



**METROPOLITAN
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Memorandum


TO: Commission
FR: Executive Director
RE: Oakland Airport Connector – FTA Action

DATE: February 12, 2010

W. I.: 1131

We received the attached letter today from the Federal Transit Administration (FTA) rejecting BART's Title VI corrective action plan. Pursuant to MTC Resolution No. 3942 adopted by the Commission at your January meeting, effective February 17, 2010, the \$70 million in American Recovery and Reinvestment Act (ARRA) funds that had been committed to the Oakland Airport Connector will be automatically redirected to the Tier 2 list of back-up projects sponsored by the various Bay Area transit operators. We will be working closely with FTA to obligate these ARRA funds to those projects by the March 5, 2010 statutory deadline.

As a result of this FTA action, Chair Haggerty has decided to cancel the special Commission meeting scheduled for February 17th. He asked me to convey his thanks to all of you for the time and attention you have given this issue in repeated meetings. Please feel free to contact me with any questions or concerns.



Steve Heminger

Attachment



U.S. Department
of Transportation

Federal Transit
Administration

The Administrator

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

FEB 12 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 in regard to the Oakland Airport Connector (OAC) project and the corrective action plan submitted by the Bay Area Rapid Transit District (BART) for the purpose of coming into compliance with the requirements of Title VI of the Civil Rights Act.

As you are aware, the Federal Transit Administration (FTA) received a formal complaint this past September 2009, alleging that BART had failed to complete a service equity analysis for the OAC Project. In December, FTA was able to confirm through a formal Title VI compliance review that the allegation was true and the complaint was well founded. Moreover, the compliance review revealed a number of other serious concerns related to BART's overall compliance with Title VI. As such, on January 15, 2010, I notified BART and the Metropolitan Transportation Commission (MTC) that you could pursue the OAC project with funds provided under the American Recovery and Reinvestment Act (ARRA) only under very limited circumstances. First, BART would be required to submit to the FTA a corrective action plan detailing how it would come into compliance with the requirements of Title VI. Second, in the event that BART could produce such a plan that was acceptable to the FTA, BART would still be prohibited from drawing any of the \$70 million in ARRA funds budgeted for the project until it had successfully accomplished all of the requirements in the plan and become fully complaint with Title VI.

As part of my January 15 letter, I articulated FTA's view that pursuing the OAC project under such conditions could endanger the ARRA funds being available for transit investments and job creation in the Bay area. Under the requirements of ARRA, any delay or failure on BART's part that occurred after March 5 would require me to reallocate the funding outside of the Bay area.

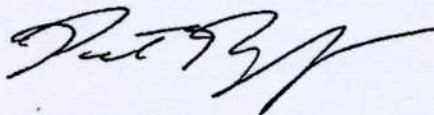
Since my letter of January 15, FTA staff and BART have worked diligently but unsuccessfully on the development of a corrective action plan that might be acceptable. I am required to now inform you that your plan is rejected. I ask that you immediately get in contact with Region IX Administrator Leslie Rogers for the purpose of pursuing alternative projects for the Bay area that can be obligated prior to the March 5 deadline.

I am required to reject your plan for the following reasons. Based on the timelines submitted by BART, there is no way the agency can come into full compliance with Title VI by September 30, 2010. The requirements of ARRA dictate that any funds not disbursed by September 30, 2010, must be lapsed back to the Treasury. And since I cannot allow BART to draw any funds for the OAC project prior to coming into full compliance, it is clear that pursuit of the OAC project would result in the funds either being reallocated out of the Bay area or lapsed. Both scenarios are unacceptable to me as I am sure they are to you. Let me say that, based on FTA's experience in other cities, BART is being realistic in admitting that the process of coming into full compliance will take considerably longer than the 8+ months that remain before the September 30 deadline. I appreciate and respect your honesty in this regard.

Given the fact that the initial Title VI complaint against BART was well founded, I am not in a position to award the ARRA funds to BART while the agency remains out of compliance. Moreover, it is clear that, if FTA were to pursue such a course, the likelihood of protracted litigation with the parties that made the initial complaint is extremely high. Given this situation, and the fact that we are now only 3 weeks away from the March 5 deadline, I must bring these discussions to a close so that we can work together to ensure that the ARRA funds can create and preserve jobs in the Bay area.

The efforts of the last few weeks have not been wasted. Wholly separate from the fate of the OAC project, it is imperative that BART, as a recipient of FTA funds, come fully into compliance with Title VI as soon as possible. The plans developed between our staffs over the last few weeks lay the groundwork for BART to achieve that important goal. If you have any further questions regarding this matter, please contact my Chief Counsel, Dorval R. Carter, at FTA Headquarters.

Sincerely yours,



Peter Rogoff