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Metropolitan Transportation Commissioners/
Bay Area Toll Authority Commissioners
Metropolitan Transportation Commission
Bay Area Metro Center
375 Beale Street, Suite 800
San Francisco, California 94105-2066

December 18, 2024

re: Comments on Proposed Action by the Metropolitan Transportation Commission and Bay Area Toll Authority to increase tolls on the seven State-owned San Francisco Bay Area bridges

via: e-mail – info@bayareametro.gov; info@bayareametro.gov

Dear Commissioners:

These comments on the proposed action by the Metropolitan Transportation Commission (MTC) and Bay Area Toll Authority (BATA) (hereinafter “MTC”) to increase tolls on the seven State-owned San Francisco Bay Area bridges are made on behalf of SHIFT Bay Area (the reconstitution of the former 20BILLION Reasons to Vote No on the Bay Area Housing Tax as a permanent public interest organization) and myself as an individual.

I’m sure the Commissioners will recall that it was 20BILLION Reasons that publicized MTC’s \$241 million annual understatement of the taxes required to service the RM4 bonds. I was the person who discovered this 53-year, \$12.8 billion error.

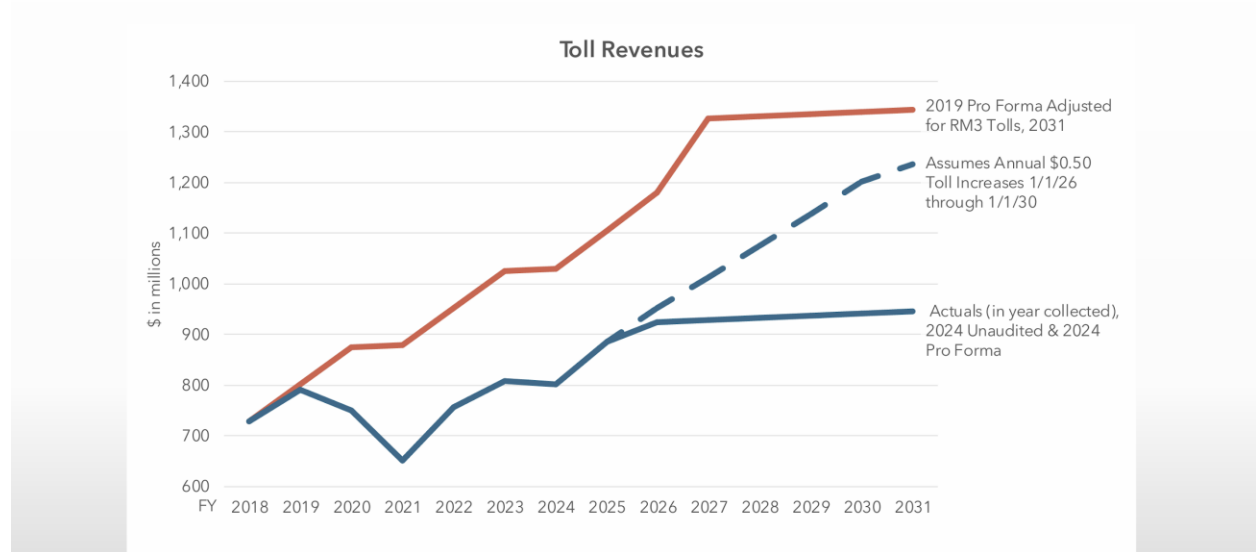
Over my almost half-century of dealing with MTC plans and proposals, the RM4 error was only the latest of many erroneous and questionable presentations. This letter sets forth several such presentations by MTC that apply to the proposed toll increase:

- The “2019 Pro Forma” Toll Revenue Projections were significantly overstated
- Actual Toll Revenue Projections were significantly understated
- When both of these are taken into consideration, the need for new toll increases is significantly reduced
- MTC presents only graphic data to justify more than a billion dollars in toll increases with no actual quantitative data, explanation of assumptions, or citations
- MTC has a terrible record of ineffective planning, oversight, and management of Bay Area transportation projects
- MTC has failed to utilize other available funds for the on-going capital renewal and replacement expenditures for the State-owned Bay Area toll bridges
- An independent and effective MTC Inspector General is essential to protect the interests of the residents, taxpayers, voters, and transportation system users of the Bay Area and the State of California

2019 Pro Forma Adjusted Toll Revenues Were Significantly Overstated

The first of these comments apply to MTC’s projections of and actual toll revenues. We have been unable to find an actual numeric schedule documenting this proposal, so the following discussion is based on this MTC graph¹:

Revenue projections – \$2.50 phased toll increase



The higher, Orange line, “2019 Pro Forma Adjusted for RM3 Tolls, 2031,” shows projected revenues – which I have attempted to duplicate in the schedule immediately following. The actual numeric document that evidently was utilized to produce the above graph has not been identified, but there is a MTC bond official statement from September 2019² – after RM3 had been approved by the voters in 2018, but well before even the first notice of COVID’s impacts.

I did a simple adjustment to create my own estimate from MTC’s fare revenue data of the Orange Line on the above graph, as follows:

¹ “Toll Increase for BATA Bridges,” slide 20, PowerPoint™ Presentation to Bay Area Toll Authority Policy Advisory Council Equity & Access Subcommittee,” Agenda Item 4b Handout, October 23, 2024, [4biv_Handout-BATA-4a-24-1322_2_Toll_Increase_BATA_Bridges-accessible.pdf](#)

The contents of this presentation and this slide in particular are consistent with several other presentations to MTC entities over the past few months.

² Official Statement, “\$869,195,000 – Bay Area Toll Authority – San Francisco Bay Rea Toll Bridge – Revenue Bonds 2019 Series F-1,” and “103,535,000 – Bay Area Toll Authority – San Francisco Bay Area Subordinate Toll Bridge Revenue Bonds 2019 Series S-9,” page A-27 for 2018 actual, page A-29 for 2019-2023 projections, September 19, 2019, [Bay Area Toll Authority](#)

MTC, Projected Bridge Toll Revenues, 2018-2023 (millions)						
FISCAL YEAR	2018	2019	2020	2021	2022	2023
Official Statement (OS) w/o RM3 increases	\$727.3	\$731.8	\$735.5	\$738.0	\$740.6	\$743.2
	50	42	01	75	61	61
RM3 Toll Increase Adjustment		110%	120%	120%	130%	140%
Adjusted OS Toll Revenue		\$805	\$883	\$886	\$963	\$1,041

The middle line, “RM3 Toll Increase Adjustment” row, is calculated as follows:

- MTC fiscal years are July 1 to June 30th of the following year; but the RM3 toll increases all occur on January 1
- Therefore, for FY19, the new toll (\$6) is 120% of the base toll (\$5), but is only in effect for half the year; so, the factor is the average of 100% and 120% □ 110%
- For FY20 and FY21, the 120% increase is in effect for all of each year
- For FY22, the new toll (\$7) is 140% of the base toll (\$5), but is only effect for half the year, so the factor is the average of 120% and 140%, or 130%
- For FY23, the 140% increase is in effect for the full year

The values in the “Adjusted OS Toll Revenue” row above appear to be very close to the Orange 2019 Pro Forma line; therefore, I believe the above simplified methodology is producing results that are reasonably close to – or even perhaps the same as – MTC’s methodology for calculating the Orange Line values.

Going forward from there, 2024 on the Pro Forma Orange Line appears only slightly higher than 2023, as was 2020 to 2021, so FY24 also appears reasonable. Also, the upward ticks for 2025 and 2026 also follow the previous pattern and appear reasonable.

However, the *higher* rate of increase for 2027 is not understood; like 2021 and 2024, this should be a year of almost flat results – and, since there are no RM3 increases after that of January 1, 2025, the Pro Forma Orange Line should be essentially flat after FY26 at the FY26 level – and most definitely *not* increasing in that year at a rate higher than any other year-to-year increase on the graph.

Instead, the Orange Line shows an increase of approximately \$150 million – the largest year-over-year of any year on the Orange line, by far. With no RM3 fare increase after January 1, 2025, how can there be such a large increase for FY27?

(The slight upward trend of the Orange Pro Forma line after FY27 could be due from MTC’s legal authority, under RM3, to do inflationary increases after the final RM3 \$1 toll increase for two-axle vehicles on January 1, 2025³.)

I therefore submit that the Orange Line projected RM3 toll revenues for fiscal years 2027 through 2031, inclusive, are all overstated by approximately \$150 million/year for a total overstatement of approximately \$750 million for this period.

I offer no opinion as to this being due to human error or being deliberate, but I will comment that, in my long experience with MTC documents and projections of this type, I have seen numerous

³ California Public Utilities Code Section 30916(c)(1), [Bill Text - SB-595 Metropolitan Transportation Commission: toll bridge revenues: BART Inspector General: Santa Clara Valley Transportation Authority: high-occupancy toll lanes.](#)

such major errors that support the proposed MTC action, but I cannot remember a single one that worked against the proposed MTC action.

While MTC may well argue that, regardless if this high Orange Line projection was intentional or not, MTC had planned on these funds being available and, therefore, it does not impact the amount of new toll revenues that are required to do what needs to be done. However, given that – from the MTC graph above – there was a large and growing shortfall evident from 2020, the year after the projection was made, to the present day, I would ask: weren't MTC staff and consultants reviewing the anticipated revenues and expenditures on a continuing basis as the shortfall not only continued, but grew larger – and, still, no one at, or working for, MTC ever noticed this?

The residents, taxpayers, voters, toll bridge crossers, and other transportation system users deserve better than this.

Actuals 2024 Unaudited & 2024 Pro Forma Revenues Appears Understated

On the same MTC graph, the Blue “Actuals (in year collected), 2024 Unaudited & 2024 Pro Forma” line appears to significantly understate actual toll revenue.

The schedule below compares my best approximation of the Blue “Actuals/Pro Forma” line to the values presented by MTC to a J.P. Morgan Investors Forum⁴:

BRIDGE TOLL REVENUE PROJECTIONS								
Fiscal Year	(\$ Millions)							
	2024	2025	2026	2027	2028	2029	2030	2031
Investor Presentation	\$894 ⁵	\$950	\$1,011	\$1,016	\$1,021	\$1,026	\$1,031	\$1,036
Less: “Revenue Projections” Blue Line	804	886	925	929	933	937	941	945
Difference	\$90	\$64	\$86	\$87	\$88	\$89	\$90	\$91

The eight-year total difference, where MTC appears to be projecting lower toll revenues to the public to help sell its needs for additional revenues, as opposed to the projections it provided to potential investors that it wants to purchase its toll revenue bonds at favorable interest rates, is approximately \$685 million.

For the five-year period, FY27-31, where the MTC Orange Line toll revenue projections is overstated by a total of approximately \$750 million, the difference in the actual toll projections is approximately \$445 million.

Looking at the difference between the Orange and Blue Lines on the MTC graphic, it is approximately \$400 million a year, or a total of approximately \$2,000 million over the five years.

⁴ MTC/BATA, PowerPoint™ presentation, “Bay Area Toll Authority – J.P. Morgan Transportation and Utilities Investor Forum, March 21, 2024, slide 12, “Pro Forma Revenue, Operations & Maintenance,” [March 21, 2024 Investor Presentation \(2\).pdf](#).

⁵ MTC Annual Comprehensive Financial Report, year ended June 30, 2024, page 45, has \$868.875 million, MTC, Comprehensive Annual Report Documents, [Comprehensive Annual Financial Report | Metropolitan Transportation Commission](#)

(What used to be known as the Comprehensive Annual Financial Report (CARF) has been known as the Annual Comprehensive Financial Report (ACFR) since the 6/30/22 ACFR due to a change in professional standards. The pronunciation of the acronym for the Comprehensive Financial Report unfortunately had the same sound as a racial slur in Afrikaans, the Dutch/German-based language of the European occupiers of what is now the Republic of South Africa. The MTC web site has evidently not yet been changed to match the current terminology.)

If the \$2,000 million is adjusted by both of the 2019 revenue over-projection and the current toll revenue under-projection, the difference falls to approximately \$805 million – or slightly over 40% of what MTC is presenting as the shortfall.

Again, I make no representations as to this difference being intentional or due to human error, but I will again note that the difference supports the action that MTC wants to pursue.

OVERALL IMPACT

The combination of all of the above biases is that, even after the proposed \$.50/year toll increase is implemented, revenues in the last year, as shown by the Dashed Blue Line are still approximately \$100 million short of the Orange Line projections – which looks like justification for more and larger toll future increases.

If the above adjustments were made, the Dashed Blue Line would meet and cross well above the Orange Line – significantly reducing the need for any additional toll increases.

All of the above issues demand presentation of detailed quantitative schedules showing MTC's actual revenue and expenditure projections and the assumptions, justifications, and citations. A three-line graph with no values, no assumptions, and no explanations is simply totally insufficient to justify major financial decisions for millions of residents that will total into the billions in toll increases.

A MAJOR PART OF THE PROBLEM IS MTC'S POOR MANAGEMENT OF LONG-TERM TRANSPORTATION PROJECTS AND PLANNING

Part of the existing and continuing tolls are due to poor MTC decisions leading to replacement of the East Span of the Bay Bridge, which increased in costs from the initial estimate of \$250 million to \$6.5 billion, 2,600% of the original estimated cost⁶ – almost \$1,000 for every resident of the Bay Area.

In addition, faulty project management procedures, quality control, and safety oversight in the construction of the new Bay Bridge Eastern span led to exposure of key anchor rods to corrosive salty water, which increased construction costs, delayed completion, and will likely reduce their useful life prior to extensive and expensive replacement⁷.

FAILURE TO TAKE ADVANTAGE OF OPPORTUNITIES TO USE OTHER FUNDS FOR BRIDGE CAPITAL RENEWAL AND REPLACEMENT

Even though MTC knew that COVID-19's impact was causing major reductions in anticipated toll revenues by early/mid-FY20, MTC made no effort to use any of the Federal COVID relief funds to offset these shortfalls. In fact, MTC decided that the best use of these funds was for MTC

⁶ Karen Trapenberg Frick, *Remaking the San Francisco-Oakland Bay Bridge*, as reported by Eric Jaffe, "From \$250 Million to \$6.5 Billion: The Bay Bridge Cost Overrun," *CitiLab*, October 13, 2015, [How the Cost of Remaking the San Francisco Bay Bridge Soared to \\$6.5 Billion - Bloomberg](#).

The \$6.5 billion does not include the interest and other costs of financing the project, which approximately double the \$6.5 billion planning/design/construction costs.

⁷ Jason Van Derboeken, "Corrosive salty water threatens 120 Bay Bridge anchor rods," *SFGATE*, updated June 5, 2015, [Corrosive salty water threatens 120 Bay Bridge anchor rods](#).

planning activities, for which it allocated almost half of the total Bay Area funding from this unexpected supplemental source.⁸

For FY24, over half of toll revenues went for interest expense⁹. MTC has failed to even attempt to get State of California authorization to issue Private Activity Bonds (PAB) at tax-exempt rates, rather than issuing taxable bonds. The State is California is, of course, well over-subscribed for PABs, there is always a lot of competition for such allocation that exists, and it is almost impossible for MTC to get all of its bridge debt as tax-exempt, but, if MTC doesn't even attempt to get a share of the State's annual allocation (as it evidently passed on even considering PABs for the proposed \$20 billion of RM4 bonds), then it will never get any, leaving residents to pay higher costs.

MTC's ILL-ADVISED INVESTMENTS IN DERIVATIVES HAS ALSO BEEN COSTLY FOR TOLL-FUNDED PROGRAMS

A contributing factor to this situation was the ill-advised MTC investment in derivatives. MTC, along with several other major transit agencies throughout the U.S., attempted to increase investment income on its rather substantial cash balances, which appear to be largely bridge tolls not yet expended and bridge toll bond revenues not yet expended. Unfortunately, a variety of factors led to substantial losses. The dollar amount of the total losses is unknown, but they appear to be in the hundreds of millions of dollars¹⁰.

⁸ Memorandum, Steven Keck, Chief Financial Officer, California Department of Transportation to Chair and Commissioners, California Transportation Commission, "Final Update on the CRRSAA Project List Under Delegated Authority," for the CTC Meeting January 25-26, 2024," [FINAL UPDATE ON THE CRRSAA PROJECT LIST UNDER DELEGATED AUTHORITY](#). (CRRSAA refers to the Federal Coronavirus Response and Relief Supplemental Appropriations Act of 2021.)

Page 1 of the cover memo states, "The CRRSAA apportioned \$911.8 million to California in December 2020."

Pages 1-2 of Attachment A, "CRRSAA Project Listing" shows a total of 20 projects in the "MTC Region" with total CRRSAA Funding of \$34,593,076 (including six, with total CRRSAA funding of \$16,727,000, which were cancelled so their funding could be allocated to the other 14 projects). All projects in the Bay Area had to go through MTC to be included in this list. Although several of these projects were streets and roads projects, there was no allocation of this funding for the BATA toll bridges. \$16,727,000, 48.4% of the total, went to MTC for "Countywide regional planning activities (Planning, Programing and Monitoring) and \$7,633,076, 22.1%, was for transit projects.

There were three Federal COVID relief supplemental allocation acts that included funding for transportation projects. Two of these, the American Rescue Act and the Coronavirus Aid, Relief, and Economic Security Act, did not include any funding for Federal Highway Administration Programs. CRRSAA included \$10 billion for FHWA programs. Source: (Untitled) U.S. Department of Transportation summary of these three programs, [Coronavirus Supplementals FY 2021 Q3 Financial Summary and Update](#).

⁹ MTC, ACFR, 6/30/24, \$422.9 million of interest expense is 52.7% of the \$801.6 million of toll revenues collected, pp. 46-46, [Comprehensive Annual Financial Report | Metropolitan Transportation Commission](#) (sic).

¹⁰ The net impacts of the derivative swap instruments are very complex to follow and to attempt to analyze. There does not appear to be any single document that explains and set forth MTC's total gain or loss on these since their use, and the resulting problems, began decades ago.

For lack of a better methodology, the partial information from MTC financial statements for various years are shown below. Keep in mind that this is far from a complete collection of results from every year and that financial accounting standards have changed considerably over this period. Also, MTC's entire purpose in entering into these transactions was to increase MTC's investment earnings and, assuming that there has been some degree of success in that, the additional revenues should be offset against the losses that have been incurred. Also, in some years, MTC has shown a positive change in the fair value of derivative instruments, such as the \$53.7 million for

ALL OF THE ABOVE ILLUMINATE THE REQUIREMENT FOR AN TRULY AND TOTALLY INDEPENDENT MTC INSPECTOR-GENERAL

As illustrated above, and as can be very well supplemented by dozens of major problems with Bay Area surface transportation programs and projects planned, funded, approved, managed, and/or overseen by MTC, almost everything that MTC has touched has resulted in overruns, delays, unproductive projects, and other problems of all types.

A truly independent Inspector-General, modeled on perhaps the most effective now existing in state and local government, that of The Office of the (New York City) Metropolitan Transportation Authority Inspector General, is essential to begin to protect the interests of the residents of the Bay Area and all of California, as well as all users of the State-owned Bay Area toll bridges¹¹.

As illustrated by recent problems, particularly with the BART IG being unable to perform her statutory duties because of resistance by the BART Board and management, the following features of the NY MTA IG would be vital for the MTC IG:

1. Ability to appeal lack of budget directly to an outside authority. The NY MTA initially works with the MTA to arrive at a mutually agreeable budget. However, if this does not produce an outcome acceptable to the IG, the IG may appeal to the State. If the IG is successful in this endeavor, it is paid the approved additional funding directly from the State, coming from State funds allocated to MTA. Because MTA staff knows that the IG has the power to appeal budget disagreements, this process has been very successful in achieving mutually acceptable outcomes without the IG having to appeal.
2. The IG handles much of its own procurement and human resources matters outside of MTA; in particular, it establishes its own personnel requirements, including compensation, and is solely responsible for selection of employees and contractors.

FY24, MTC ACFR 6/30/24, page 46. These, too, should be regarded as a contra-factor in determining the total net gain or loss.

From MTC Comprehensive Annual Financial Reports/Annual Comprehensive Annual Reports, various years, MTC digital library, [Comprehensive Annual Financial Report | Metropolitan Transportation Commission](#) (sic):

"Loss on swap termination:"		
<u>Fiscal Year</u>	<u>Amount</u>	<u>Source</u>
2008	\$80,588,000	MTC, CAFR, 6/30/10, page 8
2009	15,683,000	MTC, CAFR, 6/30/11, page 8
Total	<u>\$96,271,000</u>	

MTC, CAFR, 6/30/15, p. 12:

"BATA's investment income for fiscal year 2015 decreased by \$276,078,(000) compared to a decrease of \$54,968,(000) in fiscal year 2014. In fiscal year 2015, investment income was comprised of \$8,230,(000) of investment income and \$285,569,(000) of unrealized loss on derivative investments. The balances of the sways became ineffective and accounted for \$250,217,(000) of the \$285,569,(000). In fiscal 2014, investment income was comprised of \$5,807,(000) of investment income and \$7,068,(000) on unrealized loss on derivative instruments. The \$285,569,(000) and \$7,068,(000) loss on derivative instruments in fiscal years 2015 and 2014, respectively, represents a charge for the change in the market valuation of certain interest rate ways that no longer qualified for hedge accounting ..."

MTC, CAFR, 6/30/16, 9. 12:

"In fiscal year 2016, investment charges were comprised of \$12,005,(000) of investment income and \$187,387,(000) of unrealized loss on derivative instruments."

¹¹ [Home | OIG](#)

3. The IG is *not* appointed by MTA, but by the Governor of New York. For an MTC IG to be successful, the incumbent *must* be appointed by a senior person or body independent of MTC.

In addition, the IG's scope of responsibility must be clearly defined to include any and all funding that flows through, or is approved by, MTC; all projects that MTC funds or has planning authority over; and all MTC planning activities and plans.

Finally, an independent and effective citizen's oversight committee, with its members selected and appointed by Bay Area transportation stakeholder organizations and interest groups, would be most valuable.

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Please do not hesitate to contact me if there are any questions.

Very respectfully,

Tom Rubin

Thomas A. Rubin