

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



ABAG

Date: October 1, 2015

To: ABAG Executive Board

From: Ezra Rapport
Executive Director

Subject: **MTC Proposal to Terminate ABAG's Planning Grant and Transfer Land Use Planning Staff to MTC**

Recommended Action:

Staff recommends Executive Board adoption of Resolution No. 11-15.

Background and Analysis:

ABAG staff has prepared several memos (July 2; September 10; September 22; September 30)¹ addressing the Metropolitan Transportation Commission (MTC) proposal which was presented in full at the September 23 meeting of the Commission.

MTC's September 18 detailed proposal did not address the significant issues raised by ABAG. The ABAG Executive Board approved a response to the proposed transfer consisting of these points: (a) ABAG will not transfer its planning and research staff to MTC, (b) MTC must fund ABAG for the balance of FY 2015-16 and (c) ABAG and MTC should begin a discussion on restructuring our relations, including merger.

The MTC Commission had a substantial discussion on the implications of the proposal but did not take any action at the September 23 meeting. On October 28, the Commission is scheduled to take action on the transfer proposal and take action on the proposal to extend or not extend funding for ABAG planning and research staff to the end of FY 2015-16.

The ABAG Executive Board is convening this special meeting to address the MTC proposal to terminate ABAG's planning grant and transfer land use planning staff to MTC. In my opinion, the ABAG Executive Board should articulate and adopt a reasoned position for transmittal to MTC. I have attached to this memorandum a resolution which does so based on staff's analysis of the current situation as set forth below.

¹ Reports available online at http://abag.ca.gov/media/2015_merger/

A. ABAG and MTC are Partners in Regional Planning

SB 375 specifically allocates responsibility for preparing the Sustainable Communities Strategy (SCS) for the Bay Area between ABAG and MTC. State law requires that each region's regional transportation plan (RTP) contains a Sustainable Communities Strategy (SCS) with eight mandatory elements. These elements consist of five regional land use planning activities and tasks² and two regional transportation planning activities and tasks³ and one combined land use and transportation element⁴.

In the other three major metropolitan areas of the State, the regional Council of Governments (COG) have been designated the metropolitan transportation organization (MPO). The other major metropolitan MPOs - Southern California Association of Governments, San Diego Council of Governments and Sacramento Association of Governments - prepared the SCS for their respective regions using pass through Federal and State funds. It should be noted that all of the above organizations are merged Councils of Governments and MPOs.

The legal structure and circumstances in the San Francisco Bay region is different. ABAG, the region's COG, is not the MPO and has been conferred regional land use planning authority under its joint powers agreement and State law. MTC is the region's regional transportation planning agency and MPO with only regional transportation planning authority. Therefore, SB 375 divides the responsibility for the eight elements of the SCS between ABAG and MTC in accordance with their pre-existing statutory powers and responsibilities: the land use element to ABAG, the transportation elements to MTC and the combined land use and transportation element jointly to ABAG and MTC.

MTC uses pass-through State and Federal public monies to fund both its and ABAG's work on the SCS. Until June of this year, pursuant to an eight year funding agreement, MTC had continued to provide ABAG with access to those funds so ABAG can carry out the responsibilities for preparing PBA 2040.

This partnership has allowed the region to complete the most successful SCS in the State, as recognized by State agencies and academic researchers.

B. ABAG Needs Its Planning Staff to Connect with Cities and Counties

While ABAG does not have independent funds to carry out its work, ABAG's membership association has created a deep relationship with cities and counties who are the actual implementers of a regional land use strategy. Given the size of the Bay Area and the number of jurisdictions involved (101 cities, 9 counties) this relationship is one of the most important assets in regional planning.

ABAG has been successfully collaborating with cities and counties in the preparation of regional land use planning. In our discussions throughout the region, and from the body of correspondence and testimony at the MTC meeting on September 23rd, it should be clear that the region's cities and counties, city managers, and city planning managers are not supportive

² Sections 65080(b)(2)(B)(i), (ii), (iii), (v) and (vi)

³ Sections 65080(b)(2)(B)(iv) and (viii)

⁴ Section 65080(b)(2)(B)(vii)

of this proposed unilateral transfer of regional land use planning staff. ABAG, as a membership organization of cities and counties, and the region's Council of Governments, ensures through its staff the active participation of local governments in the planning process. The MTC proposal assumes that planning staff under MTC can accomplish the same function, but the integration of cities and counties is not only a staff function. Staff reports to the ABAG Executive Board of 38 members and there is an ABAG delegate in every city and county. ABAG holds General Assemblies of its delegates to connect with them on regional issues and to pass ABAG's budget. The ABAG planning staff is integrated into the political structure of local government. The message from local governments is clear: either continue with ABAG with its staff as the regional land use planning entity or engage in meaningful discussions of full merger between the two agencies. Any merger dialogue will need to include the participation of cities and counties, and allow ABAG to continue its current functions.

C. ABAG's Many Programs Will Be Severely Injured If It Loses Its Regional Planners

The loss of MTC's contribution to ABAG overhead would be approximately \$1.5 million, making it impossible for ABAG to continue operation of the programs, activities and services that currently exist. This is recognized by MTC and their short-term solution is to subsidize ABAG. The mechanism by which MTC would provide short-term subsidy is not specified by MTC in their proposal. The loss of MTC funding for ABAG's planning functions will have an immediate detrimental effect on ABAG's financial stability to include: a going concern qualification of its financial statements, loss of its \$2 million line of credit and draining of its current reserves and working capital.

Enterprise programs currently supported by the ABAG administrative facilities will be significantly disrupted and their budgets altered. ABAG grant revenues, not related to MTC, that have averaged \$9 million per year, excluding pass-through grant funds of \$12 million, will be jeopardized. The cascading negative effects on ABAG's finances, including diminution and loss of ABAG membership dues, will likely result in ABAG not being able to maintain the required amortization of its unfunded pension benefit.

D. ABAG and MTC Should Be Given Time to Examine Reasonable Merger Options

ABAG has stated that it will not accept the transfer proposal. ABAG is currently willing and able to undertake and complete its share of the work on PBA 2040, and its future work on the Regional Housing Needs Allocation (RHNA). If MTC wishes to deliberate with ABAG on a possible voluntary restructuring of our joint responsibilities under SB 375, ABAG is prepared to do so but should not be coerced into doing so by threats of defunding. Therefore, MTC should provide ABAG access to the pass-through State and Federal public monies.

ABAG is open to new forms of collaboration with MTC to meet MTC's needs, including exploring merger options assisted by third party experts. It should be understood that MTC and ABAG perform complementary planning and are careful to not engage in overlapping work. We understand that MTC is making a case that its administrative decision making is impaired by collaborating with ABAG on the SCS. The administrative conversations between the two organizations are viewed differently. ABAG views the complex considerations of regional planning as appropriate creative tension; MTC administrators believe the bifurcated structure is inefficient and costly. Despite these differences, the agencies are successfully collaborating and producing good outcomes for integrated transportation and land use planning. The administrative issues could be resolved with the commitment of both governing bodies to a

MTC Proposal

October 1, 2015

4

better process. ABAG recommends that a third party organizational development team facilitate conversations on better collaboration and possible merger options.

Attachment:

Resolution No. 11-15

**ASSOCIATION OF BAY AREA GOVERNMENTS
EXECUTIVE BOARD**

RESOLUTION NO. 11-15

ABAG STATEMENT TO THE METROPOLITAN TRANSPORTATION COMMISSION

WHEREAS, pursuant to section IV.D of the Bylaws of the Association of Bay Area Governments (ABAG), The cities and counties of the Bay area created ABAG as a joint powers agency with regional planning powers, including regional land use planning; and

WHEREAS, the State Legislature has also conferred specific regional land use planning powers on ABAG through the enactment of statutes such as SB 375, and

WHEREAS, the statute creating the Metropolitan Transportation Commission (MTC) (a) requires it to provide comprehensive regional transportation planning for the Bay area, (b) does not grant MTC any land use planning powers and (c) explicitly states that the Commission shall consider plans prepared and adopted by ABAG; and

WHEREAS, SB 375 allocates to ABAG the power to prepare all land use planning elements of the Sustainable Communities Strategy (SCS) and its quadrennial updates; and

WHEREAS, SB 375 allocates to MTC the power to prepare all transportation planning elements of SCS and its quadrennial updates; and

WHEREAS, SB 375 requires that the regional transportation plan (RTP) for the Bay area include the SCS and the quadrennial updates prepared by both ABAG and MTC in accordance with the statutory scheme described above; and

WHEREAS, ABAG and MTC staff have been working on the current quadrennial update to the SCS (PBA 2040); and

WHEREAS, MTC has been using pass-through State and Federal public monies to fund both its and ABAG's work on PBA 2040; and

WHEREAS, the Commission has adopted the Revised Funding Agreement Framework which specifically states that MTC will provide access to such funds through FY 2020-21, including funding for ABAG's work on PBA 2040, and

WHEREAS, so long as ABAG is able and willing to carry out its work on PBA 2040, MTC should not defund ABAG because by doing so, MTC makes it impossible for ABAG to provide the long term regional land use plan, which will impact MTC's ability to adopt a legally compliant RTP and puts at risk the region's State and Federal transportation funding.

**ASSOCIATION OF BAY AREA GOVERNMENTS
RESOLUTION NO. 11-15**

NOW, THEREFORE, BE IT RESOLVED that the Executive Board of the Association of Bay Area Governments states to the Metropolitan Transportation Commission:

- A. ABAG has regional land use planning and research staff capable of carrying out all the responsibilities assigned to ABAG under SB 375.
- B. ABAG staff has been directed to carry out the responsibilities assigned to ABAG under SB 375, including preparation of Plan Bay Area 2040.
- C. ABAG's planning and research staff belongs with the Council of Governments, which is ABAG.
- D. MTC should restore funding to ABAG for FY 2015-16 in the full amount set forth in the Revised Funding Agreement Framework as approved by MTC at its June 25, 2014 meeting, but without qualifications.
- E. So long as ABAG is able and willing to carry out its responsibilities under SB 375, MTC should continue funding ABAG for such work provided there are available State and Federal pass-through funds, and by providing ABAG with sufficient assurances that such funding will not be unilaterally terminated in the future.
- F. ABAG and MTC should immediately begin an open and transparent discussion on restructuring the relationship, including merger.

The foregoing was adopted by the Executive Board this 13th day of October, 2015.

Julie Pierce
President

Certification of Executive Board Approval

I, the undersigned, the appointed and qualified Secretary-Treasurer of the Association of Bay Area Governments (Association), do hereby certify that the foregoing resolution was adopted by the Administrative Committee of the Association at a duly called meeting held on the 13th day of October, 2015.

Ezra Rapport
Secretary-Treasurer

Approved as To Legal Form

Kenneth K. Moy
Legal Counsel