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TRANSPORTATION
COMMISSION

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Memorandum

TO: Legislation Committee

DATE: January 5, 2007

FR: Executive Director

W. I.: 1114

RE: <u>Environmental Justice (EJ) Principles</u>

MTC's Minority Citizens Advisory Committee (MCAC) developed a set of four Environmental Justice (EJ) principles that were recommended to the Commission in March 2006. The Commission adopted the first two EJ principles and, as required by EJ principle #2, asked staff to gather data and perform analyses to understand whether, and to what extent, inequities exist in current transportation funding patterns in the Bay Area. The outcome of this funding analysis was intended to inform the Commission's deliberation over how to proceed with EJ principles 3 and 4. As a reminder, the EJ principles proposed by MCAC are as follows:

> *<u>Principle #1</u> – 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 (Adopted 3/22/06).*
>
> *<u>Principle #2</u> – 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 (Adopted 3/22/06).*
>
> *<u>MCAC's Proposed Principle #3</u> – MTC should change its discretionary investment decisions and actions to mitigate identified inequities (not adopted).*
>
> *<u>MCAC's Proposed Principle #4</u> – 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 (not adopted).*

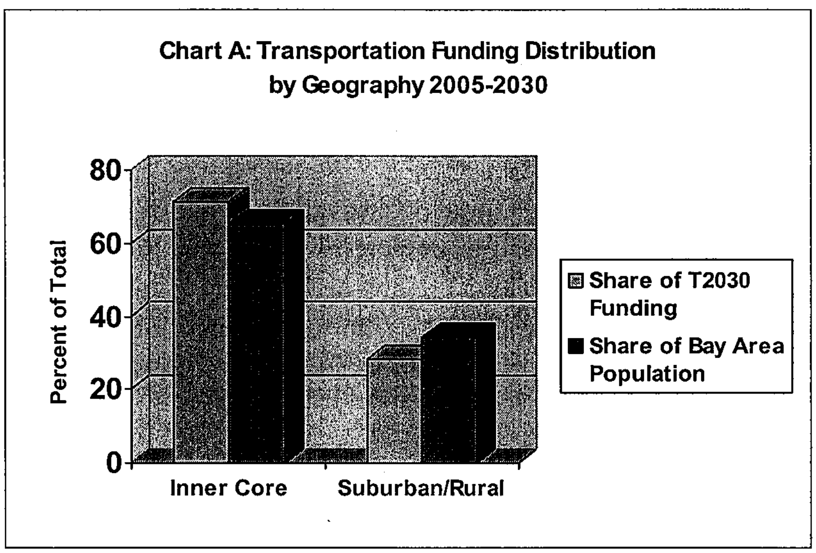
Shortly after the adoption of the first two EJ principles by the Commission, MCAC requested that a subcommittee be formed to assist in the implementation of EJ principle #2, and extended an invitation to members of the Partnership Board to participate (the subcommittee membership is included as Attachment A). Section I provides a summary of the extensive funding analyses conducted by staff and overseen by the EJ subcommittee. Section II presents recommendations from the Partnership Board, MCAC and MTC staff in terms of how to proceed with EJ principles 3 and 4.

I. How to Define Equity in Transportation Funding

Attempting to define what is an "equitable" distribution of funding among any population or geographic region is as old as the art of politics itself. The following are five ways of analyzing the distribution of transportation funding in the Bay Area—four of which show a clear benefit for the urban core, transit riders, residents of communities of concern, and transit-dependent households. With the exception of the first analysis, the charts focus on the comparison between MTC's discretionary fund sources for the last eight fiscal years (FY1998-FY2005) and a subset of the region's geography or population. Charts A & B are presented to provide context for the Commission's deliberation on this issue. The three analyses presented in Charts C, D, and E were the focus of the EJ Subcommittee's work. Data sources for all charts are noted in Attachment C.

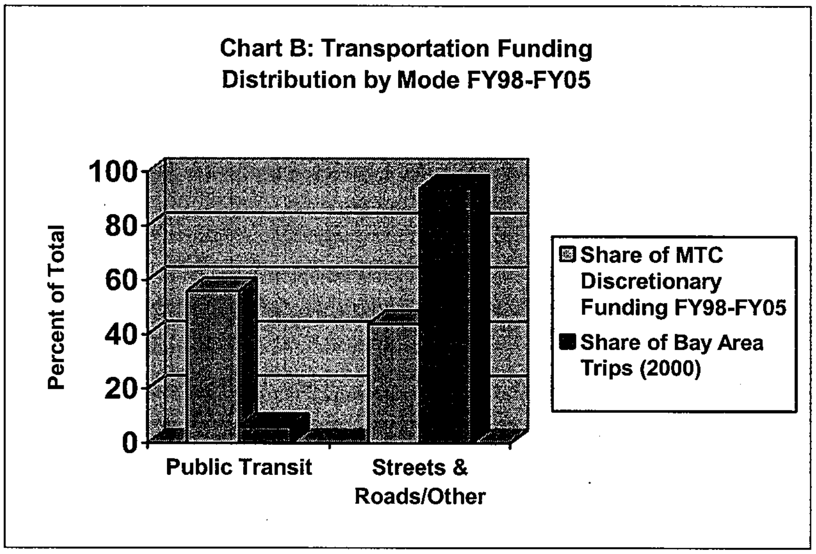
A. Equity by Geography: Urban vs. Suburban/Rural

In the Commission's recently adopted Transportation 2030 Plan, more than two-thirds of the $118 billion in transportation investments are targeted at the inner core of the Bay Area—an area defined roughly by the Bay Plain encompassing San Jose, the east bay cities west of the east bay hills, San Francisco, and the peninsula cities east of the west bay hills. As chart A below shows, this "inner core" of the Bay Area was home to 66 percent of the region's population in 2000 and will receive 72 percent of the transportation investments in the Transportation 2030 Plan.



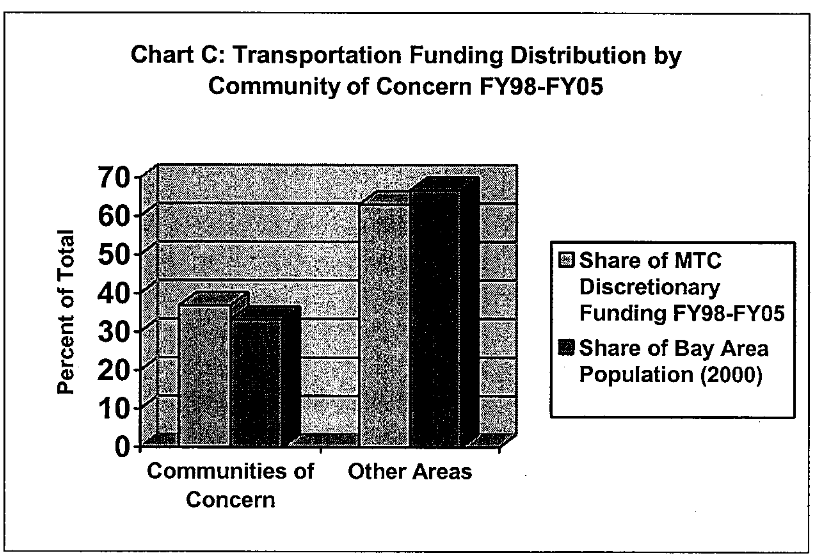
B. Equity by Mode: Transit vs. Roads

MTC has invested a significant amount of its discretionary funds in public transit systems throughout the region in order to continue to develop a more balanced and multi-modal transportation system that can alleviate peak traffic congestion in key corridors and provide mobility for low-income households with limited access to autos. As shown in Chart B, MTC invested 56 percent of its discretionary funds in public transit between FY1998 and FY2005 while roughly six percent of the region's overall trips, and 11 percent of the region's commute trips, are made by transit. During that same period, MTC invested 44 percent of its discretionary funds in roadway-related projects despite that fact that 94 percent of the region's trips are made by autos and other non-transit modes.



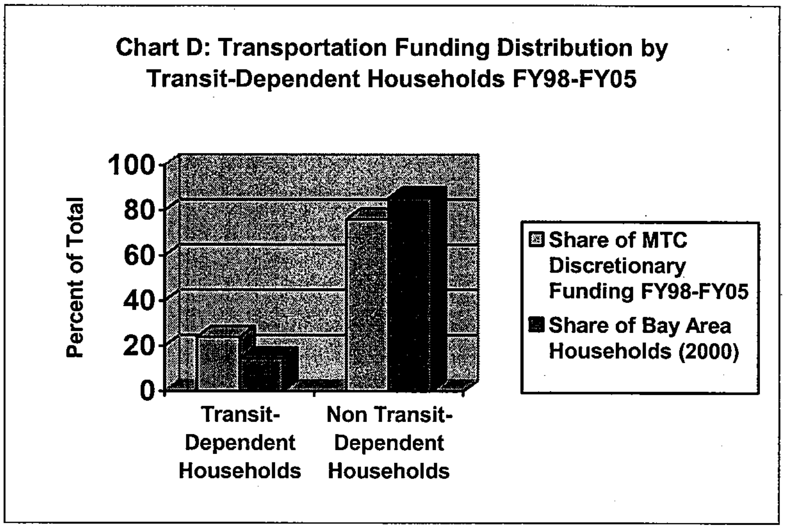
C. Equity by Race & Income (Communities of Concern)

This analysis assigns the shares of funding for either transit or roads based on the proportional usage of the transportation network by communities of concern compared to all other residents of the region. In 2006, communities of concern accounted for an estimated 44 percent of all transit trips and 28 percent of all auto trips. As shown in Chart C, communities of concern comprise 33 percent of the region's population while they benefited from 37 percent of MTC's discretionary funding from FY1998-FY2005.



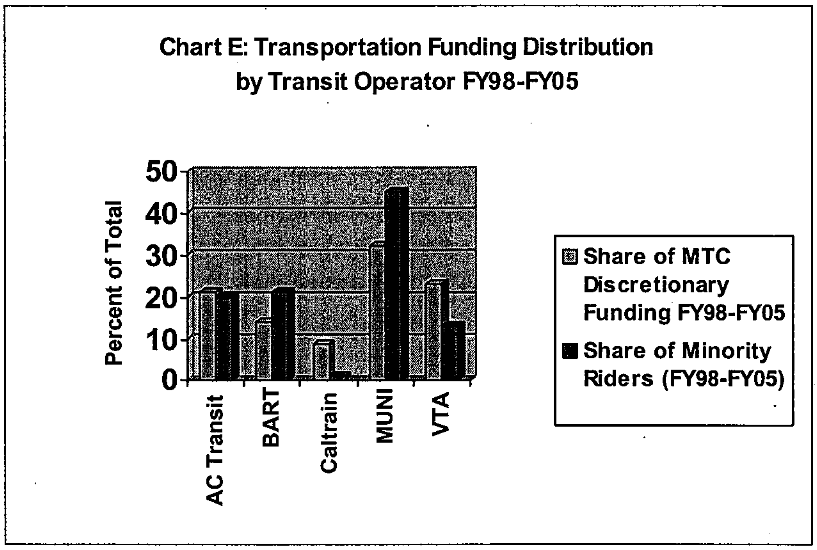
D. Equity by Transit-Dependent Households

Similar to the previous analysis, this analysis assigns transportation funding to either transit-dependent households or non-transit dependent households based on their relative usage of the transportation network. As Chart D shows, transit-dependent households accounted for approximately 15 percent of the region's households and received roughly 24 percent of MTC's discretionary funds from FY1998-FY2005 compared to non-transit dependent households.



E. Equity by Transit Operator

This analysis of transit funding by operator (limited to the five major operators shown in chart E for which demographic data currently exists) has been the one that has generated the most discussion and debate among the members of MCAC and the Partnership Board. At issue is whether funding among transit operators would be more equitable—specifically in terms of providing greater benefit for low-income communities—if the region attempted to distribute funding based on either the operator's share of total transit riders or minority transit riders. As shown in Chart E, from FY1998-FY2005 BART and Muni received less funding than their proportional share of minority riders while AC Transit, Caltrain and VTA received more. The EJ Subcommittee voted 5-3 to suggest that this analysis of transit operator funding distributions represents an inequity that would require mitigation under MCAC's proposed EJ principle #3.



II. Recommendations for EJ Principles 3 & 4

A. Partnership Board Recommendation

The Partnership Board met on December 8, 2006, to discuss the EJ analysis and the work of the EJ subcommittee. The Partnership concluded that the EJ analysis in general, and the analysis of funding distributions among transit operators in particular, was proving to be particularly divisive for the region and did not recommend any further specific action regarding EJ principles 3 and 4. Instead, the Partnership recommended that the Commission focus explicitly on developing new sources of transit operating revenues for the region as a means of providing more service in communities of concern and addressing the intent of the EJ principles. A letter from the Partnership summarizing their position is contained in Attachment D.

B. MCAC Recommendation

The Minority Citizens Advisory Committee met on December 12, 2006. MCAC voted to recommend that the Commission adopt principles 3 and 4 and asked that the Commission consider all possible funding scenarios that were discussed at the last EJ subcommittee meeting (see Attachment B) in order to fully explore all opportunities to redirect existing funding among transit operators. While MCAC had requested an additional 12 years of historical funding data (something that could not be produced by staff with an acceptable level of detail and reliability within the timeframe of this analysis), members of the Committee also stated their belief that the current analysis of funding distribution among the transit operators does indeed represent an inequity, whether that inequity was intentional or not. A letter from MCAC summarizing their recommendation is included in Attachment E.

C. Staff Findings

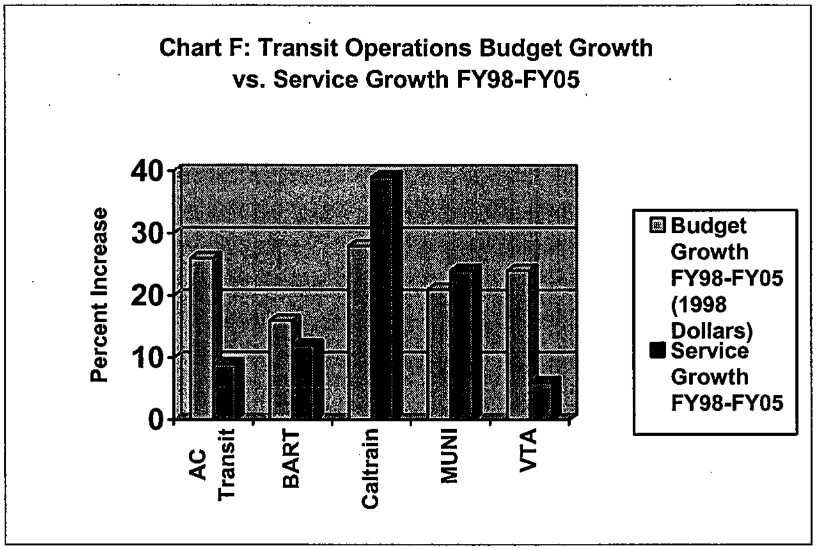
On balance, staff believes that the extensive analysis conducted under the guidance of the EJ Subcommittee does not convincingly demonstrate that there are inequities in transportation funding based on race and income. While the EJ subcommittee voted that one of the analyses (see Chart E) did demonstrate an inequity, they could not agree on how to define "inequity" in the distribution of funding among transit operators. This approach is akin to Justice Potter Stewart's famous dictum about pornography: "I know it when I see it." Absent a clear definition, it is difficult to determine (a) whether and to what extent inequities in funding exist; and (b) what should be done to redress that inequity—and the sufficiency of the response.

In addition, there are numerous challenges with attempting to distribute transit funding based solely on ridership (of either total riders or minority riders) as a proxy for providing mobility and accessibility for residents of low-income communities. Among the issues that must be weighed:

- Even under the definition of MTC's discretionary funding, there are numerous sources of funding that MTC could not redirect due to existing laws and regulations, such as FTA transit funding that is apportioned by geographic formula. Even if—as MCAC and others have suggested—MTC could seek changes in state and federal laws to shift existing fund sources from one part of the region to another (see Attachment B, scenario 3), this would obviously open up a contentious "zero sum" debate that would pit one part of the region against another.

- The Commission has established a "fix it first" policy that is based on prioritizing capital expenditures based on need rather than ridership. For example, nearly all of Caltrain's funding from MTC discretionary sources shown in Chart E above represent the significant resources that the region committed since FY1998 to upgrade the aging commuter rail line to a safe and well-maintained standard. A ridership-based funding distribution goal may well have jeopardized those particular investments.

- Simply providing more funding to any single transit agency will by no means translate into automatic service benefits for communities of concern. As shown in Chart F, significant increases in transit operator budgets have not always been matched with concurrent increases in service. Furthermore, even if a transit agency could increase service, there are no guarantees that it would prioritize new or expanded services in communities of concern.



- As MTC continues to fund a series of Community-Based Transportation Plans (CBTPs), it is obvious that a significant share of low-income transportation needs extend well beyond fixed-route transit and encompass many other strategies including community shuttles, auto loans, paratransit, carsharing, and pedestrian access and safety measures (see Table 1 below). Focusing solely on funding "equity" among transit operators is too narrow a lens to capture the broader benefits of transportation "equity" that we hope to provide to communities of concern. As such, any additional funding that is provided for the explicit purpose of expanding accessibility and mobility in communities of concern may be better directed towards the Lifeline program than it would towards any particular transit operator.

TABLE 1: Distribution of MTC Funding for LIFT and Lifeline FY00-FY08

Type of Project	Total Funding FY00-FY08 (millions)	Percent of Total Funding
Fixed Route Transit	$10.8	37%
Childrens' Shuttles	$2.4	8%
Shuttles/Demand Response	$5.1	18%
Fare Assistance	$3.2	11%
Auto-Related Programs	$2.4	8%
Transit Stop Improvements	$4.1	14%
Outreach	$0.2	1%
Guaranteed Ride Home	$0.3	1%
Mobility Manager	$0.7	1%
TOTAL	**$29.1**	**100%**

Staff is strongly committed to the principle that MTC's discretionary funding decisions should not disadvantage any communities of concern in the region. However, a key finding of this analysis is that formulas that attempt to guide the distribution of transportation funding on a per capita basis can be a double-edged sword. If an equal distribution of funding per capita becomes the yardstick by which we measure all funding decisions in the Bay Area, then based on Charts A-D shown earlier in this memo, the Commission could start directing more money towards highways and away from transit, more money towards outlying areas and away from the urban core, and more money to wealthier communities and away from communities of concern.

Yet the fact is that the Commission has an important and diverse set of policy objectives that include support for: (a) a robust system of travel alternatives such as carpooling, public transit, walking, bicycling, and telecommuting, (b) the urban core of the region to reinforce broader smart growth objectives and future policy-based growth projections, and (c) low-income communities through the significant funding for public transit in general and the Lifeline transportation program in particular. All these require that funding be focused—sometimes to benefit one population or geographic area over another—in order to achieve our regional goals and objectives.

D. Staff Recommendation

The analysis, discussion and debate that has ensued through the EJ subcommittee since May 2006—along with the continuing litigation that deals with this very same subject—leads us to now recommend that the Commission not adopt the remaining two EJ principles. As the saying goes, "actions speak louder than words," and since the words have proven to be so contentious, let us focus instead on actions. The following are ones that we recommend the Commission pursue:

(1) Most of MTC's discretionary funding relates to capital projects. While capital investments themselves have little immediate bearing on service levels absent a concomitant level of operating revenue, MTC should re-examine its current transit capital programming and allocation priorities to assess whether changes would increase benefits to low-income riders.

(2) We should advocate for new, additional flexible funding that is specifically directed to low-income communities and transit-dependent constituents to fund the breadth of projects that low-communities themselves have identified through the Community-Based Transportation Plans (CBTPs). Any portion of these funds that is directed towards transit operations should be tied to efficiency improvements among the transit operators so that the result depicted in Chart F above is not replicated with new funding.

(3) Where new transit funding sources arise—as in the case of the recent infrastructure bonds passed by the voters in November 2006—the needs of low-income/transit-dependent riders should be among the Commission's chief priorities. With this in mind, staff will begin developing policy options for

investing the roughly $350 million in new discretionary transit capital funds made available by Proposition 1B.

(4) MTC should complete Community-Based Transportation Plans in all 44 communities of concern throughout the region. This will provide a more informed basis for investment in both transit and non-transit options to improve mobility for residents of these communities.

We recommend that the Committee forward these four actions to the full Commission for approval.

Steve Heminger

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ATTACHMENT A:
MCAC/Partnership Board Subcommittee on Environmental Justice

MCAC Members	Representing
Carlos Valenzuela, MCAC Chair	*San Mateo County*
Rafael Durr, MCAC Vice-Chair	*Marin County*
Dawn Love, MCAC Vice-Chair	*Low-Income Representative*
Jacquee Castain	*Alameda County*
Frank Gallo	*Alameda County*
Candy Gayles	*Contra Costa County*
Gerald Rico	*Napa County*
Charles Rivasplata	*Marin County*

Partnership Board Members	Representing
Suzanne Smith, Partnership Chair	*Sonoma County Transportation Authority*
Henry Gardner	*Association of Bay Area Governments*
Jim Helmer	*City of San Jose, Public Works*
Mary King	*AC Transit*
Rich Napier	*City/County Association of Governments of San Mateo County*
Rick Ramacier	*Central Contra Costa Transit Authority*

ATTACHMENT B: Five Potential Strategies to Address Funding Differences Among Bay Area Transit Operators

Note: These hypothetical funding scenarios were presented to the EJ Subcommittee, MCAC and the Partnership Board to illustrate the implications of EJ Principle #3 if the differences in funding among transit operators were defined as an inequity per EJ Principle #2.

Scenario 1: MTC Policy Changes

This scenario is limited to fund sources where MTC could, through existing statute, amend policies and shift funding between operators. Some examples – based on the analysis provided to the subcommittee at the last meeting – include the following:

- State Transit Assistance (STA) Population-Based: Shift more funding toward Muni and/or AC Transit – would result in loss of funding for northern counties, small operators, and/or regional coordination projects.
- AB 1107 – MTC Administered: Change the share of funding to Muni or AC Transit – the other operator would experience a loss of funding since current split of funding is 50-50 between the two operators.
- Federal Transit Administration (FTA) Formula Funds: For San Francisco/Oakland Urbanized area, direct more funding to Muni and/or AC Transit. This would require change to current policy that scores replacement capital with highest priority given to vehicle and track/guideway replacement/rehabilitation. Given that AC Transit and Muni are currently having these top scoring projects satisfied, the change in policy would entail other operators being denied some level of top scoring capital investment in order for AC Transit and Muni to have "space" to invest in lower scoring projects.
- AB 664 funds: Change the existing policy which dedicates funds as match to FTA formula funds such that more funds directed to Muni and/or AC Transit.

Analysis: This scenario is a zero-sum game in as much as it relies on creating winners and losers among existing transit operators. Since all of the major operators carry minority and low-income riders, any policy changes to shift funding will thus disadvantage one group of minority and low-income riders to benefit another, thus "robbing Peter to pay Paul".

Scenario 2: Transit Operator Policy Changes

This scenario expands the focus beyond proportionate funding for the operators to include operating costs and cost effectiveness. The higher the operating costs for transit operators in the region, the less of the existing revenue is available for new or expanded services and capital rehabilitation. Reduction in costs or improvement in operating effectiveness could create capacity for expanded services within the funding "envelope" operators receive under existing statutes and/or policy. In addition, operators could also pursue a range of farebox revenue enhancement strategies, such as the restriction of traditional fare discounts to only the minimum levels required by federal law for disabled and senior riders, while providing the subsequent differential fare revenues for additional service to low-income communities or fare discounts for low-income riders.

However, any cost controls, efficiency increases or fare enhancements will not necessarily result in a change in the comparative operator funding shares as illustrated on the charts in cell #7. Essential to this scenario is the supposition that equity may not be defined solely on funding shares, but consider relatively improved funding capacity.

Analysis: This scenario highlights the opportunities to generate additional service from existing revenues coupled with cost decreases and/or revenues generated by modifications in fare pricing – measures that, while promising, are likely to run into conflicts with labor and stakeholder groups.

Scenario 3: Statutory Changes

This scenario assumes that MTC and its state and federal legislative delegation could seek changes in law such that more of the existing transit funding flows to Muni and/or AC Transit. Examples for the significant fund sources include:

- TDA: Change return to source requirement such that other county revenue can be used for Muni and/or AC Transit. Would likely require the funds to be pooled and administered regionally instead of the current statewide structure that is a county-based return to source. Absent on increase in TDA overall, would result in some operators receiving less money in order to redirect more to AC Transit and Muni.
- STA Revenue-Based: Either change the formula such that AC Transit and/or Muni receive a greater share – perhaps based on ridership instead of dedicated local revenue – or allow funds to be divided at the regional level.
- FTA Formula Funds: Eliminate the urbanized area distinctions in the Bay Area -- i.e. from 12 Urbanized Areas to one -- and allow the funds to be distributed anywhere in the region based on either a policy adopted by MTC or through some other mechanism.
- AB 1107 – Portion that BART Administers: Change the law to allow the entire BART district tax to be eligible among BART, Muni, and AC Transit instead of the current framework where 25% is eligible among the three operators and 75% is dedicated and administered by BART.

Analysis: As with the first scenario, Scenario 3 is essentially a zero-sum game in as much as it relies on creating winners and losers among existing transit operators. Since all of the major operators carry minority and low-income riders, any statutory changes to shift funding will thus disadvantage one group of minority and low-income riders to benefit another thus "robbing Peter to pay Paul."

Scenario 4: Policy Changes for Transit Expansion Projects

This scenario—often suggested by critics of the region's transit expansion program—would shift funding in favor of Muni and/or AC Transit. This could be achieved in at least two ways: 1) alter Resolution 3434 to delete projects and add projects that expand or enhance services for Muni and/or AC Transit; and 2) eliminate a significant portion of the transit expansion to reduce future demand for capital rehabilitation that could result from any transit extensions in the region.

Analysis: Backing off current regional funding commitments to expand transit systems would not free up any additional operating revenues for service in low-income communities and would not have any near term impact on capital rehabilitation needs. The majority of financial commitments to new transit expansion projects have already been made through local voter-

approved measures, so opportunities to redirect flexible funds to other transit projects or operators are limited.

Scenario 5: New Revenue

This scenario does not redistribute existing funds, but instead focuses on the need for new, long-term, stable revenue sources to address any differences in proportionate funding for Muni and/or AC Transit. Options could include property taxes, district sales taxes, regional gas taxes, and/or vehicle license or other impact fees.

Analysis: The advantage of this scenario is that it does not create a divisive fight among transit operators over existing financial resources. New revenues, however, will need to be approved by both the legislature and the voters and will require long-term political support and commitment. The first opportunity to seek voter approval of new revenue sources would be the 2008 election.

ATTACHMENT C: DATA SOURCES FOR CHARTS

Chart A: Equity by Geography

Data Sources: MTC Transportation 2030 Plan, 2000 U.S. Census.

Chart B: Equity by Mode

Data Sources: Annual MTC Discretionary Funding Reports FY98-FY05, 2000 Bay Area Travel Survey.

Chart C: Equity by Race and Income (Community of Concern)

Data Sources: Annual MTC Discretionary Funding Reports FY98-FY05, MTC Analysis of Bay Area Travel Forecasts, 2004 MTC Equity Analysis Report, 2000 U.S. Census.

Chart D: Equity by Transit-Dependent Household

Data Sources: Annual MTC Discretionary Funding Reports FY98-FY05, Transit Operator On-Board Surveys (various years depending on operator), 2000 U.S. Census, 2000 Bay Area Travel Survey.

Chart E: Equity by Transit Operator

Data Sources: Annual MTC Discretionary Funding Reports FY98-FY05, Transit Operator On-Board Surveys (various years depending on operator), Statistical Summary of Bay Area Transit Operators FY98-FY05.

Chart F: Transit Operations Budget Growth vs. Service Growth

Data Sources: Statistical Summary of Bay Area Transit Operators FY98-FY05.

Table 1: Distribution of MTC Funding for LIFT & Lifeline

Data Sources: MTC Staff Analysis of LIFT and Lifeline Funding FY2000-08.