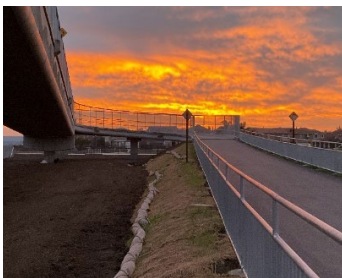


## Regional Measure 3 Independent Oversight Committee Fiscal Year 2023–24 Annual Report – Introduction and Summary

Regional Measure 3 (RM 3) was approved by the State Legislature in 2017 and by Bay Area voters in 2018, to fund projects that would help solve growing congestion problems. The measure's plan, published by MTC in 2018, called for \$4.45 billion in financing of 35 specific highway and transit improvements by increasing tolls on the region's seven state-owned toll bridges.

The project funding list includes new BART cars, with extension of service to Silicon Valley, extension of Caltrain to downtown San Francisco, expansion of S.F. Muni's vehicle fleet; improved transbay bus service; freeway improvements; expansions of the freeway express lane network; new ferry services, upgrades to relieve congestion in the Dumbarton Bridge corridor; highway 37 improvements; and extension of the SMART rail system to Windsor and Healdsburg. The RM 3 plan specifies the amounts to be dedicated to each project. RM 3 requires that an independent committee of citizens must verify that the toll proceeds are used exclusively for the listed projects.

Winning 55% overall approval by voters in the nine Bay Area counties, the legislation providing for RM 3 raised tolls by \$1 beginning Jan. 1, 2019. Tolls were increased by another \$1 in January 2022 with another \$1 increase set for January 2025. The 2019 increase marked the first toll hike on the seven state-owned bridges since 2010. However, due to litigation over the percentage of votes to authorize the toll increases, proceeds were held in escrow until January 2023. Thereafter, the escrow account was terminated, and the Commission began making RM 3 allocations in June. Establishment of an independent committee of citizens was commenced, and four meetings have been held to verify the accuracy of the process for allocation of funds.



*Photos of projects completed with RM 3  
Capital Funding.  
Left – Mokelumne Trail  
Bicycle/Pedestrian Overcrossing of SR-4.  
Right – Vine Transit Maintenance Facility.*

## Regional Measure 3 (RM 3) Accomplishments During FY 2024

- First full year of program implementation since final RM 3 legal clearance
- Advanced a variety of capital projects, including completion of the Mokelumne Trail Bicycle/Pedestrian Overcrossing of SR-4, Vine Transit Maintenance Facility, and County Connection Bus Replacements
- Supported the operation of the Salesforce Transit Center, regional express bus, and ferry service
- Aligned RM 3 projects with regional Complete Streets and Transit Oriented Communities Policies



*Photos of transit service assisted with RM 3 Operating Funding. Left: SF Bay Ferry, Right: AC Transit Transbay Service*

### RM 3 IOC MEMBERS

*TIM AMBROSE  
ALAMEDA COUNTY*

*STEVE BIRDLEBOUGH  
SONOMA COUNTY*

*KATHY CHANG  
CONTRA COSTA COUNTY*

*KEVIN HAGERTY  
MARIN COUNTY*

*FREDERICK ARN HANSSON  
SAN MATEO COUNTY*

*WILLIAM G. JERRY HAYES  
SOLANO COUNTY*

*PAMELA KINDIG  
NAPA COUNTY*

*JOHN MAITLAND  
SONOMA COUNTY*

*AISHA NASIR  
NAPA COUNTY*

*ANU NATARAJAN  
ALAMEDA COUNTY*

*NAZANIN SHAKERIN  
CONTRA COSTA*

*JOANNE WEBSTER  
MARIN COUNTY*

### About the RM 3 IOC

- Established by RM 3 statute to ensure RM 3 toll revenues are spent following the requirements of the statute
- Comprised of two representatives from each Bay Area county

### RM 3 IOC Accomplishments Supporting FY 2023-24

- Initiated the RM 3 IOC and held its first three meetings
- Evaluated FY 2023-24 expenditures of RM 3 Bridge Toll funds
- Developed the RM 3 IOC annual report format

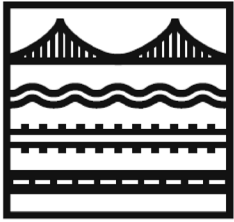
### RM 3 IOC Plans for FY 2024-25 and Beyond

- Provide input on RM 3 allocation processes
- Develop recommended additional IOC responsibilities to enhance Committee effectiveness and contributions to the RM 3 program
- Provide recommendations on ways to further enhance RM 3 program transparency, reporting, and public engagement
- Send a letter to county Boards of Supervisors urging appointments to vacant IOC seats

A report of the IOC's findings for FY 2023-24 follows this summary.

Respectfully submitted,

RM 3 Independent Oversight Committee



## **Regional Measure 3 Independent Oversight Committee**

### **Fiscal Year 2023–24 Annual Report - Findings**

The Regional Measure 3 (“RM 3”) Independent Oversight Committee (“IOC”) is pleased to provide its Fiscal Year 2023-24 RM 3 IOC annual report. This report summarizes the IOC’s findings on the expenditure of RM 3 Bridge Toll funds during the 2023-24 fiscal year.

#### **Background and History of the Independent Oversight Committee**

Bay Area voters approved RM 3 on June 5, 2018. Following this, the first and second dollars of the toll increase were applied on January 1, 2019 and January 1, 2022, respectively. The state legislation that established the RM 3 expenditure plan and the mechanism for the election (Senate Bill 595, 2017) also added the following language requiring establishment of the IOC to the California Streets and Highways Code (SHC), Section 30923:

If the voters approve a toll increase pursuant to this section, the authority shall establish an independent oversight committee within six months of the effective date of the toll increase to ensure that any toll revenues generated pursuant to this section are expended consistent with the applicable requirements set forth in Section 30914.7.

The oversight committee shall include two representatives from each county within the jurisdiction of the commission. Each representative shall be appointed by the applicable county board of supervisors and serve a four-year term and shall be limited to two terms. The oversight committee shall annually review the expenditure of funds by the authority for the projects and programs specified in Section 30914.7 and prepare and submit a report to the transportation committee of each house of the Legislature summarizing its findings. The oversight committee may request any documents from the authority to assist the committee in performing its functions.

Subsequently, the following requirements were added to statute regarding committee membership:

A representative appointed to the oversight committee shall not be a member, former member, staff, or former staff of the commission or the authority, shall not be employed by any organization or person that has received or is receiving funding from the commission or the authority, and shall not be a former employee or a person who has contracted with any organization or person that has received or is receiving funding from the commission or the authority within one year of having worked for or contracted with that organization or person.

The Bay Area Toll Authority (BATA) established the RM 3 IOC in June 2019, and populated its roster for the first four-year term as appointees were received from county boards of supervisors (BATA Resolution No. 131, Revised). The current version of this resolution, including the list of IOC members and vacancies by county, is included in Attachment F to Appendix I of this report.

The IOC did not meet during the first term of July 2019-June 2023. During this time, legal challenges to RM 3 were appealed all the way to the California State Supreme Court, which finally resolved the

challenges in January 2023. While these legal matters were ongoing, all collected RM 3 funds were held in escrow. In March 2023, BATA released these funds and terminated the escrow agreement, which allowed for the RM 3 funds to start being allocated and spent.

Counties were asked to nominate IOC appointees for a new term from July 2023 through June 2027. Because the committee did not meet during the first term, the 2023-2027 term will be considered the first term for the purposes of fulfilling term limits outlined in state statute.

## FY 2023-24 IOC Activities and Accomplishments

The IOC had its first meeting in March 2024 and met again in May 2024 and September 2024. During these meetings, the IOC reviewed RM 3 expenditures starting from the first allocations in June 2023 and discussed how it would fulfil its mandate. The IOC then prepared this annual report summarizing its findings to submit to the state legislature.

## RM 3 Policies and Procedures and Allocation Process

The RM 3 expenditure plan lists specific amounts available for capital projects, and percentage-based amounts available for operating projects. The Commission has adopted the Regional Measure 3 Policies and Procedures (MTC Resolution No. 4404, Revised; included as Attachment G to Appendix I of this report) to govern the implementation of both the capital and operating programs. These processes are summarized at a high level in the following paragraphs.

For the capital program, eligible project sponsors must follow the Policies and Procedures to request an allocation of funds, including the completion of an initial project report, an allocation request, and a board resolution. Staff reviews the request and prepares allocation recommendations in the form of resolutions for the Commission's consideration. These resolutions include reference to the specific line of the expenditure plan from which the allocation request is being made, a description of the scope of the allocation request, and additional information such as project schedule and funding plan. Payments to project sponsors for eligible expenses are made on a reimbursement basis. Capital projects may only receive the amount listed in the expenditure plan; per statute, BATA may fund the projects by transfers or bonding.

For the operating program, eligible project sponsors must likewise follow the Policies and Procedures to request allocations of funding. Statute establishes that not more than 16 percent, up to \$60 million of RM 3 revenues generated each year, are available for operating assistance. Of that annual amount, 8 percent is made available for the Transbay Terminal (Salesforce Transit Center), not to exceed \$5 million, 34 percent is made available for regional express bus services, not to exceed \$20 million; and 58% is made available for expanded ferry service, not to exceed \$35 million. To receive funds, recipients must execute an operating agreement with MTC that meets statutory requirements, and prepare an allocation application package including a cover letter, board resolution, operating agreement, and fiscal audit. The Commission annually approves programming and allocations of amounts, and in the case of the regional express bus program, recipients. Payments to project sponsors for eligible expenses are made on a reimbursement basis. Allocated amounts will be reduced if necessary to stay within statutory mandates.

## RM 3 Letters of No Prejudice

The RM 3 Policies and Procedures include an option for MTC to approve Letters of No Prejudice (LONPs) to allow project sponsors to move projects forward with alternate funds, at-risk, while maintaining RM 3

eligibility if and when RM 3 funds became available. On March 25, 2020, MTC approved Resolution No. 4412, which enables MTC to issue LONPs for RM 3 projects. LONPs are issued at the request of project sponsors and specify the amount and scope for which RM 3 eligibility will be preserved and the alternate funding source to be used in place of RM 3 funds. The first LONP was approved in March 2020. A total of 21 LONPs have been issued totaling approximately \$602 million, the last in May 2023 prior to the start of allocations. Since then, allocations have been made toward the vast majority of LONPs issued. MTC Resolution No. 4412, Revised, contains a description of every project with an LONP. This resolution is included in BATA's 2023 RM 3 Annual Report and has not been revised in FY 24.

## RM 3 Expenditure Plan Revisions and Programming

To ensure that RM 3 revenues are expended consistent with the applicable requirements set forth in SHC Section 30914.7, it is important for the IOC to track changes made to the RM 3 Expenditure Plan, which may be made through a public hearing process as outlined in the RM 3 statute (SHC Section 30914.7(e)). After a public hearing in December 2023, the Commission approved the following changes to the RM 3 expenditure plan in January 2024:

- Redirect \$16,700,000 in funds from the Solano County I-80/I-680/SR-12 Interchange Project (RM 3 project #21) to the Solano I-80 Express Lanes (Toll System) project – part of the Bay Area Corridor Express Lanes suite of projects (under RM 3 project #2)
- Modify scope of the SMART project (RM 3 project #7) to clarify eligibility of the multi-use pathway along SMART right-of-way.
- Modify scope of Highway 101-Marin/Sonoma Narrows (RM 3 project #20) to extend the project limits approximately 4.5 miles from Petaluma Blvd. South to Petaluma Blvd. North in Petaluma and approximately three (3) miles from Atherton Ave. to State Route 37 in Novato.
- Add the Metropolitan Transportation Commission (MTC) as a joint project sponsor to State Route 37 Improvements (RM 3 project #23)

The RM 3 operating projects and funding levels are determined by the RM 3 statute, but each fiscal year, MTC approves programming for the RM 3 operating program that sets the funding amounts for the year based on an estimate of toll revenues. MTC approved the FY24 RM 3 Operating Program on December 20, 2023 and revised the programming on March 27, 2024 to incorporate programming amounts for sponsors of Express Bus operating projects.

In the RM 3 capital program, most projects are named and have a single sponsor and dollar amount assigned in the RM 3 statute, but there are a few projects that have multiple sponsors or are broad categories that require programming by MTC. Since MTC began issuing Letters of No Prejudice in 2020 to allow projects to proceed ahead of allocation of RM 3 funds, MTC has taken action to program funds under the following RM 3 projects:

- Bay Area Corridor Express Lanes
- Goods Movement and Mitigation
- North Bay Transit Access Improvements
- Dumbarton Corridor Improvements

## IOC Findings

The IOC presents the following findings on BATA and the Metropolitan Transportation Commission (MTC's) expenditure of RM 3 funds.

### Capital Allocations

#### *MTC/BATA Actions*

Through the end of FY24, MTC allocated \$1.5 billion to capital projects in the RM 3 expenditure plan. Details of these allocations were reviewed by the IOC at previous meetings and are available in the meeting materials posted to MTC's website.

#### *IOC Findings*

Capital Allocations made through June 30, 2024 are consistent with the RM 3 statute.

### Operating Allocations

#### *MTC/BATA Actions*

In FY 24, MTC approved operating allocations consistent with the FY 24 RM 3 Operating Program. Prior to allocating RM 3 operating funds, MTC was required to adopt performance measures and execute operating agreements with the project sponsors. Details of these allocations were reviewed by the IOC at previous meetings and are available in the meeting materials posted to MTC's website.

#### *IOC Findings*

Operating Allocations made through June 30, 2024 are consistent with the RM 3 statute.

### Invoicing and Monitoring

#### *MTC/BATA Actions*

RM 3 funds are provided to project sponsors on a reimbursement basis. After funds are allocated, sponsors may submit invoices for eligible expenditures. MTC staff review these invoices for accuracy and consistency with the allocation and approve payment.

At the close of each fiscal year, MTC engages an auditor to perform agreed-upon procedures (AUP) to verify on a sampling test basis that the RM3 expenditures reported by project sponsors were eligible under the RM3 policies and procedures and the allocation scope, and were supported by backup documentation. The FY 23 AUP review was completed in early 2024, and no issues were flagged with any FY 23 invoices. The FY 24 AUP review is in progress and findings will be provided to the IOC when available. MTC also periodically engages an auditor to confirm RM3 invoices for capital programs to ensure they were submitted in accordance with the RM3 policies and procedures and check for duplicate charges or other errors. The most recent review covered the period from April 1, 2023 to February 29, 2024 and no issues were flagged with any invoices during this period. These reviews are available as Appendices II and III to this report.

MTC collects semi-annual reports for all RM 3 capital allocations. In FY 24, summaries of findings were presented to the Commission in January 2024 and June 2024. The June 2024 update is included as Attachment E to Appendix I of this report.

#### *IOC Findings*

MTC's invoicing and monitoring procedures ensure that funds are expended consistent with the RM 3 statute, allocations, and RM 3 policies and procedures.

#### *Other RM 3 Implementation Issues*

The IOC strongly urges counties with IOC position vacancies to fill them with appointees that can actively participate in IOC meetings, so that all counties in the region may be fully represented in the work of the committee.

## **Appendices**

Appendix I: Bay Area Toll Authority RM 3 FY 2023-24 Annual Report to the Legislature

Appendix II: Independent Accountant's Report on Agreed-Upon Procedures Applied to Regional Measure 2, 3, and AB1171 Capital Invoices For the period from April 1, 2023 to February 29, 2024

Appendix III: Independent Accountant's Report on Applying Agreed-Upon Procedures – Regional Measure 3 Funds – Year Ended June 30, 2023