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CONTRACOSTA TIMES

Oakland Tribune editorial: Stop MTC leader's bid for regional planning czar

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POSTED: 09/30/2015 12:43:03 PM PDT **0 COMMENTS** | UPDATED: 15 DAYS AGO



Steve Heminger, Executive Director, Metropolitan Transportation Commission, makes a point during a panel discussion at the Silicon Valley Regional Economic Forum held at the Computer History Museum in Mountain View, Calif. (Gary Reyes/Bay Area News Group)

Steve Heminger's self-centered bid to become Bay Area planning czar must be stopped.

The executive director of the Metropolitan Transportation Commission, who runs his agency like his personal fiefdom, now wants to take key staff from the Association of Bay Area Governments.

He and MTC board chairman Dave Cortese portray the proposed move as a consolidation. Actually, this is a hostile takeover that would gut ABAG of its employees responsible for land-use and housing planning, and weaken the agency's financial underpinnings.

What's driving Heminger? Under state law, the two agencies must now work cooperatively on regional planning. As Heminger wrote tellingly, "these different organizational styles were more than a nuisance" during recent drafting of the latest joint regional planning document.

Heminger's doesn't like to waste time on the niceties of planning. "MTC is more action-oriented and project-based," he wrote, "while ABAG is more discussion-focused and policy-based."

Well, we've seen how Heminger's action approach has worked out. Bay Area traffic is a mess. Public transit systems are falling apart with billions of dollars of unmet capital needs. The new Bay Bridge, for which Heminger led the oversight committee, is riddled with leaks and faulty bolts while the contractors have been let off with slaps on their wrists.

Meanwhile, Heminger spent more than \$45,000 on air tickets to conferences in Tokyo, Sydney, Beijing and Vienna. And he deceived the public about his empire-building, \$256 million real estate deal, 53 percent over budget, that's uses bridge toll money to help purchase and refurbish a San Francisco building.

Now, Heminger wants to take ABAG's 15 planners, adding them to his planning staff of 24. Because of a historical anomaly, about \$4 million of state and federal funds for land-use planning is funneled through MTC to ABAG. That represents one-third of ABAG's entire personnel costs. Heminger is threatening to withhold that money to force ABAG to capitulate.

He says ABAG could still use the planners' services. Sure. They would be paid by MTC and, undoubtedly, be expected to fall in line with Heminger's agenda. Even his board members, primarily elected city and council officials from around the bay, cower in fear that he will trim funding for transportation projects in their regions.

Heminger is right about one thing: The two agencies have redundancies and should be merged.

But that requires full public discussion about what the new agency would look like: Should voters directly elect the new board? Or should Bay Area city and county representatives pick them, as is done for MTC and ABAG?

We must ensure that the needs of the region's residents and businesses are met, not the whims of Heminger.

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



ABAG

Date: September 30, 2015
To: ABAG Executive Board
From: Ezra Rapport, ABAG Executive Director
Cc: Steve Heminger, MTC Executive Director

Subject: Summary of September 23rd MTC Commissioner Comments Regarding Proposed Transfer of 15 Land Use Planners and Related Funding from ABAG to MTC

MEMO
2015 OCT 16 AM 10:08
FILED
OFFICE OF THE CITY CLERK
OAKLAND

On Wednesday, September 23rd, the Metropolitan Transportation Commission (MTC) discussed a MTC staff proposal to terminate ABAG's planning grant on December 31, 2015 and transfer the regional land use planning function and 15 ABAG land use planners to MTC. The proposal is found on ABAG's website at http://abag.ca.gov/media/2015_merger/ as MTC staff memo to the Commission dated September 18, 2015.

There were several hours of public comments, with over 40 speakers, most of whom expressed concern regarding the MTC proposal's effect on the region, city participation in the regional planning process, ABAG employees and pensioners, and on ABAG's other programs and services. After discussion among Commissioners, the following requests (paraphrased) were made of the Director, Mr. Steve Heminger, by various Commissioners:

1. Examine how the MTC proposal impacts labor relations. ABAG planners are union represented; MTC is non-union. *Several commissioners, including Chair Cortese and Commissioner Campos, asked whether or not ABAG planners would be able to retain membership in their union, SEIU Local 1021, after a transfer to MTC.*
2. Examine the financial impact on ABAG from the loss of overhead funds as a result of the termination of funding and overhead associated with the transfer of 15 land use planners from ABAG to MTC.
3. Examine the potential impact of the MTC proposal on the pensions and other post employment benefits of ABAG employees and pensioners.
4. Provide more details on what formal regional land use authority the ABAG Executive Board would retain if this proposal were implemented¹.
5. Determine objectively whether or not ABAG governance will be impacted by the shift of planning services to MTC.

¹ Many elected officials feel their authority over a land-use and housing work program is directly related to their ability to hire and fire the staff responsible for carrying out that work program.

6. Examine potential loss of dues to ABAG if its members do not share MTC's belief that the loss of 15 regional land use planners will have no impact on ABAG's effective land use authority. *Commissioner Scott Haggerty said he felt that Alameda County would not want to pay its 180K/year in dues if ABAG loses its planning staff and direct authority over housing and land use policy.*
7. Provide a realistic timeline for transitioning ABAG planners to MTC if the decision is made to proceed with this proposal.
8. Look into hiring an experienced third party management consultant to look at combining the two planning departments under one agency and at merger options.
9. Recommend the best means to communicate with ABAG employees about this.
10. Schedule a field trip to observe how other Metropolitan Planning Organizations around the State handle land use and transportation planning.

In addition, a number of MTC commissioners expressed their concerns that a decision of this magnitude:

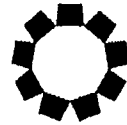
- a. should not be rushed
- b. needs greater outreach/discussion with local jurisdictions and key stakeholders
- c. needs milestones/deadlines to insure progress toward improvement and change
- d. should not hurt or disadvantage any current ABAG employees or retirees
- e. should reflect the fact that process does matter and is a critical component of any successful plan or planning effort
- f. should reflect a "bottoms up" approach for regional land use planning that achieves a strong "buy-in" or consensus from local jurisdictions.

Finally, a number of Commissioners, including Chair Cortese, appeared to be open to voting at the October MTC meeting to extend ABAG's budget through the full fiscal year (ending June 30, 2016) to alleviate the anxiety of ABAG staff and to provide sufficient time to thoughtfully examine the current MTC proposal and merger alternatives.

The Commission intends to take action at its next meeting on **Wednesday, October 28th at 9:30AM at the MetroCenter Auditorium, 101 Eighth Street, Oakland.** We will keep you posted of any significant developments and agenda items. For additional information (memos, letters, media coverage) related to this issue, please visit the ABAG website at http://abag.ca.gov/media/2015_merger/.

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/

MTC Proposal

October 1, 2015

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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
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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



MAYORS CONFERENCE

October 13, 2015

ABAG Governing Board
Attn: Clerk of the Board
MTC Board of Commissioners
Attn: Clerk of the Commission
101 8th Street
Oakland, CA 94607

Re: Relationship between the Association of Bay Area Governments and the Metropolitan Transportation Commission

Dear ABAG Governing Board Members and MTC Board of Commissioners:

As Chair of the Contra Costa Mayors Conference, I am writing to inform you that, at our October 8, 2015 meeting, our membership considered the proposal by the Metropolitan Transportation Commission (MTC) to eliminate financial support to the Association of Bay Area Governments (ABAG) for ABAG's planning and research activities from January 1, 2016 forward and, instead, to absorb ABAG's planning responsibilities and staff into MTC.

Enclosed is a resolution passed by our members on October 8, 2015 that outlines our thinking on this important matter of regional planning and our opposition to this MTC proposal.

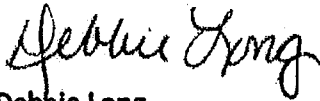
While we firmly understand the merits of consolidating and unifying the Bay Area's regional agencies, **we do not support the current proposal by MTC.** Not only would this proposal remove a core function from ABAG, it would also place the regional planning agency on a path towards insolvency, which would jeopardize the success of several high priority efforts, including the San Francisco Bay Trail Project, the San Francisco Estuary Project, and ABAG's water quality, earthquake and disaster resiliency, wetlands restoration, green business, pooled power purchasing, hazmat training, risk management/insurance pool, and pooled financing authority activities.

Instead of proceeding with this plan, we strongly urge MTC and ABAG to consider openly studying a merger that delivers a comprehensive and multi-disciplinary regional approach for all planning related functions. This process should recognize local control while still promoting optimal land use, transportation, and all related functions in the region. Additionally, this merger must be transparent and involve input from a broad set of stakeholders – including municipal governments.

We urge MTC to continue fully funding ABAG until the two agencies enact a cooperative agreement – perhaps a new JPA - that leads to an orderly and successful transition of all planning functions and the development of a new model which promotes participative Bay Area regional governance.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Debbie Long". The signature is written in a cursive, flowing style.

**Debbie Long,
Chair, Contra Costa Mayors Conference,
Council Member, City of Pinole**

**Cc: Mayors of Contra Costa Cities
Executive Director, Mayors Conference**

15 OCT 16 AM 9:12

Approved as to Form and Legality
DRAFT

City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS BROOKS & KALB & VICE MAYOR KAPLAN

RESOLUTION URGING THE METROPOLITAN TRANSPORTATION COMMISSION (MTC) TO IMMEDIATELY RELEASE THE FULL BUDGET FOR LAND USE PLANNING AT THE ASSOCIATION OF BAY AREA GOVERNMENTS (ABAG), THAT HOLDING UP OF ANY FUNDING NOT BE USED TO FORCE OTHER DECISIONS, THAT MTC AND ABAG ENGAGE IN COLLABORATIVE DISCUSSIONS TO CONSIDER RESTRUCTURING THEIR RELATIONSHIP, INCLUDING A POSSIBLE MERGER, AND DIRECTING OAKLAND'S REPRESENTATIVE ON MTC TO VOTE ACCORDINGLY

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 (Plan Bay Area (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

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MEETING OF THE
OAKLAND CITY COUNCIL

WHEREAS, on June 25, 2014 MTC unanimously approved 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 its quadrennial updates; and

WHEREAS, the cities and counties of the Bay Area are engaged with ABAG on preparation of the quadrennial PBA update in 2017 and have an immediate and direct interest in assuring that the ABAG studies underlying the SCS, PBA and other planning documents are accurate, reasonable, timely and consistent with regional and local objectives and goals; and

WHEREAS, the cities and counties of the Bay Area, through their representatives on the Executive Board of ABAG, are concerned that recent proposals by MTC would have the effect of undermining necessary funding for the timely preparation of the extensive analysis and studies needed for Plan Bay Area; and

WHEREAS, proposals by MTC that deviate from the Revised Funding Agreement Framework by no longer supporting the necessary ABAG planning staff to prepare the SCS and PBA 2040 and, in fact, transferring ABAG planners to MTC, can unnecessarily impede staff and governing boards of both ABAG and MTC from the work each needs to perform; and

WHEREAS, so long as ABAG is able and willing to carry out its work on PBA 2040, MTC should continue to fund ABAG because by not doing so, MTC would make it impossible for ABAG to provide a long term regional land use plan, which will impact MTC's ability to adopt a legally compliant RTP and could put at risk the region's State and Federal transportation funding; now therefore be it

RESOLVED: that Oakland City Council states to the MTC

- 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, and MTC should abandon the current effort to transfer only the land use planning staff and function from ABAG to MTC;
- 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 functionally 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 begin an open and transparent discussion including the 101 cities and nine counties and stakeholders on restructuring the

relationship, including the possibility of merger, and consider jointly hiring an independent consultant to facilitate such a process; and be it

FURTHER RESOLVED: pursuant to Oakland Charter Section 305(g), the Oakland City Council directs the City's representative on the MTC to vote in accordance with the Oakland City Council's above statements to MTC.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND
PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California