

## Metropolitan Transportation Commission Programming and Allocations Committee

December 9, 2020

Agenda Item 2h - 20-1688

### MTC Resolution No. 4412, Revised

**Subject:** Regional Measure 3 (RM3) Letter of No Prejudice. Recommendation of RM3 Letter of No Prejudice to the Transportation Authority of Marin for the US-101 Marin-Sonoma Narrows 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 dollar of the toll increase was implemented on January 1, 2019. RM3 is under litigation and collected RM3 revenue is being held in an escrow account. No allocations of RM3 funds are anticipated until and unless litigation is resolved in favor of RM3. 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 are available.

Through MTC Resolution No. 4412, the Commission may approve specific RM3 LONPs, at the request of project sponsors, and following 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 the resolution.

#### **US-101 Marin-Sonoma Narrows Project in Marin County**

The Transportation Authority of Marin (TAM) submitted an RM3 LONP request for \$7.1 million for the right-of-way phase of the US-101 Marin-Sonoma Narrows project (Marin Segment), RM3 project 20.1. Contract B7 of the project will widen US 101 to construct a southbound HOV lane from 0.3 miles south of the Marin/Sonoma County line to just south of De Long Avenue (6.0 miles), and a northbound HOV lane from 1.7 miles north of Atherton Avenue to 0.3 miles south of the Marin/Sonoma County line (3.5 miles). Contract B8 of the project will relocate all the necessary overhead utilities outside of the freeway ROW, provide additional Class II bike lanes and address all remaining access control issues along this project segment. The construction funding plan includes \$83 million in RM3 funds and \$40 million in Senate Bill 1 (SB1) Solutions for Congested Corridor Program funds awarded in 2020.

Provided all funding is secured, construction is expected to begin in mid-2021.

#### **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, TAM will use its local option sales tax (Measure AA) to finish right-of-way work on the US-101 Marin-Sonoma Narrows project. TAM understands the risk that RM3 funds may never become available.

Staff has reviewed the Initial Project Report and LONP request and recommend issuing the LONP. Issuing the LONP will preserve the eligibility of activities related to the above-mentioned project in Marin County occurring after the issuance of the LONP, for future RM3 allocation and reimbursement if RM3 legislation is resolved favorably.

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:** If the RM3 litigation is not resolved favorably, funds may never become available to reimburse TAM. TAM has acknowledged this risk in its agency resolution and MOU.

**Recommendation:** Staff requests that the Commission approve MTC Resolution No. 4412, Revised.

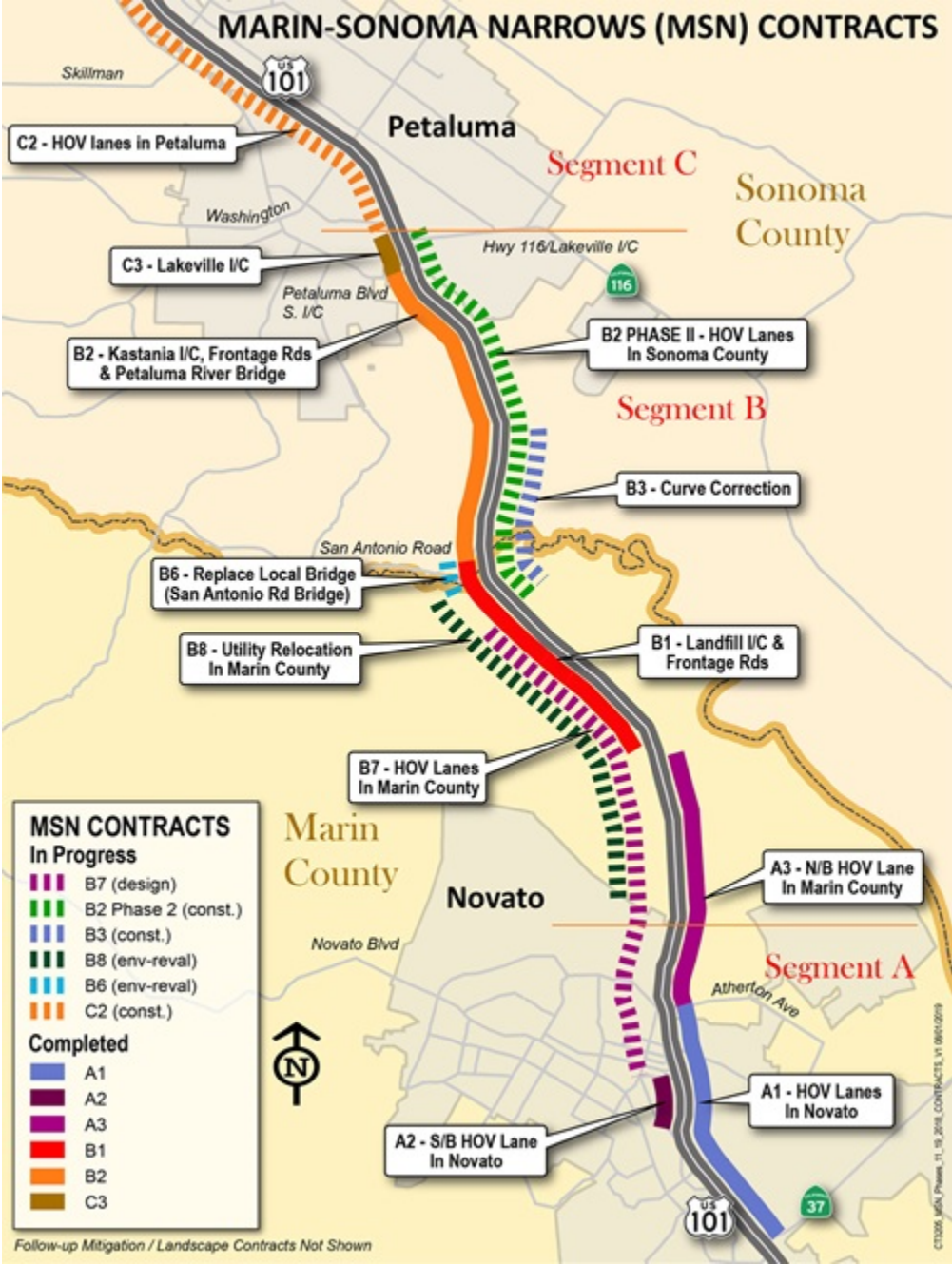
**Attachments:** Attachment A: Project Area Map  
MTC Resolution No. 4412, Revised

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Therese W. McMillan

Attachment A

Project Area Map: US-101 Marin-Sonoma Narrows Project



Date: March 25, 2020  
Referred by: PAC  
Revised: 05/27/20-C 07/22/20-C  
10/28/20-C 12/16/20-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 7<sup>th</sup> 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

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).

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).

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, and December 9, 2020.

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

  
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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

<b>RM3 Project Number</b>	20.1	
<b>Project Title</b>	US-101 Marin-Sonoma Narrows (Marin Segment)	
<b>Lead Sponsor(s)</b>	<b>Other Sponsor(s)</b>	<b>Implementing Agency</b>
Transportation Authority of Marin (TAM)		TAM/ Caltrans
<b>Legislated Project Description</b>	<b>RM3 Legislated Funding (in \$1,000s)</b>	
(20) Highway 101-Marine/Sonoma Narrows. Construct northbound and southbound high-occupancy vehicle lanes on Highway 101 between Petaluma Boulevard South in Petaluma and Atherton Avenue in Novato. The project sponsors are the Transportation Authority of Marin and the Sonoma County Transportation Authority. One hundred twenty million dollars (\$120,000,000).	\$120,000	
<b>Sponsor Programming and LONP Request Action</b>		
The TAM Board approved TAM Resolution No. 2020-14 on 1/23/2020, approving a \$7,100,000 RM3 LONP request. TAM will use local option sales tax (Measure AA) funds to complete the right-of-way phase for the project.		
<b>Detailed Project Description</b>		
Marin-Sonoma Narrows (MSN) Contract B7 Project will widen US 101 to construct a southbound HOV lane from 0.3 miles south of the Marin/Sonoma County line to just south of the Franklin Avenue Overhead (6.0 miles), and a northbound HOV lane from 1.7 miles north of Atherton Avenue Overcrossing to 0.3 miles south of the Marin/Sonoma County line (3.5 miles). The MSN Contract B8 will relocate all the necessary overhead utilities outside of the freeway ROW, provide additional Class II bike lanes and address all remaining access control issues along this project segment.		
<b>LONP Phase</b>	<b>LONP Amount (in \$1,000s)</b>	<b>LONP Approval Date</b>
ROW	\$7,100	16-Dec-20
<b>Scope - Activities eligible for future allocation and reimbursement if RM3 funds become available</b>		
The LONP preserves future RM3 eligibility for costs related to the right-of-way phase of the MSN project incurred after the LONP approval date.		
<b>Conditions - In addition to the successful outcome of RM3 litigation, eligibility for future allocation and reimbursement is conditioned upon the following:</b>		
1	None.	



## Regional Measure 3

### Letter of No Prejudice Project Summary

#### Project Funding Plan and Schedule

<b>RM3 Project Number</b>	20.1
<b>Project Title</b>	US-101 Marin-Sonoma Narrows (Marin Segment)
<b>RM3 Replacement Funding Source</b>	Measure AA, Marin's Local Option Sales Tax

Project Funding Plan				Project Schedule	
Phase	Funding Source	Committed? (Yes/No)	Total Amount (\$1,000s)	Start	End
ENV				Apr-01	Oct-09
	ENV Subtotal		\$ -		
PSE	TAM Local Funds	Yes	\$ 5,800	Nov-17	Dec-20
	SB1- Local Partnership Program	Yes	\$ 500		
	Federal Surface Transportation Block Grant Pgm	Yes	\$ 2,000		
	PSE Subtotal		\$ 8,300		
ROW	TAM Local Funds	Yes	\$ 4,000	Dec-20	May-23
	TAM Local Funds (RM3 Replacement)	Yes	\$ 7,100		
	ROW Subtotal		\$ 11,100		
CON	SB1- Solutions for Congested Corridors Pgm	No	\$ 40,120	May-21	Dec-23
	RM3	No	\$ 82,900		
	CON Subtotal		\$ 123,020		
<b>Capital Funding Total</b>			<b>\$ 142,420</b>		