

**Metropolitan Transportation Commission
Programming and Allocations Committee**

October 14, 2020

Agenda Item 2f - 20-1345

MTC Resolution No. 4412, Revised

Subject: Regional Measure 3 (RM3) Letter of No Prejudice to the Sonoma-Marín Area Rail Transit District (SMART) for \$5 million on the SMART Windsor Extension project.

Background: **Regional Measure 3 Letter 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.

SMART has submitted an RM3 LONP request for \$5 million for construction on the SMART extension to Windsor.

SMART Extension to Windsor

RM3 Project 7 commits \$40 million to SMART for the extensions to Windsor and Healdsburg. SMART took action on September 16, 2020 to commit \$35 million in RM3 funds from this project to the Windsor extension, which would fully fund the construction phase if and when RM3 funds become available. The project will extend the SMART system 3.3 miles to the north from the Sonoma County Airport to the Town of Windsor. The project includes one new station with amenities, six grade crossings, and three miles of contiguous bicycle-pedestrian pathway.

In 2008, SMART completed California Environmental Quality Act (CEQA) requirements for the project including the Windsor extension, and in 2018 was issued a Categorical Exclusion, exempting it from further National Environmental Policy Act (NEPA) requirements. Construction on the Windsor extension began in May 2020 and SMART expects to have finished testing and be ready for revenue service in December 2021.

LONP Funding Source

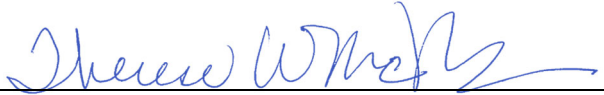
The RM3 Policies and Procedures require that the project sponsor provides a non-RM3 source of funding to cover the portion that would be covered by RM3 funds, and that a plan be provided in case the RM3 funds never become available. SMART has made \$5 million in 2008 Sonoma County Measure Q funds available to use in lieu of RM3 funds to fund construction activities in a limited notice-to-proceed through January 2021. This limited notice-to-proceed would cover work such as acquisition of bridge decks, culvert and duck bank installations, and testing under the systems contract.

Securing this LONP would allow SMART to bridge the gap between October and the potential availability of RM3 funds by the end of 2020, allowing the project to continue on schedule without cost-increasing delays. However, SMART understands the risk that RM3 funds may never become available, or may not become available within this timeframe. In the case that the lawsuit is not resolved in favor of the measure next month, SMART would likely not be able to proceed with construction beyond the limited notice-to-proceed until an alternative funding source is found.

Staff has reviewed the Initial Project Report and LONP request and recommend issuing the LONP. Issuing an LONP will preserve the eligibility of activities related to the SMART Windsor extension 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 SMART. SMART has acknowledged this in their LONP request.
- Recommendation:** Staff requests that the Commission approve MTC Resolution No. 4412, Revised.
- 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

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

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).

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, and October 14 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	7.1	
Project Title	SMART System Extension to Windsor	
Lead Sponsor(s)	Other Sponsor(s)	Implementing Agency
Sonoma Marin Area Rail Transit (SMART)		Sonoma Marin Area Rail Transit (SMART)
Legislated Project Description		RM3 Legislated Funding (in \$1,000s)
Sonoma-Marin Area Rail Transit District (SMART). Provide funding to extend the rail system north of the Charles M. Schulz-Sonoma County Airport to the Cities of Windsor and Healdsburg.		\$40,000
Sponsor Programming and LONP Request Action		
The SMART Board of Directors approved an LONP request for \$5,000,000 on September 16, 2020, for construction on the extension to Windsor.		
Detailed Project Description		
Extend the SMART rail system 3.3 miles north between Sonoma County Airport and the Town of Windsor. Project includes just over 3-miles of Class 4 mainline track (rated for passenger service up to 79 mph) and 1-mile Class 4 secondary track, over 5 bridges, one station with amenities, gauntlet tracks to accommodate freight train passage, six grade crossings that will require modifications to comply with Federal Railroad Administration Positive Train Control requirements, and 3-miles of contiguous bicycle-pedestrian pathway.		
LONP Phase	LONP Amount (in \$1,000s)	LONP Approval Date
CON	\$5,000	28-Oct-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 SMART extension to Windsor 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	7.1
Project Title	SMART System Extension to Windsor
RM3 Replacement Funding Source	Measure Q local sales tax

Project Funding Plan				Project Schedule	
Phase	Funding Source	Committed? (Yes/No)	Total Amount (\$1,000s)	Start	End
ENV				Jan-06	Sep-18
	ENV Subtotal		\$ -		
PSE				Sep-18	Apr-20
	PSE Subtotal		\$ -		
ROW				Jan-02	Dec-02
	ROW Subtotal		\$ -		
CON	FRA CRISI (Systems)	Yes	\$ 5,000	May-20	Dec-21
	AHSC	Yes	\$ 5,000		
	TIRCP	Yes	\$ 20,000		
	Measure Q (RM3 Replacement)	Yes	\$ 5,000		
	RM3	No	\$ 30,000		
	CON Subtotal		\$ 65,000		
Capital Funding Total			\$ 65,000		