
AC TRANSIT DISTRICT**Board of Directors**

Executive Summary

GM Memo No. 09-247

Meeting Date: October 28, 2009

Committees:Planning Committee External Affairs Committee Rider Complaint Committee **Board of Directors** Finance and Audit Committee Operations Committee Paratransit Committee **Financing Corporation**

SUBJECT: Consider Receiving Report on Receipt of Congestion Mitigation & Air Quality (CMAQ) Funds and Funding Taskforce**RECOMMENDED ACTION:** Information Only Briefing Item Recommended Motion**Consider Affirming Board Direction to Divert CMAQ Funds Only from the Bus Rapid Transit Project (BRT) to Operations; Provide Direction to Staff Regarding Formation and Composition of Task Force**

Fiscal Impact:

Potential positive impact to budget of \$35 million, assuming successful diversion of funds.

Background/Discussion:

On September 25, the Board considered a proposal to pursue the shifting of funds from the BRT project to the District's operating budget (GM Memo 09-228). Board direction at the September meeting included the following:

- General Manager directed staff to discuss a proposal to divert a "CMAQ first" alternative with the Executive Director of the Metropolitan Transportation Commission (MTC).
- If above proposal is acceptable to MTC, form a short-term task force to discuss other funding sources and RM2 funds. Task Force to include 3 Board members.
- If initial proposal is unacceptable to MTC, Board to discuss the inclusion of RM2 funds in the proposal.
- Staff directed to develop a funding plan to continue with the completion of the Final Environmental Impact Statement/Report (FEIS/R) for the BRT project.

Accordingly, a meeting was scheduled with MTC on October 13, which included the Executive Director and 2 other Commissioners, along with AC Transit's General Manager and Chief Financial Officer, and 2 Board members. The day after this meeting, at a regularly scheduled AC Transit Board meeting, the General Manager, Board President and Ward 5 Director provided verbal feedback from the meeting to the full AC Transit Board.

General Manager Fernandez noted that MTC had reviewed the District's initial proposal to divert \$80 million in combined CMAQ and Regional Measure 2 (RM2) revenues, with the

understanding that it was the Board's direction to pursue only the CMAQ revenues at this time. MTC was also apprised of the Board's direction to convene a Task Force of limited duration, to explore funding sources and RM2 funds. The General Manager reported that MTC seemed agreeable to the concepts discussed, conditioned upon the District's compliance with several conditions that were proposed by MTC. At the October 13 meeting, MTC distributed a document listing the proposed conditions attached to the fund shift, for discussion purposes. This document was provided to the AC Transit Board as a "red folder" item on October 14, and is included as Attachment A to this memo, for further Board discussion.

BRT Fund Diversion Options:

Options to divert BRT funds that were discussed at the MTC meeting included:

1. Divert CMAQ funds only
2. Divert CMAQ funds; and include a "trigger" linked to operational and funding conditions that would activate RM2 funds
3. Divert both CMAQ and RM2 funds, and if it is determined that the funds are not needed, agree to return un-used funds to the BRT project
4. Designate some of the monies from the California Transit Association (CTA) lawsuit to the BRT project, should those funds be realized (i.e., State Transit Assistance (STA) monies)

Staff is currently analyzing the Service Adjustment Plan (SAP), with an objective of identifying \$17.5 million in CMAQ-eligible service that could be implemented over the next two year period. If staff is unsuccessful in this effort because of an insufficient number of eligible lines, staff will analyze CMAQ-eligible service to be implemented over a *three* year period. Finally, should the lines be deemed ineligible by MTC or the Federal Transit Administration (FTA), staff will work with MTC staff to commit the CMAQ funds to another eligible project in the region and receive a like amount of other flexible revenues in exchange.

Staff is moving forward with next steps in the process to divert the funds. At present, the District is anticipating a follow-up letter from the MTC Executive Director, summarizing the meeting and the terms of the fund diversion. AC Transit and MTC staff have scheduled a meeting for early November to discuss the details of the CMAQ diversion and the eligibility of proposed lines. Assuming that MTC agrees with the proposal, AC Transit staff will meet with FTA to solidify the proposal prior to amending the Transportation Improvement Program (TIP) and re-obligating the funds for operations.

The table below depicts the anticipated next steps, along with an estimated completion date for each step:

Step	Anticipated Completion Date
1. Receive letter from MTC summarizing October 13 meeting	October 30
2. Meet with MTC Staff to discuss CMAQ eligible routes	November 6
3. Meet with FTA staff to discuss CMAQ eligible routes	November 20
4. Seek formal approval by MTC through adoption of changes in the TIP	December 23 (date could change due to holiday schedule)
5. Approval of TIP amendment by State and Federal Agencies	January 29
6. De-obligate funds for capital and re-obligate funds for operations	March

Formation of Task Force:

Based on MTC's agreement to proceed with the CMAQ first alternative, another important and immediate next step is the formation of the Task Force referenced earlier in this memo. As was mentioned, the Board President directed the inclusion of 3 Board members to serve on the Task Force; however, other decisions have yet to be made relative to this group. Some of the issues and options are listed below:

1. Clarify scope of Task Force
2. Determine duration of Task Force (i.e., 4 months, as initially recommended by AC Transit Board, or 12-24 months, as recommended by Transform)
3. Set an initial meeting date; establish meeting schedule for Task Force
4. Appoint AC Transit Board members to serve on Task Force (Board President)
5. Determine make-up of Task Force; identify desired outside agency representation (e.g., Policy Steering Committee members; Advocacy Groups; other)
6. Determine how external Task Force members will be selected (i.e., appointed by Board President or individual Directors; other)

Other:

As indicated above, the Board may wish to have further discussion on the conditions proposed by MTC, included as Attachment A to this memo. Revisions to this document would certainly be included as part of subsequent discussions with MTC.

Regular Board updates will be provided as the process continues, and as more details emerge or are clarified. Such updates will likely be at least monthly, if not more often. Consistent with this memo, staff will provide such updates to the full Board.

Prior Relevant Board Actions/Policies:

GM Memo 09-228: Consider Authorizing the General Manager or His Designee to Pursue Shifting Funds from the E.14th Street/International Boulevard/Telegraph Avenue Bus Rapid Transit (BRT) Project to the Operating Budget, September 25, 2009

Attachments:

Attachment A: MTC Proposed Conditions

Approved by: Rick Fernandez, General Manager

**Prepared by: Nancy Skowbo, DGM, Service Development
Kate Miller, Capital Development, Legislation & Grants**

Date Prepared: October 20, 2009

For Discussion - Proposed Conditions

1. **Agency Financial Review:** Prior to the release of FY2010 CMAQ funding, AC Transit must agree to a comprehensive, independent financial review that considers cost control and revenue enhancement strategies to ensure the District's long-term financial viability. AC Transit must take the necessary steps to implement the identified strategies before the release of the requested FY2011 CMAQ funding.
2. **East Bay Operations Analysis and Implementation:** AC Transit must agree to an independent, comprehensive operational analysis for the east bay and transbay service areas, in cooperation with BART, WestCAT and Union City. Where financially feasible, AC Transit must agree to the subsequent implementation of the findings.
3. **Address Eligibility for Fund Sources:**
 - a. **CMAQ:** AC Transit must demonstrate to MTC and FTA that the proposed operating expenses for the restructured service are eligible for CMAQ funds. If the proposed expenses are not CMAQ eligible, AC Transit must identify another project – likely involving another transit operator – that can use the CMAQ funds in exchange for operating funds.
 - b. **Regional Measure 2 Bus Rapid Transit Funds:** AC Transit must identify another eligible capital project that could use RM2 funds and work with the sponsor of that project to make an equivalent amount of operating dollars available to AC Transit. Once a project is identified, MTC will have to conduct a public hearing to propose that the Bus Rapid Transit funds be redirected to the other capital project.



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October 26, 2009

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Mr. Rick Fernandez
General Manager
AC Transit
1600 Franklin Street
Oakland, CA 94612

Dear *Mr. Rick* Fernandez:

I am responding to your letter dated September 17th in which you request the redirection of roughly \$80 million in capital revenues currently dedicated to the proposed East 14th/International/Telegraph Bus Rapid Transit (BRT) line to other projects in order to make an equivalent amount of funding available for AC Transit's operating costs. Based on more recent conversations with you and your Board members, I understand that the immediate request is reduced to \$35 million in federal Congestion Mitigation and Air Quality (CMAQ) Improvement Program funds over a two-year period.

I am deeply concerned about the significant budget challenges faced by the region's transit agencies, including AC Transit, as a result of the loss of State Transit Assistance funding and the steep decline in sales tax revenues. I am also concerned that the frequency of AC Transit's requests to MTC to redirect capital funding to operating expenses over the past decade suggest a more fundamental and long-term challenge that must be tackled. In order to address this challenge, I am prepared to recommend in December that the Commission approve the request to transfer \$35 million in CMAQ funding from the BRT project to AC Transit operating expenses under the following three conditions:

1. **Agency Financial Review:** Prior to the release of the FY2010 portion of CMAQ funding, AC Transit agrees to an independent comprehensive, financial review that considers cost control and revenue enhancement strategies to support the District's long-term financial viability. AC Transit must take the necessary steps to implement the identified strategies before the release of the requested FY2011 portion of CMAQ funding.
2. **East Bay Operations Analysis:** Consistent with the Commission's direction to proceed with subregional analysis of service effectiveness as part of the Transit Sustainability Project, AC Transit agrees to an independent, comprehensive

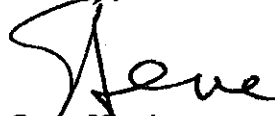
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operational analysis for the east bay and transbay service areas, in cooperation with BART, WestCAT, Union City, and the Water Emergency Transportation Authority. Where financially feasible, AC Transit agrees to take all reasonable steps to implement the recommendations of this analysis.

- 3. Address Eligibility for Fund Sources:** AC Transit will demonstrate to MTC and the Federal Transit Administration that the proposed operating expenses for the restructured service are eligible for CMAQ funds. If the proposed expenses are not CMAQ eligible, AC Transit will identify another project that can use the CMAQ funds in exchange for operating funds. In the event AC Transit does not have such a project in its own capital plan, AC Transit will be responsible for obtaining the agreement of another transit operator to assist in the exchange of funds.

If these conditions are acceptable, I would request that your Board of Directors enact a resolution endorsing this approach by November 30, 2009, so that Commission action can follow in December. Please do not hesitate to contact me should you have any questions or if you would like to discuss this matter further.

Sincerely,



Steve Heminger
Executive Director

cc: Chair Scott Haggerty
Commissioner Tom Bates
Commissioner Federal Glover
Commissioner Amy Rein Worth

Berkeleyans for Better Transportation Options

bbtop.94700@gmail.com • http://bbtop.org • P.O. Box 5489, Berkeley, CA 94705

Date: October 28, 2009

To: Hon. Members, AC Transit Board of Directors (via fax: 510-891-4705; 1 page total)

Re: **Proposed transfer of CMAQ funds to AC Transit operating budget**

Our organization is closely following the current negotiations to transfer \$35 million in Congestion Mitigation and Air Quality (CMAQ) funds to AC Transit's budget for current operations. As we stated previously, we believe that the proposed service cuts can best be avoided by shifting all available capital funds to the operating budget, rather than just the CMAQ funds.

If the RM2 funds or other funds are more easily transferable, then they should be used. All available financial options should be explored to avoid imposing the significant service cuts planned to begin early next year.

Because it would be highly disruptive to impose 15% or even 7.5% service cuts, even for a relatively short time, we ask that you do everything in your power to prevent these cuts from being imposed.

We also wish to echo regional concerns about financial stability at AC Transit. Some have suggested that the financial problems at AC Transit are even worse than has been revealed so far. Given this uncertainty, we urge AC Transit to offer a thoroughly candid financial report, and to prepare a robust ten-year plan for financial sustainability that includes substitutes for all contingencies in traditional funding sources.

Thank you for your consideration of our views.

Respectfully,

- /s: Dean Metzger
- Doug Buckwald
- Joseph Stubbs
- Barbara Gilbert
- Mary Oram
- Scott Tolmie
- Martha Jones
- Gala Garcia
- George Oram
- Michael Katz
- Jane Kramer

for BBTOP

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Board of Directors

AC Transit

1600 Franklin Street

Oakland, CA 94612

Honorable Board President and Directors,

As advocates for world-class public transportation in the Bay Area, TransForm greatly appreciates the support of AC Transit's staff and Board in forming a Long-Term Budget Sustainability Task Force. We believe that the creation of this Task Force is a key step in achieving the agency's goal of creating a sustainable 10-year financial plan without jeopardizing core system improvement projects.

With respect to your discussion on a funding Task Force at tonight's meeting, TransForm would like to recommend the following:

1. Define the scope of the Task Force as investigating and reporting on the needed steps to create long-term sustainability in AC Transit's budget beyond those that rely on one-time infusions from capital funding swaps.
2. Require that the Task Force contain non-staff/board members who bring finance knowledge, especially public finance, and stakeholder groups including riders.
3. Establish a 12-18 months process in order to enable the task force to work with MTC's proposed auditors and explore significant recommendations rather than a cursory look at immediate funding infusions.

Ongoing financial sustainability is at the heart of the issue being addressed by both AC Transit and MTC. As we have stated in the past, we feel that proposals to shift RM2 funding from capital funding to operations represent short-term, unsustainable shifts that won't even manifest for years. However we recognize that shifting CMAQ funds can immediately help to cover the current.

The scope of the Task Force should be to take a broad look at AC Transit's sources of revenue and operational expenses and work with AC Transit's financial staff to create a 10-year financial plan based on anticipated sources of revenue and reduced operations costs. It is our hope that the Task Force will ultimately help AC Transit move beyond this cycle of "creative financing" and into a new era of growth and stability. In the end, we

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anticipate the Task Force to be able to help build public awareness and increased transparency for well vetted, but difficult decisions that may need to be made by the Board in the near future in order to adopt a truly sustainable 10-year financial plan.

TransForm respectfully requests that those who are appointed by the Board President to serve on the Task Force bring knowledge on finance matters; and especially experience working on finance within the public sector, even if their expertise is not directly related to public transit agency budgets. Many of the issues facing AC Transit are not specific to transit agencies.

The Board should also make sure that the Task Force members represent relevant stakeholders, including transit riders, unions, advocacy organizations, local businesses and institutions.

We understand, and respect, Director Peeples suggestion to have the Task Force meet for only four months. However, we are concerned that such a short lifetime would severely limit the ability of the Task Force to achieve meaningful long-term recommendations. MTC has indicated willingness to discuss the CMAQ issue with an agreement from AC Transit to move towards financial sustainability. Putting in place a meaningful process that can lead to recommendations beyond “use RM2” or “use other funds than RM2” which do not represent a long term solution will help AC Transit achieve the actual result that MTC is requesting it embark on.

In summary, our recommendations are as follows:

RECOMMENDED MOTION

1. Define the scope of the Task Force as examining AC Transit’s long-term financial plans, including sources of revenue and operating expenses. The Task Force should be charged with developing recommendations on how to create a truly sustainable 10-year financial plan based on anticipated sources of revenue and reduced operations costs.

2. The Task Force Members should be appointed by the Board President and most should have a demonstrated knowledge of finance matters. The Board should advise the President on who should be appointed. The overall qualifications of the task force should include:

- Experience in public finance, or;
- Strategic financial planning experience, or;
- Represent of AC Transit stakeholders, including at least one of the following;
 - Transit riders
 - Local Businesses and Institutions
 - Transit Advocates
 - Labor

3. Provide the Task Force with 12-18 months in order to create a truly sustainable 10-year financial plan.

Sincerely,

John Knox White

Program Director