

**Metropolitan Transportation Commission  
Programming and Allocations Committee**

February 8, 2023

Agenda Item 4c - 23-0303

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**Regional Measure 3 Update**

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**Subject:**

Status update and general summary of the Regional Measure 3 program, including a review of the expenditure plan and Commission approved Letters of No Prejudice.

**Background:**

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. RM3 has been under litigation and collected RM3 revenue is being held in an escrow account. RM3 tolls collected to date and held in the escrow account total approximately \$550 million. Given a recent ruling in the case as described below, it is anticipated that RM3 funds will be made available to fund projects in the approved RM3 expenditure plan, however, no allocations of RM3 funds are anticipated until litigation is formally resolved in favor of RM3.

**Status of Litigation**

On January 25th, 2023, the California Supreme Court dismissed and remanded the RM3 case back to the Appellate Court. With the Supreme Court's action, the appellate decision in favor of RM3 becomes the final determination of the courts. Final orders to that effect are expected in the near future.

**RM3 Expenditure Plan**

The RM3 Expenditure Plan identifies the projects and programs to be funded by the RM3 revenues, including up to \$60 million annually in operating funds and \$4.5 billion total for capital projects. The full expenditure plan is included as Attachment A.

The operations funding in the expenditure plan is dedicated to funding continued operations of the Transbay Terminal, San Francisco Bay Area Water Emergency Transportation Authority (WETA) ferry service, and the regional express bus program.

Major capital projects included in the expenditure plan include BART expansion cars, the next generation Clipper system, Caltrain Downtown Extension, BART to Silicon Valley Phase II, Contra Costa 680/State Route 4 Interchange Improvements, and Richmond-San Rafael Bridge Access Improvements. The expenditure plan also includes funding for regional programs such as express lanes, goods movement and mitigation, San Francisco Bay Trail and safe routes to transit.

### **RM3 Policies and Procedures**

In December 2019, the Commission adopted MTC Resolution No. 4404, the RM3 Policies and Procedures. This document details MTC's policies for managing the RM3 expenditure plan, focusing on requirements for capital projects in preparation for issuing Letters of No Prejudice (LONPs; detailed in the following section). Details on the RM3 operating program have yet to be adopted into the Policies and Procedures.

The Policies and Procedures include:

- The allocation process for capital projects, including principles to guide allocation decisions and required request forms
- Eligibility of expenses by project phase
- Timely use of funds provisions, including allocation expiration dates, which will be set for each allocation based on the project sponsor's cash flow plan
- Monitoring and reporting requirements, including a semi-annual report of project progress
- Requirements for consistency with regional plans and policies, such as Plan Bay Area, the Transportation Improvement Program, TOD policies, transit coordination policies, and other state, regional, and local policies. Since adoption of the RM3 Policies and Procedures, the Commission has adopted Plan Bay Area 2050, the Transit Oriented Communities policy, the Bipartisan Infrastructure Law (BIL) Regional Strategy, and the Major Projects Advancement Policy (MAP); staff intend to update the policies and procedures, as appropriate, to reflect these and any other changes to relevant policies and plans.

**Letters of No Prejudice**

In March 2020, the Commission began issuing LONPs through MTC Resolution No. 4412, Revised, to projects in the RM3 expenditure plan that were ready to proceed with an alternative funding source. Per the Policies and Procedures, RM3 capital projects are usually required to have an approved allocation in place prior to starting work on an RM3-funded portion of a project. An LONP allows a sponsor to proceed with work on an RM3-eligible phase, backed by locally-controlled funding, while preserving eligibility for future RM3 reimbursement dating back to the issuance of the LONP. Once MTC is cleared to make RM3 allocations, LONP recipients will need to request an allocation to be reviewed and approved through the usual allocation process.

As of January 2023, 21 LONPs have been issued totaling \$598.3 million in future RM3 funding. The full list of approved LONPs is included as Attachment B. Another LONP proposed for the I-80/680/SR-12 project in Solano County is included on today's agenda.

**Next Steps:**

Staff are awaiting final orders from the court regarding the RM3 lawsuit. Depending on the timing of the final orders and direction from the Commission, staff expects there could be targeted allocations made in the April or May timeframe should sponsor expenditure needs warrant. In the meantime, staff will prepare updates to the Policies and Procedures to reflect changes to regional policies and incorporate the operations program and will prepare a timeline for RM3 project sponsors to provide a refresh of project information including funding and expenditure plans.

**Issues:**

None identified.

**Recommendations:**

Information

**Attachments:**

- Attachment A: Regional Measure 3 Expenditure Plan
- Attachment B: Regional Measure 3 List of Approved Letters of No Prejudice

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Alix A. Bockelman

<b>REGIONAL MEASURE 3 EXPENDITURE PLAN</b> (\$ in millions)	
<b>OPERATING PROGRAM</b>	
<b>All- Corridor Annual Operating Program</b>	
<b>All Corridors</b>	
Transbay Terminal	5
Ferries (Funding ramps up to \$35 million over five years)	35
Regional Express Bus	20
<b>Annual Operating Program Total</b>	<b>\$ 60</b>
<b>CAPITAL PROJECTS</b>	
<b>Regional Programs</b>	
BART Expansion Cars	500
Bay Area Corridor Express Lanes	300
Ferry Enhancement Program	300
Goods Movement and Mitigation	160
San Francisco Bay Trail / Safe Routes to Transit	150
Capitol Corridor	90
Next Generation Clipper Transit Fare Payment System	50
<b>Regional Programs Subtotal (35%)</b>	<b>\$ 1,550</b>
<b>Corridor-Specific Capital Projects</b>	
<b>Central (San Francisco-Oakland Bay Bridge)</b>	
Caltrain Downtown Extension	325
Muni Fleet Expansion and Facilities	140
Core Capacity Transit Improvements	140
AC Transit Rapid Bus Corridor Improvements	100
Transbay Rail Crossing	50
Interstate 80 Transit Improvements	25
<b>Central Subtotal (27%)</b>	<b>\$ 780</b>
<b>South (San Mateo-Hayward, Dumbarton)</b>	
BART to San Jose Phase 2	375
Tri-Valley Transit Access Improvements	100
Eastridge to BART Regional Connector	130
San Jose Diridon Station	100
Dumbarton Corridor Improvements	130
Highway 101/State Route 92 Interchange	50
Interstate 680/SR 84 Interchange Reconstruction	85
Interstate 680/Interstate-880/Route 262 Freeway Connector	15
<b>South Subtotal (34%)</b>	<b>\$ 985</b>
<b>North (Richmond-San Rafael, Benicia-Martinez, Carquinez, Antioch)</b>	
Contra Costa 680/State Route 4 Interchange Improvements	210
U.S. 101 Marin-Sonoma Narrows	120
Solano County Interstate 80/Interstate 680/State Route 12 Interchange Project	150
Interstate 80/Westbound Truck Scales	105
State Route 37 Improvements	100
Sonoma-Marin Area Rail Transit District (SMART) Extension to Windsor & Healdsburg	40
San Rafael Transit Center	30
Richmond-San Rafael Bridge Access Improvements	210
North Bay Transit Access Improvements	100
SR 29 Improvements	20
East Contra Costa County Transit Intermodal Station	15
Byron Highway-Vasco Road Airport Connector	10
Vasco Road Safety Improvements	15
Interstate 680 Transit Improvements	10
<b>North Subtotal (39%)</b>	<b>\$ 1,135</b>
<b>Corridor-Specific Capital Projects Subtotal (65%)</b>	<b>2,900</b>
<b>Capital Projects Grand Total</b>	<b>4,450</b>

## Agenda Item 4c, Attachment B

### Regional Measure 3

As of November 2022

#### List of Letters of No Prejudice Approved to Date

Res 4412 Attachment	RM3 Project Number	Sponsor	Project Title	LONP Phase	Amount (\$M)	Commission Approval Date
A	5.1	WETA	Mission Bay Ferry Landing	Construction	25.0	Mar-20
B	3.1	ACTC	Goods Movement GoPort 7th St Grade Separation	Construction	55.0	May-20
C	30	ACTC	I-680/SR-84 Interchange Reconstruction and SR-84 Expressway Widening	Construction	85.0	May-20
D	21	STA	I-80/I-680/SR-12 Interchange	Construction	16.7	Jul-20
E	25.1	TAM	US-101/I-580 Direct Connector	Planning/Env	5.6	Jul-20
F	7.1	SMART	SMART System Extension to Windsor and Healdsburg	Construction	5.0	Oct-20
G	20.1	TAM	US-101 Marin-Sonoma Narrows, Marin Segment	ROW	7.1	Dec-20
H	19.1	CCTA	I-680/SR-4 Interchange Improvement Phase 1 and 2A	Final Design	8.0	Feb-21
I	34.1	CCTA	Mokelumne Trail Bicycle/Pedestrian Overcrossing of SR-4	Construction	11.0	Feb-21
J	2.1	STA	I-80 Express Lanes in Solano County	Construction	70.4	Apr-21
K	20.1	TAM	US-101 Marin-Sonoma Narrows	Construction	80.9	Apr-21
L	22	STA	I-80 Westbound Truck Scales	PS&E	5.3	Apr-21
M	29.1	ACTC	SR-262 (Mission Blvd) Cross Connector	Environmental	10.0	Apr-21
N	26.1	NVTA	Vine Transit Maintenance Facility	Construction	20.0	Jun-21
O	2.2	BAIFA	I-80 Express Lanes in Solano County (Toll System)	Construction	31.3	Jul-21
P	2.3	ACTC	I-680 Southbound Express Lane in Alameda County	Construction	80.0	Sep-21
Q	28	MTC	Next-Generation Clipper Transit Fare Payment System	PS&E/CON	30.0	Feb-22
R	18.1	SMCTA	Highway 101/State Route 92 Interchange: Area Improvements Project	ROW	0.025	Mar-22
S	18.2	SMCTA	Highway 101/State Route 92 Interchange: Direct Connector Project	Environmental	2.0	Mar-22
T	27.1	NVTA	SR 29 Improvement Project - Soscol Junction	Construction	20.0	Apr-22
U	16	VTA	San Jose Diridon Station Project	PS&E/CON	30.0	Nov-22
<b>Total</b>					<b>598.3</b>	