



METROPOLITAN SERVICE DISTRICT
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*cc Andy C.
Dick B.*

MEMORANDUM

Date: October 2, 1980
To: Andy Jordan, General Counsel
From: Thomas Miller, Assistant Counsel
Regarding: Metro's Status as a Metropolitan Planning Organization (MPO) Under the Urban Mass Transit Act of 1964 as Amended

Issue: Does Metro qualify for designation as an MPO under the Urban Mass Transit Act (UMTA) 49 USC 1607a, the Federal Highway Act (FHWA) 23 USC 134 and 23 CFR 450?

Short Answer: Yes. Metro received its designation as MPO for the Portland metropolitan area by the Governor pursuant to the review and certification of appropriate federal officials as meeting federal requirements, and pursuant to the set of agreements contained in Metro's June, 1979 Prospectus. The agreements establish the Joint Policy Advisory Committee on Transportation (JPACT) as an advisory body not a legislative body. This arrangement meets the Act's requirements according to the approval of the reviewing federal officials, and Oregon Statutes regarding regional transportation planning in the Portland area. ORS 268.390. A recent amendment to the Urban Mass Transit Act demonstrates a congressional intent to authorize representative organizations, including regional governments, as MPOs, 23 USC 134(1)(b).

Discussion

Under 23 CFR 450.104, Metropolitan Planning Organization means:

"...that organization designated by the Governor as being responsible together with the State, for carrying out the provisions of 23 USC 134 as provided in 23 USC 104(f)(3) and capable of meeting the requirements of section 3 (a)(2) and (e)(1), 4(a) and 5(q)(i) and (l) of the UMT Act (49 USC 1602 (a)(2) and (c)(i), 1603(a) and 1604(g)(i) and (l). This organization is the forum for cooperative decision-making by principal elected officials of general purpose local government."

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The statutory sections referred to in 23 CFR 450.104 require: 1) state and federal cooperation in transportation plan formulation. 23 USC 134(1); 2) transportation programs and plans based on long-range land use; social, economic, environmental goals; energy conservation; development objectives, system performance goals and alternative transportation mode 23 USC (1); 3) a continuing, cooperative and comprehensive planning process for projects "...carried on by the state and governing bodies of local communities..." 49 USC 1602(a)(2), 1602(e)(i); 1603(a); 1604(g)(1); 4) encouragement of private enterprise participation in planning, 49 USC 1603(a); and 5) consideration of the views of "responsible public officials of an urban area in which the project is located, 23 USC 134(i); 49 USC 1604(1).

23 CFR 450.106 further provides that one MPO should be designated for each urbanized area. An MPO should 1) be eligible for funds under 49 USC section 1607(a); 2) established by state enabling legislation; 3) perform the functions of the OMB A-95 review; 4) have adequate representation on the MPO of "principal elected officials of general purpose local government." An MPO remains designated until the Governor designates another MPO.

Additionally, 23 USC section 134 (b) states:

"(1) Within one year after enactment of this subsection, in the absence of the State law to the contrary, units of general purpose local government within an urbanized area or contiguous urbanized areas for which a Metropolitan Planning Organization has been designated prior to enactment of this subsection, may by agreement of at least 75 percentum of the units of local government representing at least 90 percentum of the population of such urbanized area or areas, and in cooperation with the Governor, redesignate as metropolitan planning organization any representative organization.

"(2) Except as provided in paragraph (1), after the date of enactment of this subsection designations of Metropolitan Planning Organization shall be by agreement among the units of general purpose local government and the Governor." (emphasis added).

The above provisions were enacted on November 6, 1978.

The Oregon Director of Transportation recommended permanent designation of MSD as the MPO for the Portland urbanized area. In a letter of November 6, 1979, Governor Atiyeh designated Metro as MPO; stating, "...Metro is so designated by agreement of the units of general purpose local government and the Governor of the State of Oregon." (letter p. 1-2) A draft policy statement by FHWA/UMTA regarding designation of an MPO for the SMSA of Portland noted the problem of interstate cooperation and that planning must be a coordinated process carried out by local elected officials in both Washington and Oregon. The draft policy noted "considerable flexibility" for development of coordinative arrangements including participation of elected officials of general purpose local government in the MPOs. The draft policy required an integrated Prospectus for regional planning stating such arrangements.

In June, 1979, Metro produced a Prospectus which proposed an arrangement regarding the required participation and representation of principal officials of local government in decision-making by the MPO. JPACT was proposed in this Prospectus as the ongoing forum for policy review and advice on matters forwarded from the Transportation Policy Alternatives Committee (TPAC). The composition of TPAC includes representatives from Clackamas, Clark, Multnomah and Washington Counties, the City of Portland and 12 other cities within the metropolitan area. JPACT includes elected officials of general purpose local governments within the Portland metropolitan area and elected officials representing Clark County and the city of Vancouver.

On December 17, 1979, the regional directors of the Federal Highway Administration and the Urban Mass Transportation Administration completed their review of these arrangements and found that the planning process contained therein, met the requirements of the September 17, 1975, joint FHWA/UMTA regulations (23 CFR section 450 et. seq.), including the establishment of JPACT as a policy advisory forum for representation of elected officials of general purpose local government, and designation of the Metro Council as the MPO. Although the certification findings, attached to the December 17, 1979 letter, noted five deficiencies in the Prospectus, none of these concerned the relationship between JPACT as a policy advisory body and the Metro Council as MPO.

Metro's designation rests first upon federal certification of the planning process contained in the Prospectus delineating JPACT as an advisory policy body and the Council as MPO. This arrangement meets federal requirements under 23 CFR 450 et. seq. by giving local governments sufficient input into policy-making, yet leaving final approval for regional transportation

planning to the Metro Council as required under ORS 268.390. The arrangement also permits the participation of Washington state officials in the policy-making forum as required by FHWA/UMTA and permitted under ORS 268.355. As noted above, there is great flexibility in the designation of MPOs to best conform with federal and state law.

Second, the November 6, 1979, Governor's letter recites that Metro was designated as MPO with his approval and by agreement of the units of general purpose local governments in the area in accordance with 23 USC 134 (z). Since federal certification and the response to the Governor's concerns are based on the Prospectus, the designation necessarily approves the arrangements made therein. This designation has not been changed or modified by the Governor.

Thirdly, and alternatively, 23 USC 134 (l)(b) as amended, indicates a clear congressional intent that any representative organization and not simply the units of local government themselves might be designated an MPO. The Metro Council, as a body of elected regional officials, would certainly meet the definition of a representative organization. The designation of Metro as a MPO was by agreement of "...the units of general purpose local government" in unanimity, thus constituting more than the required 75 percentum of local government units. The designation was within one year of the enactment of 23 USC 134(l)(b).

Fourthly, the designation of Metro as a MPO meets the other requirements of 23 CFR 450.106. Metro is eligible to receive planning funds under 49 USC 1607(a). 23 CFR 450.106(b). Metro was established under State enabling legislation, with authority to carry out metropolitan transportation planning, Chapter 268, Oregon Revised Statutes. Metro is also designated to perform OMB A-95 Reviews 23 CFR 450.106(c). The principal elected officials of general purpose local government within Metro's jurisdiction have adequate representation, as certified by FHWA/UMTA review, 23 CFR 450.160(d). The designation of Metro as a MPO is continuous until the Governor designates another MPO. As noted above, no such redesignation has occurred. 23 CFR 450.160(f).

For the above stated reasons, Metro and not JPACT has been designated the MPO. JPACT has a vital and necessary function of providing policy advisory as required under 23 CFR 450; 23 USC 134; 49 USC 1602(a)(2), 1603(a), 1604(g)(i) and (l). However, it is Metro and not JPACT, nor any local government which is charged under Oregon Statutes with regional transportation planning, and which has the capacity to include input

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from local Washington officials into the transportation planning for the Portland metropolitan area. ORS 268.390; 268.355. The current arrangements represent the best accommodation of Metro's responsibilities under State law, and the requirements of federal law regarding local government official's input into regional, transportation planning for the Portland metropolitan area.

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