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April 7, 2022

Chair Alfredo Pedroza and Commissioners
Metropolitan Transportation Commission
c/o Executive Director Therese McMillan
Bay Area Metro Center
375 Beale Street, Suite 800
San Francisco, CA 94105-2066
VIA U.S. MAIL and VIA E-MAIL to: alfredo.pedroza@countyofnapa.org;
tmcmillan@bayareametro.gov; abockelman@bayareametro.gov; kkane@bayareametro.gov

**Re: Demand That MTC, MTC Commissioners, MTC Executive Director, et al. Cease and Desist
From Funding of Dublin Transit Center Parking Garage Project With RM2 Toll Bridge Funds
Dedicated to I-580 (Tri Valley) Rapid Transit Corridor Improvements (RM2 Project No. 32.3)**

To Chair Pedroza, Commissioners of the Metropolitan Transportation Commission, and Executive Director McMillan:

This office represents the Alameda County Taxpayers' Association (ACTA) and the Transportation Solutions Defense and Education Fund (TRANSDEF). ACTA and TRANSDEF hereby demand that the Metropolitan Transportation Commission (MTC), MTC Commissioners, MTC Executive Director Therese McMillan, and other MTC officers, employees, agents, contractors, and assigns acting under their direction and control, immediately cease and desist from funding the "Dublin Transit Center Parking Garage Project" with \$7,000,000.00 of Regional Measure 2 (RM2) bridge toll revenues that are reserved by state law for "I-580 (Tri Valley) Rapid Transit Corridor Improvements" and that they take immediate remedial action to rescind their illegal actions taken to allocate funding to that project.

Your Commission approved the allocation of RM2 funding to the "Dublin Transit Center Parking Garage Project" on or about July 24, 2019 through MTC Resolution No. 3664, Revised. The action is titled:

MTC Resolution No. 3664, Revised. Allocation of \$7 million in Regional Measure 2 (RM2) funds to the Alameda County Transportation Commission for construction of the Dublin Transit Center Parking Garage at the Dublin BART Station. A request for an allocation of \$7 million in RM2 funds to the Alameda County Transportation Commission for construction of the Dublin Transit Center Parking Garage at the Dublin BART Station.

This MTC action occurred several months after the supposed project groundbreaking ceremony just before the November 2018 election. On October 11, 2018, the *East Bay Times* published on page B4 an article titled “Construction begins on parking garage for BART station Ground was broken on Tuesday for project that will add more spaces.” Politicians gripped shovels for publicity photos, although a construction contract, let alone full financing, was not yet in place.

Senate Bill 916 (SB 916), the 2003 legislative act that authorized RM2, states:

I-580 (Tri Valley) Rapid Transit Corridor Improvements. Provide rail or High-Occupancy Vehicle lane direct connector to Dublin BART and other improvements on I-580 in Alameda County for use by express buses. Sixty-five million dollars (\$65,000,000). The project sponsor is Alameda County Congestion Management Agency.

That provision was codified at Streets & Highways Code § 30914(c)(32), which currently reads, as amended:

I-580 (Tri Valley) Rapid Transit Corridor Improvements. Provide rail or High-Occupancy Vehicle lane direct connector to Dublin BART and other improvements on I-580 in Alameda County for use by express buses. Sixty-five million dollars (\$65,000,000). The project sponsor is the Alameda County Transportation Commission.

Neither the Legislature nor MTC has amended that provision of RM2 to allow these funds to be allocated to a “parking garage.” MTC, MTC Commissioners, and Executive Director McMillan have no legislative authority under Streets & Highways Code § 30914(c)(32) to allocate a portion of the \$65 million “I-580 (Tri Valley) Rapid Transit Corridor Improvements” funds to the Dublin Transit Center Parking Garage Project. The Dublin Transit Center Parking Garage Project does not “[p]rovide rail or High-Occupancy lane direct connector to Dublin BART” or “other improvements on I-580 in Alameda County for use by express buses.” ACTA and TRANSDEF interpret “other improvements on I-580 … for use by express buses” literally. This Parking Garage Project would not be an improvement to I-580 highway, let alone be used “by express buses.”

The RM2 voter-approved “Regional Traffic Relief Plan” describes this funding category under “4. South Bay — San Mateo-Hayward and Dumbarton Bridge Corridors A. New Mass Transit Options” as “Interstate 580 Rapid Transit Corridor Improvements: \$65 million • Corridor improvements on I-580 in Alameda County. Funds available for new rail service or express bus improvements, such as a carpool-lane direct connector to Dublin BART” and “B. Traffic Bottleneck Relief Interstate 580 Rapid Transit Corridor Improvements • As noted in the “Mass Transit Options” above, these improvements may include a new carpool lane along I-580, providing direct traffic relief to the corridor.” The Parking Garage Project does not comply.

MTC, MTC Commissioners, and Executive Director McMillan have no legal authority under the voter-approved RM2 “Regional Traffic Relief Plan” to allocate a portion of the \$65 million “Interstate 580 Rapid Transit Corridor Improvements” to the Dublin Transit Center Parking Garage Project. The Dublin Transit Center Parking Garage Project is not a “[c]orridor improvement[] on I-580 in Alameda County. The Dublin Transit Center Parking Garage Project

would not provide “new rail service or express bus improvements, such as a carpool-lane direct connector to Dublin BART.” The Dublin Transit Center Parking Garage Project is not “a new carpool lane along I-580.” Again, the Project does not comply with the RM2 Plan.

ACTA and TRANSDEF further object to the mischaracterization of this project as a “Transit Center.” There is nothing about the Project that would meet that characterization. There would be no transit directly serving that parking garage. In addition, ACTA and TRANSDEF have doubts as to how convenient BART patrons would find that garage given its distance from the BART station and the likelihood that it would cost more for patrons to use than the adjacent BART garage (like the non-BART garage at Walnut Creek BART station). ACTA and TRANSDEF take a dim view of MTC’s funding of HOV lanes ostensibly built “for use by express buses” without mandates to provide actual express bus service. Since the passage of RM2, MTC has failed to provide express bus service on I-580 and elsewhere in the region. ACTA and TRANSDEF also note the irony that these RM2 funds were used to build the very I-580 HOV lanes that would be demolished to construct the Valley Link project as currently approved by the Regional Rail Authority (which itself is currently funded largely by MTC AB 1171 seismic retrofit bridge toll revenues). Tri-Valley voters (Livermore, Pleasanton, Dublin, San Ramon, and Danville) rejected the RM3 toll increase in 2018 by a 57 percent “No” vote because of MTC’s waste and abuse.

Public officials who misallocate funds could be subject to personal liability for the improper expenditure. “[I]f the official does not use due care or reasonable diligence in authorizing the expenditure of public funds, the official may be subject to personal liability for the improper expenditure ... It must be remembered that this is a standard for determining when a public official is liable for restitution for an *ultra vires* act. It does not mean that every public expenditure which was not made with due care or reasonable diligence is a violation of duty; it simply means that when an expenditure of public funds is wholly unauthorized, the public official who authorized the expenditure can be liable for restitution if he or she acted unreasonably.” (*People ex rel. Harris v. Rizzo* (2013) 214 Cal.App.4th 921.)

Pursuant to C.C.P. § 526a, among other authority, ACTA and TRANSDEF are prepared to file a lawsuit to restrain and prevent MTC, MTC Commissioners, Executive Director McMillan, and other MTC officers, employees, agents, contractors, and assigns acting under their direction and control, from illegal expenditure of and/or waste of public funds on the Dublin Transit Center Parking Garage Project (RM2 Project No. 32.3). ACTA and TRANSDEF want to avoid litigation through an out-of-court settlement under which MTC Commissioners would rescind and/or otherwise nullify their July 24, 2019 action taken through MTC Resolution No. 3664, Revised that illegally diverted \$7 million in RM2 funds to this Parking Garage Project.

Sincerely,

/s/ Jason A. Bezin

JASON A. BEZIS

Attorney for ACTA and TRANSDEF

cc: Alameda County Board of Supervisors (cbs@acgov.org); BART (BoardofDirectors@bart.gov);
Alameda County Transportation Commission (contact@alamedactc.org);
Livermore-Amador Valley Transit Authority (info@lavta.org)