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February 2008 Monthly Report for MTC

**To: Steve Heminger, Executive Director
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**From: Tom Bulger, President
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Re: Monthly Report for February 2008

Date: March 5, 2008

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- **MTC's Annual Washington DC Visit Update**
- **Congress Continues Analysis of the National Surface Transportation Policy and Revenue Study Commission's Final Report**
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President Bush Submits the FY 2009 Budget Proposal to Congress

President Bush submitted a \$3.1 trillion budget proposal for FY 2009 to Congress predicting a \$407 billion deficit. The Budget includes \$68.2 billion in total new transportation spending, a \$2.13 billion reduction from what was enacted in FY 2008. The cuts primarily come from three areas (Highway Program/Amtrak/Airport Grants). The highway program is reduced by \$800 million from what was guaranteed in SAFETEA. The reduction comes after Congress decided to add \$1 billion in spending for the Bridge program in last year's appropriation bill. Even though the extra \$1 billion went entirely to the bridge program, the Administration is proposing to take the offsetting reduction from both highways and transit on an 80-20 basis. The proposal includes \$41.6 billion for the highway construction fund, down slightly from this year's \$42.7 billion spending plan. Requested funding for rail service, buses and other mass transit is \$8.4 billion, compared with \$7.8 billion in fiscal 2008.

Additionally, the budget includes a proposal to patch a projected Highway Trust Fund (HTF) shortfall by allowing the HTF to ‘borrow’ cash from the Mass Transit Account, which is not expected to go bankrupt until 2011 or later. While the highway account will be \$3.2 billion in the red by the beginning of fiscal 2009, according to Treasury Department projections, the mass transit fund is \$4.4 billion in the black.

The budget also proposes a \$3.15 billion rescission of contract authority, which under provisions included in the Energy bill, must be proportionally spread across all of the Federal highway programs. The budget includes an additional rescission of \$8.543 billion required by section 10212 of SAFETEA, bringing total contract authority rescissions to \$11.693 billion.

The budget also proposes to rescind unobligated funds from earmarked projects in ISTEA, totally approximately \$284 million. The budget also proposes taking \$175 of those rescinded funds and directing them towards the DOT Congestion Relief Initiative. Finally, the budget includes a provision, which would rescind any funds earmarked in TEA-21, that have not had at least 10% of their total contract authority obligated. This would rescind roughly \$626 million.

The House Appropriation committee held a hearing on the transportation budget. At the hearing, subcommittee Chairman Olver (D-MA) raised concerns about the administration's proposal to ‘borrow’ funds from the transit account. However, he echoed the Secretary's concerns regarding solvency of the trust fund.

MTC's Annual Washington DC Visit Update

Currently we are finalizing a full agenda for the Commission associated with their annual trip to Washington DC on March 9th through March 12th. We have set up numerous briefings and meetings including meetings with the Bay Area Congressional delegation, and briefings with key authorizing and appropriation committees. We have also scheduled a number of briefings associated with the Surface Transportation Revenue and Policy Study Commission's final report, including sessions with APTA, the National League of Cities, and the ‘California Institute for Federal Policy’.

Final preparations are also underway for the annual California Reception on the evening of March 11th. We are again hosting this reception with the Southern California Transportation Commissions and agencies, as well as a number of California municipal transit operators.

Congress Continues Analysis of the National Surface Transportation Policy and Revenue Study Commission's Final Report

Early in February the House and Senate continued to examine the National Surface Transportation Policy and Revenue Study Commission Final Report. The Senate Environment & Public Works Committee held a hearing on January 31st in which a number of Commissioners spoke about the final report. On February 13th, the House held a hearing in

which Secretary Mary Peters presented the minority opinion of the Commission. Below are summaries of those two hearings.

Senate Environment & Public Works Committee Hearing

Senate Environment & Public Works Committee Chairwoman Barbara Boxer (D-CA) opened the hearing by stating concerns related to congestion relief, freight movement, and safety. In her statement, she mentioned that the Federal gas tax is only one of a handful of ways in which transportation programs can be funded. She specifically made mention to Senator Dodd's financing proposal as one way to increase funding.

Ranking Member James Inhofe (R-OK) reiterated concerns about a 200% gas tax increase. In his remarks he agreed that Congress should remove current modal 'stovepipes'. However, he was concerned about an increase in the Federal role proposed by the Commission. He does agree, however, that we must take a fresh look at Federal transportation policy.

At the hearing, Jack Schendorf, Vice Chair of the Commission, outlined the commission's views and highlighted a number of the proposals. Senator's from both sides of the isle outlined their parochial interests and discussed the need for further consideration. Senator's from both sides of the isle recognized the importance of the transportation system; however, most of the Republicans were hesitant to support an increased Federal role or a gas tax increase. Many Democrats were also cautious to come out in direct support of a gas tax increase, instead opting to discuss a need for increased Federal investment and looking into other financial streams.

House Transportation & Infrastructure Committee Hearing

On February 13, 2008 Secretary of Transportation Mary Peters was invited to testify before the House Transportation & Infrastructure Committee as to her opposition of the National Surface Transportation Policy and Revenue Study Commission's Final Report. In his opening statement Ranking Member John Mica (R-FL) voiced his opposition to the Commission's proposal to increase the gas tax. He also expressed some concern over merging transit and highway programs together. Subcommittee Chair Peter DeFazio (D-OR) agreed with the commission's analysis that the system is in terrible shape and in need of reform.

In her opening remarks Secretary Peters was respectful of the Commission's work and illustrated the many areas in which she agreed with the Commission's final report. She also went on to discuss that the Highway Trust Fund was going broke and that current user fees are sending the wrong message to motorists. She further went on to say that the American Public does not support an increase in gas tax and that we are at a 'transformational era'.

During the question and answer segment Secretary Peters was asked whether the existing user fee (gas tax) should continue. She said yes, that the user fee should be linked to building the interstate system and the pricing features should be used to get more efficiency out of the system. Chairman Oberstar (D-MN) angrily rebutted this statement and said that tolling/pricing is a narrow policy choice, not a policy. Congressman Petri

asked about why she did not sign onto the final report. She indicated that the main disagreement was over the way the gas tax and user fee was handled.

Congressman DeFazio and Secretary Peters also had a discussion as it relates to Public Private Partnerships (PPPs). Congressman DeFazio expressed concern over public welfare and state and local judgments. After a lengthy exchange, Ranking Member Mica asked what the regulations that governed PPPs were, she indicated that there were none and perhaps DOT should undertake a rulemaking.

The Commission's final report will continue to be a cornerstone for debate as Congress looks to authorize a transportation bill.

National Surface Transportation Follow-up Presentations

Following the hearings, Tom Bulger made several presentations concerning the recommendations of the National Surface Transportation Commission. Specifically, Tom presented a report to the American Public Transportation Association (APTA) monthly meets, and at the National Association of Counties (NACo) legislative conference.

Urban Partnership Follow up Meetings

In February, Randy Rentschler and Tom Bulger met with several members of the Bay Area delegation to discuss the status of the Urban Partnership program and the 'Doyle Drive' project. Those meetings included Senator Feinstein (D-CA), Congresswoman Woolsey (D-CA), Congresswoman Tauscher (D-CA), Congressman Honda (D-CA), and Congressman McNerney (D-CA).

Metropolitan Rail Discussion Group

The nation's largest and oldest transit systems have come together to find common principles for a new Federal transportation authorization. The group consists of from the Bay Area, MTC, BART, SFMTA as well as, New York City, Chicago, LA, Philadelphia, NJ transit, Boston, Washington, Atlanta, Cleveland, and Pittsburgh. On February 25th, the metropolitan rail discussion group sponsored a forum in the Senate for Congressional staff. Approximately, 40 House and Senate offices were in attendance, as well as the appropriate committee staff. After the forum the group continued on refining a Federal transit program authorization statement and goals. The group's recommendations were not complete, but will be ready for presentation at the APTA legislative conference in March.

Department of Homeland Security Announces FY 2008 Transit Security Grant Notice

Early in February, the Department of Homeland Security announced the FY 2008 Transit Security Grant Program (TSGP). The TSGP provides grants to the Nation's key high-threat Urban Areas to enhance security measures for their critical transit infrastructure including bus, rail, and ferry systems. This year, the TSGP will also provide funding to Amtrak for continued security enhancements for its intercity rail operations between key, high-risk Urban Areas throughout the United States.

The notice states that each Governor shall designate a State Administrative Agency (SAA) to apply for and administer the funds under the TSGP. The SAA is the only agency eligible to apply for the TSGP, and it is also responsible for obligating program funds to the appropriate transit agencies within 45 days of the receipt of funds. This goes against Congress's wishes. In the FY 2008 Homeland Security Appropriations Bill, the explanatory statement concluded that funds should be provided directly to the local transit agencies. Explanatory language does not have the weight of law, but is generally followed; however, this is not the case here. The guidance also includes targeted allocations. The guidance indicates that the Bay area is targeted to receive roughly \$28.26 million in FY 2008.

FHWA Announces Changes to the CMAQ Program

In the Energy bill, Congress decided to increase the Federal share for all CMAQ projects to 100%. The language also establishes that the Federal share for CMAQ projects can be no less than 80%. The intent of the language was to increase spending of CMAQ dollars nationwide; however, for a region like San Francisco who does a good job spending its CMAQ funds efficiently, this provision creates a problem. We have spoken to FHWA and they have indicated that the provision enacted by Congress specifically requires that CMAQ projects be funded with a minimum Federal share of 80 percent for FYs 2008 and 2009. Thus, this specific "later-enacted amendment" relative to the Federal share for the CMAQ program eliminates the option of higher State or local shares otherwise permitted by 23 U.S.C 120 (i). This amendment does not affect the use and obligation of STP funds for eligible activities that benefit air quality under 23 U.S.C 133(b). Additionally, FHWA attorneys have advised that there are no loopholes available in the language that would allow FHWA to permit and exemption. We understand that this limitation may have an impact on those jurisdictions that traditionally use the higher match to leverage their CMAQ funds and, ultimately, to implement more projects with more widespread participation in the program. We are currently making the authorizing committees aware of this problem and will update staff as discussions progress.

House Science Committee Passes Legislation That Would Create Green Transportation Infrastructure Research and Technology Transfer Centers

In February, the House Science Committee passed HR 5161, the 'Green Transportation Infrastructure Research and Technology Transfer Act'. The legislation would allow the Secretary of Transportation to make grants to nonprofit institutions of higher learning or to establish and operate university transportation centers to carry out research and development and technology transfer activities in the field of green transportation infrastructure.

The legislation is jointly referred to the House Transportation & Infrastructure Committee and awaits further action. We will keep staff update on its progress.