



U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Associate Administrator
for Airports

800 Independence Ave., SW.
Washington, DC 20591

OCT 18 1996

Mr. John L. Martin
Director of Airports
San Francisco International Airport
P.O. Box 8097
San Francisco, CA 94128

Dear Mr. Martin:

In your letter of July 1, 1996, you requested that the Federal Aviation Administration (FAA) confirm that expenditures for the construction of a Bay Area Rapid Transit (BART) station at San Francisco International Airport (SFO), and the purchase of certain equipment for that station, could be made from airport funds. Attachment 2 to your letter, entitled "BART Extension to San Francisco International Airport Concourse H)," provided a cost estimate for the components of the BART SFO station project (referred to below as "Cost Estimate").

Supplemental information was provided in a letter from you dated August 30; a letter from BART Acting General Counsel John C. Naish dated August 27; a letter from BART Washington, DC, legal counsel David M. Klaus dated August 29; and a letter from BART Interim General Manager Sherwood Wakeman dated September 12. In addition, the Air Transportation Association presented its views on the Cost Estimate in a letter dated August 1, 1996.

Finally, in your letter of October 17, you revised the original request to state that artwork and the automatic fare control equipment can be removed from the list of items to be funded with airport revenue. Accordingly, we have not addressed the use of airport revenue for artwork or fare collection equipment, and this letter should not be construed as approval of the expenditure of airport revenue for those items.

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Section 511(a)(12) of the Federal Aviation Act of 1958, as amended, recodified at 49 U.S.C. §47107(b), requires that sponsors of public airports accepting Federal Airport Improvement Program (AIP) grants agree that all revenues generated by the airport be used for the capital or operating costs of (1) the airport, (2) the local airport system, or (3) facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property. Accordingly, in responding to your request, the FAA must consider whether each of the costs of the BART SFO station meets the test of being capital or operating costs of the airport, and/or whether cost of items included in the BART station project at SFO are capital or operating costs of facilities owned or operated by the airport sponsor and directly and substantially related to the air transportation of passengers.

Introduction

The Cost Estimate included in your letter provided a breakdown of costs for zones 1 through 4 of the project, involving construction of the station and structural supports from the airport terminal to the west side of Highway 101; construction of the link building between the international terminal and the BART station; and a detailed estimate of the "conceptual systems" associated with the station. The conceptual systems estimate includes costs of fixtures and equipment associated with the equipping and operation of a transit rail station and rail line. No request to use airport revenue for reimbursement of any BART operating expenses was included in your letter, and this response does not represent approval to do so.

In addition to listing relatively detailed costs for construction and equipment included in the project, the Cost Estimate includes cost elements for contingencies and construction management and administration that are based not on precise estimates but rather on percentages of the basic item cost. The percentages used for these cost elements--25% for contingencies and 33% for construction management and administration--appear high in relation to project costs. However, it should be noted that in

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responding to your request, the FAA does not need to "approve" the reasonableness of specific cost estimates or contingency fee percentages in determining eligibility of the listed items for the use of airport revenue. Airport revenue may be used only for actual costs of eligible items.

As a general matter, these expenditures, like all uses of airport revenues, are subject to audit to ensure that the expenditures are consistent with the requirements of § 47107(b)(1). Accordingly, compliance with § 47107(b)(1) will depend not on the estimated costs provided but on the actual amounts finally expended for construction, equipment, and construction management and administration. Preliminary estimates of contingencies, etc., do not control the final determination of whether airport revenue may be used for particular expenditures.

To respond to your request, therefore, we will set out the principles of eligibility for use of airport revenues for an airport-related transit project, and relate the principles generally to the kinds of construction, equipment, and other costs included in the Cost Estimate. We cannot express any authoritative opinion at this time on the amount of costs for the BART SFO station that may be funded from airport revenues. The final payment of costs from airport funds would be subject to verification by audit after completion of the BART SFO station project. The opinions in this letter are based on information included in the Cost Estimate and otherwise provided to FAA by BART and the City and County of San Francisco. These opinions are not intended to affect arrangements already in effect at SFO or other airports or to apply to facts other than those presented in this case, without further consideration.

Location on the airport. As a preliminary matter, in your letter of July 1 you stated that "[w]ith the exception of the BART freeway overpasses (Zone 1) ..., all elements are located on Airport property." Airport property bounds the Highway 101 right-of-way on both sides, but the right-of-way itself is not airport property. The project described in the Cost Estimates includes structures and utilities extending across Highway 101 to the west side of the highway. BART Acting General Counsel John C. Naish, in a

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letter dated August 27, stated that "nor would any part of SFIA's contribution be used for line segments, systems, equipment or other facilities located off airport property and not owned by SFIA." This assertion is echoed in a letter from BART Washington, DC, legal counsel David M. Klaus dated August 29, which states that "all such equipment and components [funded with airport revenue] would be located on the airport and owned by the airport." Since Highway 101 is not on airport property, and BART has not revised the Cost Estimate to exclude the portions of the project crossing the highway right-of-way, we assume that the representation in your letter of July 1 is the correct one and that some parts of the project will be located on highway right-of-way not owned by the airport. We assume that the airport sponsor would acquire sufficient property interest to protect access to the airport for the BART line. The effect, if any, of this fact on the use of airport revenues is discussed below in connection with Zone 3 of the project.

Ownership of facilities funded with airport revenue. For capital costs that cannot be considered capital costs of the airport itself, airport revenue may only be used for facilities owned or operated by the airport sponsor. All parties agree that the completed BART station and wye connection to the main BART line will be under the operational control of BART. Accordingly, the sponsor's ability to use airport revenue to fund the BART SFO station project depends on ownership of the facilities intended for such funding. We assume that BART is owner of the other facilities in the BART system, and that ownership of any BART facilities at SFO would be a special and possibly unique arrangement. Your July 1 letter does not discuss ownership of the BART SFO station facilities. Mr. Naish, in his August 27 letter, states that "[i]t is BART's intention the SFIA will have ownership of and hold legal title to all on-Airport facilities, equipment, and systems that are funded with Airport revenues." Mr. Klaus affirmed this assertion in his letter of August 29, as cited above. In view of the absolute legal requirement under § 47107(b)(1)(C) that the airport sponsor hold legal title to any transit-related improvements funded with airport revenue (when the sponsor is not operating the transit

system), the conclusions stated in this letter are based on the assumption that the facilities constructed and equipment purchased with airport funds will be held in fee simple title by the City and County of San Francisco.

Proration of costs. Costs of an item that is only partly airport-related are generally ineligible for AIP or passenger facility charge (PFC) funding. However, the airport-related portion of the costs may be eligible for the use of airport revenues, on a prorated basis. Eligible costs must be based on a reasonable method of proration, such as length of the line included in the BART SFO station as a percentage of the total length of the extension. Any items included in the estimates that would be needed for the extension of the BART line from its present terminus south to Millbrae, regardless of whether the BART SFO station would be part of the extension, would not be eligible for the use of airport revenue.

Specific items in the Cost Estimate: use of airport revenue

The Cost Estimate divides the project into Zones 1 through 4; the link building; and "conceptual systems," which includes operating equipment and related costs associated with the operation of BART trains to the airport. The following discussion treats the construction projects first, in order of distance from the existing terminal building, and then the conceptual systems. An opinion that an item listed in the Cost Estimate may be funded with airport revenue refers only to the kind of work involved, and does not represent an approval of the cost figure assigned to that item.

Construction costs. Zone 4, International Terminal Enhancements, involves improvements to the existing airport international terminal itself, the construction costs of which can be considered airport capital costs. All items included in the Cost Estimate for Zone 4 would be considered eligible for use of airport revenue.

The Link Building is a new structure designed to connect the existing international terminal to the new BART station. It is located entirely on the airport. The items included in

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the Link Building Cost Estimate can be considered directly and substantially related to air transportation, and would be eligible for the use of airport revenue.

Zone 3 is the consolidated Airport Rapid Transit (ART) and BART station, all of which is located on the airport. The ART is a closed-system people mover wholly contained on the airport and operated by the sponsor; costs of the ART station in the absence of a BART connection would be considered airport capital costs, and are not at issue. As part of a local transit system, the BART SFO station is not an airport capital or operating cost, and must be considered under the criterion described in § 47107(b)(1)(C), i.e., a local facility owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property. As determined in past funding decisions, transit stations located within the airport boundary that are necessary to connect to a rapid transit system, and will exclusively serve the airport, may be eligible for AIP grants and PFC collection. Because of the strict statutory eligibility criteria for funding projects with AIP grants or PFC collections, the FAA considers any local transit project eligible for AIP and/or PFC funding to be a facility "directly and substantially related to air transportation of passengers or property." Such a project generally can be funded with airport revenue if the sponsor meets the additional requirement of Section 47107(b)(1)(C) that the airport sponsor own or operate the funded facility.

The BART/ART station will be constructed primarily, if not exclusively, to serve airport passengers; it is within the airport boundary; and it is necessary to connect the airport to a local rapid transit system. Accordingly, the station can be considered to be directly and substantially related to the air transportation of passengers, and airport revenue may be used for the station construction costs listed in the Cost Estimate for Zone 3.

Zones 1 and 2 are the BART/ART guideway from the station to the west boundary of Highway 101, including the structures necessary to cross the highway. As we understand it, the highway crossing is not a distinct structure but rather is

part of an elevated guideway that connects the BART station to the BART system main line. For the portions of this structure on airport property, the analysis is identical to that for the station, and the construction items in the Cost Estimate may be funded with airport revenue. For the structures carrying the rail line over the highway, we note that the property on both sides of the highway is on the airport. Accordingly, the crossing of the highway would not be considered "off the airport" for purposes of airport expenditures any more than would an overpass of other airport structures over a highway right-of-way through airport property. On this basis, the FAA finds that the Zone 1 construction items included in the Cost Estimate for the Highway 101 crossing structure may be funded with airport revenue. The airport sponsor would be required to acquire property interest over the right-of-way sufficient to assure that access to the airport via the BART system is protected.

Conceptual systems. In addition to the construction items included for the four construction zones and the Link Building, the Cost Estimate includes a "Conceptual Systems Cost Estimate" for "systems elements required for the installation and operation of the SFO Extension." As with the station project as a whole, the facilities comprising the Conceptual Systems portion of the Cost Estimate are not considered capital or operating costs of the airport and can be funded with airport revenue only if they are facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property. Some of the kinds of systems described are associated with the operation of the rail system and have not generally been funded with AIP or PFC funds, in part because the systems would be considered operating and maintenance rather than capital projects.

Certain equipment associated with operating systems could be eligible for the use of airport revenue, if it can reasonably be considered directly and substantially related to the air transportation of passengers, and if the airport operator owns the facilities. Accordingly, if (1) the airport will own the systems equipment to be funded with airport revenue, (2) that equipment is installed on the

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airport (or, in this case, on the adjacent Highway 101 right-of-way with an agreement for continued airport access), and (3) airport funding of the equipment is limited to the portion of the equipment related to the SFO station and not the BART main line, we would consider the following types of systems equipment to be eligible for the use of airport revenue:

- Automatic train control equipment
- Systemwide cable network
- Communications
- Traction power system
- Trackwork
- Contact rail
- SFIA/mainline systems interface
- Station communications and SCADA
- Station SLPA structure and systems
- 12 kV power cable relocation under Highway 101 (in excess of costs that would have been necessary for the mainline extension to Millbrae)
- Guideway systems installation
- Guideway transition approaches
- Fire, life, and safety elements

Certain other equipment is conditionally eligible for funding with airport revenue:

Central control computer tie-in. Programming and labor on the installation related to bringing the SFO station on line would be considered part of the costs of the SFO station, and would be eligible. New software or equipment installed at the central computer location, if any, would not be owned or operated by the airport and would not be eligible for airport funding.

Systems installation support. This item appears to consist of extra costs incurred on the mainline portion of the BART extension as a result of the sequencing of work on the SFO station. To the extent the work is necessitated by the SFO station project, it would be eligible. Materials used that result in improvements to the main line would not be owned or operated by the airport, however, and could not be funded with airport revenue.

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Static and dynamic integration/pre-revenue testing and start-up. It is not clear how the costs would be allocated to the SFO station, since only part of the extension start-up costs would be attributable to the addition of the SFO station to the BART system. Costs that can be shown to be attributable to the SFO station could be funded with airport revenue.

Station start-up appurtenances. This item appears eligible insofar as it represents labor costs of bringing the new SFO station on line, but it is not entirely clear from the explanation provided in the September letter what the work actually involves.

We trust that the above guidance is sufficient to determine generally which portions of the BART SFO station project may be funded with airport revenue. We urge you to keep airlines and other affected airport users apprised of any expenditures that may affect user rates and charges at the airport. If you have any questions on the applicability of this guidance to specific items, please call David Bennett, Director, Office of Airport Safety and Standards, at 202-267-3053.

We appreciate the city's cooperation in providing additional information and assistance to the FAA in responding to your request.

Sincerely,


Susan L. Kurland
Associate Administrator for
Airports