U.S. Department
of Transportation
**Federal Transit
Administration**

Deputy Administrator

1200 New Jersey Avenue S.E.
Washington DC 20590

October 28, 2013

Mr. Pat Salerno
City Manager
City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134

Re: Title VI Compliance Determination

Dear Mr. Salerno:

I write regarding our collective responsibility to protect the civil rights of all individuals and communities throughout the greater Miami region. On April 16, 2013, the Federal Transit Administration (FTA) Office of Civil Rights received a complaint alleging that the siting of the new trolley maintenance facility in Coconut Grove, Miami, violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d, et seq. This letter presents the basis of our investigation and our findings.

As you know, Title VI of the Civil Rights Act of 1964 (Title VI) provides that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." U.S. Department of Transportation (DOT) regulations require that public transportation services be provided in a nondiscriminatory manner. To implement this requirement, DOT regulations and the Federal Transit Administration's Title VI guidance require that entities receiving Federal assistance, when determining the site or location of public transportation facilities, may not make site selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination with respect to, public transportation services on the grounds of race, color, or national origin.

To ensure compliance with FTA's Title VI regulatory requirements, entities receiving Federal assistance must conduct a Title VI equity analysis for all public transportation facility siting decisions. This analysis will generally include outreach to persons potentially impacted by the siting of the respective facility, and consideration of the equity impacts of various siting alternatives. When a potentially discriminatory impact is found, the transit agency must revise its plans in order to avoid or mitigate the discriminatory impact. If, upon taking mitigating actions and reanalyzing the proposed site selection, the transit agency determines that minority communities

will continue to bear a disparate impact of the proposed site selection, the transit agency may implement the site selection o*nly* if the agency has a substantial legitimate justification for the site selection and can show that there are no alternatives that would have a less disparate impact on the minority community.[1]

FTA's initial investigation into the basis of the complaint regarding the siting of the new trolley maintenance facility raised significant concerns as to whether Miami-Dade Transit (MDT), the City of Coral Gables and the City of Miami were complying with FTA Title VI requirements. FTA began a Title VI compliance investigation after collecting and reviewing relevant information from the City of Coral Gables and MDT. After completing the investigation, FTA has determined that both the City of Coral Gables and the City of Miami were obligated to comply with Title VI when they approved the siting of the new trolley maintenance facility, and that the municipalities did not comply with the DOT Title VI regulations because they failed to conduct a Title VI equity analysis and outreach during the planning stages of the project. Further, FTA has determined that MDT has failed to comply with the DOT Title VI regulations by failing to ensure compliance by the municipalities as subrecipients of Federal funds. As a result, FTA now directs MDT to oversee the completion of the requisite Title VI equity analysis and outreach.

These findings, as further detailed in the attached memorandum, require me to formally find MDT, the City of Coral Gables, and the City of Miami not compliant with FTA Title VI requirements. Since Federal law requires FTA to first seek voluntary compliance when addressing potential violations of Title VI, your agency must take immediate actions to come into compliance. FTA's findings and the measures required for MDT, Coral Gables, and Miami to come into compliance are discussed in greater detail in the attached determination memorandum. Within ten business days of this letter, you must submit to FTA's Region IV office a specific action plan for conducting a Title VI equity analysis and public outreach in the next 90 days.

We greatly appreciate your attention to this matter. Should you have any questions, please contact the Region IV Civil Rights Officer, Carlos Gonzalez, at (404) 865-5471 or Carlos.Gonzalez3@dot.gov.

Sincerely yours,

Therese W. McMillan

Enclosure: Title VI Determination Memorandum

cc: Johnny Martinez, City Manager, City of Miami
Ysela Llort, Director, Miami-Dade Transit
Linda Ford, Director, FTA Office of Civil Rights
Carlos Gonzalez, FTA Region IV Civil Rights Officer

[1] For specific guidance on how to conduct a compliant Title VI equity analysis, please refer to FTA Circular 4702.1B, Title VI Requirements and Guidelines for Federal Transit Administration Recipients, Chapter 3(13).

Memorandum

U.S. Department
of Transportation
Federal Transit Administration

Subject: Miami-Dade Transit, City of Coral Gables, City of Miami – Final Title VI Determination Memorandum

Date: October 28, 2013

From: Dorval R. Carter, Jr., Chief Counsel
Linda C. Ford, Acting Director, Office of Civil Rights

To: Peter M. Rogoff, Administrator

SUMMARY

The Federal Transit Administration's (FTA) Office of Civil Rights has completed an initial investigation of Miami-Dade Transit (MDT), the City of Coral Gables (Coral Gables), and the City of Miami (Miami), regarding potential noncompliance with the United States Department of Transportation's (DOT) regulations at 49 CFR part 21, implementing Title VI of the Civil Rights Act of 1964, and FTA Circular 4702.1B, Title VI Requirements and Guidelines for Federal Transit Administration Recipients. FTA began its investigation after receiving a complaint and allegation of Title VI violations from a local citizen of Coconut Grove, a neighborhood in Miami, Florida, complaining about the construction of a trolley maintenance facility to be operated by Coral Gables, within the Coconut Grove neighborhood. After FTA's initial inquiry into the complaint raised significant concerns, FTA decided to open its own Title VI compliance investigation regarding the maintenance facility.

After collecting and reviewing relevant information from Coral Gables and MDT, FTA has determined that both Coral Gables and Miami were obligated to comply with Title VI when they approved the siting of the new trolley maintenance facility, specifically including Coral Gables' enactment of a land-swap ordinance providing for the construction of a trolley maintenance facility in Coconut Grove, and Miami's approval of the building permits for the facility under the Miami zoning code. The municipalities did not comply with the DOT Title VI regulations[1] because they failed to conduct a Title VI equity analysis and outreach during the planning stages of the project. Further, FTA has determined that MDT has failed to comply with the DOT Title VI regulations by failing to ensure compliance by the municipalities as subrecipients of federal funds. As a result, FTA now directs MDT to oversee the completion of the requisite Title VI equity analysis and outreach, as further described below.

[1] 49 C.F.R. Part 21 and FTA Circular 4702.1B, Title VI Requirements and Guidelines for Federal Transit Administration Recipients

The following sections describe in detail the factual background, FTA's initial investigation, an analysis of FTA's jurisdiction, the basis of FTA's finding of noncompliance with the Title VI regulations, and the remedy directed to MDT, Coral Gables, and Miami.

FACTUAL BACKGROUND[2]

MDT provides exclusive public transit services throughout Miami-Dade County, which includes the County's 34 municipalities. In certain circumstances, MDT contracts with third parties, including municipalities, to provide enhanced transportation services to local populations. In April 2002, MDT signed an Interlocal Agreement with the City of Coral Gables, under which Coral Gables operates a trolley shuttle service on a fixed 5.5 mile route along Ponce de Leon Boulevard. The trolley service transports 4,000 passengers per day at no charge on eleven heavy duty, low floor buses designed as vintage trolley cars, connecting MDT's Douglas Road MetroRail Station and MDT's S.W. 8th Street MetroBus Stop with the Coral Gables central business district.

As part of its trolley service, Coral Gables owns and operates a trolley maintenance facility. The existing facility, located at 4133 Le Jeune Road in Coral Gables, was acquired in 1996 with local funds. In early 2011, Astor Development, n/k/a Astor Trolley, LLC, ("Astor") approached Coral Gables with a proposal to acquire the existing maintenance facility, planning to combine the property with adjacent plots to construct a mixed-use development.[3] In exchange, Astor offered to construct, at its own cost, a new maintenance facility for Coral Gables on land it had recently acquired in the Coconut Grove neighborhood of the City of Miami. Astor offered to pass title to the new maintenance facility to Coral Gables through a land swap agreement. Coral Gables accepted this offer, and passed an ordinance on August 28, 2012, authorizing the acquisition of the Coconut Grove property for the purpose of constructing the new trolley maintenance facility.[4] None of the exhibits accompanying the ordinance, nor the August 28, 2012, meeting minutes and transcript, discuss the impacts of the new facility on the Coconut Grove neighborhood.

Astor required a building permit from the City of Miami for construction of the new maintenance facility. The city Planning and Zoning Department (Zoning Department) issued a building permit by Warrant on May 31, 2012, concluding that the maintenance facility was a permissible use for the site under the city's zoning Code, Miami 21.[5] The Zoning Department posted notice

[2] Factual information in the Background section is drawn from the administrative complaint received by FTA; responses by MDT and the City of Coral Gables during the investigation, including a July 24, 2013 letter and exhibits from the City of Coral Gables; public records from the City of Coral Gables and the City of Miami; and other publicly available information.

[3] The planned development consists of and upscale collection of shops and high-end condominiums, worth an estimated $20 to $30 million, with a concomitant tax benefit to the City of Coral Gables.

[4] Coral Gables, Fla., Ordinance No. 2012-09 (Aug. 28, 2012).

[5] Miami 21, enacted in May 2010, adopts a more holistic zoning plan than a traditional use-based zoning plan. The zoning plan divides Miami into a variety of "transects," zones defined by intensity of development rather than use. Within each transect, 47 different types of uses are categorized as follows: Allowed by Right, Allowed by Warrant (administrative process), Allowed by Exception (public hearing), or Prohibited. The Coconut Grove neighborhood is zoned T5 (Urban Center) Open, with permissible uses defined in Article 4, Table 3 of Miami 21. The Zoning Department classified the new maintenance facility as an auto-related commercial establishment, allowed in T5-O zones by Warrant. The maintenance facility, however, might more naturally fit within the definition of an auto-

of the Warrant permit online, including a statement that any aggrieved party must file a written appeal and appropriate fee within fifteen days of the permit's issuance. Other than posting the Warrant, the City of Miami took no action to solicit community input or otherwise evaluate the impact of the new maintenance facility on the local community.

No one challenged the initial building permit, though on January 31, 2013, several Coconut Grove residents filed a lawsuit seeking an injunction after construction started in December 2012. The plaintiffs' primary argument was that approximately half of the Coconut Grove residents lacked internet access and thus lacked the appropriate notice of the Warrant permit. The plaintiffs further argued that the use was inappropriate for the location under the zoning code. The judge expressed sympathy with the plaintiffs' arguments, but ultimately dismissed the case for lack of jurisdiction on August 16, 2013, concluding that the online posting provided the notice required by law and that the plaintiffs had failed to exhaust their administrative remedies within the zoning process. This suit did not address Title VI requirements.

COMPLAINT

On April 16, 2013, the FTA Office of Civil Rights received a complaint alleging that the siting of the new maintenance facility in Coconut Grove violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d, *et seq*. Specifically, the complaint alleged the following:[6]

- The warehousing and maintenance of the entire Coral Gables Trolley fleet will be done in this depot [i.e. the maintenance facility]. Trolleys will commence service at 5:00 a.m., running all day and ending at 11:00 p.m. on Monday through Friday. Housing the depot in the heart of a residential area raises a number of concerns including; excessive noise, unsafe streets, environmental concerns of continuously emitted diesel fuel, an increase in traffic, potential health concerns, and a possible reduction in property value.

- In addition, the land on which the depot is being built is zoned for "Commercial" use, while the plans for the building clearly reflect an intent to use the building for prohibited "Industrial uses."

- The Trolley system run by the City of Coral Gables does not service the Historic Grove area (or any of the City of Miami). The City of Miami along with the City of Coral Gables has decided not to run the Trolley through the Historic Grove neighborhood. This is notwithstanding the fact that the Grand Ave. is a commercial corridor of largely minority owned businesses. Not allowing Historic Grove residents access to the Trolley system hurts local business as well as the ability of Grove residents to access other areas of the City of Miami. We have access to public transportation at a fee, but we are being

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related industrial establishment: "A facility conducting activities associated with the repair or maintenance of motor vehicles, trailers, and similar large mechanical equipment; . . . and *government vehicle maintenance facilities*." (emphasis added). Miami 21 Art. 1.1.h. Characterized as an industrial use, however, the new maintenance facility would be prohibited in Coconut Grove absent a variance (requiring a showing of undue hardship) or a zoning change approved by the City Commission.

[6] The allegations are copied verbatim from the complaint.

denied the free Trolley service.

- The adverse impacts will fall disparately on members of the Black community of the Historic Grove. The Historic Grove is a small neighborhood completely surrounded by affluent communities. As a result, the West Grove has historically been segregated from these areas or served as a dumping ground for hazardous or unseemly public projects.

FTA conducted an initial investigation to determine whether Title VI applied to the actions referenced in the complaint as well as to assess the timeliness of the complaint. During this initial investigation, FTA discovered significant evidence indicating a possible failure to comply with DOT's Title VI regulations. Based on this evidence, the FTA Office of Civil Rights initiated its own investigation into the matter under its investigation authority provided in 49 CFR § 21.11(c).[7]

INVESTIGATION

After receiving the complaint, FTA staff investigated to determine whether Coral Gables was a recipient of federal funds. FTA Region IV staff determined that although FTA did not provide funds for the new maintenance facility, FTA had provided funds through an American Recovery and Reinvestment Act (ARRA) Section 5307 grant for one of Coral Gables' trolleys. FTA staff then developed a list of questions to local officials regarding the funding.

On April 25, 2013, FTA Office of Civil Rights and FTA Region IV staff held an information gathering phone call with staff from MDT and Coral Gables. The local officials provided the basic background on the project and the land-swap plan, and confirmed that Coral Gables operates an FTA-funded trolley. The local officials also stated that Coral Gables had not performed any outreach, and alerted FTA to the pending lawsuit that residents of Coconut Grove had filed in Miami challenging the Miami Zoning Department's Warrant permit. Following this phone call, on April 26, 2013, MDT staff forwarded to FTA copies of the notice and information that it provided to all ARRA subrecipients, including Coral Gables and Miami, regarding civil rights compliance requirements.

On June 7, 2013, FTA Office of Civil Rights sent a letter to Coral Gables requesting further information regarding the allegations of the complaint. Coral Gables responded through outside counsel on July 24, 2013. The response provided additional detail regarding the Coral Gables trolley service and the circumstances surrounding the construction of the new maintenance facility. Regarding the complaint, the response asserted three arguments as to why FTA's investigation against Coral Gables should be closed. First, the complaint listed the City of Miami, rather than Coral Gables, as the alleged violator, and there was no evidence that Coral Gables had taken any culpable act. Second, the complaint was time-barred. Third, the response asserted that Coral Gables had never received nor used any federal funds in connection with its trolley service. Thus, Coral Gables had no obligation to comply with Title VI, and in fact had no documentation for its Title VI program assurances, Title VI policies, or facilities analysis.

[7] Because FTA conducted the compliance investigation under its own authority, any evaluation of the timeliness of the original complaint became moot.

The July 24, 2013 response from Coral Gables included the Interlocal Agreement between MDT and Coral Gables for the ARRA funds used to purchase the trolley. On August 27, 2013, MDT provided a copy of its Interlocal Agreement with Miami regarding use of ARRA funds to FTA. Both Interlocal Agreements expressly provide that Coral Gables and Miami, respectively, are responsible for adhering to federal civil rights requirements. MDT also forwarded to FTA its draft Standard Operating Procedures for ARRA subrecipient compliance, and stated it had recently completed an audit of Coral Gables for compliance with the ARRA grant requirements. Coral Gables did not responded to the audit questionnaire, but MDT stated that it had scheduled proactive site visits for November 2013 to all participating municipalities as part of its grant oversight process.

FTA also relied on a contemporaneous Title VI compliance review the Federal Highways Administration (FHWA) conducted with the City of Miami. The Florida Department of Transportation (FDOT) conducts a Quality Assurance Review process for sub-recipients of federal assistance, which includes a Sub-Recipient Title VI Compliance Assessment. As part of this assessment for the City of Miami, FDOT and FHWA personnel had several conversations with multiple city officials between August 1, 2013, and August 12, 2013, regarding their Title VI Program. During these conversations, it became apparent that none of the relevant city staff appeared to be aware of their Title VI obligations, and Miami has no Title VI compliance program in effect.

On August 26, 2013, FTA met with Coral Gables' outside counsel at FTA's headquarters in Washington, DC. In attendance from FTA were the Administrator, Deputy Administrator, Associate Administrator for Communications and Congressional Affairs, and Acting Director of Civil Rights. The FTA representatives discussed Coral Gables' civil rights obligations in the context of the new maintenance facility and Coral Gables' use of a federally-funded trolley.

LEGAL AUTHORITY

As recipients and subrecipients of federal financial assistance, MDT, Coral Gables, and Miami are obligated, both by federal law and contract, to ensure that their covered programs and activities comply with Title VI; applicable policies or procedures may not have the purpose or effect of discriminating on the basis of race, color, or national origin. FTA's legal authority to conduct this investigation and determine the steps necessary to ensure nondiscrimination is derived from: (1) Title VI of the Civil Rights Act of 1964; (2) 49 U.S.C. § 5332; (3) 49 CFR part 21; and (4) the FTA Master Agreement. In addition, FTA Circular 4702.1B, Title VI Requirements and Guidelines for Federal Transit Administration Recipients, provides guidance to FTA recipients regarding compliance with Title VI requirements; FTA's recipients and subrecipients are contractually obligated under the FTA Master Agreement to follow the Circular.

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be

> subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 602 of the Act, 42 U.S.C. § 2000d-1, requires Federal agencies to effectuate the provisions of section 601 by issuing regulations of general applicability. In the event a Federal agency finds that a recipient is out of compliance with the regulations and voluntary compliance cannot be secured, the agency may take steps to withhold Federal funds from that recipient or refer the matter to the U.S. Department of Justice for a civil enforcement action. In addition to Title VI of the Civil Rights Act, Federal Transit Law at 49 U.S.C. § 5332(b), provides that a person may not be excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving financial assistance under chapter 53 of title 49 because of race, color, religion, national origin, sex, disability, or age. The statute further provides that the Secretary of Transportation shall take affirmative action to ensure compliance with section 5332(b), and in the event a recipient does not comply with "subsection (b) of this section, a civil rights law of the United States, or a regulation or order under that law, the Secretary shall notify the [recipient] of the decision and require action be taken to ensure compliance." 49 U.S.C. § 5332(c)(1)-(2).

DOT's Title VI regulations are set forth in Title 49 CFR part 21. The regulations apply to all recipients of Federal financial assistance from DOT, and prohibit both intentional (disparate treatment) and unintentional (disparate impact) discrimination. The provision prohibiting disparate impact discrimination is in 49 CFR § 21.5(b), and states in relevant part:

> (b) Specific discriminatory actions prohibited:
>
> . . .
>
> (3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

Notably, 49 CFR § 21.5(b)(7) provides, "[e]ven in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin."

Moreover, pursuant to the Master Agreement that MDT voluntarily enters into with FTA each year in order to receive Federal funds for public transportation, MDT is subject to the terms and conditions of section 12.b of the fiscal year 2012 Master Agreement, which provides:

> Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each third party participant will, prohibit discrimination on the basis of race, color, or national origin and:

(1) Comply with:

(a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*,

(b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR part 21, and

(c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a, and

(2) Follow FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," and any other applicable Federal directives that may be issued, except as FTA determines otherwise in writing.

Finally, FTA's Title VI Circular 4702.1B,[8] which MDT agrees to follow when it signs the Master Agreement, provides guidance to assist recipients and their subrecipients in their obligation to comply with Title VI, including the requirement to complete a Title VI equity analysis during the planning stage for new facilities.[9]

ANALYSIS

1. FTA has jurisdiction over Miami-Dade Transit, the City of Coral Gables, and the City of Miami under Title VI.

DOT's Title VI regulations apply to

> any program for which Federal financial assistance is authorized under a law administered by the Department. . . . It also applies to money paid, property transferred, or other Federal financial assistance extended. . . .

49 CFR § 21.3. The regulations define a "program" as "all of the operations of any entity . . . any part of which is extended Federal financial assistance," 49 CFR § 21.23(e), and "entity" includes:

> "(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or
>
> (ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government

[8] FTA updated its Title VI circular in 2012. However, the requirements cited here – monitoring subrecipients and conducting an equity analysis and outreach when siting facilities – were also requirements in Circular 4702.1A, the prior version referenced in the relevant MDT ARRA grants, as well as the DOT Title VI regulations. *See* chapter VI, section 3 and chapter IV, section 8 of Circular 4702.1A, and 49 CFR § 21.9 and § 21.5.
[9] FTA Title VI Circular 4702.B, Chap. III-11.

entity) to which the assistance is extended, in the case of assistance to a State or local government. . . ."

Id. Further, a recipient of federal assistance includes any entity "to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof. . . ."

In 2009 FTA awarded MDT an ARRA grant totaling $69,802,389. The Miami-Dade Board of County Commissioners allocated 20% of these funds to Miami-Dade County municipalities as a one-time award. As a part of this allocation, MDT procured 34 buses/trolleys on behalf of seven subrecipients, including Coral Gables and Miami. In June and July 2010, MDT signed Interlocal Agreements with both Coral Gables and Miami, outlining the terms and conditions of the municipalities' receipt of the federally-funded trolleys. Specifically relevant in this case, both Coral Gables and Miami agreed to abide by federal civil rights laws, including Title VI, as well as FTA's civil rights regulations, as a condition of receiving the federally funded assets.[10] MDT purchased the trolleys, and delivered one trolley to Coral Gables on July 9, 2012, and 19 trolleys to Miami, though MDT retained title to the vehicles. Both Coral Gables and Miami have continued to use the federally-funded trolleys through the present.[11]

The Interlocal Agreement between MDT and Coral Gables regarding use and transfer of the ARRA-funded trolley is signed by the City Manager under authorization by the City Commission. "The City Manager is appointed by the Mayor and City Commission and carries out the policy direction of the City Commission."[12] As an "instrumentality" of a local government and as representatives of the City's government to which FTA funds are extended, the City Commission and all of its operations constitute a "program" under 49 CFR § 21.23(e)(1). Thus, the City Commission's approval of the siting for the new maintenance facility through the land-swap ordinance falls under DOT's Title VI regulatory authority.[13]

The Interlocal Agreement between MDT and Miami likewise is signed by the City Manager under authorization by the City Commission. Again, the City Commission is an

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[10] Interlocal Agreement Between Miami-Dade Transit Agency and the City of Coral Gables For Federal Funding Pass-Through Arrangements with the American Recovery and Reinvestment Act (ARRA) of 2009 Federal Transit Administration (FTA 5307) for the City to Operate Circulator Services, Attachment A (Civil Rights Requirements); Interlocal Agreement Between Miami-Dade Transit Agency and the City of Miami For Federal Funding Pass-Through Arrangements with the American Recovery and Reinvestment Act (ARRA) of 2009 Federal Transit Administration (FTA 5307) for the City to Operate Circulator Services, Attachment A (Civil Rights Requirements)

[11] In addition to these FTA funds, the City of Coral Gables and the City of Miami have received FHWA funds for the past several years. According to its financial statements, Coral Gables received more than $1 million in FHWA funds between FY 2010 and FY 2013. Miami receives funds from FHWA on an ongoing basis. Receipt of FHWA funds imposes the same civil rights requirements upon the municipalities as receipt of the FTA funds described above.

[12] City Manager, "About this Office," http://www.coralgables.com/index.aspx?page=283 (last visited Sep. 9, 2013).

[13] The City of Coral Gables suggested that if any Title VI violation had occurred through its actions, it would consider ceasing use of the federally-funded trolley to cure its defect. However, FTA has jurisdiction to evaluate compliance with Title VI requirements as long as the alleged discriminatory act occurred while the entity was receiving federal financial assistance. *Delmonte v. Department of Bus. Prof'l Regulation*, 877 F. Supp. 1563 (S.D. Fla. 1995); *Huber v. Howard County, Md.*, 849 F. Supp. 407, 415 (D. Md. 1994), *aff'd without opinion*, 56 F.3d 61 (4th Cir. 1995), *cert. denied*, 516 U.S. 916 (1995).

"instrumentality" of a local government, and as representatives of the City's government to which FTA funds are extended, the City Council and all of its operations constitute a "program" under 49 CFR § 21.23(e)(1). Further, the FTA funds received through the City Commission and City Manager are assigned to and managed by the City's Assistant City Manager/Chief of Infrastructure, which oversees the city's transportation, planning, zoning, and public works operations, among others. As a result, all operations under the Chief of Infrastructure also constitute a "program"' under 49 CFR § 21.23(e)(1). The Miami Building Department, under the authority of the Chief of Infrastructure, approved the building permit for the new maintenance facility, and its actions thus fall under DOT's Title VI regulatory authority.

2. *The City of Coral Gables and the City of Miami each failed to comply with DOT regulations and the FTA circular regarding the siting of transportation facilities.*

FTA Circular 4702.1B describes the requirement to conduct a Title VI equity analysis during the planning stage with regard to siting of transportation facilities, including maintenance facilities, in order to comply with 49 CFR § 21.5(b)(3) and Appendix C to 49 CFR Part 21:

> a. The recipient shall complete a Title VI equity analysis during the planning stage with regard to where a project is located or sited to ensure the location is selected without regard to race, color, or national origin. Recipients shall engage in outreach to persons potentially impacted by the siting of facilities. The Title VI equity analysis must compare the equity impacts of various siting alternatives, and the analysis must occur before the selection of the preferred site.
>
> b. When evaluating locations of facilities, recipients should give attention to other facilities with similar impacts in the area to determine if any cumulative adverse impacts might result. Analysis should be done at the Census tract or block group where appropriate to ensure that proper perspective is given to localized impacts.
>
> c. If the recipient determines that the location of the project will result in a disparate impact on the basis of race, color, or national origin, the recipient may only locate the project in that location if there is a substantial legitimate justification for locating the project there, and where there are no alternative locations that would have a less disparate impact on the basis of race, color, or national origin. The recipient must show how both tests are met; it is important to understand that in order to make this showing, the recipient must consider and analyze alternatives to determine whether those alternatives would have less of a disparate impact on the basis of race, color, or national origin, and then implement the least discriminatory alternative.[14]

Coral Gables admits that it conducted no such analysis and no outreach in connection with its decision to approve the location of the new maintenance facility through the land-swap ordinance. Likewise, the City of Miami approved the building permit for construction of the

[14] FTA Title VI Circular 4702.B, Chap. III-11.

facility without taking any affirmative action regarding public outreach, and without conducting the requisite Title VI analysis. Both municipalities were made aware of their Title VI regulatory obligations through their Interlocal Agreements with MDT, including the requirement to conduct a Title VI equity analysis when siting transportation maintenance facilities, yet neither municipality conducted the requisite analysis or public outreach. FTA thus finds that both Coral Gables and Miami are not in compliance with their Title VI regulatory duties as subrecipients of FTA financial assistance.

3. MDT failed to comply with DOT regulations and the FTA circular regarding monitoring of subrecipients.

FTA Circular 4702.1B describes the requirement that recipients must monitor subrecipients for compliance with DOT Title VI regulations, in order to comply with 49 CFR § 21.9(b). The Circular provides:

> a. In order to ensure the primary and subrecipient are in compliance with Title VI requirements, the primary recipient shall undertake the following activities:
>
> (1) Document its process for ensuring that all subrecipients are complying with the general reporting requirements of this circular, as well as other requirements that apply to the subrecipient based on the type of entity and the number of fixed route vehicles it operates in peak service if a transit provider.
>
> (2) Collect Title VI Programs from subrecipients and review programs for compliance. Collection and storage of subrecipient Title VI Programs may be electronic at the option of the primary recipient.
>
> (3) At the request of FTA, in response to a complaint of discrimination, or as otherwise deemed necessary by the primary recipient, the primary recipient shall request that subrecipients who provide transportation services verify that their level and quality of service is provided on an equitable basis. Subrecipients that are fixed route transit providers are responsible for reporting as outlined in Chapter IV of this Circular.[15]

While MDT has submitted some evidence of its process for ensuring subrecipient compliance with Title VI obligations, it has failed to sufficiently ensure actual compliance with the regulations. MDT has admitted that it has not received any information from Coral Gables regarding its Title VI Programs. Of particular concern is that both Coral Gables and Miami have asserted that they are unaware of any Title VI obligations and, therefore, have no process for ensuring compliance with the Title VI regulations. As a result, FTA finds that MDT has failed to sufficiently monitor its subrecipients in connection with its ARRA grants, and, therefore, is not in compliance with the Title VI regulations.

[15] FTA Title VI Circular 4702.B, Chap. III-10-11.

REMEDY

As the primary grant recipient, MDT is responsible for the actions of its subrecipients. Both Coral Gables and Miami have failed to conduct the necessary Title VI equity analysis in connection with their actions regarding the siting of the new Coral Gables trolley maintenance facility. Therefore, MDT must now oversee the execution of the necessary Title VI equity analysis, which must also include community outreach. MDT must coordinate with Coral Gables and Miami to determine the assignment of primary responsibility for this analysis. Because the facility is near completion, the analysis will have the benefit of considering actual impacts of the new facility on the neighborhood of Coconut Grove. The analysis must determine whether the facility will cause adverse impacts borne disproportionately on the basis of race, color, or national origin. If such a disparate impact is found, MDT, in coordination with Coral Gables and Miami, must determine whether there is a substantial legitimate justification for locating the maintenance facility in Coconut Grove despite the adverse disparate impacts identified. Even if such a justification is established, MDT, in coordination with Coral Gables and Miami, must also determine that there are no alternative locations that would have a less disparate impact on the basis of race, color, or national origin. The analysis may also consider mitigating measures that may be taken to alleviate any disparate impact that is found.

CONCLUSION

FTA formally finds Miami-Dade Transit, the City of Coral Gables, and the City of Miami not compliant with FTA Title VI requirements. Coral Gables and Miami failed to conduct the necessary Title VI analysis before taking action regarding the siting of Coral Gables' new trolley maintenance facility, and MDT failed to sufficiently oversee Title VI regulatory compliance among the municipalities, its subrecipients of ARRA funds.