

**Metropolitan Transportation Commission
Programming and Allocations Committee****March 11, 2020****Agenda Item 3a.iv.****MTC Resolution No. 4412**

Subject: Regional Measure 3 (RM3) Letter of No Prejudice to WETA for the Mission Bay Ferry Landing Project.

Background: **Regional Measure 3 Letters of No Prejudice**
Regional Measure 3 (RM3) was approved by voters 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.

Mission Bay Ferry Landing

The Water Emergency Transportation Authority (WETA) has submitted an RM3 LONP request for \$25 million for construction of the Mission Bay Ferry Landing, part of RM3 Project 5: Ferry Enhancement Program. The project will construct a new ferry landing in the Mission Bay neighborhood, near the Bayfront Park and Chase Center, with the capacity to berth two ferry boats simultaneously, and will include a pedestrian plaza. The project is being delivered by the Port of San Francisco and will be operated by WETA once it is complete.

The WETA Board took action on February 13, 2020 to commit \$25 million of the \$300 million RM3 Ferry Enhancement Program for the Mission Bay Ferry Landing. The Port has secured a CEQA Mitigated Negative Declaration and has completed all design required for bidding for the construction contract. Construction is expected to begin in June 2020, and the project is expected to be complete and in operation by December 2021.

The RM3 Policies and Procedures require that the project sponsor provide 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 Port will be using their capital funds to construct the project. WETA and the Port are aware of the risk that RM3 funds may never become available.

Staff have reviewed the Initial Project Report and LONP request and recommend issuing a LONP, preserving the eligibility of activities related to construction on the Mission Bay Ferry Landing occurring after the issuance of the LONP, for future RM3 allocation and reimbursement in the event that RM3 legislation is resolved favorably.

Issues: If the RM3 litigation is not resolved favorably, funds may never become available to reimburse WETA. WETA and the Port have acknowledged this risk in their agency resolutions and MOU.

Recommendation: Refer MTC Resolution No. 4412 to the Commission for approval.

Attachments: MTC Resolution No. 4412
Presentation slides attached to Agenda Item 3a.i



Therese W. McMillan

Date: March 25, 2020

Referred by: PAC

ABSTRACT

MTC Resolution No. 4412

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

Additional discussion of this allocation is contained in the Executive Director's memorandum and MTC Programming and Allocations Committee Summary sheet dated March 11, 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

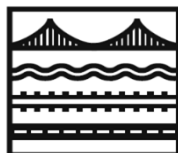
RESOLVED, that an RM3 LONP does not represent a general funding commitment by MTC; in the event that RM3 funds do not become available, there is no expectation that MTC or BATA will provide alternate funds; and be it further

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

METROPOLITAN TRANSPORTATION COMMISSION

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.

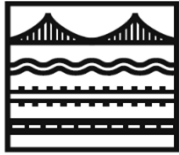


Regional Measure 3

Letter of No Prejudice Project Summary

Project Information

RM3 Project Number	5.1	
Project Title	Mission Bay Ferry Landing (under the Ferry Enhancement Program)	
Lead Sponsor(s)	Other Sponsor(s)	Implementing Agency
Water Emergency Transportation Authority (WETA)		Port of San Francisco
Legislated Project Description	RM3 Legislated Funding (in \$1,000s)	
(5) Ferry Enhancement Program. Provide funding to purchase new vessels, upgrade and rehabilitate existing vessels, build facilities and landside improvements, and upgrade existing facilities. The project sponsor is the San Francisco Bay Area Water Emergency Transportation Authority.	\$300,000	
Sponsor Programming and LONP Request Action		
The WETA Board of Directors approved WETA Resolution No. 2020-05 on 2/13/2020, programming \$25,000,000 of the RM3 Ferry Enhancement Program to the Mission Bay Ferry Landing project, and approving a \$25,000,000 RM3 LONP request.		
Detailed Project Description		
The Mission Bay Ferry Landing (MBFL) will provide ferry service to and from the Mission Bay neighborhood. The MBFL will provide the capability to berth two ferry boats simultaneously and will be located on Terry Francois Boulevard approximately 100 feet south of 16th Street. The Port and WETA estimate that, after completion, the MBFL will have the capacity to handle up to 6,000 passengers per day.		
LONP Phase	LONP Amount (in \$1,000s)	LONP Approval Date
CON	\$25,000	25-Mar-20
Scope - Activities eligible for future allocation and reimbursement if RM3 funds become available		
The LONP preserves future RM3 eligibility for costs related to construction of the Mission Bay Ferry Landing 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	5.1
Project Title	Mission Bay Ferry Landing (under the Ferry Enhancement Program)
RM3 Replacement Funding Source	Port of San Francisco Capital Fund

Project Funding Plan

Project Schedule

Phase	Funding Source	Committed? (Yes/No)	Total Amount (\$1,000s)	Start	End
ENV	Port Capital	Yes	\$ 138	Jan-17	Dec-18
	Office of Community Investment & Infrastructure	Yes	\$ 47		
	ENV Subtotal		\$ 185		
PSE	Port Capital	Yes	\$ 5,971	Dec-18	Jul-19
	City and County of SF General Fund	Yes	\$ 1,240		
	PSE Subtotal		\$ 7,211		
ROW				N/A	N/A
	ROW Subtotal		\$ -		
CON	Port Capital	Yes	\$ 872	Jun-20	Dec-21
	Private donation	Yes	\$ 4,000		
	Office of Community Investment & Infrastructure	Yes	\$ 8,353		
	Port Capital (RM3 replacement)	Yes	\$ 25,000		
	CON Subtotal		\$ 38,225		
Capital Funding Total			\$ 45,621		