METROPOLITAN
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COMMISSION

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Memorandum

TO: Commission

DATE: February 10, 2009

FR: Executive Director

W. I.: 1131

RE: Oakland Airport Connector - Update

A few days after our lengthy January 27th Commission meeting, BART submitted an initial draft "action plan" to the Federal Transit Administration (FTA) that outlines a scope of work and schedule for correcting deficiencies in BART's compliance with Title VI of the Civil Rights Act, both as an agency in general terms as well as specifically in connection with the Oakland Airport Connector (OAC) project. BART has been in regular contact with FTA since the submission of the initial draft, but as of this date has received no assurance that a final action plan will be approved by the February 16th deadline established by the Commission.

As a reminder, there are three separate sources of federal funding in BART's financial plan to construct the OAC project: $70 million in American Recovery and Reinvestment Act (ARRA) funds approved by MTC in February 2009, $25 million in New Starts funds, and an approximately $80 million cash flow loan for which BART has applied under the terms of the Transportation Infrastructure Finance and Improvement Act (TIFIA). Although only the ARRA funds face a statutory obligation deadline of March 5, 2010, I think it is fair to characterize all three of these federal funding sources as "at risk" if the issue of BART's Title VI compliance cannot be favorably resolved in the near future. A summary of the OAC financial plan is contained in Attachment 1.

If BART is able to secure FTA approval of its Title VI action plan by the February 16th deadline, I continue to recommend that the Commission retain its $70 million ARRA commitment to the OAC project, even though a failure ultimately to resolve BART's Title VI issues after the March 5th statutory obligation deadline could result in a loss of these ARRA funds to the region and the State of California. As noted at your meeting last month, I think this risk is real, but manageable. If FTA has not approved the action plan by next week, I believe the Commission should redirect the ARRA funds to the Tier 2 list of back-up projects so that we can attempt to obligate the $70 million to those projects by the March 5th deadline. For your information, the Tier 2 list is contained in Attachment 2. To cover both bases, we will prepare two alternate Commission resolutions for your consideration at the special meeting next week.

In the meantime, last week MTC received another letter from FTA requesting information about our agency's Title VI compliance procedures, especially as they relate to oversight of the region's transit operators that receive federal support through our programming and allocations process. A copy of that letter is contained in Attachment 3. As requested, we will be responding to this new FTA inquiry within 30 days.

If you have any questions about any of these matters in advance of the February 17th special Commission meeting, please do not hesitate to contact Ann Flemer or me. Please note that the special meeting is scheduled for 1:30 p.m. to accommodate a conflict with another regional agency board meeting in the morning.

Steve Heminger

Attachments

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OAC Financial Plan

Source	$Millions	
ACTIA	89	
Port of Oakland	29	(1)
STIP	21	
Tolls	146	
Proposition 1B	33	
ARRA	70	
New Starts	25	
TIFIA Loan	79	
Total	492	

(1) Total Port of Oakland funding commitment is $40 million, with remainder available later to help repay TIFIA loan.

Attachment 2

METROPOLITAN TRANSPORTATION COMMISSION
American Recovery and Reinvestment Act
Federal Transit Administration Formula Program
TIER 2

Tier 2 - Strategic Investments

Project Title	Implementing Agency	Tier 2 ARRA Funding
Non-System Preservation Project		**~~$70,000,000~~**
~~Oakland Airport Connector~~	~~BART~~	~~$70,000,000~~

Tier 2 Contingency List

Project Title	Implementing Agency	Tier 2 ARRA Funding
Public Transit System Preservation Projects		**$70,000,000**
AC Transit		
Preventive Maintenance	AC Transit	$6,014,364
ADA Paratransit Operating Assistance	AC Transit	$668,262
SUBTOTAL		$6,682,626
BART		
Additional Coverboards Replacement	BART	$6,000,000
Additional APSE units for 40 more C-1 cars	BART	$6,400,000
Additional Floor and Seat Cushion Replacements for 50 more cars	BART	$2,550,000
Additional Car Capacity Interior Reconfiguration for 100 more cars	BART	$1,000,000
48V Power Supplies for Station Communications	BART	$1,022,051
SUBTOTAL		$16,972,051
Caltrain		
San Mateo County Railroad Bridge Replacement	Caltrain	$2,684,596
SUBTOTAL		$2,684,596
GGBHTD		
Bus Wash Racks/Water Reclamation System	GGBHTD	$2,447,279
SUBTOTAL		$2,447,279
SFMTA		
LRV Truck Rebuild Program - Phase I	SFMTA	$13,158,767
Preventive Maintenance	SFMTA	$4,300,000
SUBTOTAL		$17,458,767
Samtrans		
Replacement of up to 137 buses	Samtrans	$2,045,371
SUBTOTAL		$2,045,371
VTA		
107 Hybrid 40' Bus Replacements	VTA	$12,251,784
SUBTOTAL		$12,251,784
ACE		
Midlife Overhaul of 5 ACE locomotives	ACE	$763,107
SUBTOTAL		$763,107
CCCTA		
Preventive Maintenance	CCCTA	$1,107,398
SUBTOTAL		$1,107,398
ECCTA		
IT Structure - Replace all Office Hardware & Software	ECCTA	$500,000
Resurface Bus Parking Lot	ECCTA	$468,120
Replace Shop Lifts	ECCTA	$86,768
SUBTOTAL		$1,054,888

Tier 2 Contingency List

Project Title	Implementing Agency	Tier 2 ARRA Funding
Fairfield		
Bus Purchase/replacements (6)	Fairfield	$788,484
SUBTOTAL		$788,484
LAVTA		
ADA Paratransit	LAVTA	$77,905
Preventive Maintenance	LAVTA	$701,141
SUBTOTAL		$779,046
NCTPA		
VINE PMI Tools & Equipment	NCTPA	$400,000
VINE Bus Rehab	NCTPA	$321,312
SUBTOTAL		$721,312
Santa Rosa CityBus		
Hybrid Bus Purchase	Santa Rosa CityBus	$983,249
SUBTOTAL		$983,249
Sonoma County Transit		
CNG Bus Purchase	Sonoma County Transit	$448,161
SUBTOTAL		$448,161
Union City		
Replacement Buses (2)	Union City	$77,123
SUBTOTAL		$77,123
City of Vacaville		
Vacaville Intermodal Station	City of Vacaville	$527,655
SUBTOTAL		$527,655
City of Vallejo		
Vallejo Station	City of Vallejo	$2,009,466
SUBTOTAL		$2,009,466
WestCat		
Preventive Maintenance	WestCat	$107,637
Facility Upgrade		$90,000
SUBTOTAL		$197,637
ARRA - Public Transit System Preservation Total		**$ 70,000,000**

Attachment 3

U.S. Department
of Transportation
**Federal Transit
Administration**

Headquarters

5th Floor – East Bldg, TCR
1200 New Jersey Ave, S.E.
Washington, D.C. 20590

February 3, 2010

Steve Heminger
Executive Director
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607

Dear Mr. Heminger:

This letter is in response to a complaint received in our office in September 2009 by Public Advocates on behalf of Urban Habitat Program, Transform, and Genesis against the Bay Area Rapid Transit District ("BART") alleging violations of Title VI of the Civil Rights Act of 1964.

The complaint alleges that BART did not conduct a service equity analysis of its Oakland Airport Connector project. Also, noted in the complaint sent to FTA, on July 8, 2009, Mr. Bob Allen of Urban Habitat spoke during a public meeting before Metropolitan Transportation Commission (MTC) staff advising of BART's "failure to produce the required equity analysis for this project." As a follow up to this public meeting a letter was sent to the Programming and Allocation Committee of MTC, dated July 8, 2009, by Mr. Allen outlining the service equity requirements. In a letter dated July 14, 2009, BART's staff attorney sent a letter to MTC's general counsel indicating that "BART has a policy in place for the evaluation of fare and service changes that has been approved by the FTA through every Triennial audit."

The Federal Transit Administration (FTA) Office of Civil Rights is responsible for civil rights compliance and monitoring, which includes ensuring that providers of public transportation properly implement Title VI; the Department of Transportation regulations, 49 CFR Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964"; and FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients."

From December 15 to 17, 2009, FTA conducted an on-site compliance review of BART's Title VI program. Preliminary compliance review findings indicate that BART had not conducted the necessary service equity analysis for this project or fare equity analysis.

As you are aware, BART is a subrecipient of the MTC, and, therefore, MTC is responsible for ensuring its subrecipeints comply with Title VI, the DOT Title VI regulations, and FTA Circular 4702.1A. Your agency is responsible for documenting a process that ensures that all MTC subrecipients are in compliance with the reporting requirements of FTA C 4702.1A.

The fact that BART has not conducted the necessary service equity analysis for the OAC project or fare equity analysis raises concerns that your agency does not have procedures in place to monitor its subrecipients. In order to determine whether MTC is in compliance with Title VI, FTA's Office of Civil Rights requests MTC send FTA the following information within 30 days of receipt of this letter:

- a list of all MTC subrecipients; and
- MTC's procedures for monitoring Title VI compliance of its subrecipients.

FTA will determine whether the information MTC provides meets Title VI requirements. If you have any questions regarding this request for information, please contact Amber Ontiveros at 202-366-5130 or at her electronic mail address: *amber.ontiveros@dot.gov*.

Sincerely,

Cheryl L. Hershey
Director, Office of Civil Rights

cc: Dorothy Dugger, General Manager, BART
Dorval Carter, Jr., Chief Counsel, Federal Transit Administration
Amber Ontiveros, Equal Opportunity Specialist