

**Metropolitan Transportation Commission
Programming and Allocations Committee**

May 10, 2023

Agenda Item 2f - 23-0551

MTC Resolution No. 4412, Revised

Subject:

Regional Measure 3 Letter of No Prejudice (LONP) for \$2 million to the Contra Costa Transportation Authority (CCTA) for construction of the Mokelumne Trail Bicycle/Pedestrian Overcrossing at SR-4.

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. Collected RM3 revenue has been held in an escrow account while litigation was resolved. Given the recent ruling in favor of RM3, the Bay Area Toll Authority released the toll funds held in escrow and terminated the escrow agreement in March 2023. However, MTC has not yet begun making RM3 allocations, and this LONP is necessary until allocations are available. 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.

Mokelumne Trail Bicycle/Pedestrian Overcrossing at SR-4 in Contra Costa County

CCTA is the project sponsor for RM3 Project 34, the East Contra Costa Intermodal Transit Center, which includes a total of \$15 million for the construction of the transit center and connected Mokelumne Trail Bicycle/Pedestrian Overcrossing at SR-4. In February 2021, MTC approved and issued an \$11 million LONP for construction of the Mokelumne Trail component

in the City of Brentwood. CCTA has submitted a LONP request for an additional \$2 million for the construction phase of the Mokelumne Trail Bicycle/Pedestrian Overcrossing at State Route 4. This request will bring the total RM3 LONP amount for this project to \$13 million.

This project will bridge an existing gap in the Mokelumne Trail to connect bike paths in the cities of Brentwood and Antioch, and will also serve the future East Contra Costa County Intermodal Transit Center. Construction costs have increased due to identification of a bird nesting site, unusual wet weather conditions, and design issues. The additional \$2 million in RM3 eligibility will cover the increased construction cost.

RM3 Project 34 funds are eligible for both the Mokelumne Trail and the future East Contra Costa County Intermodal Transit Center. CCTA is prioritizing completing the Mokelumne Trail with RM3 funds; remaining funds will be used for future work on the transit center, which remains largely unfunded.

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, CCTA will use additional Measure J funds to cover the additional \$2 million cost increase until RM3 funds are available for reimbursement.

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 Contra Costa County occurring after the issuance of the LONP for future RM3 allocation and reimbursement when RM3 funds are available.

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.

Issues:

None

Recommendations:

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

Attachments:

- MTC Resolution No. 4412, Revised

A handwritten signature in blue ink that reads "Andrew B. Fremier". The signature is written in a cursive, flowing style.

Andrew B. Fremier

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 02/22/23-C
05/24/23-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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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.

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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.

This resolution was revised by Commission Action on February 22, 2023 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 May 24, 2023 to amend Attachment I, LONP Summary for the Mokelumne Trail Bicycle/Pedestrian Overcrossing at SR-4 in Contra Costa 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, November 9, 2022, February 8, 2023, and May 10, 2023.

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	34.1	
Project Title	Mokelumne Trail Bicycle/Pedestrian Overcrossing At SR-4 (under the East Contra Costa Intermodal Transit Center Project)	
Lead Sponsor(s)	Other Sponsor(s)	Implementing Agency
Contra Costa Transportation Authority (CCTA)		CCTA
Legislated Project Description	RM3 Legislated Funding (in \$1,000s)	
(34) East Contra Costa County Transit Intermodal Center. Fund the construction of a Transit Intermodal Center in Brentwood enhancing access to eBART and Mokelumne Bike Trail/Pedestrian Overcrossing at State Route 4. The project sponsor is the Contra Costa Transportation Authority. Fifteen million dollars (\$15,000,000).	\$15,000	
Sponsor Programming and LONP Request Action		
The Contra Costa Transportation Authority approved Resolution No. 21-07-P on 2/17/2021, programming \$11,000,000 of the RM3 East Contra Costa Intermodal Transit Center to the Mokelumne Trail Bicycle/Pedestrian Overcrossing project and approving a \$11,000,000 RM3 request. The Contra Costa Transportation Authority approved Resolution No. 23-13-P on 4/19/2023, programming an additional \$2,000,000 of the RM3 East Contra Costa Intermodal Transit Center to the Mokelumne trail Bicycle/Pedestrian Overcrossing project and approving an RM3 request for the additional \$2,000,000.		
Detailed Project Description		
The Mokelumne Bicycle/Pedestrian Overcrossing will close a gap between the existing Mokelumne Trail segments east and west of SR-4, south of the Lone Tree Way interchange. The overcrossing will include a multi-span bridge with columns in the SR-4 median. Bridge approaches will be constructed from earthen embankments. The trail overcrossing will be 18.5 feet wide to accommodate two directions of bicycle and pedestrian travel, including the safety barriers.		
LONP Phase	LONP Amount (in \$1,000s)	LONP Approval Date
CON	\$11,000	24-Feb-21
CON	\$2,000	24-May-23
Scope - Activities eligible for future allocation and reimbursement if RM3 funds become available		
The LONP preserves future RM3 eligibility for costs related to the construction of the Mokelumne Bike Trail/Pedestrian Overcrossing incurred after the LONP approval date.		
Conditions - In addition to the successful outcome of RM3 litigation, eligibility for future allocation and reimbursement is conditioned upon the following:		
1	None	



Regional Measure 3

Letter of No Prejudice Project Summary

Project Funding Plan and Schedule

RM3 Project Number	34.1
Project Title	Mokelumne Trail Bicycle/Pedestrian Overcrossing At SR-4 (under the East Contra Costa Intermodal Transit Center Project)
RM3 Replacement Funding Source	East Contra Costa Regional Fee and Financing Authority (ECCRFFA) loan and Contra Costa County Measure J

Project Funding Plan

Project Schedule

Phase	Funding Source	Committed? (Yes/No)	Total Amount (\$1,000s)	Start	End
ENV				Oct-17	Oct-18
	ENV Subtotal		\$ -		
PSE	BART	Yes	\$ 200	Oct-17	Jan-21
	Measure J	Yes	\$ 763		
	PSE Subtotal		\$ 963		
ROW	ECCRFFA	Yes	\$ 1,270	Jun-18	Aug-22
	Measure J	Yes	\$ 64		
	ROW Subtotal		\$ 1,334		
CON	ECCRFFA (RM3 Replacement)	Yes	\$ 11,000	Mar-22	Sep-23
	Measure J (RM3 Replacement)	Yes	\$ 2,000		
	Measure J		\$ 2		
	CON Subtotal		\$ 13,002		
Capital Funding Total			\$ 15,299		