



METROPOLITAN
TRANSPORTATION
COMMISSION

Agenda Item 4

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Memorandum

TO: Legislation Committee

DATE: Feb. 24, 2006

FR: Executive Director

W. I.: 1114

RE: Proposed Environmental Justice (EJ) Principles

In January, the Minority Citizen's Advisory Committee (MCAC) presented to the Legislation Committee a set of four environmental justice principles. The principles were an outcome of many months of development by MCAC, including collaborative discussions with staff last summer. The resulting principles were supported by staff to serve as the Environmental Justice framework for the Commission, acknowledging that continuing work between MCAC, MTC staff and the Bay Area Partnership would be required to develop policies and procedures for implementing principles in future planning and funding decisions. The principles are outlined in Attachment A.

After hearing testimony during its January meeting, including comments from the Congestion Management Agencies raising concerns and recommending alternative language to the principles, the Committee requested that MCAC meet with the Bay Area Partnership to determine if mutually acceptable language could be achieved. Previously in December 2005, the MCAC chair and MTC staff had presented the principles to the Partnership Board for its information, at which time the Board adopted the following statement:

"The Partnership strongly supports the work of the MCAC, and supports the four proposed principles as important components within the Commission's complex investment decision-making processes which must balance multiple important factors when making planning and programming decisions. The Partnership looks forward to actively participating in the process of making these principles operational."

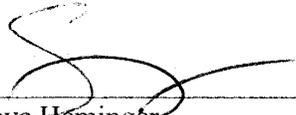
On February 3, 2006, a joint meeting was convened and led by the chairs of MCAC and the Partnership Board. During a lengthy session, modified language to MCAC's original principles was discussed, but no action was taken since neither MCAC nor the Partnership had a quorum present at the joint meeting. Subsequently, at its regular meeting on February 14th, MCAC voted to retain its original language as outlined in Attachment A, and requests the Committee's approval thereof.

For the Committee's information, written comments received on the proposed principles since January are included in Attachment B.

The Legislation Committee also requested that MTC's General Counsel review MCAC's proposed principles. In particular, the Committee was interested in whether the Commission

might encounter increased legal exposure if the principles were adopted. A separate memorandum from Francis Chin is included for your consideration.

As you recall, the third and fourth principles occasioned the most comment at your January meeting, and this continues to be reflected in the edits suggested by our local partners and your Counsel. I continue to believe that the four principles as drafted by MCAC are workable and feasible to implement, but it is a policy matter for the Commission to determine in which precise words and phrases it wishes to express its commitment to environmental justice.



Steve Heminger

ATTACHMENT A

MCAC Proposed Environmental Justice Principles

Title: MTC and Environmental Justice

Opening Statement: To ensure that Environmental Justice is effectively incorporated into all of the Metropolitan Transportation Commission's planning, decision-making, funding and operations, the Minority Citizens Advisory Committee urges the Metropolitan Transportation Commission to adopt and implement the following principles.

Principles:

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.

Principle #3 – MTC should change its discretionary investment decisions and actions to mitigate identified inequities.

Principle #4 – Ensure that adverse or potentially adverse disproportionate project impacts on low-income and/or minority communities are addressed and mitigated by project sponsors prior to MTC project or funding approval.

ATTACHMENT B

Congestion Management Agency and Transportation Justice Working Group

Letters

Bay Area CMA Directors

December 16, 2005

Hon. Jon Rubin, Chairman
Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607-4700

RE: Recommendations Regarding MTC's Minority Citizens Advisory Committee (MCAC) Proposed Policy Relative to Environmental Justice

Dear Chair Rubin:

MTC staff advised the Bay Area Partnership on December 5, 2005 that the policy on Environmental Justice proposed by your MCAC would be forwarded to the Commission for your consideration in January 2006. The Executive Directors of the Bay Area's Congestion Management Agencies have reviewed the proposed policy, both as part of the Bay Area Partnership and at the CMA Directors' meeting of December 9, 2005. The Directors unanimously support the concept of Environmental Justice, and the need for MTC to fully address the U.S. Department of Transportation's *Order to Address Environmental Justice in Minority Populations and Low-Income Populations* (DOT Order 5610.2).¹

Context for an Environmental Justice Policy

While the Directors support the need for pro-actively addressing environmental justice issues, we also believe that a policy on Environmental Justice must be considered in context.

First, recognizing that DOT Order 5610.2 defines Environmental Justice, we recommend that the MTC policy refer explicitly to the Order.

Second, should the Commission adopt the proposed policy, together with the Bay Area Partnership we recommend that contribution to attaining Environmental Justice be viewed as one among several determining factors. It should be recognized that in its decision-making process the Commission must balance its actions by considering environmental justice together with the many other compelling objectives.

State Interpretation of Environmental Justice Requirements

The following is drawn from a Caltrans publication on Environmental Justice, and it provides a clear interpretation of the requirements in E.O 12898. For consistency, the MTC resolution adopting the policy should cite this interpretation:

¹ Available at <<http://www.fhwa.dot.gov/environment/ejustice/ej-10-7.htm>>

Bay Area CMA Directors

"The objective of the Order is to ensure that the interests and well being of minority populations and low-income populations are considered and addressed during transportation decision making, and to achieve this by working within the existing statutory and regulatory requirements. Like E.O. 12898, the DOT Order does not create a new set of requirements for state and local agencies, but is intended to reinforce considerations already embodied in existing law, such as NEPA and Title VI. The Order states that DOT will not carry out any programs, policies or activities that will have a disproportionately high and adverse effect on minority populations or low-income populations unless "further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable."²

Other Compelling Considerations

As the Commission knows all too well, funding available for transportation investments is very limited, and identified needs far exceed available revenues in many areas. The region needs more investment in safety, including seismic retrofit projects, in rehabilitation and maintenance to protect and preserve local streets and roads and transit systems, in operational improvements and congestion relief, and to expand the highway and transit systems. A Commission policy on Environmental Justice must be implemented in the context of these many compelling needs, and as one component of the decision-making process at MTC, the CMAs, local jurisdictions, the transit operators, other agencies and Caltrans.

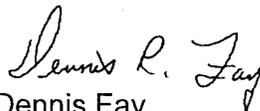
Conclusion

We appreciate the opportunity to offer our recommendations to the Commission relative to the proposed MCAC Environmental Justice policy. To summarize, we believe that a proactive approach to Environmental Justice by the Commission, the CMAs, local jurisdictions, transit operators, other agencies and Caltrans is warranted; and recommend that such a policy be implemented in the context of the definition of Environmental Justice found in DOT U.S. Order 5610.2, and of the many other compelling considerations facing the Commission in making transportation planning, programming and investment decisions; and in a manner consistent with the State's interpretation of E.O 12898.

Sincerely,



Mike Zdon, CMA Directors' Chairman
Napa County Transportation Planning
Agency



Dennis Fay
Alameda County CMA

² Caltrans, Division of Transportation Planning, Office of Policy Analysis and Research, Desk Guide: Environmental Justice in Transportation Planning and Investments, Prepared by ICF Consulting with Myra L. Frank & Associates (January 2003), p.26.

Bay Area CMA Directors



Robert K. McCleary
Contra Costa Transportation Authority



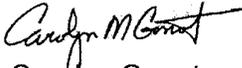
Diane Steinhauser
Transportation Agency of Marin



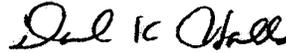
Jose Luis Moscovich
San Francisco Transportation Authority



Rich Napier
San Mateo County CMA



Carolyn Gonot
Santa Clara Valley Transportation
Authority



Daryl Halls
Solano Transportation Authority



Suzanne Wilford
Sonoma Transportation Authority

cc: Steve Heminger, MTC Executive Director
Michael Scanlon, MTC Partnership Chair

C/CAG

CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY

Atherton • Belmont • Brisbane • Burlingame • Colma • Daly City • East Palo Alto • Foster City • Half Moon Bay • Hillsborough •
Menlo Park • Millbrae • Pacifica • Portola Valley • Redwood City • San Bruno • San Carlos • San Mateo • San Mateo County •
South San Francisco • Woodside

December 22, 2005

Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607

RECEIVED

DEC 27 2005

MTC

Attention: Jon Rubin - Chair Person

Subject: Environmental Justice Principles

Dear ~~Chair~~ Rubin:

The City/ County Association of Governments of San Mateo County, as the Congestion Management Agency for San Mateo County, support Environmental Justice issues to be a consideration as part of the transportation planning and implementation at both the County and Regional level. Toward that end C/CAG initiated and is in the process of addressing potential issues as it relates to the access to the Dumbarton Bridge and the City of East Palo Alto. C/CAG has created opportunities for both short and long term funding to implement potential solutions.

C/CAG Staff is supportive of inclusion of a clear broad policy statement at the Regional Level to make certain that Environmental Justice issues are one of the factors considered in Regional Transportation Planning and Implementation. The Minority Citizens Advisory Committee is to be commended for an excellent job on a difficult subject. While I agree with all the Principles presented, I think there needs to be some clarity in three basic areas to guide the processes and implementation guidelines to minimize any misunderstanding and potential liability. Trying to address it in a separate document creates the potential or risk that the clarifications may not be applied to the Principles.

The three basic areas are: 1- MTC should not pre-suppose in Principle 3 that there is a problem. Rather it should be treated the way it was done in Principle 2 and say "if any". 2- Environmental Justice is not the only factor it is one of many factors. This position is consistent with the Partnership Board Position. Principle 3 should be modified to clarify this point. 3- In Principle 4 it is important that the issues are "reasonably" addressed, otherwise it could be more restrictive than intended.

With changes to address these issues the policies with modified language would read as follows:

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. (No Change)

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. (No Change)

Principle #3 - MTC should **change** {**consider as one of the factors in**} its discretionary investment decisions and actions to mitigate identified inequities {, **if any**}.

Principle #4 - Ensure that adverse or potentially adverse disproportionate project impacts on low-income and/ or minority communities are {**reasonably**} addressed ~~and mitigated~~ by project sponsors prior to MTC project or funding approval.

An alternative if the Commission did not want to incorporate the changes into Principles 3 and 4 would be to add a fifth principle. A proposal for this language is as follows:

Principle #5 - It is recognized that Principles 1 through 4 are only one of the many factors that must be considered in the Regional Transportation Planning and Implementation. However, it is the Commissions desire to see that these issues are reasonably addressed and reasonably mitigated at both the Regional and Local levels.

Clearly these changes do not change the intent of these Principles and provides clarity that will guide the definition of the detailed processes and implementation. MTC considerations of these comments are appreciated. If there are any questions please contact me at 650 599-1420.

Sincerely,



Richard Napier
Executive Director
City/ County Association of Governments

Attachment

cc: Therese McMillan - MTC Staff
 Sue Lempert - MTC Representative
 Mike Nevin - MTC Representative
 Rose Jacobs-Gibson - ABAG Representative

Monday, February 14, 2006

Mr. Carlos Valenzuela,
Chair
Minority Citizens Advisory Committee
Metropolitan Transportation Commission
101 Eight Street
Oakland, CA 94607

Dear Chair Valenzuela and Committee Members:

We are writing to urge the Minority Citizens Advisory Committee ("MCAC") to reject the Bay Area Partnership's proposed amendments because they would seriously undermine MCAC's Environmental Justice Principles. MCAC adopted these principles unanimously in November 2005 after many months of thorough deliberation. Simply put, the significant modifications that the Partnership is proposing you to make to Principles 3 and 4 would render them meaningless.

For nearly two years, our organizations have been working hand-in-hand with MCAC to craft a set of common sense and meaningful EJ principles that would serve as an important first step towards ensuring that MTC's future planning and investment practices are equitable and free of discrimination. The language unanimously adopted by MCAC requires four basic commitments from MTC: (1) the creation of a transparent public participation process that empowers communities of color and low-income communities to participate in decision-making; (2) the collection essential data to understand the presence and extent of racial and economic inequity in transportation funding decisions; (3) if inequities are discovered, a change in MTC's discretionary investment decisions to mitigate such inequities; and (4) mitigation of adverse disproportionate project impacts prior to MTC project or funding approval.

A History of Interference

Since your Committee unanimously adopted the present language in November 2005, MCAC has stood steadfast by its charge of "ensuring that the views and needs of minority communities are adequately reflected in policies of" MTC. You have done so in spite of substantial resistance from staff, Commissioners and others. We are alarmed by this latest attempt to undermine MCAC's work. The following is a short history of the obstacles MCAC has faced, and overcome, thus far:

- June 8, 2004 – After MCAC begins discussion of a set of draft EJ principles, MTC staff lobbies MCAC to adopt a staff-developed counterproposal that excludes any mention of identifying or rectifying inequities. Staff's proposed language replaces the word "equity" with the phrase "fair, though not necessarily equal."

- November 2004 – MCAC unanimously adopts four Environmental Justice Principles, standing firm despite pressure from staff to adopt weaker language.
- January 14, 2005 – MCAC sends its EJ Principles to MTC’s Legislation Committee for consideration. In a departure from normal procedure, no staff report is prepared, and MTC does not recommend adoption. After pressure from community groups and MCAC, MTC staff agrees to prepare a report for the Legislation Committee, which postpones consideration of the EJ Principles.
- February 25, 2005 – Rather than preparing an analysis of MCAC’s EJ Principles, staff analyzes *its own counterproposal* to those Principles and presents them to the Legislation Committee, which again receives no analysis of MCAC’s Principles. The staff counter-proposal again fails to mention the word “inequity.”
- March 4, 2005 – MCAC presents its EJ Principles to the Legislation Committee for a second time. The Legislation Committee again refuses to vote on the EJ Principles as worded, and sends them back to MCAC for further modification.
- September 13, 2005 – MCAC negotiates with Executive Director Steve Heminger and reaches a deal to adopt minor wording revisions while holding firm to MCAC’s insistence that identified inequities be rooted out of MTC’s practices.
- December 10, 2005 – In violation of normal protocol, MTC asks the Bay Area Partnership Board to review MCAC’s Principles.
- January 13, 2006 – The Legislation Committee, bowing to opposition by the Partnership, refuses for a third time to vote on recommending the Principles for adoption and, in an unprecedented move, directs MCAC to meet jointly with the Partnership to negotiate *further* changes to the EJ Principles.
- February 3, 2006 – MCAC in good faith holds a joint meeting with the Partnership to discuss their differences on the EJ Principles. Despite not having a quorum, the Partnership proposes hostile and contradictory language for Principles 3 and 4.

Dangerous Precedent

The Legislation Committee’s request that MCAC vet its EJ Principles through the Partnership, which represents entirely different constituents, is unprecedented and jeopardizes the integrity of MTC’s advisory process. As former Commissioner Mary King pointed out at the meeting last week, both MCAC and the Partnership are convened to advise MTC, but neither is convened to advise the other on how to advise MTC. MCAC has the distinctive charge of “ensuring that the views and needs of **minority communities** are adequately reflected in policies of” MTC. The Partnership is not charged with this responsibility, nor is it constituted to do so. MCAC is not required to change its recommendations simply because the Partnership has a different opinion. Indeed, to do so would be to violate its fundamental charge of representing minority communities.

Irreconcilable Differences

Not only are the Partnership’s proposed changes to Principle #3 contradictory, they would render the Principle meaningless. MCAC’s Principle #3 calls on MTC to actually

“*change* its discretionary investment decisions and actions to mitigate identified inequities.” (Emphasis added). The Partnership’s non-committal and somewhat contradictory language removes the key word “change” and instead requires MTC to “include environmental justice inequities . . . in its discretionary investment decisions and shall pursue actions to mitigate identified inequities.” Even under the most charitable reading, this language would not require MTC to change its investment decisions or actions if inequity were to be found.

We urge MCAC not to succumb to this latest demand by the Partnership and some members of the Legislation Committee to water down your principles. MCAC has given its best advice to MTC on how to serve the needs of minority communities not once, but at least five times. Each time, it was asked to back down from representing the needs of minority and low-income communities, and each time it held its ground. The EJ Principles you have adopted are straightforward and workable. It is time for the Legislation Committee to take an up or down vote on MCAC’s proposal without further delay or interference.

Sincerely,

Lila Hussain
Transportation Justice Working Group (TJWG)

AJ Napolis
Communities for a Better Environment

Amber Crabbe
Transportation and Land Use Coalition

Summer Brenner
Member of the Youth Transportation Coalition

Boona Cheema
Building Opportunities for Self-Sufficiency

Julie Iny
Kids First Oakland

Margaret Gordon
West Oakland Resident
Pacific Institute

Jessuina Perez-Teran
Marin Tenants Union

David Schonbrunn
TRANSDEF



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Memorandum

TO: Legislation Committee

DATE: Feb. 24, 2006

FR: General Counsel

W. I.: 1114

RE: Proposed Environmental Justice (EJ) Principles

The Legislation Committee requested my review of MTC's Minority Citizens Advisory Committee's (MCAC) proposed environmental justice (EJ) principles. In particular, the Committee was interested in whether the Commission might encounter increased legal exposure if the principles were adopted.

As the Committee may recall, concerns were raised by a number of comments about the proposed MCAC principles when they were first presented at the January Committee meeting. Since then, an effort by MCAC and the Bay Area Partnership to develop mutually-acceptable substitute language has not been successful. So, again before you is the MCAC proposal, unmodified from the version previously presented.

I remind the Committee that the adoption of EJ principles is not legally required by statute or regulation. Given MCAC's strong desire to have its recommended principles approved intact without amendment, one course of action that the Committee can take, and which I would fully recommend, is to forward to the Commission for approval a motion to receive the MCAC recommendations intact, but not to formally adopt them. That way, the MCAC will be afforded the opportunity to have its recommendations stand without any forced edits and therefore be fully reflective of the advocacy position taken by MCAC. And while MTC will have the full benefit of MCAC's guidance, MTC will remain free to consider the MCAC recommendations within the context of any and all other comments and factors it must consider in making its transportation investment decisions.

If, however, the Committee believes that it nevertheless wants the Commission to make an Environmental Justice statement similar to MCAC's recommendations, I suggest the following as an alternative version for your consideration.

MTC Environmental Justice Principles

Title: MTC and Environmental Justice

Opening Statement: The Metropolitan Transportation Commission is fully supportive of Environmental Justice and will continue to work to incorporate it into all of MTC's planning, funding, and operations decisions. After considering recommendations from MTC's Minority Citizens Advisory Committee, the Commission adopts the following principles.

Principles:

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

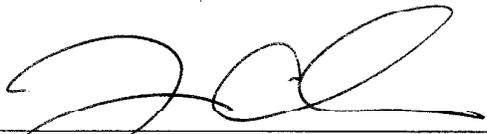
Principle #2 – Collect accurate and current data essential to helping define and develop a better understanding of the presence and extent of inequities, if any, in transportation funding based on race and income.

Principle #3 – MTC’s discretionary investment decisions and actions shall, as a routine practice, take into consideration environmental inequities identified under Principle #2, so that positive corrective action can be taken if necessary.

Principle #4 – Projects that have adverse or potentially adverse disproportionate project impacts on low-income and/or minority communities as identified under Principle #2, should be addressed and mitigated, to the extent feasible, by project sponsors prior to seeking MTC project or funding approval.

My proposed edits retain the shape and structure of the MCAC proposal, but in a manner that I believe better reflects positively the ongoing work of the Commission, and in a tone that helps diffuse some of the legal confusion over the meaning of the text.

A copy of my recommended version, shown in mark-up text, is included as Attachment A.



Francis Chin

ATTACHMENT A

~~MCAC Proposed~~ MTC Environmental Justice Principles

Title: MTC and Environmental Justice

Opening Statement: ~~The Metropolitan Transportation Commission is fully supportive of To~~ ensure that Environmental Justice and will continue to work ~~is effectively to incorporate it~~ into all of MTC's ~~the Metropolitan Transportation Commission's planning, decision-making, funding, and operations decisions. After considering recommendations from, the MTC's Minority Citizens Advisory Committee, urges the Metropolitan Transportation Commission to adopt~~ and implement the following principles.

Principles:

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

Principle #2 – Collect accurate and current data essential to helping define ~~ing~~ and develop a better understanding of the presence and extent of inequities, if any, in transportation funding based on race and income.

Principle #3 – ~~MTC's should change its~~ discretionary investment decisions and actions shall, as a routine practice, take into consideration environmental to ~~mitigate identified inequities identified under Principle #2, so that positive corrective action can be taken if necessary.~~

Principle #4 – ~~Ensure Projects that have~~ adverse or potentially adverse disproportionate project impacts on low-income and/or minority communities as identified under Principle #2, should be ~~are~~ addressed and mitigated, to the extend feasible, by project sponsors prior to seeking MTC project or funding approval.