U.S. Department
of Transportation

**Federal Transit
Administration**

The Administrator

1200 New Jersey Avenue, SE
Washington, D.C. 20590

January 15, 2010

Mr. Steve Heminger
Executive Director
Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607

Ms. Dorothy Dugger
General Manager
San Francisco Bay Area Rapid Transit District
300 Lakeside Drive
P.O. Box 12688
Oakland, CA 94604-2688

Dear Mr. Heminger and Ms. Dugger:

I write to inform you of the Federal Transit Administration's (FTA) serious concerns regarding the Metropolitan Transportation Commission's (MTC) and the Bay Area Rapid Transit District's (BART) pursuit of federal assistance for the Oakland Airport Connector Project (the Project). Specifically, FTA is concerned with the preliminary results of a recent Title VI compliance review for BART, which revealed that BART failed to conduct an equity analysis for service and fare changes for the Project. In light of this development, MTC and BART are now in danger of losing federal funding for the project, including American Recovery and Reinvestment Act (ARRA) funds. MTC and BART must now face a choice between continuing to pursue federal funding for the Project (which will require immediate corrective action of the Title VI non-compliance) or committing the ARRA funds to alternative projects within the Bay Area.

In September 2009, FTA received a complaint alleging that BART failed to complete a service equity analysis for the Project. In response, FTA conducted a compliance review from December 15th through the 17th, 2009. During the review, BART's staff acknowledged it failed to integrate Title VI into BART's service planning and monitoring activities for the Project. BART also admitted that it did not conduct an equity evaluation of its service changes other than the one conducted on the 2009 reduction in service headways. While BART's non-compliance with Title VI will be addressed through the Office of Civil Rights' compliance review process, FTA brings this situation to your attention immediately because of the timing required to award grants to the Project.

We are in receipt of your "Title VI, Environmental Justice, and Limited English Proficiency Analysis of Proposed Service and Fare Changes," dated yesterday, which appears to be an attempt to meet the Title VI Circular requirements for a service equity analysis for the Project. Our initial review finds it insufficient to meet the Circular's requirements on many fronts. The equity analysis fails to analyze whether the Project's improvement and the service reductions would have a discriminatory impact. In addition, your analysis still does not address: (1) a policy for what constitutes a "major service change;" (2) the impacts of the major service change according to a specified procedure, including route changes and span of service; (3) an analysis of what alternative modes of transit are available for people affected by the service expansion and reductions, including the travel time and cost of the current route compared to the cost to the rider of the alternative; and (4) documented evidence of steps taken to seek out and consider the viewpoints of minority and low-income populations in the course of developing the policy on major service changes.

Should MTC and BART wish to continue pursuing federal funding for the Project, BART must perform an equity evaluation with respect to the Project that addresses each of the concerns laid out in the paragraph above. In addition, BART would be required to provide FTA with an implementation strategy for mitigating any adverse impacts identified in the equity evaluation and promptly provide satisfactory answers to any follow-up questions FTA might have. If BART provides an acceptable action plan, FTA will approve the award of grants for the Project but only with a condition that prohibits BART from drawing down any funds until it completes the action plan, implements any mitigation measures, and fully remediates non-compliance with all Title VI requirements.

The above option involves considerable risk to the $70 million in ARRA funds currently programmed by FTA for the Project. ARRA requires FTA by **March 5, 2010**, to withdraw from each urbanized area or State any unobligated funds. By law, those funds must be redistributed to other urbanized areas or States that have not had funds withdrawn. Even should BART submit a timely action plan acceptable to FTA, BART's implementation actions will certainly extend beyond the March 5, 2010 deadline. *If BART were to fail in any respect to make progress or to meet its deadlines as established in the action plan, FTA would have to de-obligate the ARRA funds for the Project and would be prohibited by law from re-obligating those funds to alternative projects in the San Francisco Bay area.*

Should MTC and BART decide instead to pursue the other alternative of not seeking federal funding for the Project, then I advise you that FTA will still expect BART's complete and timely cooperation in remediating Title VI non-compliance issues.

Please let me know as soon as possible if you choose to pursue federal funding for the Project, which would trigger the requirement that BART timely submit a remedial action plan. We would also like to know if MTC and BART choose the alternative of reprogramming the ARRA funds to other Bay Area projects so we can execute those grants promptly.

Should you have any questions regarding the above, please feel free to contact me or FTA Chief Counsel Dorval R. Carter, Jr. at (202) 366-4011.

Sincerely,

Peter M. Rogoff