

**Metropolitan Transportation Commission
Programming and Allocations Committee**

November 9, 2022

Agenda Item 2d - 22-1504

MTC Resolution No. 4412, Revised

Subject:

Regional Measure 3 (RM3) Letter of No Prejudice to the Santa Clara Valley Transportation Authority (VTA) for the San Jose Diridon Station Project.

Background:**Regional Measure 3 Letters of No Prejudice (LONP)**

Bay Area voters approved Regional Measure 3 (RM3) on June 5, 2018, and on December 19, 2018, the Bay Area Toll Authority (BATA) adopted a toll schedule phasing in the resulting toll increase. The first and second dollars of the toll increase were implemented on January 1, 2019 and January 1, 2022, respectively. A lawsuit has been filed challenging RM3 and revenue collected pursuant to RM3 is being held in an escrow account. The case is currently pending in the California Supreme Court. In December 2019, MTC approved a Letter of No Prejudice (LONP) process as part of the overall RM3 Policies and Procedures to allow project sponsors to move projects forward with alternate funds, at-risk, while maintaining RM3 eligibility if and when RM3 funds become available.

Through MTC Resolution No. 4412, the Commission may approve specific RM3 LONPs, at the request of project sponsors, subject to the RM3 Policies and Procedures. Details on each LONP request specifying the amount and scope for which RM3 eligibility will be preserved will be included in the attachments to Resolution No. 4412.

San Jose Diridon Station Project

VTA has submitted an RM3 LONP request for \$30 million for the early right-of-way acquisition and preliminary engineering for the San Jose Diridon Station Project, designated as RM3 project 16 in statute. VTA is partnering with the Peninsula Corridor Joint Powers Board, California High Speed Rail, the City of San Jose, and MTC on the Diridon Intermodal Station Concept (DISC), a project to redesign, rebuild, and expand the existing Diridon station to accommodate existing regional rail services, future BART and California High Speed Rail service, and VTA light rail and bus services.

Through the DISC project, VTA and partners have completed 15% conceptual design for Diridon Station. This design has allowed development of a conceptual footprint for the area that is anticipated to be needed to construct and operate the tracks and station. VTA has an opportunity to secure two of the parcels within this footprint and plans to initiate negotiations to purchase these parcels. VTA has requested an LONP for \$30 million to preserve RM3 eligibility for this early property acquisition and related planning and engineering work.

RM3 statute specifies that for this project, “The project sponsor shall consider accommodating a future connection to Norman Y. Mineta San Jose International Airport and prioritizing non-auto access modes.” Although the Diridon Station project is still in the conceptual phases, MTC staff understands these topics to be appropriately under consideration by VTA. Additionally, the City of San Jose currently has issued a request for proposals for predevelopment work on an SJC Airport to Diridon Station Connector project. Regarding the prioritization of non-auto access modes, the current concepts under development through the DISC project maintain a goal to have heavy rail, light rail, bus, bicycle, and pedestrian access in close proximity and utilize direct connections to facilitate transfers.

LONP Funding Source

The RM3 Policies and Procedures require that the project sponsor provides a non-RM3 source of funding to cover the portion that would be covered by RM3 funds, and that a plan be provided in case the RM3 funds never become available. In lieu of RM3 funds at this time, the project will use up to \$30 million in 2015 Measure B Funds, VTA Joint Development Funds, and City of San Jose Local Funds. MTC has informed VTA of the risk that RM3 funds may never become available.

MTC staff has reviewed the Initial Project Report and LONP request and recommend issuing an LONP. Issuing an LONP will preserve the eligibility of activities related to the above-mentioned project occurring after the issuance of the LONP, for future RM3 allocation and reimbursement contingent on the outcome of the litigation related to RM3.

An RM3 LONP does not represent a general funding commitment by MTC. In the event RM3 funds do not become available, there is no expectation that MTC or BATA will provide alternate funds.

Issues:

- Depending on the outcome of the RM3 litigation, funds may never become available to reimburse VTA. VTA has acknowledged this in its LONP request resolution.
- Environmental review has not yet been completed for the Diridon Station project. RM3 Policies and Procedures state that all applicants for RM3 funds are required to submit proof of having a valid environmental document that has been certified by the County Clerk for each project. While the California High Speed Rail Authority has recently completed environmental review for the San Francisco to San Jose High Speed Rail Section, which shows the parcels identified for this early right-of-way acquisition as project uses for both High Speed Rail Alternative A and Alternative B, this is not considered environmental approval for the Diridon Station project.
- RM3 Policies and Procedures also hold that RM3 funds will be allocated for right of way capital and support only after the project has identified and committed construction capital funds, though there can be exceptions for early right-of-way acquisition when financially or strategically advantageous.
- The ownership structure of the parcels, once purchased, is yet to be determined but could be solely one project partner (including California High Speed Rail), a joint ownership structure, or other structure.

Potential Conditions on Future Allocation:

Prior to an allocation of RM3 funds for this scope, staff would ensure adherence to the RM3 Policies and Procedures by reevaluating the project status and readiness for allocation and may recommend related funding conditions as appropriate, such as:

- Environmental clearance of the Diridon Station project prior to reimbursement of right-of-way purchase with RM3 funds

- Entitlement of MTC to a refund or credit (at MTC's option) based on MTC's share of the fair market value of the property if:
 - The property is not used for the project identified in the allocation
 - The project fails and ceases to be used for its intended public transportation purpose
 - Any excess right-of-way is sold or otherwise disposed of
- Guaranteeing MTC's interest in the property prior to reimbursement with RM3 funds through appropriate instruments, depending on project progress at the time of allocation.
- Execution of agreements with relevant parties to ensure the above potential conditions, as appropriate.

Recommendation:

Refer MTC Resolution No. 4412, Revised, to the Commission for approval.

Attachments:

- MTC Resolution No. 4412, Revised



Therese W. McMillan

Date: March 25, 2020
Referred by: PAC
Revised: 05/27/20-C 07/22/20-C
10/28/20-C 12/16/20-C
02/24/21-C 04/28/21-C
06/23/21-C 07/28/21-C
09/22/21-C 01/26/22-C
02/23/22-C 03/23/22-C
04/27/22-C 06/22-22-C
11/16/22-C

ABSTRACT

MTC Resolution No. 4412, Revised

This resolution authorizes the Executive Director to issue Letters of No Prejudice for RM3 funds for eligible projects.

This resolution includes the following attachments:

- Attachment A – Mission Bay Ferry Landing (WETA) LONP Summary
- Attachment B – Goods Movement GoPort 7th Street Grade Separation (Alameda County Transportation Commission (ACTC)) LONP Summary
- Attachment C – I-680/SR-84 Interchange Reconstruction and SR-84 Expressway Widening (ACTC) LONP Summary
- Attachment D – I-80/680/SR-12 Interchange (Solano Transportation Authority) LONP Summary
- Attachment E – US-101/I-580 Direct Connector (Transportation Authority of Marin) LONP Summary
- Attachment F – SMART System Extension to Windsor and Healdsburg (SMART) LONP Summary
- Attachment G – US-101 Marin-Sonoma Narrows Marin Segment Project (Transportation Authority of Marin) LONP Summary
- Attachment H – I-680/SR-4 Interchange Improvement Phase 1 and 2A Project (Contra Costa Transportation Authority) LONP Summary
- Attachment I – Mokelumne Trail Bicycle/Pedestrian Overcrossing of SR-4 Project (Contra Costa Transportation Authority) LONP Summary
- Attachment J – SR-262 (Mission Blvd.) Cross Connector Project (Alameda County Transportation Commission) LONP Summary

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MTC Resolution 4412, Revised

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Attachment K – I-80 Westbound Truck Scales Project (Solano Transportation Authority)
LONP Summary

Attachment L – US-101 Marin-Sonoma Narrows Project (Transportation Authority of
Marin) LONP Summary

Attachment M – I-80 Express Lanes Project (Solano Transportation Authority) LONP
Summary

Attachment N – Vine Transit Maintenance Facility (Napa Valley Transportation
Authority) LONP Summary

Attachment O – I-80 Express Lanes Project Toll System (Bay Area Infrastructure
Financing Authority) LONP Summary

Attachment P – I-680 Southbound Express Lane (ACTC) LONP Summary

Attachment Q – Next Generation Clipper Regional Fare Payment System Integrator
(MTC) LONP Summary

Attachment R – Highway 101/State Route 92 Interchange Area Improvement Project
(San Mateo County Transportation Authority) LONP Summary

Attachment S – Highway 101/State Route 92 Interchange Direct Connector Project (San
Mateo County Transportation Authority) LONP Summary

Attachment T – State Route 29 Improvement Project (Napa Valley Transportation
Authority) LONP Summary

Attachment U – San José Diridon Station Project (Santa Clara Valley Transportation
Authority) LONP Summary

This resolution was revised by Commission Action on May 27, 2020 to add Attachments B and C, LONP Summaries for two RM3 projects sponsored by the Alameda County Transportation Commission (ACTC).

This resolution was revised by Commission Action on July 22, 2020 to add Attachments D and E, LONP Summaries for two RM3 projects sponsored by the Solano Transportation Authority (STA) and the Transportation Authority of Marin (TAM).

This resolution was revised by Commission Action on October 28, 2020 to add Attachment F, LONP Summary for an RM3 project sponsored by the Sonoma-Marín Area Rail Transit District (SMART).

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This resolution was revised by Commission Action on December 16, 2020 to add Attachment G, LONP Summary for an RM3 project sponsored by the Transportation Authority of Marin (TAM).

This resolution was revised by Commission Action on February 24, 2021 to add Attachments H and I, LONP Summaries for two RM3 projects sponsored by the Contra Costa Transportation Authority (CCTA).

This resolution was revised by Commission Action on April 28, 2021 to add Attachment J, LONP Summary for SR-262 (Mission Blvd.) Cross Connector Project sponsored by the Alameda County Transportation Commission; Attachment K, LONP Summary for I-80 Westbound Truck Scales Project sponsored by the Solano Transportation Authority; Attachment L, LONP Summary for US-101 Marin-Sonoma Narrows Project sponsored by the Transportation Authority of Marin; and Attachment M, LONP Summary for I-80 Express Lanes Project sponsored by the Solano Transportation Authority.

This resolution was revised by Commission Action on June 23, 2021 to add Attachment N, LONP Summary for a project sponsored by the Napa Valley Transportation Authority (NVTA).

This resolution was revised by Commission Action on July 28, 2021 to amend Attachment M, LONP Summary for the I-80 Express Lanes Project in Solano County, and to add Attachment O, LONP Summary for the I-80 Express Lanes Toll System Project in Solano County.

This resolution was revised by Commission Action on September 22, 2021 to add Attachment P, LONP Summary for the I-680 Southbound Express Lanes Project in Alameda County.

This resolution was revised by Commission Action on January 26, 2022 to amend Attachment D, LONP Summary for the I-80/680/SR-12 Interchange Project in Solano County.

This resolution was revised by Commission Acton on February 23, 2022 to add Attachment Q, LONP Summary for the Next Generation Clipper Fare Payment System Integrator.

This resolution was revised by Commission Action on March 23, 2022 to add Attachment R, LONP Summary for the Highway 101/State Route 92 Interchange Area Improvement Project, and Attachment S, LONP Summary for the Highway 101/State Route 92 Interchange Direct Connector Project.

This resolution was revised by Commission Action on April 27, 2022 to add Attachment T, LONP Summary for the State Route 29 Improvement Project in Napa County.

This resolution was revised by Commission Action on June 22, 2022 to amend Attachment D, LONP Summary for the I-80/680/SR-12 Interchange Project in Solano County.

This resolution was revised by Commission Action on November 16, 2022 to add Attachment U, LONP Summary for the San José Diridon Station Project in Santa Clara County.

Additional discussion of this allocation is contained in the Programming and Allocations Committee Summary sheets dated March 11, 2020, May 13, 2020, July 10, 2020, October 14, 2020, December 9, 2020, February 10, 2021, April 14, 2021, June 9, 2021, July 14, 2021, September 8, 2021, January 12, 2022, February 9, 2022, March 9, 2022, April 13, 2022, June 8, 2022, and November 9, 2022.

Date: March 25, 2020
W.I.: 1255
Referred by: PAC

Re: Authorization to Issue Letters of No Prejudice for Regional Measure 3 Funds

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION No. 4412

WHEREAS, pursuant to Government Code Section 66500 *et seq.*, the Metropolitan Transportation Commission (“MTC”) is the regional transportation planning agency for the San Francisco Bay Area; and

WHEREAS, Streets and Highways Code Sections 30950 *et seq.* created the Bay Area Toll Authority (“BATA”) which is a public instrumentality governed by the same board as that governing MTC; and

WHEREAS, on June 5, 2018, a special election was held in the City and County of San Francisco, and the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma (individually, each a “County” and, collectively, the “Counties”) to approve a toll increase of three dollars (\$3.00) phased in over time, including a one dollar (\$1.00) toll increase on January 1, 2019, a one dollar (\$1.00) toll increase on January 1, 2022, and a one dollar (\$1.00) toll increase on January 1, 2025, for vehicles traveling on the state-owned bridges located in the San Francisco Bay Area (“Regional Measure 3”); and

WHEREAS, on September 26, 2018, the Bay Area Toll Authority (“Authority”) adopted Resolution No. 126 accepting certified statements from the Registrar of Voters of the City and County of San Francisco and each of the Counties and observing that a majority of all voters voting on Regional Measure 3 (“RM3”) at such special election voted affirmatively for RM3; and

WHEREAS, on December 19, 2018, the Authority adopted Resolution No. 128 adopting a toll schedule phasing in the toll increase approved pursuant to RM3, effective on January 1, 2019; and

WHEREAS, RM3 establishes the RM3 Expenditure Plan and identifies specific capital projects and programs and operating programs eligible to receive RM3 funding as identified in Sections 30914.7(a) and (c) of the California Streets and Highways Code; and

WHEREAS, BATA shall fund the projects of the RM3 Expenditure Plan by bonding or transfers to MTC; and

WHEREAS, MTC adopted RM3 Policies and Procedures for the implementation of the RM3 Expenditure Plan, specifying the allocation criteria and project compliance requirements for RM3 funding (MTC Resolution No. 4404); and

WHEREAS, the RM3 Policies and Procedures established a process whereby eligible transportation project sponsors may request a Letter of No Prejudice (LONP) for Regional Measure 3 funding; and

WHEREAS, the Attachments to this resolution, attached hereto and incorporated herein as though set forth at length, list the scope, amount, and conditions for which project sponsors have requested an LONP, and the replacement funding source used in place of RM3 funds; and

WHEREAS, the claimants to which an LONP is issued under this resolution have certified that the projects and purposes listed and recorded the Attachments are in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.); now, therefore, be it

RESOLVED, that MTC approves MTC staff's review of the LONP requests for the projects listed in the Attachments; and be it further

RESOLVED, that MTC authorizes the Executive Director to issue LONPs in accordance with the amount and activities as set forth in the Attachments; and, be it further

RESOLVED, that future allocation and reimbursement with RM3 funds will be conditioned upon successful outcome of RM3 litigation; and, be it further

RESOLVED, that future allocation and reimbursement with RM3 funds will be conditioned upon compliance with the provisions of the RM3 Policies and Procedures as set forth in length in MTC Resolution No. 4404; and be it further

RESOLVED, that future allocation and reimbursement of RM3 funds are further conditioned upon the project specific conditions as set forth in the Attachments; and, be it further

RESOLVED, that project sponsors receiving an LONP are responsible for delivering the usable project segment or complete phase with alternate funds before RM3 funds are available, at risk to the project sponsor; and be it further

RESOLVED, that an RM3 LONP does not represent a general funding commitment by MTC; in the event that RM3 funds do not become available, there is no expectation that MTC or BATA will provide alternate funds; and be it further

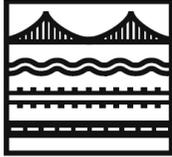
RESOLVED, that a certified copy of this resolution and applicable attachments shall be forwarded to the project sponsor.

METROPOLITAN TRANSPORTATION COMMISSION



Scott Haggerty, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at the regular meeting of the Commission held in San Francisco, California, on March 25, 2020.

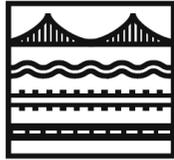


Regional Measure 3

Letter of No Prejudice Project Summary

Project Information

RM3 Project Number	16	
Project Title	San Jose Diridon Station Project	
Lead Sponsor(s)	Other Sponsor(s)	Implementing Agency
Santa Clara Valley Transportation Authority (VTA)		
Legislated Project Description	RM3 Legislated Funding (in \$1,000s)	
Redesign, rebuild, and expand Diridon Station to more efficiently and effectively accommodate existing regional rail services, future BART and high-speed rail service, and Santa Clara Valley Transportation Authority light rail and buses. The project sponsor shall consider accommodating a future connection to Norman Y. Mineta San Jose International Airport and prioritizing non-auto access modes.	\$100,000	
Sponsor Programming and LONP Request Action		
The Santa Clara Valley Transportation Authority approved a VTA Resolution on 10/6/2022 approving a \$30,000,000 RM3 LONP request.		
Detailed Project Description		
The early right of way acquisition for the Diridon Station will enable VTA to secure a portion of the station footprint identified by the Diridon Integrated Station Concept (DISC) 15% conceptual design.		
LONP Phase	LONP Amount (in \$1,000s)	LONP Approval Date
PS&E and CON	\$30,000	16-Nov-22
Scope - Activities eligible for future allocation and reimbursement if RM3 funds become available		
The LONP preserves future RM3 eligibility for costs related to early right of way acquisition and early planning and engineering activities related to the Diridon Integrated Station Concept incurred after the approval date.		
Conditions - In addition to the successful outcome of RM3 litigation, eligibility for future allocation and reimbursement is conditioned upon the following:		
1	No conditions added at time of LONP; staff will review project status prior to recommending allocation and recommend conditions as appropriate to ensure compliance with RM3 Policies and Procedures and guarantee MTC interest in property in early stages of project.	



Regional Measure 3

Letter of No Prejudice Project Summary

Project Funding Plan and Schedule

RM3 Project Number	16
Project Title	San Jose Diridon Station Project
RM3 Replacement Funding Source	2015 Measure B Funds, VTA Joint Development Funds, and City of San Jose Local Funds

Project Funding Plan			Project Schedule		
Phase	Funding Source	Committed? (Yes/No)	Total Amount (\$1,000s)	Start	End
ENV					
	ENV Subtotal		\$ -		
PSE					
	PSE Subtotal		\$ -		
ROW	2015 Measure B Funds, VTA Joint Development Funds, and City of San Jose Local Funds (RM3 Replacement)	Y	\$ 30,000		
	ROW Subtotal		\$ 30,000	Nov-22	Dec-28
CON					
	CON Subtotal		\$ -		
Capital Funding Total			\$ 30,000		