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Attachment B

July 8, 2009

Programming and Allocation Committee
Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607

Dear Members of the Programming and Allocations Committee:

As you are aware proposed funding for the OAC project includes two federal sources. $70million in FTA formula funds through ARRA and BART's request for a loan of $150 million through the Department of Transportation's TIFIA program. FTA Circular No. FTA C 4702.1A details Title VI Guidelines for FTA recipients while the Title VI provisions for the TIFIA loan are covered under FHWA guidelines. As the Metropolitan Planning Organization responsible for programming these two federal funds sources for the OAC, MTC has a responsibility to ensure that a proper Title VI analysis was completed by BART for the OAC project. Specifically FTA Circular No. FTA C 4702.1A states that an MPO's Title VI responsibilities include:

1. GUIDANCE ON CONDUCTING METROPOLITAN TRANSPORTATION PLANNING.
   In order to integrate, into metropolitan planning activities, considerations expressed in the DOT Order on Environmental Justice, MPOs should have an analytic basis in place for certifying their compliance with Title VI. Examples of this analysis can include:
   a. A demographic profile of the metropolitan area that includes identification of the locations of socioeconomic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI.
   b. A metropolitan transportation planning process that identifies the needs of low-income and minority populations.
   c. An analytical process that identifies the benefits and burdens of metropolitan transportation system investments for different socioeconomic groups, identifying imbalances and responding to the analyses produced.

   In addition, in 2006 MTC adopted Environmental Justice Principles #1 and #2 which require that the Commission:

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Principle #1 – Create an open and transparent public participation process that empowers low-income communities and communities of color to participate in decision making that affects them.

Principle #2 – Collect accurate and current data essential to defining and understanding the presence and extent of inequities, if any, in transportation funding based on race and income.

In response to a Public Records request made by Public Advocates on June 12th (please see attached copy) to BART regarding preparation of a Title VI analysis for the Oakland Airport Connector Projector BART failed to include any documentation that a Title VI report was completed but rather sent a copy of a section of the Final EIR/EIS from March 2002 (please see attached letter from BART staff). The documentation included in the FEIR/FEIS in insufficient for meeting Title VI requirements - as outlined in FTA Circular No. FTA C 4702. 1A (and fails to meet the standard set by the EJ Principles the Commission adopted) in several areas:

Section V - 6

(1) Assess the effects of the proposed fare or service change on minority and low-income populations.
(a) Route changes. For proposed major service changes that would reduce or expand frequency of service or add or eliminate routes, the recipient should produce maps of the routes that would be eliminated, reduced, added, or expanded, overlaid on a demographic map of the service area, that highlights those Census tracts or traffic analysis zones where the total minority and low-income population is greater than the service area average.
(b) Span of service. For proposed changes that would reduce or expand hours and days of service, the recipient should analyze any available information generated from ridership surveys that indicates whether minority and low-income riders are more likely to use the service during the hours and/or days that would be eliminated.
(c) Fare changes. For proposed changes that would increase or decrease fares on certain transit modes or by fare payment type or payment media, the recipient should analyze any available information generated from ridership surveys indicating whether minority and low-income riders are more likely to use the mode of service, payment type, or payment media that would be subject to the fare increase.
(2) Assess the alternatives available for people affected by the fare increase or major service change.

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(a) Service changes. For proposed service changes, the recipient should analyze what, if any, modes of transit or transit routes are available for people affected by the service expansions or reductions. This analysis should compare the travel time and cost of the current route with the travel time and cost to the rider of the alternatives.
(b) Fare changes. For proposed fare changes, the recipient should analyze what, if any, alternative transit modes, fare payment types, or fare payment media are available for people affected by the fare change. This analysis should compare the fares paid under the change with fares that would be paid through available alternatives.
(3) Describe the actions the agency proposes to minimize, mitigate, or offset any adverse effects of proposed fare and service changes on minority and low-income populations.
(4) Determine which, if any of the proposals under consideration would have a disproportionately high and adverse effect on minority and low-income riders. Recipients can implement a fare increase or major service reduction that would have disproportionately high and adverse effects provided that the recipient demonstrates that the action meets a substantial need that is in the public interest and that alternatives would have more severe adverse effects than the preferred alternative.

Therefore Urban Habitat and others do not see how the PAC or the Commission as a whole can move forward with any decision to provide BART with Federal funds in absence of the required Title VI Analysis. Given that it is MTC's responsibility to ensure that the Title VI analysis has been completed, we ask that you comply with federal law and immediately require BART to complete the necessary Title VI Analysis as outlined in FTA Circular No. FTA C 4702. 1A before making any decision on the allocation of federal funds for the OAC project.

Sincerely,

Bob Allen
Transportation and Housing Program Director
Urban Habitat

Cc:
Steve Hemminger, Metropolitan Transportation Commission Staff
Minority Citizens Advisory Committee

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June 12, 2009

Kenneth A. Duron
District Secretary
Bay Area Rapid Transit District
300 Lakeside Drive, 23rd Floor
Oakland CA 94612

VIA FACSIMILE & REGULAR MAIL
FAX: (510) 464-6011

Re: Public Records Act Request

Dear Mr. Duron:

FTA Circular 4702.1A requires, in part, that "recipients . . . shall evaluate significant system-wide service and fare changes and proposed improvements at the planning and programming stages to determine whether those changes have a discriminatory impact."

Pursuant to the Public Records Act, California Government Code § 6250 et seq., please provide us with a copy of any evaluation that was prepared by or on behalf of the Bay Area Rapid Transit District ("BART") with respect to the Oakland Airport Connector (OAC) project pursuant to FTA Circular 4702.1A.

Public Advocates will pay reasonable copying costs. We look forward to your response within ten days, pursuant to California Government Code, § 6253(c). Thank you for your attention to this matter.

Sincerely,

Guillermo Mayer
Staff Attorney

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BART

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
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June 25, 2009

Guillermo Mayer
Public Advocates Inc.
131 Steuart Street, Suite 300
San Francisco, CA 94105-1241

via fax only: 415-431-1048

Dear Mr. Mayer,

In response to your California Public Records Act request of June 12, 2009, we are faxing Section 3.15, Environmental Justice, of the Oakland Airport Connector Project Final Environmental Impact Report/Final Environmental Impact Statement.

This completes the District's response to your request.

Sincerely,

Kenneth A. Duron
District Secretary