Board of Directors reviewed the Amended Proposed Operating Budget for 2009-2010 including a projected $128.9 million deficit as outlined below:

Revenue Category	2009-2010 Approved Budget	2009-2010 Projection as of Feb 2009	2009-2010 Projected Surplus / (Deficit)	Description
State/Regional Funds	115.7	60.9	(54.8)	State Budget Eliminated Transit Assistance Funding ($42.8M), TDA Sales Tax and AB1107 from MTC ($11.5M), Gas Tax ($0.5M)
General Fund	252.2	227.9	(24.3)	Less General Fund Baseline Available due to declining General Fund revenues
Advertising	16.2	10.0	(6.2)	Advertising market declines

Parking Citations	103.8	97.8	(6.0)	Reduced citations from street sweeping schedule changes plus Courthouse fee increase to State
Garage Revenues	31.4	27.7	(3.7)	Reflects anticipated reduction in garage revenues due to declining patronage and economic conditions
Parking Meters	35.0	32.0	(3.0)	Variable pricing projections from SF*park* adjusted back to original assumption
Interest	5.6	4.8	(0.8)	Lower Interest rates
Fund Balance *	36.4	42.3	5.9	Use of additional fund balance
Cable Car Fares	4.6	5.5	0.9	Increased collection of Cable Car fares
Other Revenues	215.8	215.8	0.0	No changes projected at this time
TOTAL	**$816.7**	**$726.9**	**($89.8)**	

* As of March 1, 2009, the fund balance in the SFMTA funds was $58.7 million in operating funds and -$10 million in capital/ restricted funds, totaling $48 million. $42.3 million of the operating fund balance is included in the 2009-2010 operating budget.

0.00	**2009-2010 Approved Budget**	**2009-2010 Projection as of Feb 2009**	**2009-2010 Projected (Deficit)**	**Description**
Salaries & Benefits	496.4	521.5	(25.1)	$6.6M increase due to retirement benefits as a result of the passage of Proposition B in June 2008. Increase adjustment of $14M in overtime based on actual usage. Increased additional benefits and salary adjustments of $4.5M – unemployment insurance, position changes.
Services from City Departments	68.4	80.2	(11.8)	• SF Police Department $7M • SF General Hospital $3M • 311 Call Center $2.2M • Tax Collector's Office $0.5M • Telecommunications Department $0.5M • Risk Manager's Office $0.4M • Planning Department $0.3M • Department of Human Resources ($1.2M) • Various other adjustments known at this time
Other Line items	251.9	251.9	0	No changes projected to other various expenditures at this time
TOTAL	$816.7	$855.8	($39.1)	

	FY 2009-2010 Approved Budget	2009-2010 Projection as of Feb 2009	FY 2009-2010 (Deficit)
Revenues	$816.7	$726.9	($89.8)
Expenditures	$816.7	$855.8	($39.1)
Total FY 2009-2010 Projected (Deficit)			($128.9)

To address this deficit, the SFMTA Board of Directors is considering various options including service reductions and increases to fares, fees, fines, rates and charges that support transit service. Reductions in transit service and increases to fares, fees, fines, rates and charges that support transit service are considered "projects" under the California Environmental Quality Act ("CEQA") and typically require an evaluation of any potential environmental impact, unless a statutory exemption applies. CEQA provides a statutory exemption from environmental review for the reduction or elimination of public transit service or to initiate or increase fees, rates, or charges as a result of a declared "fiscal emergency". (California Public Resources Code section 21080.32; 14 Code of California Regulations section 15285.)

A "fiscal emergency" means that the transit agency is projected to have "negative working capital" within one year from the date that the agency makes the finding that a fiscal emergency exists. In calculating the available working capital, a transit agency adds together all unrestricted cash, unrestricted short-term investments, and unrestricted short-term accounts receivable and then subtracts unrestricted accounts payable. Employee retirement funds, including Internal Revenue Code Section 457 deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, workers' compensation reserves, and insurance reserves, are excluded from this calculation.

Calculation of Working Capital (millions)	
Sources	
Unrestricted Net Assets (Cash) *	
Fund Balance ($58.7 available less $42.3 included in 2009-2010 Operating Budget)	$16.4
Subtotal: Unrestricted Net Assets	***$16.4***
Unrestricted Short-Term Investments	$0
Unrestricted Accounts Receivables	
Revenues (see above table)	$726.9
Less Funds Restricted for Paratransit from Grants	(-$5.8)
Subtotal: Accounts Receivables	***$721.1***

Total Sources	**$743.3**
Uses	
Unrestricted Accounts Payables	
Expenditures (see above table)	**$855.8**
Less Expenditures funded from Grants for Paratransit	**(-$5.8)**
Subtotal: Accounts Receivables	***$850.8***
Total Uses	**$855.8**
Operating Surplus/(Deficit)	**($112.5)**

- Unrestricted Fund Balance is determined by subtracting total current liabilities from total current assets excluding grants which are restricted

The analysis of SFMTA's working capital shows negative working capital of $112.5 million in 2009-2010. The analysis excludes restricted revenues and restricted expenditures. Therefore, grant funds and their expenditures are not included in the analysis. Capital projects, special revenue funds, Paratransit revenues and expenditures, and continuing projects funds are likewise excluded.

Once the above analysis is completed and the agency believes that a "fiscal emergency" declaration is warranted, the agency is required to hold a public hearing and respond to comments and suggestions made by the public prior to declaring that a fiscal emergency exists. The public hearing is scheduled for April 7, 2009. During the public hearing, staff will address why a "fiscal emergency" exists and receive testimony from the public. Within 30 days after the public hearing, SFMTA is required to respond to comments received from the public at the hearing which is planned for April 21, 2009. Once SFMTA has responded to these comments, the SFMTA Board may declare that a "fiscal emergency" exists. It is important to note that a declaration of "fiscal emergency" does not by itself implement service reductions or changes to fares, fees, fines, rates and charges that support transit service.

SFMTA will respond to the public comments received on April 7, 2009, at the regularly scheduled April 21, 2009, SFMTA Board meeting. This will fulfill the requirement of responding to public comment within 30 days at a regularly scheduled public meeting. At the same Board meeting, staff expects to request that the SFMTA Board of Directors declare that a fiscal emergency exists for SFMTA for the 2009-2010 fiscal year.

Alternatives Considered

The SFMTA Board considered various options to address the 2009-2010 deficit at the March 17, 2009, meeting and is considering various options to address the 2009-2010 deficit at a public hearing on April 7, 2009.

Funding Impact

Impact to 2009-2010 Amended Operating Budget.

Recommendation

It is recommended that a public hearing be held before the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors on Tuesday, April 7, 2009, to consider a declaration of fiscal emergency for the 2009-20010 fiscal year under California Public Resources Code section 21080.32 and California Environmental Quality Act implementing guidelines, Title 14 of the California Code of Regulations section 15285. The SFMTA must respond within 30 days of the public hearing to suggestions made by the public and plans to do so at the April 21, 2009, Board meeting. After responding to these comments, the SFMTA Board may make a finding that a fiscal emergency exists for the SFMTA caused by the failure of agency revenues to adequately fund agency programs, facilities, and operations.

The City Attorney has reviewed this item.

THIS PRINT COVERS CALENDAR ITEM NO. : 12

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Finance & Information Technology

BRIEF DESCRIPTION:
The San Francisco Municipal Transportation Agency (SFMTA) at its meeting on April 7, 2009, held a public hearing regarding the proposed declaration of fiscal emergency under California Public Resources Code section 21080.32 and California Environmental Quality Act implementing guidelines, Title 14 of the California Code of Regulations section 15285. This document contains responses to public comments received at the April 7, 2009 meeting and through April 10, 2009 concerning that proposed declaration. It is recommended that the Board of Directors adopt a resolution finding that a fiscal emergency exists caused by the failure of the Agency to adequately fund agency programs, facilities, and operations.

SUMMARY:
- The Proposed Amended Operating Budget for 2009-2010 projects a $128.9 million deficit. There are various options that were discussed by the SFMTA Board of Directors at its meetings on the March 17, 2009 and April 7, 2009 to address this deficit including a reduction in transit service and increases to various fares, fees, fines, rates and charges that support transit service.
- Reductions in transit service and increases to fares, fees, fines, rates and charges that support transit service are subject to the California Environment Quality Act (CEQA). CEQA provides a statutory exemption from environmental review for the reduction or elimination of transit service and increases to fares, fees, fines, rates and charges that support transit service if implemented as a result of a declared fiscal emergency caused by the failure of the revenues to adequately fund an agency's programs, facilities, and operations.
- A "fiscal emergency" means that the agency is projected to have negative working capital within one year from the date that the agency makes the finding that a fiscal emergency exists. An analysis of the working capital for SFMTA concludes that the conditions exist for the declaration of a "fiscal emergency." A finding by the SFMTA Board that a fiscal emergency exists does <u>not</u> automatically result in implementation of service reductions or changes to fees, rates, or fares. Any such decisions must be separately approved by the SFMTA Board.
- In accordance with the regulatory requirements, on April 7, 2009, the SFMTA Board of Directors held a public hearing to receive public testimony regarding the proposed declaration of a fiscal emergency. At the April 7, 2009 public hearing and through April 10, 2009, oral and written public comments were received. The relevant regulations require a response to the comments and suggestions made by the public within 30 days at a regular public meeting.
- Responses to comments and suggestions made by the public are included in this calendar item.
- It is requested that the SFMTA Board of Directors find that a fiscal emergency exists for 2009-2010 under California Public Resources Code section 21080.32 and California Environmental Quality Act implementing guidelines, Title 14 of the California Code of Regulations section 15285.

ENCLOSURES:
1. Resolution

APPROVALS:		**DATE**
DEPUTY OF DIVISION PREPARING ITEM	____________________	__________
FINANCE	____________________	__________
DIRECTOR	____________________	__________
SECRETARY	____________________	__________

ADOPTED RESOLUTION BE RETURNED TO <u>Sonali Bose</u>

ASSIGNED SFMTAB CALENDAR DATE: ____________________

Purpose

To address the SFMTA 2009-2010 Proposed Amended Operating Budget deficit of $128.9 million which includes service reductions and increases to fares, fees, fines, rates and charges that support transit service. These options are subject to CEQA unless a statutory exemption exists. California Public Resources Code Section 20180.32 provides a statutory exemption that a reduction or elimination of transit service and increases to fares, fees, fines, rates, and charges that support transit service can be implemented as a result of a declared "fiscal emergency" caused by the failure of the revenues to adequately fund Agency programs, facilities, and operations without further environmental review. The Agency is required to hold a public hearing and respond to comments and suggestions made by the public prior to declaring that a "fiscal emergency" exists. The purpose of this item is to respond to the oral and written comments made by the public before the SFMTA Board of Directors considers declaring a fiscal emergency under California Public Resources Code section 21080.32.

Goal

Approval of the proposed resolution will support the following SFMTA Strategic Plan goals:

- Goal 3 - External Affairs/Community Relations
  To improve the customer experience, community value and enhance the image of the SFMTA.

- Goal 4 -Financial Capacity
  To ensure financial stability and effective resource utilization

Description

On March 17, 2009, the SFMTA Board of Directors reviewed the Amended Proposed Operating Budget for 2009-2010 including a projected $128.9 million deficit as outlined below:

Revenues	2009-2010 Approved Budget ($M)	2009-2010 Projection as of Feb 2009 ($M)	2009-2010 Projected Surplus / (Deficit) ($M)	Description
State/Regional Funds	134.6	79.8	(54.8)	State Budget Eliminated Transit Assistance Funding ($42.8M), TDA Sales Tax and AB1107 from MTC ($11.5M), Gas Tax ($0.5M)
General Fund	252.4	228.1	(24.3)	Less General Fund Baseline Available due to declining General Fund revenues
Advertising	16.2	13.8	(6.2)	Advertising market declines

Revenues	2009-2010 Approved Budget ($M)	2009-2010 Projection as of Feb 2009 ($M)	2009-2010 Projected Surplus / (Deficit) ($M)	Description
Parking Citations	103.8	97.8	(6.0)	Reduced citations from street sweeping schedule changes plus Courthouse fee increase to State
Garage Revenues	33.6	29.9	(3.7)	Reflects anticipated reduction in garage revenues due to declining patronage and economic conditions
Parking Meters	44.3	41.3	(3.0)	Variable pricing projections from SFpark adjusted back to original assumption
Interest	5.6	4.8	(0.8)	Lower Interest rates
Fund Balance *	36.4	42.3	5.9	Use of additional fund balance
Taxi Services	0.0	2.2	2.2	Addition of Taxi Services
Transit Fares	163.4	164.3	0.9	Increased collection of Cable Car fares
Other Revenues	22.6	22.6	0.0	No changes projected at this time
TOTAL	**$816.7**	**$726.9**	**($89.8)**	

* As of March 1, 2009, the fund balance in the SFMTA funds was $58.7 million in operating funds and -$10 million in capital/ restricted funds, totaling $48 million. $42.3 million of the operating fund balance is included in the 2009-2010 Amended Operating budget.

Expenditures	2009-2010 Approved Budget	2009-2010 Projection as of Feb 2009	2009-2010 Projected (Deficit)	Description
Salaries & Benefits	496.4	521.5	(25.1)	$6.6M increase due to retirement benefits as a result of the passage of Proposition B in June 2008. Increase adjustment of $14M in overtime based on actual usage. Increased additional benefits and salary adjustments of $4.5M – unemployment insurance, position changes.
Services from City Departments	68.4	80.2	(11.8)	• SF Police Department $7M • SF General Hospital $3M • 311 Call Center $2.2M • Tax Collector's Office $0.5M • Telecommunications Department $0.5M • Risk Manager's Office $0.4M • Planning Department $0.3M • Department of Human Resources ($1.2M) • Various other adjustments known at this time
Taxi Services	0.0	2.2	2.2	Addition of Taxi Services
Other Line items	251.9	251.9	0	No changes projected to other various expenditures at this time
TOTAL	$816.7	$855.8	($39.1)	

	FY 2009-2010 Approved Budget	2009-2010 Projection as of Feb 2009	FY 2009-2010 (Deficit)
Revenues	$816.7	$726.9	($89.8)
Expenditures	$816.7	$855.8	($39.1)
Total FY 2009-2010 Projected (Deficit)			($128.9)

To address this deficit, the SFMTA Board of Directors is considering various options including service reductions and increases to fares, fees, fines, rates and charges that support transit service. Reductions in transit service and increases to fares, fees, fines, rates and charges that support transit service are considered "projects" under the California Environmental Quality Act (CEQA) and typically require an evaluation of any potential environmental impact, unless a statutory exemption applies. CEQA provides a statutory exemption from environmental review for the reduction or elimination of public transit service or to initiate or increase fees, rates, or charges that support transit service as a result of a declared "fiscal emergency." (California Public Resources Code section 21080.32; 14 Code of California Regulations section 15285.)

A "fiscal emergency" means that the agency is projected to have "negative working capital" within one year from the date that the agency makes the finding that a fiscal emergency exists. In calculating the available working capital, a transit agency adds together all unrestricted cash, unrestricted short-term investments, and unrestricted short-term accounts receivable and then subtracts unrestricted accounts payable. Employee retirement funds, including Internal Revenue Code Section 457 deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, workers' compensation reserves, and insurance reserves, are excluded from this calculation.

Calculation of Working Capital (millions)

	2009-2010 Full Year	2009-2010 10 months
Sources		
Unrestricted Net Assets (Cash) *		
Projected Fund Balance ($58.7 available at the end of Fiscal Year less $42.3 included in 2009-2010 Operating Budget)	$16.4	$16.4
Subtotal: Unrestricted Net Assets	**$16.4**	**$16.4**
Unrestricted Short-Term Investments	**$0**	**$0**
Unrestricted Accounts Receivables		
Revenues (see above table)	$726.9	$605.8
Less Funds Restricted for Paratransit from Grants	($14.2)	($11.8)
Subtotal: Accounts Receivables	**$712.7**	**$594.0**
Total Sources	**$729.1**	**$610.4**
Uses		
Unrestricted Accounts Payables		

	2009-2010 Full Year	2009-2010 10 months
Expenditures (see above table)	$855.8	$713.2
Less Expenditures funded from Grants for Paratransit	($14.2)	($11.8)
Subtotal: Accounts Receivables	**$841.6**	**$701.4**
Total Uses	**$841.6**	**$701.4**
Operating Surplus/(Deficit)	**($112.5)**	**($91.0)**

- Unrestricted Fund Balance is determined by subtracting total current liabilities from total current assets excluding grants which are restricted

The analysis of SFMTA's working capital shows negative working capital of $112.5 million at the end of 2009-2010 and $91.0 million at the end of April 2010. The analysis excludes restricted revenues and restricted expenditures. Therefore, grant funds and related expenditures are not included in the analysis. Capital projects, special revenue funds and Paratransit revenues and expenditures are likewise excluded.

Once the above analysis is completed and the agency believes that a "fiscal emergency" declaration is warranted, the agency is required to hold a public hearing and respond to comments and suggestions made by the public prior to declaring that a fiscal emergency exists. The SFMTA held a public hearing on April 7, 2009. During the public hearing, the reason for the declaration of a "fiscal emergency" was summarized and SFMTA received public testimony. Within 30 days after the public hearing, SFMTA is required to respond to comments received from the public. Once SFMTA has responded to these comments, the SFMTA Board may declare that a "fiscal emergency" exists. It is important to note that a declaration of "fiscal emergency" does not by itself implement service reductions or changes to fares, fees, fines, rates and charges that support transit service.

Responses to comments and suggestions made by the public at the April 7, 2009 public hearing through April 10, 2009 are set forth in this document. This fulfills the requirement of responding to public comments within 30 days at a regularly scheduled public meeting. Therefore, at its April 21, 2009 Board meeting, the SFMTA Board of Directors may declare that a fiscal emergency exists.

Responses to Public Comments

This document serves as the San Francisco Municipal Transportation Agency's (SFMTA) formal response to comments received from the public regarding the declaration of a fiscal emergency on April 7, 2009. Several members of the public have expressed and/or submitted similar comments of which are collectively listed with a single response below. The comments are separated into three sections as follows: 1) general comments; 2) specific comments on service modifications; and 3) specific comments on user charges.

1) **General Comments**

- **Do not Declare a Fiscal Emergency**
  Commenter: Irwin Lum, Rafael Cabrera, David Pilpel
  Response: Under the formula established by the California Public Resources Code, the Agency is projected to have negative working capital within one year, and therefore the financial conditions do exist to support declaration of a fiscal emergency. The declaration of a fiscal emergency is therefore a policy matter before the Board of Directors as it considers possible service reductions and increases to charges, including fares, that support transit service.

- **Negative working capital must be shown within One Year of the Declaration**
  Commenter: David Pilpel
  Response: Yes, the calculations show that at the end of 2009-2010 the negative working capital is approximately $112 million and at the end of April 2010 the negative working capital is projected at $91 million.

- **Comment: Fiscal emergency exemption from CEQA is available only to publicly owned transit agencies and, as part of a City Department, Muni may not be eligible.**
  Commenter: David Pilpel
  Response: As a consolidated transportation department, the SFMTA receives funds from a variety of sources to support transit service. SFMTA believes it is eligible to rely on the "fiscal emergency " CEQA exemption for increases in fees, rates or charges as its revenues support public transit and, to the same extent as any other publicly owned transit agency, for reductions or elimination of public transit service . We anticipate concurrence from the San Francisco Planning Department. CEQA review of increases to taxi-related fees is not being satisfied by the fiscal emergency determination. The San Francisco Planning Department has issued a categorical exemption in connection with these charges.

- **SFMTA cannot use the "fiscal emergency" CEQA exemption to make service modifications that do not reduce or eliminate service**
  Commenter: David Pilpel
  Response: All service modifications proposed for approval at this time are designed to achieve cost-savings by reducing the overall service level. In some cases, a portion of a

bus route is proposed to be discontinued. This may require a change in the location of the route terminus, including the addition of a terminal loop at a new location. Such a modification is a necessary and logical result of eliminating or reducing the level of service on that route. In addition, where a route or route segment is eliminated, it may be necessary to adjust that route or a related route in order to avoid eliminating critical service connections. Again, these changes are a necessary and logical result of eliminating or reducing service on a route or route segment, and the primary purpose of such an adjustment is to accomplish the underlying discontinuation of service.

- **Why Wasn't This Fiscal Emergency Anticipated**
  Commenter: Michael Kinsley, Patricia Cady, Shawna Richard
  Response: Similarly to other private and public organizations across the globe, the Agency has and continues to be impacted by the rapid economic decline over the past year. When the Agency developed its two-year budget early 2008, the degree of the economic downturn, as well as the State legislative act to eliminate transportation funds were unknown as were the results of the November 2008 election which had an impact on the Agency's labor expenditures. Currently, the SFMTA is attempting to balance the original 2009-2010 budget approved in April 2008.

- **Reduce the Pay of SFMTA Employees**
  Commenter: Steve Vaccaro, Kevin Weaver, Laurie Beatty, Frank Zepeda, George Polony, Susan Wheeler, Barbara Bocci
  Response: Several of SFMTA's collective bargaining agreements (CBAs) are part of the overall City's CBAs of which wages are determined. Section 8A.104 of the City Charter, in relevant part, states that "for any job classification that exists both as a service-critical classification in the Agency and elsewhere in City service, the base wage rate negotiated by the Agency for that classification shall not be less than the wage rate set in the Citywide memorandum of understanding for that classification." Additionally, the Transit Worker salaries are set by the Charter, section A8.404(b), in relevant part, which states that their salaries " shall not be less than the average of the two highest wage schedules so certified by the civil service commission for each such classification" compared to two highest wage scheduled of comparable transit agencies in the United States. The pay for managers, however, is set by the SFMTA.

- **Reduce Management**
  Commenter: Gretchen Beck, J. P., Maureen Sharkey, Chris Meiering, Dan Edwards
  Response: The SFMTA has included management positions within the list of the proposed 370 positions slated for elimination. The Agency currently has 111 filled management positions out of a total staffing complement of more than 5,000 employees representing 2.2% of the total workforce.

- **Encourage The State From Cutting Transit Funds**
  Commenter: Steve Vaccaro

The SFMTA appreciates this comment and is working with the California Transit Association, a transit-industry based organization that represents State transit agencies to develop a strategy for State funding. It is expected that this strategy will be implemented in the immediate future.

- **Ticket Double Parked Cars**
  Commenter: Steve Vaccaro
  Response: The SFMTA actively cites double parked cars and will continue to do so.

- **Raise Advertising Rates**
  Commenter: Steve Vaccaro
  Response: The SFMTA's advertising agreements are managed by contractors who set rates based on market conditions. Additionally, the SFMTA's ability to advertise is limited by City regulations as well as customer preferences.

- **Place ads on the NextMuni schedule pages served by Web and to Phones**
  Commenter: Josh Litwin
  Response: The SFMTA does not own NextMuni but provides this service through a contractor.

- **Keep Going With The Progress, Do Not Let The System Degrade**
  Commenter: Gregory Wong
  Response: The SFMTA appreciates this comment and the options to address the 2009-2010 deficit were proposed based on this premise.

- **Reduce Claims Payout**
  Commenter: John Cummings, Shaun White
  Responses: The SFMTA recognizes the importance of claim reduction payout. Thus, the Agency has leveraged a comprehensive safety awareness campaign. Additionally, the SFMTA recently hired a Chief Safety Officer who reports directly to the Executive Director/CEO further underscoring the importance of this effort.

- **Make It Easier to Pay, Replace the Antiquated Fare Collection System**
  Commenter: Andy Cox, Melissa Sautter
  Response: The SFMTA appreciates this comment and is in the process of procuring change machines, funded by the American Recovery and Reinvestment Act, as well as rehabilitating the Agency's current fareboxes. Additionally, the Agency will be fully implementing TransLink®, a transit smart card fare payment program, in the coming months after the completion of the pilot program which will allow the purchase of fare media any time during the month. BART is expected to implement TransLink® as well in the next year. Finally, the SFMTA is working on a transportation smart card which will allow customers to pay for transit, parking (on- and off-street) and taxis.

- **Reduce Personnel and Spending Instead of User Charges**
  Commenter: David Ferguson, Kevin Weaver, R T,
  Response: For 2009-2010, the SFMTA will be reducing spending by nearly $70 million to help address the $128.9 million deficit. Unfortunately, addressing the remaining $50 million requires increases reductions in transit service as well as increase in charges across all the Agency's transportation modes – transit, parking and taxis.

- **Concern About the Funds Voted for Use for Muni is Being Used Correctly**
  Commenter: Gertraud Albert, Gretchen Beck, Emmet McDonagh, Sharon R. Meyer
  Response: In November 2007, San Francisco voters approved allocating additional general fund revenues estimated to total $27 million to the SFMTA. The $27 million is currently unavailable for Muni service improvements as Agency expenses, such as payment to other City Departments, i.e., "work orders" supporting SFMTA business operations, have increased.

- **Adequate Notice of the Public Hearing on the Fiscal Emergency proposal was not adequate**
  Commenter: Mary Miles, David Pilpel
  Response: SFMTA followed all applicable laws in providing notice for the fiscal emergency hearing.

- **Consider an Increase to the Gas Tax**
  Commenter: Timothy Wickland
  Response: The SFMTA appreciates this comment and is working with the California Transit Association, a transit-industry based organization that represents State transit agencies to develop a strategy for State funding. It is expected that this strategy will be implemented in the immediate future and may include an increase to the gas tax.

- **Consider Hiring Part Time Operators**
  Commenter: Frank Zepeda, David Pilpel
  Response: The SFMTA is currently exploring the feasibility of incorporating part-time transit operators to ensure ample staffing is available to meet Muni service delivery objectives.

- **Cut Costs By Reducing The Number Of Transit Operators On Non-Driving Status**
  Commenter: David Pilpel
  Response: All City and County of San Francisco employees, including transit operators, are legally entitled to certain types of leave. To the extent that leaves are discretionary, the SFMTA has a vigorous return to work program.

- **No Layoff to Front Line Positions**
  Commenter: Frank Zepeda
  Response: The SFMTA is proposing to eliminate 370 vacant positions. Layoffs are

contingent upon the SFMTA Board of Directors' actions regarding the proposed service modifications as less front line positions will be needed should there be a reduction in service delivery.

- **Are all of the 2009-2010 jobs going to be eliminated for this year and next year**
  Commenter: Randy L Jones
  Response: The 370 positions are eliminated for 2009-2010. The SFMTA will begin developing the 2010-2011 and 2011-2012 operating budget in the latter part of 2009.

- **Cost Recovery Fees should be Recalculated Annually**
  Commenter: David Pilpel
  Response: The SFMTA calculates cost recovery fees every two years given the two-year budget process.

- **Suggest Charging Everyone Who Lives In S.F. For A Monthly Fastpass**
  Commenter: Michelle Brant
  Response: The SFMTA will assess the legal implications under state and local law raised by this comment.

- **Comment: What Level of Disclosure would be Required to Financial Agencies regarding the "fiscal emergency"**
  Commenter: David Pilpel
  Response: The declaration of "fiscal emergency" allows the SFMTA to balance the 2009-2010 budget through service modifications and fare increases which will demonstrate financial accountability and responsibility to financial agencies.

2) Specific Comments On Service Modifications

On April 7, 2009, three service modification proposals were presented to the SFMTA Board of Directors along with other options to close the Agency's budget deficit. The comments summarized below refer to these three service modification proposals. Many of the comments expressed concerns related to potential service eliminations. While we regret having to consider any service reductions, we have worked to develop proposals that have the smallest impact possible on the fewest number of customers

The service modification options developed in response to the SFMTA's budget deficit do not represent the implementation of the Transit Effectiveness Project (TEP). However, the proposed modifications have been informed by the data collected and the extensive public input received during the TEP planning phase. This extensive technical data and analysis helped staff make informed and precise decisions about these service changes and how to provide the best possible service within limited resources.

Line/ Route	Names of Commenters	Issue	Option	Response

Line/ Route	Names of Commenters	Issue	Option	Response
F	Susan Wheeler	The F is nearly impossible to board after 5 p.m.; it does not stop; poor replacement for the 10-Townsend.	2,3	Under Options 2 and 3, 10-Townsend service would be eliminated north of Broadway. No changes to the F-line are proposed at this time, but additional access to the North Point corridor is provided by routes 9X/9BX and 47. We concur with the concern about F-line crowding, and are working on longer-term solution, including rehabilitating additional streetcars, which would allow us to operate more p.m. peak F-line service.
N #1	Jamie Whitaker	Alternative is to run every other N-Judah train past Embarcadero Station to Caltrain and/or start the E-Embarcadero street car service on the weekends.	1,2,3	The SFMTA appreciates this suggestion, but does not believe it will offer significant cost savings. Additionally, we do not yet have sufficient operable street cars to run regular E-Embarcadero service. The T-Third line has capacity on weekends to carry existing N-Judah customers between Embarcadero Station and Caltrain.
N #2	Michael & Vivian Anthony; Jerry Dott; Irving Q. Waldorf; Rebekah	Opposes discontinuance of N-Judah on The Embarcardero, to South Beach and/or to AT&T Park; T-Third line is insufficient. Opposes elimination of N-Judah service on weekends; T-Third line is unreliable and residents of Rincon Hill need metro service on weekends.	1,2,3	No changes are proposed for the weekday N-Judah service. On weekends, consideration is being given to providing additional Ballpark shuttles and/or N-Judah service during weekend ballgames. Service on non-ballgame days will be monitored to ensure T-Third Street service is sufficient.
N #3	Emmet McDonagh	Encourage people to walk to the ballpark in order to reduce overcrowding during ballgames.	1,2,3	The SFMTA appreciates this comment. We have observed a decrease in transit demand to the ballpark since it opened, reflecting an increasing number of people walking to ballgames. We will continue to encourage people to avail themselves of the many choices to get to the ballpark, including walking.
N #4	David Pilpel, Melissa Sautter	Supports the change.	1,2,3	The SFMTA appreciates this comment.
N #5	Troy Blair	The N-Judah runs too infrequently to cover its service area.	NA	Although it is our most frequent rail line, the N-Judah would benefit from more service. Unfortunately, given the current budget constraints we do not have resources at this time to make this change.
J-M	Jalin Chen	Opposes extension of the J and shortening of the M; will inconvenience people living between SFSU and Balboa BART; will also cost money and cause nuisance to areas where new tracks must be added.	NA	This is a TEP proposal, but is not being considered as part of the proposed service reductions being considered by the SFMTA Board of Directors for FY2009-2010.

Line/ Route	Names of Commenters	Issue	Option	Response
5	Jerry Dott	Willing to accept temporary price increases with no reductions in service to the N-Judah, 5-Fulton, and 38-Geary.	1,2,3	The service changes on the N-Judah, 5-Fulton and 38-Geary were designed to maintain or improve service on the trunk portion of the routes. N-Judah service would only be affected on weekends on The Embarcadero; 38-Geary service would only be affected between 33rd Avenue and Ocean Beach; and peak period capacity would be increased on the 5-Fulton east of 6th Avenue.
1 #1	Anonymous comment received via email;	Opposes the reduction/discontinuance of service.	1,2,3	No service reduction is being proposed on the heavily used portion of the 1-California west of Drumm Street. The segment recommended for elimination from Clay/Drumm streets to Howard/Beale streets has low ridership and detracts from the reliability of the overall service.
1 #2	David Pilpel	Supports eliminating service south of Sacramento.	1,2,3	The SFMTA appreciates this comment.
1 #3	Melissa Sautter	Supports reducing service on weekends.	1, 2, 3	No changes are proposed on the 1-California weekend service. However, many of the proposed service reductions would affect both weekday and weekend service.
2 #1	David Pilpel; Anonymous comment received via email; Linda Thomas	Opposes the reduction/discontinuance of service.	1,2,3	The proposals provide 5 minute service on Sutter Street which we believe is adequate to accommodate demand. In the outer Richmond, ridership from the 2-Clement will be distributed between the 38-Geary, 38L-Geary Limited and 1-California routes. Additional capacity will be provided in the Geary Corridor when resources become available.
2 #2	Gary Parent; Joel Sheppard; Mary Wu; Herbert Weiner	Opposes discontinuance of 2-Clement service; 38-Geary will become overcrowded, and is not adequate for wheelchair users, or for the elderly.	1,2,3	The proposals provide 5 minute service on Sutter Street, which we believe is adequate to accommodate demand. In the outer Richmond, ridership from the 2-Clement will be distributed between the 38-Geary, 38L-Geary Limited and 1-California routes. Additional capacity will be provided in the Geary Corridor when resources become available.
2 #3	Jim Uomini	Suggests ending the 2-Clement at Park Presidio and Geary to allow transfer to 38/38L.	2, 3	The SFMTA appreciates this comment.

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Line/ Route	Names of Commenters	Issue	Option	Response
3 #1	David Pilpel; Anonymous comment received via email; Linda Thomas; Adam Cole; Christian Lowe; Barbara Bocci; Sharon Meyer, Gertrude Albert	Opposes the reduction/discontinuance of service.	3	Without the 3, there are only about 200 customers (384 daily boardings) who would no longer have direct service to the Post/Sutter corridor, and only one intersection (Jackson/Baker) would lose all service. The proposals provide 5 minute service on Sutter and Post streets, which we believe is adequate to accommodate demand. Additional capacity will be provided in the Geary Corridor when resources become available.
3 #2	Gary Parent; Joel Sheppard	Opposes discontinuance of 3-Jackson service; 38-Geary is not adequate for wheelchair users.	3	Under Option 3, the 3-Jackson would be discontinued but the 4-Sutter would be modified to operate all-day between Presidio/California and downtown. The proposals provide 5 minute service on Sutter Street, which we believe is adequate to accommodate demand. Additional capacity will be provided in the Geary Corridor when resources become available.
3 #3	Noel W. Kirshenbaum	Opposes discontinuance of 3-Jackson; Route 3 serves many schools and customers.	3	Schools along Jackson will still be served within SFMTA's quarter-mile service goal by the 24-Divisadero and the 43-Masonic. Without the 3-Jackson, there are only about 200 customers (384 daily boardings) who would no longer have direct service to the Post/Sutter corridor, and only one intersection (Jackson and Baker) would lose all service.
3 #4	Herbert Weiner; Paul Wermer	Oppose discontinuance of 3-Jackson; connections to other routes are poor and safety along 2-Clement and 38-Geary at night is bad. Seriously ill/frail will be forced to walk further distances and creates physical hardship. Muni proposals are life-threatening.	3	Most customers will continue to be served within SFMTA's quarter-mile standard by the 24-Divisadero and 43-Masonic buses. Only one intersection (Jackson and Baker) would lose all service.

Line/ Route	Names of Commenters	Issue	Option	Response
3 #5	Michelle Brandt; Linda Aldrich; Judith Taylor	Opposes discontinuance of 3-Jackson service, walk from 1-California is far and hilly.	3	Customers would not have to walk to the 1-California under this proposal. Connections can be made to the 24-Divisidero or the 43-Masonic. Without the 3-Jackson, there are only about 200 customers (384 daily boardings) who would no longer have direct service to the Post/Sutter corridor, and only one intersection (Jackson and Baker) would lose all service. The proposals provide 5 minute service on Sutter and Post streets, which we believe is adequate to accommodate demand.
3 #6	Paul Wermer, Nora Gibson, Kelly Connelly	Requested that Muni facilitate a meeting with 3-Jackson riders in order to come up with a plan for providing service on Jackson.	3	Staff will follow up to accommodate this meeting request.
3 #7	Nora Gibson	Opposes the discontinuance of 3-Jackson; cutting the 3-Jackson is not in line with the City's Transit First policy.	3	While we regret having to consider any service reductions, our current operating deficit necessitates these proposals. Without the 3-Jackson, there are only about 200 customers (384 daily boardings) who would no longer have direct service to the Post/Sutter corridor, and only one intersection (Jackson and Baker) would lose all service. The proposals provide 5 minute service on Sutter and Post streets, which we believe is adequate to accommodate demand. Additional capacity will be provided in the Geary Corridor when resources become available.
4 #1	Anonymous comment received via email	Opposes the reduction/discontinuance of service.	1,2,3	The 4-Sutter only operates during peak hours. The proposals that discontinue the 4 still provide 5 minute peak period service on Sutter and Post streets east of Fillmore, which we believe is adequate to accommodate demand. All stops along the 4-Sutter's route will continue to be served.
4 #2	Joel Sheppard; Anonymous comment received via email;	Opposes reduction/discontinuance of 4-Sutter; 38-Geary will become dangerously overcrowded.	1,2,3	The 4-Sutter only operates during peak hours. The proposals that discontinue the 4-Sutter still provide 5 minute peak period service on Sutter and Post streets east of Fillmore, which we believe is adequate to accommodate demand. All stops along the 4-Sutter's route will continue to be served. Additional capacity will be provided in the Geary Corridor when resources become available.

Line/ Route	Names of Commenters	Issue	Option	Response
4 #3	David Pilpel	Suggest eliminating service west of Presidio Ave and reducing span of service.	1,2,3	The SFMTA appreciates this suggestion; however the 4-Sutter cannot be turned at Presidio/California if the 3-Jackson continues to use this terminal. With respect to span of service, current 4-Sutter only operates during peak periods.
5 #1	Gerald Dott, Jr.; Dirk Hoekstra	Opposes reduction of 5-Fulton service to Ocean Beach in the Richmond.	3	Capacity on the 5-Fulton between 6th Avenue and Downtown would be increased in this proposal to address current crowding and additional customers moving from the 21-Hayes between 6th and Stanyan. In the p.m. peak Richmond customers would see similar service to today. In the a.m. peak Richmond service would run every 7 to 10 min versus 5 min today. This is consistent with passenger demand, but crowding of buses will be carefully monitored if this change is put into effect.
5 #2	Gerald Dott, Jr.	Supports retention of 5-Fulton Owl service.	NA	No changes to 5-Fulton Owl services are proposed at this time.
5 #3	David Pilpel	Supports in concept but suggests pursuing independent of 21-Hayes proposal.	3	The SFMTA appreciates this suggestion. This will be considered as a variation on current proposals.
5 #4	Jerry Dodd	Opposes all changes to the 5, including elimination evening service.	3	No changes to 5-Fulton midday or evening service are proposed.
6	Anonymous comment received via email	Opposes the reduction/discontinuance of service.	NA	No reductions or discontinuances of 6-Parnassus service are proposed at this time. In Options 1 and 2 peak period frequencies would improve from every 10 min to every 9 min.
7 #1	Jean Ellis-Jones	Opposed to eliminating the 7-Haight; the route is needed for local stops.	1,2,3	Under this proposal, all local stops currently made by the 7-Haight are covered by other routes. The 71L-Haight/Noreiga Limited makes local stops west of Masonic and the 6-Parnassus makes local stops east of Masonic on Haight Street.
7 #2	Lou Lesperence, Troy Blair	Supports eliminating the 7-Haight.	1,2,3	The SFMTA appreciates this comment.
6, 7, 71	Troy Blair	Regarding the 6, 7, and 71, weekend service runs too infrequently, does not factor in the number of tourists traveling to the Haight.	NA	Changes to weekend service on Haight Street are not being proposed. (Only the 6 and 71 routes operate on weekends; the 7-Haight operates weekday peak periods only.)

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Line/ Route	Names of Commenters	Issue	Option	Response
10 #1	Renee Tan	Opposes reducing frequency of the 10-Townsend from Potrero Hill; Route 10 is extremely crowded already when the bus is late.	2,3	The proposal to retain 50% of the present service to and from 17th and De Haro was developed as an alternative to eliminating service entirely. When resources again become available, SFMTA plans to increase and extend this or similar service.
10 #2	Mary Beth Brodbine; Robin Chen; Christina Curci; Katie Lee; Mrs. John MacKay; Don Russell	Oppose eliminating 10-Townsend service north of Broadway. The bus is crowded on North Point, does not have low ridership. The 30X will be the only bus left (from northern Russian Hill/Ghirardelli area) that wouldn't require a transfer, but it is already overcrowded. The 10-Townsend is the only convenient way for people to get to work at Lombard/Sansome. TEP numbers do not show that Route 10's ridership is primarily people trying to get to the Financial District; also, ridership will not be decreased due to fare hike. 10-Townsend is the only convenient way for people at the Wharf to get to the Financial District for work.	2,3	Under Options 2 and 3, the portion of the 10-Townsend proposed for elimination north of Broadway will continue to be served by the 47-Van Ness along North Point Street and by parallel service on the F-line along The Embarcadero. We are working on longer-term solutions, including rehabilitating additional streetcars, which would allow us to operate more p.m. peak F-line service.
10 #3	Dane Hansen	Opposes cutting 10-Townsend service north of Broadway; it is the only route up Sansome and also connects tourists to Pier 39.	2,3	Under Options 2 and 3, the portion of the 10-Townsend proposed for elimination north of Broadway will continue to be served by the 47-Van Ness along North Point Street and by parallel service on the F-Van Ness along The Embarcadero. Both the 47 and F-line make direct connections with the 39-Coit.
10 #4	David Pilpel	Opposes the change; suggests new south-of-Market routing and through-routing with present 53-Southern Heights.	2,3	Under Options 2 and 3, the 10-Townsend is proposed for elimination north of Broadway. This area will continue to be served by the 47-Van Ness along North Point Street and by parallel service on the F-line along The Embarcadero. With respect to the overall rerouting proposed south-of-Market and through-routing with the portion of the 53-Southern Heights east of Potrero, this appears to be a service modification outside the range of the present fiscally driven discussion, and does not appear likely to generate cost savings.
10 #5	Laura Duede, Laura Kenney, Erika Opper	Opposes cutting 10-Townsend service north of Broadway; many people on North Point take the 10 to the BART, Caltrain, and Transbay Terminal; the F is not a good substitute.	2,3	Because it is not cost effective to provide direct service to/from all destinations, many trips on the Muni system require a transfer. However, customers traveling from North Point Street to Caltrain can avoid a transfer by using the 47-Van Ness.

Line/ Route	Names of Commenters	Issue	Option	Response
12 #1	Michael Townsend	Opposes discontinuance of 12-Folsom/Pacific along The Embarcadero; will double his commute time from Russian Hill.	2,3	Segments of the 12-Folsom/Pacific along The Embarcadero and west of Van Ness Avenue are being proposed for elimination due to low ridership under Options 2 and 3. Service along The Embarcadero will continue to be provided by the F-line, and the portion of the 12-Folsom/Pacific proposed for elimination west of Van Ness Avenue will be served by a modified 10-Townsend. Capacity of the 41-Union between Russian Hill and Howard/Main streets is proposed to be increased by the use of articulated buses, and may offer an alternative.
12 #2	Ron Fell	Does not understand reduction in 12-Folsom/Pacific service to The Embarcardero; service should be increased instead (from an apparent resident at Folsom/Embarcadero).	2,3	Boardings and alightings along The Embarcadero segment of the 12-Folsom/Pacific are modest and returning the route to Second Street appears both shorter and quicker, which will mean better service for most 12-Folsom/Pacific customers. This was also a way to emphasize the most important segments of the 10 and 12 by overlapping routes.
12 #3	Diana Molina	Opposes reduction in 12-Folsom/Pacific service to Embarcardero; would greatly inconvenience those coming from the Inner Mission.	2,3	While the 12-Folsom/Pacific carries about 6,930 daily passenger boardings, it only carries about 440 daily passenger boardings along the segments proposed for elimination under Options 2 and 3. The cost per passenger to serve customers along the segments proposed for elimination is about 4 times higher than the Muni system average. Mission and Potrero routes make direct connections between the Inner Mission and The Embarcadero.
12 #4	David Pilpel	Supports in part.	2,3	The SFMTA appreciates this comment.
12 #5	David Pilpel	Suggests retaining branch service to Jackson and Fillmore.	2,3	Under Options 2 and 3, the proposed changes would extend the 10-Townsend to cover the portion of the 12-Folsom/Pacific eliminated west of Van Ness Avenue. We anticipate that customers boarding the existing 12-Folsom/Pacific west of Van Ness Avenue are more likely to have destinations near Downtown and the Caltrain Station then within the Mission District.
14	Anonymous comment received via email;	Supports leaving the 14 the way it is.	2,3	No changes to the 14-Mission are under consideration.

Line/ Route	Names of Commenters	Issue	Option	Response
16AX #1	Kimberly Chun, Gail Chun	Opposes discontinuance of 16AX; the 16AX has more daily passenger boardings than other routes, such as the 31AX/BX.	2,3	Under Option 1, no changes to the 16AX are proposed. While the 16AX has more daily passenger boardings that the 31AX or 31BX, there are less than 150 boardings on the segments proposed for elimination and the cost per passenger is more than 3 times the system average. Under Options 2 and 3, the 16BX would be extended to Great Highway and the a.m. peak period frequency would be increased from 9 to 7 minutes.
16AX #2	David Pilpel	Supports the change.	2,3	The SFMTA appreciates this comment.
16BX	David Pilpel	Supports the change.	2,3	The SFMTA appreciates this comment.
17 #1	Don Baker; Wendy Tobias	Oppose reducing 17-Parkmerced service; people ride later than 8:00 or 8:30 p.m.; residents and students need service after 8:30 p.m.	3	The 17-Parkmerced only carries about 120 daily passenger boardings after 8:30 p.m. The cost per passenger to serve customers after 8:30 p.m. is about 2.5 times higher than the Muni system average. A modified proposal which would end service at 10 p.m. instead of 8:30 p.m. will be considered.
17 #2	David Pilpel	Eliminate Buckingham Way routing.	NA	This appears to be a service modification outside the range of the present fiscally driven discussion, and is therefore inappropriate for consideration at this time, as it does not appear likely to generate cost savings.
18 #1	Spencer Lord	Do not add bus traffic on routes 18 or 38 to 33rd Avenue, use 25th instead.	2,3	Under Option 1, no changes to the 18-46th Avenue or 38-Geary are proposed, but 2-Clement buses would be removed from 33rd Avenue. Under Options 2 and 3, during the day, the 18-46th Avenue and a portion of the 38-Geary buses would operate on 33rd Avenue, but the present 2-Clement buses would not. Late at night, the 38-Owl would no longer operate on 33rd Avenue as it now does.
18 #2	Jason Chu	Opposes routing 18-46th Avenue onto 33rd; redundant service.	2,3	Under Option 1, no changes to the 18-46th Avenue or 38-Geary are proposed, but 2-Clement buses would be removed from 33rd Avenue. Under Options 2 and 3, during the day, the 18-46th Avenue and a portion of the 38-Geary buses would operate on 33rd Avenue, but the present 2-Clement buses would not. Late at night, the 38-Owl would no longer operate on 33rd Avenue as it now does.

Line/ Route	Names of Commenters	Issue	Option	Response
18 #3	David Pilpel; Gaetana Caldwell-Smith; Robert (No Last Name Given); Aaron Kitashima	Opposes the change due to lack of alternative service to the Cliff House and Land's End. Opposes changing the route because it is currently very quick and efficient.	2,3	While the 18-46th Avenue carries about 3,410 daily passenger boardings, it only carries about 80 daily passenger boardings along the segments proposed for elimination under Options 2 and 3. The cost per passenger to serve customers along the segments proposed for elimination is more than 4 times higher than the Muni system average.
19 #1	David Pilpel	Supports the change.	1,2,3	The SFMTA appreciates this comment.
19 #2	Lin Doyle; Herbert Weiner	Oppose reducing 19-Polk service during midday; many elderly and disabled customers rely on it. Seriously ill/frail will be forced to walk further distances and creates physical hardship. Muni proposals are life-threatening. (Mr. Weiner actually refers to the "19-Parkmerced.")	1,2,3	Customers would not walk further distances as a result of this proposal as the current route would continue to have all day service. The proposal for the 19-Polk would reduce the midday frequency along portions of the route, but increase it along other portions, including Potrero Hill and the Bayview.
19 #3	Josh Litwin	Enjoy frequent peak service of 19-Polk, but isn't necessary.		The SFMTA appreciates this comment.
20 #1	Howard Wong	Opposes discontinuance of 20-Columbus; will cause large net decrease in transit to North Beach and the waterfront.	1,2,3	20-Columbus ridership averages only 854 passenger boardings per day, at an excessive cost per passenger for service in this dense part of the City. The SFMTA hopes to reintroduce Columbus Avenue service at a later date as proposed by the TEP, but is unable to do so under current fiscal constraints.
20 #2	Ryan Turri, Dorothy Danielsen	Opposes discontinuance of 20-Columbus no alternative route between SOMA and Financial District to North Beach in the afternoon; low ridership but still important.	1,2,3	The 30-Stockton and 41-Union provide alternative service between SoMa and North Beach. The SFMTA hopes to reintroduce Columbus Avenue service at a later date as proposed by the TEP, but is unable to do so under current fiscal constraints.
20 #3	David Pilpel	Supports the change.	1,2,3	The SFMTA appreciates this comment.
21	David Pilpel	Opposes the change; making turn and terminal on Hayes or Shrader will be difficult.	3	We believe a viable terminal for the 21-Hayes in the vicinity of the Hayes/Stanyan/Fulton/Shrader block can be provided. If we are unable to do so, this proposal would not be implemented.
24	Anonymous comment received via email;	Supports leaving the 24-Divisidero the way it is.	NA	No major changes are being proposed to the 24-Divisidero.

Line/ Route	Names of Commenters	Issue	Option	Response
26 #1	Eric Johnson, Herbert Weiner	Opposes the discontinuance of 26-Valencia service to Balboa Park and Glen Park BART, with particular concern about accessible connections. Muni proposals are life-threatening for seriously ill/disabled people.	1,2,3	Most of the 26-Valencia operates parallel to other Muni services, in particular the 14-Mission, 49-Van Ness/Mission and the J-Church. This proposal includes rerouting the 36-Teresita to serve the hilly portion of Chenery Street that is currently served by the 26-Valenica and is isolated from other Muni services. At Glen Park BART, the 36-Teresita would provide accessible connections to the 23, 44 and 52 routes, as well as to BART.
26 #2	David Pilpel	Supports 26 discontinuance, with alternate proposal for 36. (See 36.)	1,2,3	The SFMTA appreciates this comment.
26 #3	Heidi-Jane Schwabe	Opposes any changes to the 26-Valencia.	1,2,3	Most of the 26-Valencia operates parallel to other Muni services, in particular the 14-Mission, 49-Van Ness/Mission and the J-Church. This proposal includes rerouting the 36-Teresita to serve the hilly portion of Chenery Street that is currently served by the 26-Valenica and is isolated from other Muni services. At Glen Park BART, the 36-Teresita would provide accessible connections to the 23, 44 and 52 routes, as well as to BART.
26 #4	Harry Pariser	Opposes the change; the 26-Valencia is an essential route.	1,2,3	Most of the 26-Valencia operates parallel to other Muni services, in particular the 14-Mission, 49-Van Ness/Mission and the J-Church. This proposal includes rerouting the 36-Teresita to serve the hilly portion of Chenery Street that is currently served by the 26-Valenica and is isolated from other Muni services. At Glen Park BART, the 36-Teresita would provide accessible connections to the 23, 44 and 52 routes, as well as to BART.
26 #5	Anonymous comment received via email;	Supports the change; the 26-Valencia is duplicative of routes 14 and 49.	1,2,3	The SFMTA appreciates this comment.
27 #1	Lisa Puryear; plus anonymous comment received via email.	Opposes the reduction/discontinuance of service.	3	Under Option 3, the proposed changes would include augmenting the parallel 9-San Bruno service on Potrero Avenue. Providing this augmented service on the 9-San Bruno is more cost effective than operation of the 27-Bryant.
27 #2	Matthew Priest	Extend to Potrero Center.	3	This is likely to reduce the cost savings from this proposal. However, when the actual schedule is developed, it may be possible to extend service south of 8th Street.

Line/ Route	Names of Commenters	Issue	Option	Response
38	Spencer Lord	Do not add bus traffic on routes 18 or 38 to 33rd Avenue.	2,3	Under Option 1, no changes to the 18-46th Avenue or 38-Geary are proposed, but 2-Clement buses would be removed from 33rd Avenue. Under Options 2 and 3, during the day, the 18-46th Avenue and a portion of the 38-Geary buses would operate on 33rd Avenue, but the present 2-Clement buses would not. Late at night, the 38-Owl would no longer operate on 33rd Avenue as it now does.
29 #1	Michael Lamperd	Opposes eliminating the 29-Sunset north of Baker Beach; wonders whether PresidiGo will honor his monthly pass.	1,2,3	There is no charge to ride the PresidiGo shuttle buses. SFMTA intends to work with the National Park Service and Presidio Trust to improve connections with the shuttles if this proposal is pursued.
29 #2	David Pilpel; Harry Pariser	Oppose curtailing the 29-Sunset; dialogue and publicity about PresidiGo route and schedule are needed; the Presidio shuttle does not provide adequate substitute service.	1,2,3	SFMTA will pursue coordination with the National Park Service and Presidio Trust concerning PresidiGo shuttle operation.
31	David Pilpel	Supports the change.	3	The SFMTA appreciates this comment.
33	Barry Toronto	Suggests ending the 33-Stanyan at 16th and Mission; Route 33 duplicates 22-Fillmore service	NA	Options to curtail the 33-Stanyan were considered, but not recommended at this time because of the often expressed need to retain a crosstown service to SF General Hospital, and the long-term objective under the TEP to operate the 33-Stanyan to Third Street.
35 #1	Edward Kamrin, Edie Harris	Opposes ending evening service at 8:30 p.m.	3	In order to reduce costs, service on most lightly utilized community service routes is proposed to end at 8:30 p.m. under Option 3. While the 35-Eureka carries about 730 daily passenger boardings, it only carries about 70 daily passenger boardings after 8:30 p.m. The cost per passenger to serve customers after 8:30 p.m. is about 3 times higher than the Muni system average. A modified proposal that would end service at 10 p.m. instead of 8:30 p.m. will be considered.
35 #2	Bryan Burkhart	The 35-Eureka is currently running empty 99 percent of the time and is way oversized for the street.	3	Based on current passenger activity, 35-Eureka service could be reduced. Based on the TEP recommendations, the SFMTA also plans to replace the buses now in use on route 35 with smaller vehicles, but this will not happen immediately.

Line/ Route	Names of Commenters	Issue	Option	Response
36 #1	Ken MacInnis	We rely on the 36-Teresita for the only bus service to Mt Sutro / Clarendon Woods and the Midtown Terrace neighborhood. Opposes reduction in 36-Teresita service; service often fails to show up and should be increased, not decreased.	1,2,3	We believe 30-minute frequencies can accommodate customer demand on the 36-Teresita. We acknowledge the increased importance of reliable service, and affirm our commitment to continue improving service reliability even in current circumstances.
36 #2	David Pilpel	Supports a variation that would route 36-Teresita via Balboa Park, operate 20-minute frequency.	1,2,3	Most 36-Teresita customers use the route to access BART, and that the Glen Park BART Station serves them more directly than the Balboa Park Station. The 43-Masonic would still connect Forest Hill to City College. This suggestion also appears likely to require at least one additional coach.
36 #3	Peter Ehrlich, Anonymous	Opposes plan to increase 36-Teresita to 30 minutes.	3	We believe 30-minute frequencies can accommodate customer demand on the 36-Teresita. We acknowledge the increased importance of reliable service, and affirm our commitment to continue improving service reliability even in current circumstances.
36 #4	Scott Fell	Opposes rerouting of 36-Teresita to Glen Park BART; Balboa BART is a major hub going to downtown, while Glen Park BART is not and does not service low income areas.	3	Most 36-Teresita riders are going to BART; taking them to Glen Park would actually be less out of the way than the present route to Balboa Park BART. The section south of Monterey Boulevard is still served by the 43-Masonic.
37 #1	Edward Kamrin; Gene Vorobyov	Opposes ending evening service at 8:30 p.m.; tourists, residents, elderly and disabled customers depend on it to connect Twin Peaks with the rest of the City.	3	In order to reduce costs, service on most lightly utilized community service routes is proposed to end at 8:30 p.m. under Option 3 only. While the 37-Corbett carries about 1,790 daily passenger boardings, it only carries about 170 daily passenger boardings after 8:30 p.m. The cost per passenger to serve customers after 8:30 p.m. is more than 2.5 times higher than the Muni system average. A modified proposal that would end service at 10 p.m. instead of 8:30 p.m. will be considered.
37 #2	Corene Kendrick	Do not cut the 37-Corbett after 8:30 p.m.; many people depend on it to do grocery shopping at the Safeway at Church and Market, and also to get home from work.	3	In order to reduce costs, service on most lightly utilized community service routes is proposed to end at 8:30 p.m. under Option 3 only. While the 37-Corbett carries about 1,790 daily passenger boardings, it only carries about 170 daily passenger boardings after 8:30 p.m. The cost per passenger to serve customers after 8:30 p.m. is more than 2.5 times higher than the Muni system average. A modified proposal that would end service at 10 p.m. instead of 8:30 p.m. will be considered.

Line/ Route	Names of Commenters	Issue	Option	Response
38 #1	Jerry Dott; Gerald Dott, Jr.; David Pilpel; Anonymous comment received via email;	Opposes the discontinuance of 38-Geary service to Ocean Beach.	2,3	Under Options 2 and 3, no capacity is proposed to be removed from Geary corridor services. Existing 38-Geary local buses that operate to Ocean Beach will still operate to 33rd Avenue under the proposal. Rerouting the 18-46th Avenue to the Ocean Beach branch of the existing 38-Geary service will provide additional service connecting to the 38-Geary and 38L-Geary Limited.
38 #2	Gerald Dott, Jr.; Spencer Lord	Opposes discontinuance of 38-Owl service to Ocean Beach.	2,3	To make late night service more consistent with daytime service, 38-Geary Owl buses would be rerouted to Geary Boulevard and Point Lobos Avenue. Owl service would therefore be available on Geary Blvd. and Pt. Lobos Avenue to the north of the present route, as well as on Fulton Street (5-Fulton Owl) to the south. No owl changes are proposed east of 33rd Avenue.
38 #3	Jason Chu	Supports cutting 38-service west of 33rd.	2,3	The SFMTA appreciates this comment.
38 #4	Aaron Kitashima	It is unclear which branch will take over the OWL service of the 38-Geary Ocean Beach.	2, 3	There would no longer be Owl service along the Ocean Beach branch. The 38-Geary Owl would operate on Geary Blvd. and Pt. Lobos Avenue to the north of the present route, and the 5-Fulton Owl would continue to operate to the south. No owl changes are proposed east of 33rd Avenue.
38L	Gaetana Caldwell-Smith	Suggests extending the 38L-Geary Limited along Pt. Lobos to La Playa and Cabrillo, rather than cutting the 18-46th Avenue.	2, 3	This proposal would raise costs, not lower them, and that additional articulated buses for such an extension are not available.
39 #1	Patricia Cady; Paul Switzer; Joan Wood, Howard Wong; Gail Switzer	Opposes discontinuance of Union Street branch of the 39-Coit; partnership of the Port, Rec & Park, and local merchants are prepared to market this route. Marketing efforts have already begun to increase ridership; cutting 39 would only help small fraction of SFMTA budget deficit. Eliminating Union Street branch of the 39-Coit; proposal goes against existing agreement between Muni and the community.	2,3	Under Options 2 and 3, the Union Street branch of the 39-Coit is proposed for elimination. The cost per passenger to serve customers along the Union Street branch of the 39-Coit is more than 2 times higher than the Muni system average. Regardless of the outcome of the current fiscal process, SFMTA is committed to the public private partnership and will continue to work with the various stakeholders to support Coit Tower access.
39 #2	David Pilpel	Opposes eliminating service south of Filbert; reduce span of service instead (to 6 p.m.?).	2,3	Ending the service at 6 p.m. would generate little additional savings, as the 39-Coit service only operates until 8 p.m. today. Elsewhere, this commenter proposes midnight service on all community routes.

Line/ Route	Names of Commenters	Issue	Option	Response
39 #3	Dorothy Danielsen; Judy Robinson; Patricia Cady	Opposes eliminating 39-Coit service or rerouting it on to Filbert; this will discourage people from riding and adversely affect the elderly and disabled.	2,3,	Ridership on the Union Street branch is only 116 per day. The more direct routing to Coit Tower may actually increase ridership by more than this amount.
41 #1	Jean Ellis-Jones	Opposed to eliminating a segment of 41-Union because the short turn location at Green is a poor place for bus layovers.	1,2,3	A "no-parking" area for a terminal with separated trolley coach wiring already exists on Union Street between Green and Fillmore streets, and is used on a daily basis for a limited number of trips. Staff will consider adequacy of this terminal space as schedules are developed.
41 #2	David Pilpel	Supports the change; finding terminal on Fillmore or Green may be difficult.	1,2,3	A "no-parking" area for a terminal with separated trolley coach wiring already exists on Union Street between Green and Fillmore streets, and is used on a daily basis for a limited number of trips. Staff will consider adequacy of this terminal space as schedules are developed.
41 #3	Jackie Ato	Suggests cutting the number of stops even more than the proposal.	1,2,3	An analysis of ridership patterns on the 41-Union reveal that ridership is relatively light west of Fillmore, but build rapidly east of Fillmore.
41 #4	Peter Ehrlich	Questions the proposal to put articulated trolleys on the 41 and also to short line it at Union and Steiner; the hilly terrain and power drain due to the trolleys will be a nightmare.	1, 2, 3	SFMTA's ETI articulated coaches have been successfully tested over the 41-Union. The power supply issue raised will be addressed prior to implementation.
43	Emmet McDonagh	Opposes reducing 43-Masonic service; students need the bus and will be riding it more frequently due to reduced 36-Teresita service.	NA	No reductions of 43-Masonic service are proposed at this time.
48	Paul Stevens	Supports removing the "Fountain Loop" on the 48; it has low ridership and is a waste of time and money.	NA	While this proposal is under consideration as part of the TEP, it has not been proposed as part of these service modifications because it does not reduce the number of vehicles or drivers required to provide 48-Quintara/24th Street service and therefore would not provide significant cost savings.
49 #1	Erica Byrne	49 should be dedicated to Van Ness because Mission Street already has the 14 and BART.	NA	Mission Street is too heavily used to recommend discontinuance of any trunkline service at this time.
49 #2	Anonymous comment received via email;	Supports leaving the 49-Van Ness/Mission the way it is.	NA	The SFMTA appreciates this comment.

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Line/ Route	Names of Commenters	Issue	Option	Response
52	Edward Kamrin, Jeni Pleskow, Edie Harris	Opposes ending evening service at 8:30 p.m.	3	In order to reduce costs, service on most lightly utilized community service routes is proposed to end at 8:30 p.m. under Option 3 only. While the 52-Excelsior carries about 2,390 daily passenger boardings, it only carries about 120 daily passenger boardings after 8:30 p.m. The cost per passenger to serve customers after 8:30 p.m. is about 3 times higher than the Muni system average. A modified proposal that would end service at 10 p.m. instead of 8:30 p.m. will be considered.
53 #1	David Pilpel	Opposes discontinuance of route; suggests reducing span of service instead, and through-routing with 10-Townsend.	2,3	If this service were to be retained, reducing its span of service from 7:15 to 6 p.m., cutting into the peak period, is not recommended. With respect to through-routing the portion of the 53-Southern Heights east of Potrero with the 10-Townsend, this appears to be a service modification outside the range of the present fiscally driven discussion, and does not appear likely to generate cost savings.
53 #2	Josh Litwin	Likes having the 53-Southern Heights service, but doesn't necessarily need it.	2,3	The SFMTA appreciates this comment. It is precisely such "not necessarily needed" services which we has sought to identify for possible reduction or discontinuance.
54	A. Hart	End 54-Felton at 10 p.m., empty buses in the evening after the rush hour. The buses are noisy going through the residential area.	NA	Proposing elimination of service on routes like the 54-Felton were avoided, because they provide major crosstown connections and serve many neighborhoods.
56	David Davenport; Russ Miller	Consider reducing service on the 56-Rutland.	NA	Only one bus is used on the 56-Rutland and service already ends at 9 p.m. It is not possible to reduce service further without eliminating the route entirely.
66 #1	Dirk Hoekstra	How does rerouting the 66-Quintara onto 19th Avenue save money?	2,3	The shorter route, operated at a 30-minute frequency, can be operated with one rather than the present two buses. Connecting to Taraval Street retains these savings, while providing an L-line connection and service to Safeway.
66 #2	Carolyn Chan	Opposes cutting the 66-Quintara	2,3	Under Options 2 and 3, the segment of the 66-Quintara proposed for elimination serves only 280 customers daily, at a cost per passenger about 50% higher than the Muni system average.
66 #3	Carolyn Chan	Cut service at 10 p.m.	NA	The SFMTA appreciates this comment. A modified proposal that would end service at 10 p.m. instead of 8:30 p.m. will be considered.
66 #4	Erik Sens	Do not reduce frequency of service on 66-Quintara.	2,3	Under Options 2 and 3, reducing service from 20 to 30 minutes throughout the day saves a bus to achieve the cost savings on this route.

Line/ Route	Names of Commenters	Issue	Option	Response
66 #5	Lisa Louie	Suggests getting rid of 66-Quintara.	NA	The SFMTA appreciates this comment, but is not recommending discontinuing this route based on extensive community feedback collected during the TEP.
66 #6	David Davenport	Opposes cutting service on Quintara west of 19th Ave; would create a service gap outside of peak periods unless substitute Route 48 is provided.	2,3	Under Options 2 and 3, the segment of the 66-Quintara proposed for elimination serves only 280 customers daily, at a cost per passenger about 50% higher than the Muni system average. Due to budget constraints, additional service cannot be added to the 48-Quintara/24th Street at this time.
66 #7	David Pilpel	Opposes the change; suggests eliminating selected trips instead.	2,3	Doing as suggested would be expected to generate little if any cost savings.
66 #8	Peter Ehrlich	Suggests rerouting the 66-Quintara to connect at West Portal rather than at 19th Ave and Taraval.	2,3	This suggestion would eliminate the cost savings from this proposal.
67 #1	David Pilpel	Supports in part.	1,2,3	The SFMTA appreciates this comment.
67 #2	David Pilpel	Suggests retaining service on Crescent; extending route to Glen Park BART.	1,2,3	While this may be an interesting service restructuring proposal, operating as suggested to Glen Park BART would neutralize any cost savings from no longer operating a full loop.
67 #3	Gretchen Beck	Opposes reduction of service on the 67-Bernal Heights; no convenient and reliable alternatives in the area, especially on weekends.	1,2,3	Service frequency on the 67-Bernal Heights during the day will be unchanged, including on weekends, only buses will not operate in a complete loop. Reduction of evening service after 10 p.m. is under consideration.
67 #4	Anonymous comment received via email;	Opposes reduction of 67 service; Route 67 serves residents of Alemany public housing who go to the Safeway on Mission.	1,2,3	While this was one of the reasons the route was established originally as a loop, examination of ridership data shows little use of Route 67 for shopping at the Mission Street Safeway. Customers making this trip would have to transfer at Mission & 24th Street.
74X #1	David Pilpel, Anonymous comment received via email;	Supports the change.	1,2,3	The SFMTA appreciates this comment.
74X #2	Michelle Brandt	Opposes the change and proposes reroute onto Lombard Street and lowering fares.	1,2,3	Costs of service on the 74X exceed $20 per passenger--over 7 times the system average and higher than for any other Muni service. Neither reducing fares nor rerouting this service would save resources.

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Line/ Route	Names of Commenters	Issue	Option	Response
74X #3	Frank Zepeda	Opposes cutting the 74X; suggests better signage.	1,2,3	Costs of service on the 74X exceed $20 per passenger–over 7 times the system average and higher than for any other Muni service. Marketing efforts to support the route included yellow shrink-wrapped buses and customized signage.
76 #1	Heather Kilday, Harry Pariser	Opposes reducing 76-Marin Headlands service; rides the bus year-round for hiking, it is crowded on weekends.	3	In order to reduce costs, this proposal was include in Option 3 only. Because of its popularity, no changes are proposed to the 76-Marin Headlands route in the Summer months. However, on shorter Winter days and during adverse weather conditions, ridership is much lighter than in Summer.
76 #2	David Davenport	Opposes cutting Route 76 part of the year, suggests cutting service in south of Market instead.	3	This change was considered, but it was determined that it would not reduce operating costs for this service.
76 #3	David Pilpel	Supports the change; suggests doing more, including cutting headway to 30 minutes and reducing span of service.	3	While we agree it would be desirable to operate a 30-minute service, doing so would neutralize the cost savings of only operating six months each year.
76 #4	Anna Sylvester	Opposes cutting the 76-Marin Headlands; the route is the only way for people without cars to get to nature.	3	In order to reduce costs, this proposal was include in Option 3 only. Because of its popularity, no changes are proposed to the 76-Marin Headlands route in the Summer months. However, on shorter Winter days and during adverse weather conditions, ridership is much lighter than in Summer.
89 #1	Dirk Hoekstra	Opposes discontinuance of 89-Laguna Honda; could harm disabled customers leaving Laguna Honda Hospital.	2,3	SFMTA intends to discuss options for having the Department of Public Health assume responsibility for this hospital-oriented service.
89 #2	David Pilpel	Opposes discontinuance of 89-Laguna Honda; suggests reducing span of service instead.	2,3	The Department of Public Health has frequently sought expansion, not reduction, of the hours of service. SFMTA intends to discuss options for having the Department of Public Health assume responsibility for this hospital-oriented service.
108 #1	David Pilpel	Supports curtailment of service to Caltrain.	1,2,3	The SFMTA appreciates this comment.
108 #2	David Pilpel	Opposes reroute on Treasure Island.	1,2,3	This proposal is a modest contraction of the route, but has strong support from the Treasure Island community because there are limited origins/destinations on H Avenue.
General #1	Dirk Hoekstra	Opposes 30 minute headways after 10 p.m.	3	This proposal was developed as part of the most extensive service reduction package (Option 3). We are developing a recommendation that may be able to limit the magnitude to something similar to Option 2.

Line/ Route	Names of Commenters	Issue	Option	Response
General #2	Todd Clobes	Supports Options 1, 2, and 3; supports fare inspectors.	1,2,3	The SFMTA appreciates this comment.
General #3	Gail Chun	Opposes service cuts due to their arbitrariness.	1,2,3	It is unfortunate that these proposals are perceived as arbitrary; in fact, they are based on far more extensive route performance data than the SFMTA has ever had. All proposals have been screened in terms of the number of customer boardings affected, the number of passengers per revenue vehicle hour, the cost per passenger of the affected service, and other measures as appropriate.
General #4	Victor Povicov; Anonymous comment received via email;	Hopes to see elements of the TEP incorporated into proposed changes. TEP service cuts were proposed in the context of other improvements; right now there is no context of improvements.	NA	Many elements of the TEP actually have been incorporated into the proposed changes. These unfortunately constitute many of the TEP's service reductions without the TEP's proposed service enhancements; otherwise there would not be cost savings. It is intended that the TEP's proposed service enhancements can be implemented over the next several years.
General #5	Diane Carroll; Christopher Pedersen; Daniel Zizmor	Bus stop consolidation is one strategy for saving money. Muni should consolidate stops so as to make stops every four blocks. One specific comment to consolidate bus stops along Van Ness.	NA	The SFMTA appreciates these comments. Stop consolidation is not part of the current proposals, but may be considered in the future.
General #6	Jason Chu	Stop wasting money on bus and bus stop maintenance and redundant transit services.	NA	Many of the proposed changes do involve the removal of duplicative services. SFMTA believes that continued focus on maintenance is critical to providing reliable service to our customers.
General #7	Meredith Goldsmith	Now is a good time to increase efficiency and save money while improving service for the majority of riders.	NA	While SFMTA attempted to develop proposals to increase efficiency and save money, the SFMTA's ability to make improvements is restricted under current fiscal constraints.
General #8	Meredith Goldsmith	Opposes ending all non-Owl service at midnight, would prefer 12:30 or 1 a.m.	2,3	SFMTA will consider an alternative that affects span-of-service less severely than in the initial proposals.
General #9	Wendy Tobias	Opposes stopping Metro service at midnight.	NA	SFMTA apologizes for certain misleading statements in some of the initial public materials that were distributed. Changes to Muni Metro operating hours are not currently under consideration.
General #10	Susan Wheeler	Muni is relying on transfers between routes that are often slow and poorly timed; bus schedules must be timed to allow for smoother transfers.	1,2,3	SFMTA remains committed to improving reliability of Muni service, and realizes this becomes even more important to our customers as these fiscal strategies are implemented.

Line/ Route	Names of Commenters	Issue	Option	Response
General #11	Josh Litwin	All options are reasonable.	1,2,3	The SFMTA appreciates this comment.
General #12	Ajay Martin	Do not cut Owl service, or service after 10 p.m.; many people rely on this service.	2,3	No reductions are proposed to Owl service, although one route (38) would be adjusted to conform to the proposed daytime routing. The proposed reductions on various routes to 30-minute frequencies after 10 p.m. would save almost 18,000 annual revenue hours, or approximately $1.5 million annually, and have been included for that reason in option 3 only.
General #13	Maria Belilovskaya	Do not cut service on community routes after 8:30 p.m.; doing so will alienate the core Muni ridership.	3	A modified proposal that would end service at 10 p.m. instead of 8:30 p.m. will be considered.
General #14	David Davenport	Overall, the TEP data and the proposals are good.	1,2,3	The SFMTA appreciates this comment.
General #15	Erika Byrne	Van Ness does not have reliable service; consider creating a dedicated bus on Van Ness, rather than routes 47 and 49, which serve other neighborhoods.	NA	The SFMTA is working to improve reliability systemwide; a Van Ness only service is not proposed at this time, because it would force a significant number of thru-riders traveling to SoMa and the Mission to transfer.
General #16	Emmanuel Andres, Shaun White	Opposes service cuts due to their effect on students, youth and seniors.	1,2,3	The SFMTA is obligated to develop a balanced budget. While we regret having to consider service reductions, the magnitude of our operating deficit required us to consider a variety of cost saving and revenue generating options.
General #17	Reggie McCray, Vincent Yeng-Jieh Choo	Suggests combining duplicative service.	NA	The SFMTA appreciates this comment, and has attempted to do as this comment suggests in a number of proposals.
General #18	Barry Toronto	Supports routes ending earlier.	2,3	The SFMTA appreciates this comment.
General #19	Barry Toronto	Service reductions in the evening should begin at 10 p.m. rather than 8:30 p.m.	3	A modified proposal that would end service at 10 p.m. instead of 8:30 p.m. will be considered.
General #20	Manish Champsee	Service cuts are better than maintenance cuts; do not cut maintenance.	NA	SFMTA agrees with this comment. It is our intent that service reliability be maintained and enhanced, even if scheduled service must be reduced.
General #21	David Pilpel	Submit temporary Transbay Terminal changes separately.	NA	Changes in routings to serve the temporary Transbay Terminal site were submitted to and approved by the SFMTA Board in March 2008. These changes would likely coincide with the timing of any proposed service modifications that are approved.

Line/ Route	Names of Commenters	Issue	Option	Response
General #22	David Pilpel	Various suggestions offered for potential schedule efficiencies.	1,2,3	Commenter offered numerous suggestions outside of SFMTA's formal proposals for potential improvements to operating schedules for various routes. We appreciates the thought and effort this represents, and will take these comments under advisement for consideration during the schedule construction process.
General #23	Peter Ehrlich; Harry Pariser, Melissa Sautter	Oppose cutting service at 8:30 p.m.; neighborhood routes should end at 10 or 10:30, this would also make it easier to put together balanced 8-hour schedules for operators.	3	A modified proposal that would end service at 10 p.m. instead of 8:30 p.m. will be considered.
General #24	Ben Lin, Timothy Wickland, Allison Miller	Opposes service reductions.	1,2,3	The SFMTA is obligated to develop a balanced budget. While we regret having to consider service reductions, the magnitude of our operating deficit required us to consider a variety of cost saving and revenue generating options.
General #25	Frank Zepeda	Supports cutting some routes in the evening.	2,3	The SFMTA appreciates this comment.
General #26	Frank Zepeda	Opposes abandoning any routes, particularly those that have standing loads at times, or those that provide alternatives to other service.	1,2,3,	The SFMTA is obligated to develop a balanced budget. While we regret having to consider service reductions, the magnitude of our operating deficit required us to consider a variety of cost saving and revenue generating options.
General #27	Vincent Yeng-Jieh Choo	Supports reducing frequency on routes if there is not enough ridership.	1,2,3	The SFMTA appreciates this comment.
General #28	Vincent Yeng-Jieh Choo	Opposes reducing the span of service.	2,3	SFMTA will consider an alternative that affects span-of-service less severely than in the initial proposals.
General #29	Mark Scott	I personally have never owned a car in my 16 years living in the City. Being a regular Muni rider and a motorcyclist, I, like many others, have found a combination that allows me to continue a car-free lifestyle. Thus, while motorcycling may not ostensibly appear to be a "transit first" alternative, incentives supporting a non-car-owning lifestyle are overall consistent with that long-standing city policy.	NA	SFMTA encourages use of all alternative transportation options.

Line/ Route	Names of Commenters	Issue	Option	Response
General #30	Peter Chou	Both parking and Muni fees will increase significantly. The only convenient and dependable lines are the rail lines that cover only a fraction of the city. You are forcing residents to waste time by using a bad and inefficient public transportation system.	1, 2, 3	Muni system reliability has improved recently, and while we still have not reached our goals, we remain committed to continuing this improvement even in the face of the current fiscal constraints.
General #31	Remi Tan	Concerned that route and frequency cuts be done carefully for routes that are truly underutilized. For under-served routes, could be offered a discount taxi service of Muni pass. Use vans with lower salary level paid through proposed higher parking fees, and extra parking money to increase service on heavily used routes per TEP and help outer resident get message that Muni is more convenient and cheaper than driving.	1, 2, 3	SFMTA is considering various fee increases, not only transit fares, and most of these revenue streams do support SFMTA's transit operations. The current service proposals are based on more detailed ridership and cost information than has ever been available before. Smaller vehicles are under consideration, but our current labor agreements do not provide for differential salaries.
General #32	Jalin Chen	Opposes cutting service due to low ridership; feels that ridership on some buses is low because they are unreliable.	1, 2, 3	While this has been a problem in the past--and system reliability remains below agency targets--our customers generally acknowledge that reliability has improved recently, and our statistics confirm that.
General #33	Christina Wong, R T	Opposes reducing service while also increase fares.	1, 2, 3	The SFMTA is obligated to develop a balanced budget. While we regret having to consider service reductions, the magnitude of our operating deficit required us to consider a variety of cost saving and revenue generating options. These options require consideration of both fare increases and service reductions.
General #34	Rachel Moore, Greg Wong	Service cuts need to be studied very carefully before being implemented.	1, 2, 3	In addition to the analyses performed to date, further analysis will continue through the period of schedule development to ensure the proposals are as carefully crafted as possible. It is even possible that some proposals could be dropped if expected savings cannot be achieved or certain aspects cannot be implemented as intended.
General #35	Guadalupe C. Amador	Opposes cuts and layoffs; raise the fares if necessary	1,2,3	The SFMTA is obligated to develop a balanced budget. While we regret having to consider service reductions, the magnitude of our operating deficit required us to consider a variety of cost saving and revenue generating options. These options require consideration of both fare increases and service reductions.

Line/ Route	Names of Commenters	Issue	Option	Response
General #36	Anonymous comment received via email;	Appreciates being informed by email and the chance to comment.	NA	The SFMTA appreciates this comment.
General #37	Jean Fraser	Muni should get rid of legacy routes that serve very few people.	1,2,3	The SFMTA appreciates this comment. Passenger activity levels were one of the key issues considered when developing proposals.
General #38	Elliot Schwartz	Opposes reducing service; will hurt the environment; goes against the Transit First Policy.	1,2,3	The SFMTA is obligated to develop a balanced budget. While we regret having to consider service reductions, the magnitude of our operating deficit required us to consider a variety of cost saving and revenue generating options.
General #39	Laura Iversen	Supports Option 1; opposes Options 2 and 3 because they decrease the functionality of the system.	1,2,3	The SFMTA appreciates this comment and while we do not think we can limit the reductions to Option 1, we are developing a recommendation that may be able to limit the magnitude to something similar to Option 2.
General #40	Crishel Bonfante	Muni has to get more reliable and cleaner in order to justify fare increases.	NA	Muni system reliability has improved recently, and while we still have not reached our goals, we remain committed to continuing this improvement even in the face of the current fiscal constraints.
General #41	David Johnson	Questions the cost projections for the service cuts; the projections do not factor in the reduction in revenue resulting from the reduction in service.	1,2,3	Service reduction proposals were designed to affect relatively small numbers of customers. Although some customer loss may be expected, fares cover less than 25% of the cost of service. A conservative assumption was used in developing costs, which allows for some portion of lost revenues.
General #42	Gertrude Albert	Service would be better if schedules were posted.	NA	The NextMuni system provides "real-time" bus arrival information at 300 bus shelters currently, and is also available via voice or digital cell phones, computers, and other devices. This has provided a popular, and for most purposes superior, alternative to posted schedules, which have a maintenance costs that SFMTA is currently unable to absorb.
General #43	Ruthanne Barulich	Opposes cutting service while also encouraging the public to use public transit.	1,2,3	The SFMTA is obligated to develop a balanced budget. While we regret having to consider service reductions, the magnitude of our operating deficit required us to consider a variety of cost saving and revenue generating options.

- **Continue with the TEP**
  Commenter: Gregory Wong
  Response: The SFMTA appreciates this comment and the options to address the 2009-2010 deficit were made keeping the Transit Effectiveness Project (TEP) in mind. The

proposed service modifications developed in response to the 2009-2010 deficit have been informed by the data collected and the extensive public input received during the TEP planning phase. While the budget challenges may slow the SFMTA's progress toward implementing TEP recommendations, staff is currently developing the TEP Implementation Plan and will be presenting it to the SFMTA Board of Directors this summer. In addition, the Agency continues to apply best practices learned through the TEP to improve service reliability, especially on our busiest routes and lines.

- **Support Option One Only**
  Commenter: Laura Iversen
  Response: The SFMTA appreciates this comment and has developed three potential service options designed to affect the least number of customers possible. The three proposed options represent a potential annual operating savings between $5.8 million and $17.8 million, contingent upon the extent of the modifications. The Board of Directors will consider these three options along with other proposals to address the 2009-2010 deficit.

- **Increase Service Frequency**
  Commenter: Cal Grant
  Response: The SFMTA appreciates this comment and will continue to strive to provide the best possible quality of service to our customers. In order to address the 2009-2010 deficit, three potential service options were developed. Each option includes both recommendations for reducing frequencies of some Muni routes and increasing frequencies of some Muni routes to absorb customers affected by other proposed changes or to conserve resources.

- **Provide Van Service Where Services are Reduced**
  Commenter: Remi Tan
  Response: The SFMTA appreciates this comment and anticipates that demand for paratransit services will increase if Muni service reductions are pursued. In order to address the 2009-2010 deficit, three potential service options were developed, representing a potential annual operating savings between $5.8 million and $17.8 million, contingent upon the extent of the modifications. These operating savings estimates assume that paratransit demand will grow 2% under Option 1, 4% under Option 2 and 6% under Option 3.

- **Would Rather Pay Higher Fares To Avoid Cutbacks In Service**
  Commenter: John Cummings, Laura Iversen, Guadalupe C. Amador, Christina Wong, Gerald D. Adams, Sharon R. Meyer
  Response: The SFMTA appreciates this comment and the options to address the 2009-2010 deficit were made based on this premise.

3) **Specific Comments On User Charges**

TRANSIT FARES

i. **General**

- **Increase The Proof Of Payment Citation From $50.00 To $250.00**
  Commenter: Ricardo Tovar
  Response: The $50.00 citation amount was established by the Board of Supervisors when the SFMTA received authorization two years ago to cite fare evaders under the proof of payment program. The penalty limits for the first offense is set at $50; $75 for the second offense; and $100 for the third offense committed within one year of the date of the first offense. The SFMTA will be review the level of this citation amount for the 2011-2012 budget year.

- **Collect Fares From Fare Evaders/Back Door Boarding**
  Commenter: Steve Vaccaro, Caroline Kleinman, Gregory Wong, John Cummings, K H, Andy Cox, Shaun White, Justin Nomi, S. Kitazawa, Rachel Moore, Denise Nicco, Jalin Chen, Rosie X , Ricardo Tovar, Jeanne Gibson, Dan Edwards, Allen Henderson, Barbara Bocci
  Response: The SFMTA appreciates this comment and is in the process of expanding the Agency's Proof of Payment program which is used on the Muni rail system to the Muni bus fleet.

- **Add San Francisco Police Department And Proof of Payment Presence On The System**
  Commenter: Gregory Wong, John Cummings, Rebekah
  Response: The SFMTA appreciates this comment and is in the process of expanding the Agency's Proof of Payment program which is used on the Muni rail system to the Muni bus fleet . Additionally, the SFMTA is working with the SFPD to strengthen its Vehicle Inspection Program which encourages every police officer to the system during his/her shift.

- **Possible negative impact of eliminating Proof of Payment Inspectors, Street Supervisors, Operators**
  Commenter: Robert, Rebekah
  Response: Unfortunately, the SFMTA was required to eliminate more than 400 positions to balance the FY 2009-2010 budget. However, the Agency will continue to fill existing vacancies and hire approximately 180 positions in FY 2009-2010 including Proof of Payment inspectors, street supervisors and transit operators.

- **Difficult to Afford Increase**

Commenter: Crishel Bonfante, Keisha Roberts, Heidi-Jane Schwabe, Troy Blair, Brendan Kober, Tracy Leung, Shirley Stuckey
Response: The SFMTA is sensitive to low income customers and offers discount monthly passes for senior, disabled, and youth customers. In addition, the SFMTA has an agreement with the Department of Human Services (DHS) in which DHS provide a $35 Lifeline Pass for low-income residents. Information on the Lifeline Pass can be obtained by visiting the Customer Service Center at 11 South Van Ness or the SFMTA website.

- **Discourages The Use Of Public Transit**
  Commenter: Crishel Bonfante, Tim Brace
  Response: The SFMTA hopes that the proposed budget options do not discourage use of public transit. The vast majority of transit agencies across the county are facing significant deficits just as the SFMTA and are either reducing service or increasing fares or both given the significant loss in revenue. The SFMTA hopes that the residents and visitors of San Francisco support the City's Transit First policy as well as improving the environment and will continue to choose Muni as their preferred mode of transit.

- **No Fare Increase**
  Commenter: Kevin Weaver, R T, Alison Miller, Timothy Wickland, Ben Lin, Peter Chou
  Response: The SFMTA would prefer not to increase fares but unfortunately given the economic situation, the SFMTA, similarly to most transit agencies across the county are facing significant deficits and are either cutting service or increasing fares or both. For 2009-2010, the SFMTA will be reducing spending by nearly $70 million to help address the $128.9 million deficit. Unfortunately, addressing the remaining $50 million requires reductions in transit service as well as increases in charges across all the modes – transit, parking and taxis.

- **Establish a $5.00 Day Pass**
  Commenter: Derek Reibert
  Response: The SFMTA considered a day pass as one possible option, however, given the distribution and administrative costs associated with this fare media, the day pass was not included in the final list of options for consideration.

- **Set the Discount Fares at 40-50% of the Full Fare**
  Commenter: Derek Reibert, David Davenport
  Response: The SFMTA is reviewing all of its fare multipliers and will be presenting a policy for the SFMTA Board of Directors' consideration in the near future. The policy will address the multiplier between the single ride and the monthly pass as well as the relationship between the adult fares and the discount fares. It is expected that this policy will be in place for the 2010-2011 fiscal year and going forward.

- **The service cut projections fail to consider the decreased revenue from these service cuts.**
  Commenter: David Johnson
  Response: The projections were developed using 70% of the National Transit Database direct cost to reflect reductions in revenues and the impact of the difference between service hours reductions compared to pay hours saved.

- **The Discount for Senior, Youth and Disabled is Too High.**
  Commenter: Sepehr Zamani, David Pilpel
  Response: The SFMTA is reviewing all of its fare multipliers and will be presenting a policy for the SFMTA Board of Directors' consideration in the near future. The policy will address the multiplier between the single ride and the monthly pass as well as the relationship between the adult fares and the discount fares. It is expected that this policy will be in place for the 2010-2011 fiscal year and going forward.

- **Support Increases to Fares At Different Timelines and Different Levels.**
  Commenter: David Pilpel
  Response: The SFMTA appreciates the comment.

- **Price Fares according to Zones**
  Commenter: rogerdepa
  Response: Given the limited geography of the City, the City's Transit First policy and a system based on travel into and from the downtown area, a fare based on zones has not been considered.

- **The Lifeline Pass Should Be Eliminated In Favor Of A System That Shifts This Work To The Existing Social Service Agencies**
  Commenter: David Davenport
  Response: The SFMTA has been working this past year with the Health Services Agency (HSA) to jointly develop a solution to improve the distribution and access for the Lifeline Pass. The SFMTA will continue to explore ways to provide low income customers access to the Muni system while reducing the related administrative costs.

- **Support Fare Increases**
  Commenter: Patrick Pun, Jim Flanagan
  Response: The SFMTA appreciates the comment.

- **Reward frequent riders of BART and MUNI with reductions in costs if they purchase semi-annual and annual passes.**
  Commenter: Jane Williamson
  Response: The SFMTA will be considering this option with the implementation of TransLink®, a transit smart card fare payment program.

ii) **Adult Monthly Fast Pass Increase**

- **Acceptable if Muni performed better**
  Commenter: Crishel Bonfante
  Response: It has been quite clear that one of the major reasons why Muni service has not met expectations is due to a lack of adequate resources. It is widely known based on studies by the Grand Jury and the Board of Supervisors' Budget Analyst, Muni has had a structural deficit for decades. Many members of the public say that they are willing to pay more if Muni service improves; however, Muni service cannot improve without adequate resources.

- **Raise the Fast Pass higher than Proposed**
  Commenter: Gregory Wong, Jean Fraser, Vincent Yeng-Jieh Choo,
  Response: The SFMTA Board of Directors will be considering an Automatic Indexing Plan for charges effective in 2010-2011 which will allow fares to increase in small increments every two years rather than large increases infrequently. This policy will ensure customers know what to expect, make fare increases transparent and will also allow the SFMTA to budget appropriately.

iii) **Single Ride Increase**

- **Do not Support the Increase to $2.00**
  Commenter: Steve Vaccaro, Harry S. Pariser, Troy Blair
  Response: The SFMTA would prefer not to increase fares but unfortunately given the economic situation, the SFMTA, like transit agencies across the country is facing a significant deficit and must explore reducing service, increasing fares or both. For 2009-2010, the SFMTA will be reducing spending by close to $70 million to help address the $128.9 million deficit. Unfortunately, addressing the remaining $50 million requires reductions in transit service as well as increase in charges across all the modes – transit, parking and taxis. Finally, the $1.50 single ride fare for adults was last increased in 2005.

- **Increase it by $0.25**
  Commenter: Gregory Wong
  Response: The SFMTA has received comments from customers regarding the ease of paying $2.00 rather than $1.75 as it relates to avoiding searching for coins.

- **Support the Increase to $2.00**
  Commenter: Laura Iversen, Janet Clyde, Derek Reibert, Vincent Yeng-Jieh Choo, Frank Zepeda
  Response: The SFMTA appreciates the comment.

- **Replace the Antiquated Fare Collection System before the Increase to $2.00**
  Commenter: Andy Cox
  Response: The SFMTA supports this comment and is in the procuring change machines, funded by the American Recovery and Reinvestment Act, as well as rehabilitating the fareboxes. Unfortunately given the need to address the deficit, the SFMTA can not wait for the completion of these projects before increasing the single ride fares.

iv) Charging For Transfers

- **Do not Charge for Transfers**
  Commenter: Laura Iversen, Melissa Sautter, Aaron Kitashima, Robert, Joe Humphreys, Harry S. Pariser, A. Ozols, Jalin Chen, rogerdepa, Tracy Leung, F. Curtis May, Ph.D. Bill Hough, Vincent Yeng-Jieh Choo, Hennie Wisniewski
  Response: This option is no longer being considered.

- **Do you plan to print POP transfer for proof of payment (similar to cable car receipt for proof of payment and non-transfer)?**
  Commenter: Kenton Louie
  Response: This option is no longer being considered.

v) Premium Pass

- **Impact of Possible Switch to Other Lines**
  Commenter: Robert
  Response: The SFMTA is very aware of this possibility and will be closely monitoring the impact of premium passes if implemented.

- **Do not Support the BART/Muni premium pass**
  Commenter: Tracy Leung
  Response: Based on ridership from July 2008 through February 2009, reimbursement to BART at $1.02 per trip is on track to reach $13.4 million this fiscal year. Currently, approximately 20% of Adult Fast Pass revenues are paid to BART. Payments to BART have grown at an average annualized rate of 14% over the last four years, which reflects an annualized ridership increase of 8% and an increase in the reimbursement rate from $0.87 to $1.02 per trip. If FY 2009-2010 Fast Pass usage does not increase over current levels, SFMTA can expect to incur a deficit of $2.4 million compared to FY 2009-2010 budgeted levels for the use of the Fast Pass on BART. This deficit could reach $3.6 million if usage next fiscal year grows at rates consistent with four-year trends (8% annualized ridership growth rates).

- **How would I Pay for the Premium Pass**
  Commenter: Kenton Louie

Response: The SFMTA will create a separate pass to be used until TransLink®, a transit smart card fare payment program is fully implemented which will allow customers to ride the express and non-express routes.

vi) Cable Car Passports

- **The 1-, 3- and 7-day Passports are already "too expensive" to be attractive for most passengers.**
  Commenter: David Davenport
  Response: The majority of the Cable Car passports are purchased by tourists. The Passport fees were last raised in 2005.

PARKING RATES

i) General

- **Charge Car Users More**
  Commenter: Peggy da Silva, Timothy Wickland
  Response: The SFMTA appreciates this comment but must consider all stakeholder interests including automobile users.

- **Increase the fines for anyone parking in bus stops, Increase the fines for red-light runners.**
  Commenter: Jane Williamson
  Response: The SFMTA charges the highest amount allowable under State law.

- **Establish fines for excessively high decibel exhaust pipes on cars, trucks and motorcycles.**
  Commenter: Jane Williamson
  Response: This is within the jurisdiction of Board of Supervisors.

- **Increase Parking Rates to Keep Muni Services**
  Commenter: Elliot Schwartz, Remi Tan
  Response: The SFMTA appreciates this comment and the options to address the 2009-2010 deficit were made based on this premise.

- **Reduce Projects and Expansion Instead of Raising Parking Rates and Expanding Parking Hours**
  Commenter: David Hill
  Response: Most projects and expansions are funded through grants which are restricted for capital uses and these funds are not available for operating needs which is where the $128.9 million deficit rests.

- **Enhance the Use of Parking Cards and Allow Discounts for High Value Cards**
  Commenter: Heidi Lypps, Peter Hartikka, Jon McBain, Andrew Kim, WolfQueen, George Durden, Psva Leo
  Response: The SFMTA appreciates this comment related to the enhanced availability of parking cards which can be purchased via the internet. Additionally, the SFpark program will be replacing parking meters to allow for credit card payments in pilot areas. At this time, the SFMTA is not considering parking discounts for high value cards.

- **Increase Parking Garage and Parking Meter Rates and Extended Hours Based on Demand**
  Commenter: David Pilpel
  Response: The SFpark program will be implementing demand based pricing in the pilot areas which encompass 25% of metered on-street parking spaces (6,000) and approximately 11,500 off-street parking spaces. Once the 18-month pilot program is completed, SFMTA intends to expand demand based parking pricing Citywide. The pilot will also include extended hours.

- **Consider the $3 Surcharge for Citations to Recover State Increase**
  Commenter: David Pilpel
  Response: Based on the recent increases in parking citation penalties, the additional $3 is not recommended at this time

ii) On Street Parking

- **Oppose the Extension of Hours beyond 6 p.m. and instead Increase Parking Rates More Than $0.50 Per Hour**
  Commenter: Deirdre McCrohan, John Czarnik, David Ferguson,
  Response: The SFMTA appreciates this comment but must consider all stakeholder interests, as well as the City adopted Transit First policy.

- **Oppose the Extension of Paid Parking Hours beyond 6 p.m.**
  Commenter: John Czarnik, David Hill, Christina Wong, Michael Dotson, Mook, Peter Chou, Leah Cooper, Erin Rooney, Jessica White, My Do
  Response: The SFMTA appreciates this comment but must consider all stakeholder interests, as well as the City adopted Transit First policy. Additionally, the SFMTA is evaluating relaxing time limits so that paid parking may be available in more than one and two hour blocks and could allow someone to park for four hours between 6 p.m. and 10 p.m. in certain parts of the City.

- **Oppose the Extension of Paid Parking to Sunday**
  Commenter: David Ferguson, David Hill, Michael Dotson, Mook, Peter Chou,

Leah Cooper, Erin Rooney, Jessica White, My Do
Response: The SFMTA appreciates this comment but must consider all stakeholder interests, as well as the City adopted Transit First policy. Additionally, the SFMTA is evaluating relaxing time limits so that paid parking may be available in more than one and two hour blocks.

- **Why not increase the Residential Parking Permit**
  Commenter: Erica Byrne, Gina Brown, Jean Fraser
  Response: Residential Parking Permit program are cost recovery fees and the permit amount cannot exceed the costs of enforcement.

- **Support the Increase to Hourly Parking Rates, Raise it More**
  Commenter: Remi Tan, Jean Fraser
  Response: The SFMTA appreciates this comment but must consider all stakeholder interests including automobile users.

- **Cannot afford the Increases**
  Commenter: John Czarnik, Peter Tousignant, Leah Cooper
  Response: The SFMTA appreciates this comment; however, parking rates have not increased in the City since 2005.

- **The Proposed Increase of $1.00 to Motorcycle Hourly Rates is Too High**
  Commenter: DB Noyola, Rich Risbridger, Sasha Pave, Morgan Lang, Ilo Kratins, Pete Young, Matthew M. Randle, Joel M. Blackman, Eric Vanderlin, Heidi Lypps, Jon McBain, Peter Hartikka, Andrew Kim, WolfQueen, Dan Edwards, Roy Murakami, George Durden, Christopher Passanisi, Psva Leo, Mook, Andrew Lesslie, Eric Wight, Erin Veneziano, Jonathon Clark, Christina Gommerman, Chris Meiering, John Gruninger, Erin Rooney, Mike Greenberg, Patrick D. Moore, Mark Scott, Sivan Mozes, Steve Tourdo, Jessica White, Kyle Sund, Stephen Linden, Kip Gebhardt, Greg Luecke, Hubert Bugajski, Phil Venton, Mike, Dahn Van Laarz, Shannon J. Halkyard, Jim, Jim Bowlby, Danny Krause, Rob Callbeck, Tad Dodson, Andrew R. Whalley
  Response: The SFMTA has amended the original proposal so that motorcycle users would pay proportionally to the space they occupy relative to an 18 foot space, or a 21- foot space with buffer red zones, rounded to the nickel. Current rates are $0.25 per hour in Zone One, $0.15 per hour in Zones Two and Four and $0.10 per hour in Zone 3. This would increase to $0.70, $0.60, $0.40, $0.60 if meter rates increased by $0.50.

- **Do Not Raise Motorcycle Hourly Rates**
  Commenter: Douglas Arthur Worley, Bjorn Pave, David Hill, Ilo Kratins, Ross Capdeville, Steven Williams, J. P. , Jane Williamson, Steven Solter, Robert Charbonneau, Jeff Johnston, Jason, Andy Bajka, Kevin Vollbrecht, Jeffrey Meleg,

John Jarman, Maureen Sharkey, Scott Anderson, Joshua Hackett, Neil Clark, Cheryl Eng, Terry Anastassiou, Peter Fraenkel, Vinicio Vazquez, Tim Z Falconer, Amaury Gallisa, Jim Flanagan, David E. Thiel, Brian Biggs, Azmeer Salleh, Eric Worthington, George Lula, Max Zhang, Dana L. Rees, Nicholas Weaver, Jason Smith, Geoff Walshe, Clyde Wildes, Bonnie, Bill Swartz, Colin Hessel, Dave Rathofer, Suguru Nishioka, Tiffany Khaler, Harry Whalley, Shawn Kenning, Gary Skow, Peter Fraenkel
Response: While SFMTA would prefer not to increase raise rates, motorcycle rates were last increased in 2002-2003. The SFMTA has amended the original proposal so that motorcycle users would pay proportionally to the space they occupy relative to an 18- foot space, or a 21-foot space with buffer red zones, rounded to the nickel. Current rates are $0.25 per hour in Zone One, $0.15 per hour in Zones Two and Four and $0.10 per hour in Zone 3. This would increase to $0.70, $0.60, $0.40, $0.60 if meter rates increased by $0.50.

- **Double the Parking Fee Instead of Raising Motorcycle Hourly Rates to $1.00**
  Commenter: Sasha Pave
  Response: The SFMTA appreciates this comment but must consider all stakeholder interests in the City including automobile users and motorcyclists.

- **Cut Back on Services to Avoid Increase to Parking Rates and Extension of Parking Hours**
  Commenter: David Ferguson, David Hill
  Response: The SFMTA appreciates this comment and has developed three potential service options. The three proposed options represent a potential annual operating savings between $5.8 million and $17.8 million, contingent upon the extent of the modifications. The Board of Directors will consider these three options along with other proposals to address the 2009-2010 deficit.

iii) Off Street Parking

- **Raise Rates to Equal Private Garages**
  Commenter: Remi Tan, Frank Zepeda
  Response: The 2009-2010 amended budget proposal includes increases in parking fees at all city garages. If approved, these increases will bring parking fees at City garages close to rates at private garages. These rate increases reflect rates at nearby facilities, and the City's interest in providing affordable rates to support the retail businesses and cultural and entertainment venues, and thereby support local economy.

iv. Taxi Fees And Medallions

- **Offer Discount Taxi Service in Areas where Muni Service is Reduced**

Commenter: Remi Tan
Response: There may be opportunities to coordinate with the taxi industry to make increased taxi service available where Muni service is reduced; however it is not feasible in the short term to arrange for payment of private taxi service with Muni fare media.

- **Taxi Drivers Should Be Tested On Geographical Knowledge Of The City**
  Commenter: Rebekah Drechsel
  Response: The SFMTA is in the process of assuming taxi driver training responsibilities from three private entities and the San Francisco Police Department. As part of this process, the curriculum used to train new taxi drivers will be carefully reviewed and updated. Geographical knowledge of the city will be one of the subject matter areas addressed in training.

- **Taxi Medallions Should Be Transferable To Purchasers Who Are Connected To The Taxi Industry; Proposed Pilot Program Should Utilize Newly Issued Medallions Through A Minimum Bid Auction To Establish A Market Price. I Support The Patrick Shannon Plan.**
  Commenter: Donald L. Fassett
  Response: On March 27, 2009, the SFMTA issued a Request for Information seeking proposals regarding Prop K reform. Proposals must be submitted by May 1. Once those proposals are received, the SFMTA will use the ideas contained in the proposals and input received from the industry to identify the details of a pilot program.

- **Support The Transfer Of Taxi Medallions To Help Balance The Budget.**
  Commenter: Frank Noto
  Response: The SFMTA will consider the transferability of medallions as one of the alternatives for Proposition K reform, along with additional input received from the taxi industry that are received in response to the SFMTA's March 27, 2009 Request for Information for Proposition K reform proposals.

- **Offer A Proposal For Proposition K Reform Called The "Patrick Shannon Plan. "The Main Tenets Of This Plan Are: 1. Pre-K Owners Reclaim The Transferability They Originally Purchased; 2. K Permittees Are Allowed To Purchase Transferability For $100K; 3. New Permits To Be Auctioned And Cabdrivers As Well As Any True ESOP, Cooperative Or Bona Fide Employee-Owned Company Allowed To Bid For Permits; And 4. Transfer Fees To Be Charged By The City Upon Transfers Of Medallions.**
  Commenter: Patrick Shannon
  Response: The SFMTA appreciates the comment. The comments received will be included and evaluated with all responses to the Request for Information after May 1, 2009.

- **Taxi Related Fees Should Be Cost Recovery**
  Commenter: David Pilpel
  Response: Existing taxi permit fees do not recover current regulatory costs. MTA staff proposes to increase existing fees to more fully recover taxi regulatory costs.

- **Taxi Revenues Should Not Subsidize the Rest of the Modes and Should Be Kept Separate**
  Commenter: David Pilpel
  Response: This is a policy matter that will be addressed by the Board of Directors after receipt of proposals for Proposition K reform.

Funding Impact

Impact to Proposed Amended Operating Budget for 2009-2010.

Recommendation

It is recommended that the SFMTA Board of Directors adopt a resolution finding that a fiscal emergency exists caused by the failure of the Agency to adequately fund agency programs, facilities, and operations under California Public Resources Code section 21080.32 and California Environmental Quality Act implementing guidelines, Title 14 of the California Code of Regulations section 15285. The SFMTA has responded within 30 days to the oral and written comments and suggestions made by the public.

The City Attorney has reviewed this item.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. ____________________

WHEREAS, The San Francisco Municipal Transportation Agency "SFMTA" faces a severe fiscal challenge resulting from the economic downturn; and

WHEREAS, The SFMTA is considering reduction in transit service and increases to various fares, fees, fines, rates and charges that support transit service; and

WHEREAS, Reductions in transit service normally require an evaluation of the potential environmental impact of such reductions under the California Environmental Quality Act (CEQA); and

WHEREAS, CEQA provides a statutory exemption for the reduction or elimination of existing transit service, facilities, programs, or activities by an Agency as a result of a declared fiscal emergency caused by the failure of Agency revenues to adequately fund programs, facilities and operations; and

WHEREAS, A fiscal emergency exists when an agency is projected to have "negative working capital" within one year from the date that the agency finds that a fiscal emergency exists; and

WHEREAS, California Public Resources Code section 21080.32(d)(2) provides that, in calculating the available working capital, an agency is to add together all unrestricted cash, unrestricted short-term investments, and unrestricted short-term accounts receivable and then subtract unrestricted accounts payable and that reserves shall not be included in this calculation; and

WHEREAS, Analysis of SFMTA's negative working capital for 2009-2010 identifies a shortfall of approximately $112 million and $91 million at the end of April 2010; and

WHEREAS, On April 7, 2009, the SFMTA Board of Directors held a noticed public hearing on the proposed declaration of fiscal emergency; and

WHEREAS, On April 21, 2009, the SFMTA responded to comments and suggestions made by the public at the April 7, 2009 meeting and received through April 10, 2009, at a regularly scheduled SFMTA Board of Directors meeting; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors declares a fiscal emergency exists caused by the failure of agency revenues to adequately fund agency programs and facilities pursuant to California Public Resources Code section 21080.32 and California Environmental Quality Act implanting guidelines, Title 14 of the California Code of Regulations section 15285;

and be it further

RESOLVED, That pursuant to section 21080.32 of the California Public Resources Code and Section 15285 of Title 14 of the California Code of Regulations, the SFMTA Board of Directors finds that the SFMTA faces a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs, facilities and operations; and be it further

RESOLVED, That the SFMTA Board of Directors finds it necessary to increase certain fees, rates or charges that support public transit service as well as to reduce or eliminate certain public transit services and that such increases in fees, rates or charges and such service reductions are statutorily exempt from review under CEQA; and finally be it further

RESOLVED, That the SFMTA Board of Directors finds that the reduction or elimination of the availability of existing service are statutorily exempt from CEQA review.

I hereby certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of ______________________________.

____

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 09-064

WHEREAS, The San Francisco Municipal Transportation Agency "SFMTA" faces a severe fiscal challenge resulting from the economic downturn; and

WHEREAS, The SFMTA is considering reduction in transit service and increases to various fares, fees, fines, rates and charges that support transit service; and

WHEREAS, Reductions in transit service normally require an evaluation of the potential environmental impact of such reductions under the California Environmental Quality Act (CEQA); and

WHEREAS, CEQA provides a statutory exemption for the reduction or elimination of existing transit service, facilities, programs, or activities by an Agency as a result of a declared fiscal emergency caused by the failure of Agency revenues to adequately fund programs, facilities and operations; and

WHEREAS, A fiscal emergency exists when an agency is projected to have "negative working capital" within one year from the date that the agency finds that a fiscal emergency exists; and

WHEREAS, California Public Resources Code section 21080.32(d)(2) provides that, in calculating the available working capital, an agency is to add together all unrestricted cash, unrestricted short-term investments, and unrestricted short-term accounts receivable and then subtract unrestricted accounts payable and that reserves shall not be included in this calculation; and

WHEREAS, Analysis of SFMTA's negative working capital for 2009-2010 identifies a shortfall of approximately $112 million and $91 million at the end of April 2010; and

WHEREAS, On April 7, 2009, the SFMTA Board of Directors held a noticed public hearing on the proposed declaration of fiscal emergency; and

WHEREAS, On April 21, 2009, the SFMTA responded to comments and suggestions made by the public at the April 7, 2009 meeting and received through April 10, 2009, at a regularly scheduled SFMTA Board of Directors meeting; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors declares a fiscal emergency exists caused by the failure of agency revenues to adequately fund agency programs and facilities pursuant to California Public Resources Code section 21080.32 and California Environmental

Quality Act implanting guidelines, Title 14 of the California Code of Regulations section 15285; and be it further

RESOLVED, That pursuant to section 21080.32 of the California Public Resources Code and Section 15285 of Title 14 of the California Code of Regulations, the SFMTA Board of Directors finds that the SFMTA faces a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs, facilities and operations; and be it further

RESOLVED, That the SFMTA Board of Directors finds it necessary to increase certain fees, rates or charges that support public transit service as well as to reduce or eliminate certain public transit services and that such increases in fees, rates or charges and such service reductions are statutorily exempt from review under CEQA; and finally be it further

RESOLVED, That the SFMTA Board of Directors finds that the reduction or elimination of the availability of existing service are statutorily exempt from CEQA review.

I hereby certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of APR 21 2009.

R. Boomer

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

SFMTA Municipal Transportation Agency

FY 2009-2010 OPERATING BUDGET
Year End Projection
As of October 15, 2009

November 3, 2009 SAN FRANCISCO, CALIFORNIA

Overview of Two Year Operating Budget

FY 2009 and FY 2010

Summary of Revenue Lost
Two Year Operating Budget for FY 2009 and FY 2010
(millions)

	Mid Year FY 2009	Amended FY 2010
STA (operating and capital)	$65.0	$65.0
Other State Grants	$22.0	$12.0
General Fund	$19.2	$24.3
Citations	$6.2	$6.0
Advertising Revenues		$6.2
Off and On Street Parking		$6.7
TOTAL	$112.40	$120.20

Summary of Balancing Actions
Two Year Operating Budget for FY 2009 and FY 2010

	Mid Year FY 2009	Amended FY 2010
Eliminated /Frozen Positions	√	√
Reduced Non Personnel Line Items	√	√
Use of Reserve	√	√
Neighborhood Parking Permits	√	√
Fees (Boot removal, color curb, etc.)	√	√
Parking Meters Rates		√
Variable Pricing for Off and On Street Parking		√
Garage Rates		√
Taxi Permit Fees/Medallion Program		√
Parking Citation Fines	√	√
Monthly Passes		√
Paratransit Fares		√
Single Ride Fare		√
Cable Car Passports		√
Transit Service Modifications		√

Presentation on April 7, 2009

Board of Directors Meeting

FY 2009-2010 AMENDED OPERATING BUDGET
Changes to Revenues (millions)

Revenue Category	2009-2010 Approved Budget	2009-2010 Projection as of Feb 2009	2009-2010 Projected Surplus / (Deficit)	Description
State/Regional Funds	115.7	60.9	(54.8)	State Budget Eliminated Transit Assistance Funding ($42.8M), TDA Sales Tax and AB1107 from MTC ($11.5M), Gas Tax ($0.5M)
General Fund	252.2	227.9	(24.3)	Less General Fund Baseline Available due to declining General Fund revenues
Advertising	16.2	10.0	(6.2)	Advertising market declines
Parking Citations	103.8	97.8	(6.0)	Reduced citations from street sweeping schedule changes plus Courthouse fee increase to State
Garage Revenues	31.4	27.7	(3.7)	Reflects anticipated reduction in garage revenues due to declining patronage and economic conditions
Parking Meters	35.0	32.0	(3.0)	Variable pricing projections from SF*park* adjusted back to original assumption
Interest	5.6	4.8	(0.8)	Lower Interest rates
Fund Balance	36.4	42.3	5.9	Use of additional fund balance
Taxi Services	0.0	2.2	2.2	Addition of Taxi Services
Cable Car Fares	4.6	5.5	0.9	Increased collection of Cable Car fares
Other Revenues	215.8	215.8	0.0	No changes projected at this time
TOTAL	$816.7	$726.9	($89.8)	

FY 2009-2010 AMENDED OPERATING BUDGET
Changes to Expenditures (millions)

Expenditure Category	2009-2010 Approved Budget	2009-2010 Projection as of Feb 2009	2009-2010 Projected (Deficit)	Description
Salaries & Benefits	496.4	521.5	(25.1)	$6.6M increase due to retirement benefits as a result of the passage of Proposition B in June 2008. Increase adjustment of $14M in overtime based on actual usage. Increased additional benefits and salary adjustments of $4.5M – unemployment insurance, position changes.
Services from City Departments	68.4	80.2	(11.8)	•SF Police Department $7M •SF General Hospital $3M •311 Call Center $2.2M •Tax Collector's Office $0.5M •Telecommunications Department $0.5M •Risk Manager's Office $0.4M •Planning Department $0.3M •Department of Human Resources ($1.2M) •Various other adjustments known at this time
Taxi Services	0.0	2.2	(2.2)	Addition of Taxi Services
Other Line items	251.9	251.9	0	No changes projected to other various expenditures at this time
TOTAL	$816.7	$855.8	($39.1)	

FY 2009-2010 AMENDED OPERATING BUDGET

(millions)

	FY 2009-2010 Approved Budget	2009-2010 Projection as of Feb 2009	FY 2009-2010 (Deficit)
Revenues	$816.7	$726.9	($89.8)
Expenditures	$816.7	$855.8	($39.1)
Total FY 2009-2010 Projected (Deficit)			($128.9)

Presentation on April 21, 2009
Board of Directors Meeting

Addressing the Deficit for FY 2010

Sharing in the Solution

- SFMTA: eliminating positions, reducing non labor costs, reduction in work orders
- Users of the System: higher charges, service modifications

FY 2009-2010 PROPOSED AMENDED OPERATING BUDGET

(millions)

	Approved Budget (a)	Projection as of Feb 2009 (b)	Proposed Amended Budget (c)	Variance (c) Compared to (b)
Revenues	$816.7	$726.9	$784.0	↑ $57.1
Expenditures	$816.7	$855.8	$784.0	↓ $71.8
Revenues Less Expenditures	$0	($128.9)	$0	

Solutions for Addressing the Deficit in the Proposed Amended Operating Budget for FY 2009-2010 (millions)

Description Of Proposal	Notes	Amount
Eliminating Positions	Eliminate 370 positions	$32.00
Use of Reserve	Use of Reserve established by Board Approved Reserve Policy	$10.00
Roll Back all Non-personnel line items	Eliminate half the CPI increases assumed in 2009-2010 to 2008-2009 figures	$11.30
Reduce increase to overtime budget	The original proposal was to increase the overtime budget by $14 million to reflect actual expenditures in overtime for the past 4 years. However, this increase will be reduced by half in anticipation of improved overtime management	$7.00
Increase Single Ride Fare	Increase the $1.50 for adult single rides to $2.00 and discount single rides from $0.50 to $0.75 as of July 1, 2009.	$14 .00
Increase Cable Car Passports	Increase the 1-day, 3-day and 7-day passports by $2.00 to $13, $20 and $26 respectively as of January 1, 2010	$0.65

Solutions for Addressing the Deficit in the Proposed Amended Operating Budget for FY 2009-2010 (millions) continued

Description Of Proposal	Notes	Amount
Increase Adult Month Fast Pass	Increase the adult Fast Pass rate from $55 to $60 on January 1, 2010. The rate is set to increase from $45 to $55 on July 1, 2009.	$3.50
Increase Discount Passes for Youth, Seniors and Disabled fares	Increase the discount Fast Pass rate from $15 to $20 on January 1, 2010. The rate is set to increase from $10 to $15 on July 1, 2009.	$1.25
Increase Paratransit Fares	Increase Van Services from $1.65 to $2 and All Taxi Services from $4 to $5 per scrip book valued at $30 on July 1, 2009. These rates were last increased in 2006.	$0.40
Premium Monthly Pass for BART/Muni Use	Increase pass by $10.00 for those customers using both systems as of January 1, 2010. Currently SFMTA pays BART $1.02 per trip or over $12 million per year. Assuming 40,000 trips per day on BART by Fast Pass purchasers. (e.g. monthly adult pass would be $70).	$1.35
Candlestick Park Express and Special Event Service	Increase fares by $2 effective January 1, 2010. Adult-$9; Senior/Disabled/Youth -$7; Adult/Senior/Disabled/ Youth with valid pass or pass equivalant-$5	$0.05

Solutions for Addressing the Deficit in the Proposed Amended Operating Budget for FY 2009-2010 (millions), continued

Description Of Proposal	Notes	Amount
Increase Motorcycle Parking Meter Rates in all Zones	Parking meters rates were last raised in 2002-2003 by the Board of Supervisors. Motorcycles would pay proportionally to the space they occupy relative to a 18 foot space, or a 21 foot space with buffer red zones, rounded to the nickel. Current rates are \$0.25 per hour in Zone One, \$0.15 per hour in Zones Two and Four and \$0.10 per hour in Zone 3. This would increase to \$0.70, \$0.60, \$0.40, \$0.60 if meter rates increased by \$0.50.	\$0.60
Increase Parking Meter Rates	In June of 2005 the Board of Supervisors approved a \$1 increase in the hourly parking meter rates in parking meter zones 1, 2, and 4 and an increase of \$0.50 in parking meter zone 3. Recommend a \$0.50 increase in all zones, effective September 1, 2009.	\$3.00
Charge for Parking on Weekday/Evenings	*Assume meters would operate from 9 AM to 10 PM. Most meters in the City currently operate from 9 AM to 6 PM or 9 hours. Revenue estimate is net of additional Parking Control Officers and Meter Repair Staff (not included in final approved budget)*	*\$4.00*
Charge for Parking on Sundays	*Currently parking is free on Sundays on all meters in the City. Assume meters would operate from 9 AM to 10 PM. Revenue estimate is net of additional Parking Control Officers and Meter Repair Staff (not included in final approved budget)*	*\$2.00*

Recommended Solutions for Addressing the Deficit in the Proposed Amended Operating Budget for FY 2009-2010 (millions), continued

Description Of Proposal	Notes	Amount
Expand Holiday Enforcement	Expand current enforcement to all Holidays except for New Year's Day, Thanksgiving Day, and Christmas Day. Revenue estimate is net of additional Parking Control Officers and Meter Repair Staff.	$0.25
Taxi Permit Fees	Increase permit fees to cost recovery amounts	$0.58
Taxi Medallion Program	New Taxi Medallion Program. Revenue collected will depend on whether medallions are newly issued or existing, whether the program involves a fee for conversion to a transferable medallion type or outright sale or franchise structure as well as the amount of a conversion fee or the percentage of auction sales might be collected or the franchise payments.	$15.00
Increase Garage Rates	Various Garage Rates	$1.50
Reduce Work Orders	SFPD Work Order ($1.9 M), City Attorney ($0.5M), 311 ($0.8M), Other (1.4M)	$4.60
Transit Service System Reduction	Various Routes (Described in Following Slides) 108 position reduction	$13.4 Million

Proposed Service Reductions

$13.4 million in annual savings derived from:

80 Operator Positions	$6.8 M
15 Other Positions in Muni Operations	$1.7 M
13 Positions in Finance/IT (11), Administration (1), Safety (1)	$1.0 M
Fuel/Parts Savings – Muni Operations	$2.9 M
Other Non Labor – Other Divisions	$1.0 M
Total	$13.4 M

NOTE: SFMTA will also convert approximately 100 operator positions to part-time to more efficiently schedule service delivery.

Presentation on April 30, 2009

Board of Directors Meeting

FY 2009-2010 PROPOSED AMENDED OPERATING BUDGET
Changes to Revenues ($ millions)

Revenue Category (a)	Approved Budget (b)	Projection as of Feb 2009 (c)	Proposed Amended Budget (d)	Explanation of Figures Between February 2009 Projection and Proposed Amended Budget Columns (c) and (d)
State/Regional Funds	134.6	79.8	79.8	No change
General Fund	252.4	228.1	227.6	Further reduction in General Fund Transfer (0.5)
Advertising	20.0	13.8	13.8	No change
Parking Citations	103.8	97.8	101.4	Expanded meter hours weeknights (10 pm) & Sunday
Parking Meters	44.3	41.3	51.3	Expanded meter hours weeknights (10 pm) & Sunday
Garage Revenues	33.6	29.9	31.4	Garage rate increases
Interest	5.6	4.8	4.8	No change
Fund Balance	36.4	42.3	42.3	No change
Taxi Services	0.0	2.2	18.2	Taxi Pilot Medallion Program ($15M) , and Cost Recovery of permit fees ($0.58), Other Fees ($0.4)
Transit Fares	163.4	164.3	185.9	Increase in single ride fares, discount fares, monthly fast passes, Cable Car Passports, Paratransit fares, Candlestick Park and Special Event Services, and Premium Monthly Passes for Bart/Muni use. Also reflect increased collection of Cable Car fares.
Other Revenues	22.6	22.6	22.3	Decrease in Recoveries from Other City Departments
TOTAL	$816.7	$726.9	$778.8	+ 51.9 M

FY 2009-2010 PROPOSED AMENDED OPERATING BUDGET
Changes to Expenditures ($ millions)

Expenditure Category (a)	Approved Budget (b)	Projection as of Feb 2009 (c)	Proposed Amended Budget (d)	Explanation of Figures Between February 2009 Projection and Proposed Amended Budget Columns (c) and (d)
Salaries & Benefits	496.4	521.5	497.6	Savings from 442 net eliminated positions (370 eliminated + 108 from service reductions – 30 from for meter enforcement - 3 for SPOT – 3 for other) + reduction in increased overtime ($7.0) + increases to Health Care Costs ($2.2)
Materials & Supplies	69.6	69.6	65.4	Savings from service reductions and other expenditure reductions
Services from City Departments	68.4	80.2	70.5	SFPD Work Order ($1.9 M), City Attorney ($0.5M), 311 ($0.8M), Other (1.4M), SFGH ($5.1 million moved from Work Orders to Claims)
Taxi Services	0.0	2.2	2.8	Increased Staffing and Expenditures for Taxi Services (including work orders)
Reserve	10.0	10.0	0.0	Use of reserve
Capital Outlay	7.9	7.9	0.0	Reduction in STA Funds
Other Expenditures	164.4	164.4	142.5	Rollback of CPI and service reductions, debt service
TOTAL	$816.7	$855.8	$778.8	- $77.0 M

FY 2009-2010 PROPOSED AMENDED OPERATING BUDGET

(millions)

	Approved Budget (a)	Projection as of Feb 2009 (b)	Proposed Amended Budget (c)	Variance (c) Compared to (b)
Revenues	$816.7	$726.9	$778.8	↑ $51.9
Expenditures	$816.7	$855.8	$778.8	↓ $77.0
Revenues Less Expenditures	$0	($128.9)	$0	

Presentation on June 2, 2009

Board of Directors Meeting

Background

- On April 30, 2009, the SFMTA Board approved the Amended Operating Budget for 2009-2010 totaling $778.8 million and also made the following changes:
  - Eliminated extension of parking hours to evenings on weekdays
  - Eliminated extension of parking hours to Sunday
  - Reduced SFPD work order
  - Added a $3.00 increase to parking citations to recover the $3.00 increase related to the State Court Construction Fund
  - *The above actions reduced the total of the Amended Operating Budget for 2009-2010 by $4.2 million to $774.6 million*
- The Controller's Office asked the SFMTA to delete a $7.00 million reserve set aside for unsuccessful labor concessions
  - *The above action reduced the total of the Amended Operating Budget for 2009-2010 by $7.0 million to $767.6 million*
- In addition, $2 million in adjustments were made to other line items including revenue transfers, attrition savings and recoveries
  - *The above action reduced the total of the Amended Operating Budget for 2009-2010 by $2.0 million to $765.6 million*

Uses of Funds

On May 12, 2009, additional changes were made to the 2009-2010 Amended Operating Budget

Component	Amount ($ millions)
Service Enhancements	**$8.70**
Monthly Discount Pass Increase Deferral ***Increase from $15 to $20 postponed from Jan 1 to May 1, 2010***	**$1.25**
Monthly Lifeline Pass Reduction ***Decrease from $35 to $30 per month effective Jul 1, 2009***	**$0.35**
TOTAL	**$10.30**

Funding Sources

On May 12, 2009, additional changes were made to the 2009-2010 Amended Operating Budget

Component	Amount ($ millions)
Salary Savings ***Delayed hiring***	**$3.00**
Transit Fare Inspectors (33 positions unbudgeted)	**$2.50**
Work Order Reductions Based on Audits	**$2.50**
SFPD Work Order, Public Garage Drive-by Discontinued	**$0.30**
Reduction in Non-Labor Line Items	**$1.00**
Extension of Parking Meter Hours from 6pm to 8pm based on study results (reserve)	**$1.00**
TOTAL	**$10.30**

Service Enhancements

- $8.7 million in transit service enhancements developed to offset the $13.4 million in service reductions on May 12:
  - Adjust schedules to improve on-time performance and reliability
  - Increase frequencies and modify route structures to address crowding
  - Adjust headways to enhance service on routes parallel to service reductions

FY 2009-2010 Revised Amended Operating Budget
($ millions)

Revenue Category (a)	April 30, 2009 FY 2010 Approved Amended Budget (c)	FY 2010 Adjusted Amended Budget (d)	Explanation of Technical Adjustments between Approved Amended Budget and Adjusted Amended Budget Columns (c) and (d)
State/Regional Funds	79.8	79.8	No Change
General Fund/In Lieu Parking Tax	227.6	228.9	Increase in General Fund Transfer (+$1.2M), In Lieu Parking Tax (+$0.1M)
Advertising	13.8	13.8	No Change
Parking Citations	101.4	101.4	No Change
Parking Meters	42.3	43.3	Extending Meter Hours Based on Study (+$1.0M reserve)
Garage Revenues	31.4	31.4	No Change
Interest	4.8	4.8	No Change
Fund Balance	42.3	42.3	No Change
Taxi Services	18.2	18.5	Clean Air Taxi Program Funds (+$300K)
Transit Fares	181.7	181.3	Lifeline Pass Reduction (-$350K)
Other Revenues	22.3	22.4	Port of SF services recovery (+28K)
TOTAL	**$765.6**	**$767.9**	**$2.3**

FY 2009-2010 Revised Amended Operating Budget

($ millions)

Expenditure Category (a)	April 30, 2009 FY 2010 Approved Amended Budget (c)	FY 2010 Adjusted Amended Budget (d)	Explanation of Technical Adjustments between Approved Amended Budget and Adjusted Amended Budget Columns (c) and (d)
Salaries & Benefits	488.6	493.7	Operators and Street Inspectors for Service Enhancement (+$6.4M) and elimination of 14 Transit Fare Inspector positions (-$1.3M) from May 12 decision
Materials & Supplies	65.4	65.4	No Change ($1.0 million in Service Enhancement needs offset by $1.0 million in non labor line items from May 12 decision)
Work Orders	66.3	63.2	Work Order Reductions Based on Audit (-$2.0M) DTIS (-$0.7M) 311 Call Center (-$0.5M) Real Estate rent (-$52K) Controller's Office audits (+$117.2K)
Taxi Services	2.8	3.1	Clean Air Taxi Program ($300K) – Disbursement of grant funds received from Dept. of the Environment
Rainy Day Reserve	0.0	0.0	No Change
Capital Outlay	0.0	0.0	No Change
Other Expenditures	142.5	142.5	No Change
TOTAL	$765.6	$767.9	$2.3

FY 2009-2010 Revised Amended Operating Budget

($ millions)

	FY 2010 Approved Amended Budget (b)	FY 2010 Revised Amended Budget (c)	Variance (c) Compared to (b)
Revenues	$765.6	$767.9	↑ $2.3
Expenditures	$765.6	$767.9	↓ $2.3
Revenues Less Expenditures	$0	$0	

Presentation on

November 3, 2009

Board of Directors Meeting

FY 2009-2010 Operating Budget
Year End Revenue Projection as of October 15, 2009
Revenues ($ millions)

Revenue Category	(a) 2009-2010 Approved Budget	(b) 2009-2010 Revised Budget	(c) 2009-2010 Year-to-Date Actuals	(d) 2009-2010 Year End Projection	(d-b) Year End Projection Compared to Revised Budget
Transit Fares	181.3	181.3	51.8	181.3	0.0
Operating Grants	79.5	79.5	11.7	79.5	0.0
Parking and Traffic Fees & Fines	244.8	244.8	71.6	232.8	(12.0)
Taxi Services	18.2	18.2	1.1	10.7	(7.5)
Other (Advertising, Interest, TIDF)	21.3	21.3	5.2	21.3	0.0
Interdepartmental Recovery	3.0	4.4	0.1	4.4	0.0
General Fund Transfer	178.3	178.3	89.2	178.3	0.0
Fund Balance – Appropriated	42.2	42.2	42.2	42.2	0.0
Carryforwards and Adjustments	0	13.0	11.3	11.3	0.0
TOTAL	$768.6	$783.0	$284.2	$761.8	($19.5)

FY 2009-2010 Operating Budget
Year End Revenue Projection as of October 15, 2009
($ millions)

Revenue Category	Variance	Explanation between Revised Budget and Projection (-/+ = under/over budget)
Parking and Traffic Fees & Fines	(12.0)	- Parking Meters (3.4) includes (3.0) from parking meter increases not approved in FY 2009 - Parking Citations (4.4) includes (2.4) from $1.50 Courthouse fee to pay off debt on courthouses - Extended Hours Parking (1.0) - Parking Garages (2.0) - Parking Tax (0.7) - Other Fees and Permits (0.5)
Taxi Fees	(7.5)	- Taxi Medallion Pilot Program, mid year implementation
TOTAL	($19.5)	

FY 2009-2010 Operating Budget
Year End Expenditures Projection as of October 15, 2009
Expenditures ($ millions)

Expenditure Category	(a) 2009-2010 Approved Budget	(b) 2009-2010 Revised Budget	(c) 2009-2010 Year-to-Date Actuals	(d) 2009-2010 Year End Projection	2009-2010 Year Projections Compared to 2009-2010 Revised Budget
Salaries & Benefits	484.4	484.4	113.3	492.7	(8.3)
Contracts and Other Services	64.0	67.8	26.7	74.7	(6.9)
Materials & Supplies	40.7	46.3	13.2	53.6	(7.3)
Equipment & Maintenance	42.5	45.3	22.8	45.3	0.0
Rent & Building	7.0	7.5	3.5	7.5	0.0
Insurance & Payments to Other Agencies	66.2	66.2	32.5	69.3	(3.1)
Rainy Day Reserve	0.0	0.0	0.0	0.0	0.0
Work Orders	63.8	65.5	65.4	65.5	0.0
TOTAL	$768.6	$783.0	$277.4	$808.6	($25.6)

FY 2009-2010 Operating Budget
Year End Expenditure Projection as of October 15, 2009
($ millions)

Expenditure Category	Variance	Explanation between Revised Budget and Projection
Salaries & Benefits	(8.3)	- Delayed Service Modifications (0.6) - Service Enhancements (1.9) - Additional Safety and Operations Staffing, 26 positions (2.4) - Salary and Benefits (2.7) - Unbudgeted Labor Settlement (0.3) - Unbudgeted Video Repair (0.4)
Contracts and Other Services	(6.9)	- Bike EIR (1.5) - NextBus contract (2.0) - On Call Bus and Rail contracts to support ARRA projects (3.4)
Materials & Supplies	(7.3)	- Unbudgeted Video Repair (0.4) - Service Enhancements (5.8) - Other (including Bike Plan) (1.1)
Insurance & Payments to Other Agencies	(3.1)	- Unbudgeted premium paid for excess coverage (2.4) - Claims payout (0.7)
Work Orders	0.0	- Assume Controller is able to identify work order savings (2.0)
TOTAL	(25.6)	

FY 2009-2010 Operating Budget
Solutions
($ millions)

Solution	Amount	Explanation
ARRA	6.7	10% allocated to Operations from capital projects
Operator Schedule	1.5	Realigning the schedule $3 million annually, $1.5 million for half year
Overtime Reduction	5.0	Regular Day Off (RDO) Coverage, Special Events
Position Elimination	12.3	Includes 250 positions for 6 months
Total	25.5	

FY 2009 – 2010 Operating Budget
Year End Revenue Projection as of October 15, 2009
Budget to Year End Projection ($ millions)

	FY 2009-2010 Revised Budget	FY 2009-2010 Year End Projection	Variance
Revenues	$783.0	$770.2	↓ $12.8
Expenditures	$783.0	$789.8	↑ $6.8
Deficit			($19.6)

SFMTA Municipal Transportation Agency

FY 2011 and FY 2012 Operating Budget As of January 29, 2010

January 29, 2010 SAN FRANCISCO, CALIFORNIA

Introduction

- Original approved FY 2010 budget = $816.7M
- FY 2010 Approved Budget = $768.6M ($129M deficit balanced, $45M remained, $16.9M left)
- Balancing the two year budget dependent on the actions taken to address the FY 2010 budget deficit
- Continued economic downturn has exhausted fund balance (reserves) and reduced revenues over $230 million ($130 million from State Transit Assistance) since FY 2009
- SFMTA two year budget for FY 2011 and FY 2012 approval required by May 1, 2010

FY 2010 Budget
Revenues Compared to
FY 2011 and FY 2012 ($M)

Revenue Category	FY 2010 Amended Budget	FY 2010 Year End Projection	FY 2011 Budget	FY 2012 Budget
Transit Fares	181.3	181.3	178.1	179.1
Operating Grants	79.5	81.9	76.7	76.7
Parking and Traffic Fees & Fines	244.8	232.8	228.8	231.8
Taxi Services	18.2	14.4	8.2	8.2
Other (Advertising, Interest, TIDF)	21.3	21.4	18.9	19.3
Interdepartmental Recovery	3.0	3.0	3.0	3.0
General Fund Transfer	178.3	175.3	169.3	173.3
Fund Balance – Appropriated	42.2	42.2	0.0	0.0
TOTAL	$768.6	$752.3	$683.0	$691.4

FY 2011 and FY 2012
Change in Revenues
Compared to FY 2010 Amended Budget ($M)

Line Item	FY 2011	FY 2012
Fund Balance (used in FY 2010)	(42.2)	(42.2)
Interest Earnings (economic impact/lower balance invested)	(2.4)	(2.0)
General Fund Transfer (lower tax receipts)	(9.0)	(5.0)
Fare Revenue (net of service modification impacts and TransLink usage)	(3.0)	(2.0)
Garage Revenues (economic impact)	(2.0)	(1.0)
Parking Meter Revenues (economic impact)	(4.0)	(2.0)
Parking Citations (economic impact, street sweeping reduction, overall issuance decline)	(10.0)	(10.0)
Paratransit Fares (economic impact)	(0.2)	(0.2)
Taxi Reform (major revenue form pilot in FY 2010)	(10.0)	(10.0)
Regional Grants (Sales Tax-based Decline)	(2.8)	(2.8)
Preliminary Revenue Change FY 2011 and FY 2012	**(85.6)**	**(77.2)**
Potential Revenue Items		
Impact of Proposals to Balance FY 2010 Budget	15.0	16.0
Second Federal Economic Stimulus Package	Advocating for Revenue	
Gas Tax		
STA/Spillover from State		

FY 2010 Budget Expenditures Compared to FY 2011 and FY 2012 ($M)

Expenditure Category	FY 2010 Amended Budget	FY 2010 Year End Projection	FY 2011 Budget	FY 2012 Budget
Salaries & Benefits	484.4	475.9	478.1	481.1
Contracts and Other Services	64.0	66.4	70.0	74.0
Materials & Supplies	40.7	47.9	50.7	50.7
Equipment & Maintenance	42.5	34.9	47.5	42.5
Rent & Building	7.0	7.5	7.0	7.0
Insurance & Payments to Other Agencies	66.2	69.3	68.6	68.6
Rainy Day Reserve	0.0	0.0	0.0	0.0
Work Orders	63.8	65.9	63.8	63.8
TOTAL	$768.6	$767.8	$785.7	$787.7

FY 2011 and FY 2012
Change in Expenditures
Compared to FY 2010 Amended Budget ($M)

Line Item	FY 2011	FY 2012
Operator Schedule (FY 2010)	(3.0)	(3.0)
Salaries and Benefits Including Layoffs (FY 2010)	(19.5)	(17.9)
Elimination of Sales Tax (Prop B) funding of staffing costs	1.1	1.1
Health, Retirement, and Other Benefit Increases (From Mayor and Controller projections)	15.1	16.5
Vendor Discount Program	(4.0)	(4.0)
Replenish Materials and Parts Budget Reduced in FY 2010	10.0	10.0
Catastrophic Loss Coverage Premium	2.4	2.4
Incremental Operating Costs from Capital Projects (e.g. TransLink, Video Cameras, NextMuni, etc.)	15.0	14.0
Preliminary Expenditure Change FY 2011 and FY 2012	**17.1**	**19.1**
Potential Expenditure Items		
Impact of Proposals to Balance FY 2010 Budget – Labor Concessions (10.0), Service Reductions (25)	(35.0)	(35.0)
Performing Arts Garage EIR	0.9	
Parking and Revenue Control System for Parking Garages	4.0	

FY 2011 and FY 2012 Projected Deficit

($M)

	FY 2011 (Deficit)	FY 2012 (Deficit)
Revenues	(85.6)	(77.2)
Expenditures	17.1	19.1
TOTAL DEFICIT	(102.7)	(96.3)
Proposals to Balance FY 2010	50.0 (Not including Prop K Sales Tax Request)	51.0
REMAINING DEFICIT	(52.7)	(45.3)

Public Meetings

SFMTA Board of Directors Meetings		
	FY 2010	FY 2011 and FY 2012
February 16, 2010	Public Hearing on Fee, Fine and Fare Changes and Possible Approval of FY 2010 Balancing Actions including Muni Service Modifications	
March 2, 2010		Approval of Parking Policies
March 30, 2010		Public Hearing on Fee, Fine and Fare Changes
April 6, 2010		Public Hearing, Possible Budget Adoption
April 20, 2010		Public Hearing, Possible Budget Adoption
Town Hall Meetings (1 SVN, 2nd Floor)		
February 6, 2010	10 am to Noon	
February 9, 2010	6 pm to 8 pm	
March 10, 2010		6 pm to 8 pm
March 20, 2010		10 am to Noon

SFMTA Budget Updates:
www.sfmta.com/sfmtabudget or Call 311

File #100288

CITY AND COUNTY OF SAN FRANCISCO

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MEMORANDUM

TO: President David Chiu and Members of the Board of Supervisors

FROM: Kate H. Stacy
Deputy City Attorney

DATE: April 7, 2010

CC: John Rahaim, Planning Director; Bill Wycko, Environmental Review Officer

RE: Appeal of Determination of Statutory Exemption from Environmental Review for SFMTA Service Reductions and Related Fiscal Emergency

On April 13, the Board of Supervisors is scheduled to consider an appeal of a statutory exemption from environmental review for transit service reductions made by the San Francisco Municipal Transportation Agency ("SFMTA") and the SFMTA's related finding of a fiscal emergency. In this memorandum we provide a summary of the law governing statutory exemptions generally and more specifically the statutory exemption relied on here, and the legal standard for the Board's review of the exemption on appeal. We understand that the Planning Department and SFMTA are separately providing background information on the actions and determination at issue.

Issue Before the Board

CEQA requires that if a nonelected decisionmaking body of a local lead agency, such as the Planning Department, determines that a project is exempt from CEQA, that determination may be appealed to the agency's elected decisionmaking body, here, the Board of Supervisors. (Public Resources Code Section 21151(c).) S.F. Admin. Code Chapter 31 provides for the Planning Department to determine whether projects proposed by City departments are exempt from CEQA. In this case, the Planning Department determined that proposed actions by SFMTA were statutorily exempt from CEQA under Public Resources Code Section 21080.32 and CEQA Guidelines section 15285. The matter before the Board on April 13 is an appeal of the determination by the Planning Department that the SFMTA actions are statutorily exempt from CEQA.

Statutory Exemptions

The California Environmental Quality Act, Public Resources Code sections 21000 et seq. ("CEQA"), provides a number of exemptions where CEQA review is not required. There are generally two kinds of exemptions, a statutory exemption and a categorical exemption. In *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 128-29, the court stated that "statutory exemptions have an absolute quality not shared by categorical exemptions: a project that falls within a statutory exemption is not subject to CEQA even if it has the potential to significantly affect the environment."

At issue here is a statutory exemption. The State Legislature has the power to create exemptions from CEQA's requirements, regardless of the project's potential for adverse environmental consequences. (*Sagaser v. McCarthy* (1986), 176 Cal. App. 3d 288, 299; *Napa Valley Wine Train Inc. v. Public Utilities Commission* (1990), 50 Cal. 3d 370, 376.) "As a practical matter, the statutory exemptions have in common only this: the *Legislature* determined that each promoted an interest important enough to justify forgoing the benefits of environmental review." (*Napa Valley Wine Train*, *supra*, 50 Cal. 3d at 382; emphasis in original.)

The rule that CEQA provisions must be interpreted to give the fullest possible protection to the environment does not control the interpretation of a statutory exemption. (*Napa Valley Wine Train*, *supra*, 50 Cal. 3d at 381.) The *Napa Valley Wine Train* decision states that "[i]t is precisely to avoid that burden for an entire class of projects that the Legislature has enacted the exemption." (*Id.*) Statutory exemptions are expressly enacted to lift the burden of environmental review from specified classes of projects that may in fact have significant effects. Therefore, limiting a statutory exemption to projects that will not adversely affect the environment would defeat the purpose of the exemption. (*Id.*)

Finally, the statute is directive; if the project fits within the terms of the statutory exemptions, no further environmental review may be required. (*See* Public Resources Code Section 21080.32(b), "this division does not apply to actions taken..."; *see also* Public Resources Code Section 21083.1: "It is the intent of the Legislature that courts, consistent with generally accepted rules of statutory interpretation, shall not interpret this division… in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines.") In *Martin v. City and County of San Francisco* (2005), 135 Cal. App. 4th 392, the court prevented the City from requiring a homeowner to conduct more environmental review than CEQA apparently required. In reaching its conclusion restricting the scope of the City's CEQA review, the court said, "CEQA is not to be stretched beyond the 'reasonable scope of the statutory language'..." or "interpreted 'in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines.'" (*Martin*, *supra*, at 402; citations omitted.)

The statutory exemption upon which the Planning Department and the SFMTA relied here is set forth in Public Resources Code Section 21080.32 and CEQA Guidelines section 15285. CEQA Guidelines section 15285 contains the elements of Public Resources Code Section 21080.32 and provides as follows:

> (a) CEQA does not apply to actions taken on or after July 1,1995 to implement budget reductions made by a publicly owned transit agency as a result of a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities. Actions shall be limited to those directly undertaken by or financially supported in whole or in part by the transit agency pursuant to Section 15378(a)(1) or (2), including actions which reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity.
>
> (b) When invoking this exemption, the transit agency shall make a specific finding that there is a fiscal emergency. Before taking its proposed budgetary actions and making the finding of fiscal emergency, the transit agency shall hold a public hearing. After this public hearing, the transit agency shall respond within 30 days at a regular public meeting to suggestions made by the public

> at that initial hearing. The transit agency may make the finding of fiscal emergency only after it has responded to public suggestions.
>
> (c) For purposes of this subdivision, "fiscal emergency" means that the transit agency is projected to have negative working capital within one year from the date that the agency finds that a fiscal emergency exists. "Working capital" is defined as the sum of all unrestricted cash, unrestricted short-term investments, and unrestricted short-term accounts receivable, minus unrestricted accounts payable. Employee retirements funds, including deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, worker's compensation reserves, and insurance reserves shall not be included as working capital.
>
> (d) This exemption does not apply to the action of any publicly owned transit agency to reduce or eliminate a transit service, facility, program, or activity that was approved or adopted as a mitigation measure in any environmental document certified or adopted by any public agency under either CEQA or NEPA. Further, it does not apply to actions of the Los Angeles County Metropolitan Transportation Authority.

Standard of Review

The review of a statutory exemption is narrow. Just as a court is limited in its review under CEQA of whether a statutory exemption applies as discussed above, the Board of Supervisors must examine only whether the actions taken fit within the criteria set forth in the specified statutory exemption, and not whether the project may have environmental impacts – unless the terms of the statutory exemption itself require some analysis of an environmental effect. This Board's authority on appeal derives from CEQA and the Board must adhere to the directives in CEQA. If a project is statutorily exempt, CEQA provides that it "does not apply" and therefore no further environmental review is required.

Accordingly, the Board is limited to determining whether the actions taken by SFMTA meet the terms of the statutory exemption at issue here. For example, the Board may evaluate whether there was adequate evidence in the record to support the SFMTA's finding of a "fiscal emergency" as defined by the statute, or whether the SFMTA complied with the procedures required to invoke the statutory exemption. But in its review on appeal, the Board may not consider possible environmental impacts because the statutory exemption itself does not require any analysis of those impacts.

Please let us know if we can be of further assistance.

F.le #100288

KIM MALCHESKI
ATTORNEY AT LAW
P.O. BOX 40105
SAN FRANCISCO, CALIFORNIA 94140
(415) 647-2797

TO: Board of Supervisors

RE: CEQA Appeal from SFMTA Declaration of Fiscal Emergency
Nos. 2010.0060E, 100288
Hearing Date: April 13, 2010, 4p.m.

Dear Supervisors:

I am writing as a regular MUNI passenger in support of the CEQA appeal filed by David Pilpel in regard to the 2009 Declaration of Fiscal Emergency by the MTA Board and the exemption from environmental review filed by the Planning Department (PD) on February 4, 2010. The appeal is obviously timely and ripe because it was filed within 30 days of the PD's certificate of exemption filed on 02-04-10, and because the MUNI cuts have already gone into effect on some lines. The 26 Valencia line I used to ride has been terminated.

The real issue presented by this appeal is: Will the Board require the MTA and PD to follow CEQA and the Transit First policy of the City Charter?

CEQA legal standards

The purpose of CEQA is to protect the environment, and the law is to be liberally construed to protect the environment. (Martin v. CCSF (2005) 135 Cal.App.4th. 392, 402.) The Planning Commission had a duty to interpret the law so as to afford the "fullest possible protection to the environment within the reasonable scope of the language." (San Franciscans for Reasonable Growth v. CCSF (1984) 151 Cal.App.3d. 61, 74.)

Where a proposed project may have an adverse significant effect on the environment, an environmental impact report should be prepared. (Martin, supra, at p. 401, Public Resources Code §§ 21100, 21151.) "Environment" is defined as the "physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, [and] objects of historical or aesthetic significance." (Public Resources Code § 21060.5.)

While an economic or social condition may not be considered a significant effect on the environment by itself, "a social or economic change related to a physical change may be considered in determining whether the physical change is significant." (CEQA Guideline, § 15382; Martin, supra, at p. 402.)

The Planning Department (PD) is required by CEQA and controlling decisions of the First District Court of Appeal in San Francisco to consider the "cumulative impacts" of other projects in the area, including other closely related past, present, and reasonably foreseeable future projects, which reasonably could adversely affect the environment. (San Franciscans for Reasonable Growth, supra, 151 Cal.App.3d. 61, 73-74, and CEQA Guidelines quoted therein.)

This is not a real fiscal emergency.

As explained by Mr. Pilpel in his well-written and researched letter of March 2, 2010, this is not a real fiscal emergency, and it is certainly not supported by substantial evidence. The $16.9 million budget deficit faced by the MTA is a result of their mismanagement of the agency for years. (See article by Supervisor David Campos, attached hereto as exhibit 1.) According to Mr. Campos, MUNI spent $23.8 million in overtime, or 45.6% of the City's total. That is blatant mismanagement that can only be blamed on MUNI management.

Furthermore, the MTA is spending $67 million on work orders to other City agencies, including $12.2 million to the SFPD to harass MUNI riders. This is a gross waste of MUNI dollars and arguably a violation of the City Charter as it is a misuse of monies in their budget.

According to materials handed out by the MTA at one of their public meetings, it is not enforcing existing parking garage regulations and is not collecting up to $6 million a year in parking revenue. (See attached exhibit 2.)

The decision of the MTA board to declare a fiscal emergency qualifies as a "project" under CEQA as defined by Public Resources Code section 21065(a), as it is an "activity" undertaken by a public agency that will have adverse significant effects on the environment. The definition of "project" has been defined rather broadly by California courts. (See e.g. Livermore v. Local Agency (1986) 184 Cal.App.3d 531.)

This Board should order the PD to prepare an environmental impact report to determine the significant adverse effects on the environment of the ongoing MUNI cuts and fare increases that can reasonably be expected to increase automobile traffic and pollution. San Francisco has a Transit First policy contained in the City Charter, for the obvious reason that the use of automobiles poisons the environment and people.

The PD is legally required to consider the cumulative impacts of other related actions by other public agencies such as AC Transit and BART, which have either cut service and/or increased fares. The PD needs to assess the cumulative impact on the environment of all of those related transit systems because of the high number of commuters that travel to San Francisco every day.

The Board may in its discretion also consider social and economic factors resulting from the MTA's decisions. (See legal standards summarized above.)

In conclusion, I respectfully request that the Board vote in favor of this appeal and order the PD to prepare an environmental impact report. We are not asking the Board to do anything radical here. We are only asking that the Board require City agencies to follow CEQA and the City Charter.

Respectfully submitted,

Kim Malcheski

cc: D. Pilpel
MTA

SFBG
SAN FRANCISCO BAY GUARDIAN ONLINE
Published on *San Francisco Bay Guardian* (http://www.sfbg.com)

Why Muni is in such trouble

By *paula*
Created *03/16/2010 - 12:18pm*

The Municipal Transportation Agency has not had a management and performance audit since 1996. How is it that an $800 million operation can go for 14 years without that type of evaluation?

OPINION The Municipal Transportation Agency's Web site states a goal of providing a "convenient, reliable, accessible, and safe transit system that meets the needs of all transit users" in San Francisco. I have a feeling that if you ask most Muni riders, few would use those words ("convenient," "reliable," "safe," "meeting the needs of all transit users") to describe Muni today.

Riders have been put in the untenable position of paying higher fares for less service. Yet Muni still faces a $17 million deficit (projected to grow to $55 million next year), which it proposes to close by again increasing fares and cutting services. When asked about Muni recently, Mayor Gavin Newsom pointed to a $179 million reduction in state funding as the culprit. And while no one can dispute the devastating impact of such a cut, there are a few questions that suggest that the state alone is not to blame for Muni's troubles.

For one, we just learned that the MTA has not had a management and performance audit since 1996. Although it's undergone a number of fiscal audits, a management audit is different; such an audit would actually evaluates Muni's operations to determine if the system is run effectively and efficiently. How is it that an $800 million operation can go for 14 years without that type of evaluation?

Moreover, what does it say about how Muni is managed when the agency has consistently failed to control overtime costs? We just learned that Muni accounts for about half of the city's overtime expenses. This fiscal year alone, Muni has spent $23.8 million in overtime, or 45.6 percent of the city's total. What kind of management and operational practices allow an agency to function like this? !

And why is Muni spending 9 percent of its budget ($67 million) on work orders (with other departments) for services that may or may not have much to do with its mission — including $12.2 million for the Police Department, $8.5 million for the Department of Telecommunications, and $6.9 million for the General Services Agency that runs 311? Since a quarter of the value of these work orders would suffice to wipe away its deficit, what, if anything, has Muni done about this?

Ex. 1

And speaking of Muni's deficit, why is it that increasing fares and reducing services seem to be the only tools in its tool box? As a number of transportation experts have suggested, there are several options that should have been on the table — raising parking fees, adding parking meters, charging for blue placards, and putting a revenue measure on the ballot, just to name a few. While some of these options may not be the answer, has Muni at least considered them? Did it consider them before proposing more fare increases and service cuts, including doubling fares for seniors, the disabled, and youth?

All this points to a more fundamental question — what about the MTA Board? Has the board provided the type of engaged and independent oversight needed to guarantee effective management? And is independent oversight even possible when all board members are appointed by one person, the mayor?

Because of these and other questions, I am proud that the Board of Supervisors unanimously approved a motion I introduced asking the budget analyst to conduct an independent management audit of the MTA. Given the timing of the budget process, the first phase of the audit will be completed by May 1, with the remainder in the summer. The audit will evaluate key areas of Muni's operations to shed light on whether it is truly following best practices. We owe it to the ridership to face these questions head on. We no longer have the luxury to wait for the state to do the right thing.

SF Supervisor David Campos represents District 9.

Opinion Volume 44, Issue 24 David Campos

Source URL: http://www.sfbg.com/2010/03/16/why-muni-such-trouble

Ex. 2

Possible Solutions (*$M*)

Line Item		
Enforcing existing parking garage pricing ordinance	Enforce existing Planning Code ordinance that says all garages/lots in C-3 can only charge hourly rates for parking (i.e., no daily, early bird, monthly, or annual rates). Requires hiring enforcement personnel. Increases SFMTA revenue by increasing parking garage and tax revenues.	3.0 (half year)
Enhancing existing parking garage ordinance to apply citywide	Planning Code ordinance changed to apply to all parking lots and garages citywide. May require significant time for garages/lots to comply (some would require changes in infrastructure). Requires hiring enforcement personnel. Increases SFMTA revenue by increasing parking garage and tax revenues.	2.6 (half year)
Taxi Penalties and Charges	A revised regulatory penalty schedule to cite permit holders for regulatory violation. Public Charges: (a) a credit card convenience fee of $0.75 per credit card transaction, and (b) a cleaning fee of $100.	0.1
Window Advertising Wraps	Wrap windows on vehicles to allow for full wraps or partial wraps. Amend Vehicle Advertising Contract.	1.0
Automatic Indexing	CPI Increase (2.7% in FY 2011 and 2.8% in FY 2012) on Fares based on CPI-U Forecast (Automatic Indexing Policy approved by the Board). For example, Adult Fast Pass would be $62 in FY 2011 and $64 in FY 2012.	3.5
Stop Consolidation	Optimize the number of stops in the system	3.0

= $6 mil a yr

(Ex 2)

MTA management says bus drivers are over-paid.

How much does an MTA manager make?

name	job title	total 2007 pay NOT including benefits
Nathaniel Ford	Executive Director	$315,000+
Tom Nolan	MTA Board Chairman	$308,000+
John Haley	Deputy CEO	$235,000+*
Stuart Sunshine	Deputy General Manager	$216,000+
Bond Yee	Director Sustainable Streets	$200,000+*
Carter R. Rohan	Director Capital Programs	$199,000+
Sonali Bose	Director of Finance	$197,000+
Kenneth Jew	Principal Engineer	$173,000+
John Funghi	Assoc Engineer	$173,000+
Chung-Ming Wen	Sr Engineer	$171,000+
ames Albert	IS Manager	$169,000+
Vicki Rambo	Deputy Director	$168,000+
William Nelson	Engineer	$168,000+
Ashish Patel	Manager	$160,000+
Diana Buchbinder	Deputy Director	$159,000+
Nabil Tarazi	Engineer	$158,000+
Gregg Wilcox	title unavailable	$157,000+
Kerstin Magary	Manager	$156,000+
Clifton Wong	Engineer	$155,000+
Debra A. Johnson	Director of Administration	$154,000+
Jun Chen	Manager	$153,000+

*new hires

The list goes on...but you get the point.

Maybe drivers aren't the problem.

Ex. 3

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

KATE HERRMANN STACY
Deputy City Attorney

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Email: kate.stacy@sfgov.org

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2010 APR -7 PM 3:15
BY

MEMORANDUM

TO: President David Chiu and Members of the Board of Supervisors

FROM: Kate H. Stacy
Deputy City Attorney

DATE: April 7, 2010

CC: John Rahaim, Planning Director; Bill Wycko, Environmental Review Officer

RE: Appeal of Determination of Statutory Exemption from Environmental Review for SFMTA Service Reductions and Related Fiscal Emergency

---

On April 13, the Board of Supervisors is scheduled to consider an appeal of a statutory exemption from environmental review for transit service reductions made by the San Francisco Municipal Transportation Agency ("SFMTA") and the SFMTA's related finding of a fiscal emergency. In this memorandum we provide a summary of the law governing statutory exemptions generally and more specifically the statutory exemption relied on here, and the legal standard for the Board's review of the exemption on appeal. We understand that the Planning Department and SFMTA are separately providing background information on the actions and determination at issue.

Issue Before the Board

CEQA requires that if a nonelected decisionmaking body of a local lead agency, such as the Planning Department, determines that a project is exempt from CEQA, that determination may be appealed to the agency's elected decisionmaking body, here, the Board of Supervisors. (Public Resources Code Section 21151(c).) S.F. Admin. Code Chapter 31 provides for the Planning Department to determine whether projects proposed by City departments are exempt from CEQA. In this case, the Planning Department determined that proposed actions by SFMTA were statutorily exempt from CEQA under Public Resources Code Section 21080.32 and CEQA Guidelines section 15285. The matter before the Board on April 13 is an appeal of the determination by the Planning Department that the SFMTA actions are statutorily exempt from CEQA.

Statutory Exemptions

The California Environmental Quality Act, Public Resources Code sections 21000 et seq. ("CEQA"), provides a number of exemptions where CEQA review is not required. There are generally two kinds of exemptions, a statutory exemption and a categorical exemption. In *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 128-29, the court stated that "statutory exemptions have an absolute quality not shared by categorical exemptions: a project that falls within a statutory exemption is not subject to CEQA even if it has the potential to significantly affect the environment."

At issue here is a statutory exemption. The State Legislature has the power to create exemptions from CEQA's requirements, regardless of the project's potential for adverse environmental consequences. (*Sagaser v. McCarthy* (1986), 176 Cal. App. 3d 288, 299; *Napa Valley Wine Train Inc. v. Public Utilities Commission* (1990), 50 Cal. 3d 370, 376.) "As a practical matter, the statutory exemptions have in common only this: the *Legislature* determined that each promoted an interest important enough to justify forgoing the benefits of environmental review." (*Napa Valley Wine Train, supra*, 50 Cal. 3d at 382; emphasis in original.)

The rule that CEQA provisions must be interpreted to give the fullest possible protection to the environment does not control the interpretation of a statutory exemption. (*Napa Valley Wine Train, supra*, 50 Cal. 3d at 381.) The *Napa Valley Wine Train* decision states that "[i]t is precisely to avoid that burden for an entire class of projects that the Legislature has enacted the exemption." (*Id.*) Statutory exemptions are expressly enacted to lift the burden of environmental review from specified classes of projects that may in fact have significant effects. Therefore, limiting a statutory exemption to projects that will not adversely affect the environment would defeat the purpose of the exemption. (*Id.*)

Finally, the statute is directive; if the project fits within the terms of the statutory exemptions, no further environmental review may be required. (*See* Public Resources Code Section 21080.32(b), "this division does not apply to actions taken..."; *see also* Public Resources Code Section 21083.1: "It is the intent of the Legislature that courts, consistent with generally accepted rules of statutory interpretation, shall not interpret this division… in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines.") In *Martin v. City and County of San Francisco* (2005), 135 Cal. App. 4th 392, the court prevented the City from requiring a homeowner to conduct more environmental review than CEQA apparently required. In reaching its conclusion restricting the scope of the City's CEQA review, the court said, "CEQA is not to be stretched beyond the 'reasonable scope of the statutory language'..." or "interpreted 'in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines.'" (*Martin, supra*, at 402; citations omitted.)

The statutory exemption upon which the Planning Department and the SFMTA relied here is set forth in Public Resources Code Section 21080.32 and CEQA Guidelines section 15285. CEQA Guidelines section 15285 contains the elements of Public Resources Code Section 21080.32 and provides as follows:

> (a) CEQA does not apply to actions taken on or after July 1,1995 to implement budget reductions made by a publicly owned transit agency as a result of a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities. Actions shall be limited to those directly undertaken by or financially supported in whole or in part by the transit agency pursuant to Section 15378(a)(1) or (2), including actions which reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity.
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Standard of Review

The review of a statutory exemption is narrow. Just as a court is limited in its review under CEQA of whether a statutory exemption applies as discussed above, the Board of Supervisors must examine only whether the actions taken fit within the criteria set forth in the specified statutory exemption, and not whether the project may have environmental impacts – unless the terms of the statutory exemption itself require some analysis of an environmental effect. This Board's authority on appeal derives from CEQA and the Board must adhere to the directives in CEQA. If a project is statutorily exempt, CEQA provides that it "does not apply" and therefore no further environmental review is required.

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Please let us know if we can be of further assistance.

ORIGINAL

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TO: Board of Supervisors

RE: CEQA Appeal from SFMTA Declaration of Fiscal Emergency
Nos. 2010.0060E, 100288
Hearing Date: April 13, 2010, 4p.m.

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As explained by Mr. Pilpel in his well-written and researched letter of March 2, 2010, this is not a real fiscal emergency, and it is certainly not supported by substantial evidence. The $16.9 million budget deficit faced by the MTA is a result of their mismanagement of the agency for years. (See article by Supervisor David Campos, attached hereto as exhibit 1.) According to Mr. Campos, MUNI spent $23.8 million in overtime, or 45.6% of the City's total. That is blatant mismanagement that can only be blamed on MUNI management.

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Kim Malcheski

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cc: D. Pilpel
MTA

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By *paula*
Created *03/16/2010 - 12:18pm*

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For one, we just learned that the MTA has not had a management and performance audit since 1996. Although it's undergone a number of fiscal audits, a management audit is different; such an audit would actually evaluates Muni's operations to determine if the system is run effectively and efficiently. How is it that an $800 million operation can go for 14 years without that type of evaluation?

Moreover, what does it say about how Muni is managed when the agency has consistently failed to control overtime costs? We just learned that Muni accounts for about half of the city's overtime expenses. This fiscal year alone, Muni has spent $23.8 million in overtime, or 45.6 percent of the city's total. What kind of management and operational practices allow an agency to function like this? !

And why is Muni spending 9 percent of its budget ($67 million) on work orders (with other departments) for services that may or may not have much to do with its mission — including $12.2 million for the Police Department, $8.5 million for the Department of Telecommunications, and $6.9 million for the General Services Agency that runs 311? Since a quarter of the value of these work orders would suffice to wipe away its deficit, what, if anything, has Muni done about this?

Ex. J

And speaking of Muni's deficit, why is it that increasing fares and reducing services seem to be the only tools in its tool box? As a number of transportation experts have suggested, there are several options that should have been on the table — raising parking fees, adding parking meters, charging for blue placards, and putting a revenue measure on the ballot, just to name a few. While some of these options may not be the answer, has Muni at least considered them? Did it consider them before proposing more fare increases and service cuts, including doubling fares for seniors, the disabled, and youth?

All this points to a more fundamental question — what about the MTA Board? Has the board provided the type of engaged and independent oversight needed to guarantee effective management? And is independent oversight even possible when all board members are appointed by one person, the mayor?

Because of these and other questions, I am proud that the Board of Supervisors unanimously approved a motion I introduced asking the budget analyst to conduct an independent management audit of the MTA. Given the timing of the budget process, the first phase of the audit will be completed by May 1, with the remainder in the summer. The audit will evaluate key areas of Muni's operations to shed light on whether it is truly following best practices. We owe it to the ridership to face these questions head on. We no longer have the luxury to wait for the state to do the right thing.

SF Supervisor David Campos represents District 9.

Opinion Volume 44, Issue 24 David Campos

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Possible Solutions *($M)*

how long?

728 wy

Ex. 2

Line Item	[illegible]	[illegible]
Enforcing existing parking garage pricing ordinance	Enforce existing Planning Code ordinance that says all garages/lots in C-3 can only charge hourly rates for parking (i.e., no daily, early bird, monthly, or annual rates). Requires hiring enforcement personnel. Increases SFMTA revenue by increasing parking garage and tax revenues.	3.0 (half year) = $6 mil a yr = $6 mill a yr
Enhancing the existing parking garage ordinance to apply citywide	Planning Code ordinance changed to apply to all parking lots and garages citywide. May require significant time for garages/lots to comply (some would require changes in infrastructure). Requires hiring enforcement personnel. Increases SFMTA revenue by increasing parking garage and tax revenues.	2.6 (half year)
Taxi Penalties and Charges	A revised regulatory penalty schedule to cite permit holders for regulatory violation. Public Charges: (a) a credit card convenience fee of $0.75 per credit card transaction, and (b) a cleaning fee of $100.	0.1
Window Advertising Wraps	Wrap windows on vehicles to allow for full wraps or partial wraps. Amend Vehicle Advertising Contract.	1.0
Automatic Indexing	CPI increase (2.7% in FY 2011 and 2.8% in FY 2012) on Fares based on CPI-U Forecast (Automatic Indexing Policy approved by the Board). For example, Adult Fast Pass would be $62 in FY 2011 and $64 in FY 2012.	3.5
Stop Consolidation	Optimize the number of stops in the system	3.0

(Ex. 2)

MTA managem( )t says bus drive are over-paid.

How much does an MTA manager make?

name	job title	total 2007 pay NOT including benefits
Nathaniel Ford	Executive Director	$315,000+
Tom Nolan	MTA Board Chairman	$308,000+
John Haley	Deputy CEO	$235,000+*
Stuart Sunshine	Deputy General Manager	$216,000+
Bond Yee	Director Sustainable Streets	$200,000+*
Carter R. Rohan	Director Capital Programs	$199,000+
Sonali Bose	Director of Finance	$197,000+
Kenneth Jew	Principal Engineer	$173,000+
John Funghi	Assoc Engineer	$173,000+
Chung-Ming Wen	Sr Engineer	$171,000+
James Albert	IS Manager	$169,000+
Vicki Rambo	Deputy Director	$168,000+
William Nelson	Engineer	$168,000+
Ashish Patel	Manager	$160,000+
Diana Buchbinder	Deputy Director	$159,000+
Nabil Tarazi	Engineer	$158,000+
Gregg Wilcox	title unavailable	$157,000+
Kerstin Magary	Manager	$156,000+
Clifton Wong	Engineer	$155,000+
Debra A. Johnson	Director of Administration	$154,000+
Jun Chen	Manager	$153,000+

*new hires

The list goes on…but you get the point.

Maybe drivers aren't the problem.

Ex. 3