



**DATE:** January 13, 2020

**TO:** Transportation Authority of Marin Funding, Programs & Legislation Executive Committee

**FROM:** Anne Richman, Executive Director  
David Chan, Programming and Legislation Manager *Anne Richman*

**SUBJECT:** Letters of No Prejudice (LONP) for Regional Measure (RM) 3 Projects (Action), Agenda Item No. 8

---

## **RECOMMENDATION**

The Funding, Programs & Legislation Executive Committee reviews the request to apply for Letters of No Prejudice (LONP) for Regional Measure (RM) 3 projects and recommends the TAM Board authorizes the Executive Director to request LONP from the Metropolitan Transportation Commission (MTC), when appropriate, for TAM projects that meet the requirements for RM 3 LONPs.

## **BACKGROUND**

In June 2018, Bay Area voters approved RM 3 to raise tolls on the region's state-owned toll bridges by \$1 beginning January 1, 2019. Tolls will rise by another \$1 in January 2022 with another \$1 increase in January 2025. Toll revenues, estimated at \$4.45 billion total, will be used to fund highway and transit improvements in the toll bridge corridors and their approach routes to address the Bay Area's growing congestion problems.

Four projects in Marin were included in the RM 3 Expenditure Plan approved by the voters:

- U.S. 101 Marin-Sonoma Narrows (MSN) - \$120 million (Marin and Sonoma counties)
- Richmond-San Rafael Bridge Access (580) Improvements – \$210 million total, of which \$135 million is for improvements in Marin County
- State Route 37 Improvements - \$100 million (Marin, Sonoma, Napa, and Solano counties)
- San Rafael Transit Center - \$30 million

Other projects in Marin are also potentially eligible for funds under other programmatic categories in RM3 such as the North Bay Transit Access Improvements program and the Bay Trail program. However, since the passage of RM3, two lawsuits challenging RM 3 were initiated. Therefore, the tolls collected are being placed into an escrow account and are not being disbursed to projects. If the Bay Area Toll Authority (BATA) prevails in the litigation, the funds will be applied to RM3 approved projects. Should BATA ultimately lose the litigation, the funds will be reimbursed to toll-payers.

## **Regional Measure 3 Policies and Procedures**

Since the lawsuits were initiated, Congestion Management Agencies (CMAs), including TAM, have been requesting MTC allow for a LONP process for RM 3. An LONP permits a project sponsor to incur costs on

a project using non-RM 3 resources, with the understanding that the costs incurred after the approval of the LONP may be eligible for reimbursable once RM 3 funds are available.

The intent of an LONP is to allow a project sponsor to advance a project that is ready to proceed to a deliverable phase, but for the availability of RM 3 funds. Project sponsors that receive an LONP will be responsible for delivering the usable project segment or complete phase with alternate funds before RM3 funds are available. The project sponsor would be proceeding at their own risk, in that if RM3 is not available due to the litigation or other causes, the sponsor would not be repaid.

In December 2019, MTC adopted the RM 3 Policies and Procedures, which includes an LONP process.

## **DISCUSSION**

It is still unclear when the litigation will be resolved. Since both the MSN and Richmond-San Rafael Bridge Access Improvement projects may be ready to proceed to the next phase before litigation is resolved, staff strongly believes there is a benefit in requesting MTC's consideration and approval of LONPs for those two projects.

MTC requires project sponsors to submit a notice of intent to request LONP approval 60 days prior to its Commission action. Getting the TAM Board's authority to submit LONP requests will allow staff the flexibility to react to the changing circumstances. When or if TAM will submit LONP requests will be determined by the timing of RM 3 funding availability and when these TAM projects are ready to move to the next phase.

### **US 101 MSN Project**

Design has been underway for the last remaining segments of HOV lanes between North Novato and Olompali, using local TAM and federal funds. Staff is working with the consultant team and Caltrans to complete the design by Spring 2020 and be construction-ready by mid-2020.

TAM has sufficient local funds to complete final design for the MSN Project. TAM could request an LONP for the design phase to seek reimbursement from MTC if RM3 funds become available. TAM does not have sufficient local funds to proceed with construction of the project absent RM3 and/or SB1 funds and would not be requesting an LONP for the construction phase at this time.

Note that because the RM3 legislation lists both TAM and the Sonoma County Transportation Authority (SCTA) as sponsors of the overall Marin Sonoma Narrows RM3 project, MTC may require that both TAM and SCTA boards take actions regarding fund programming; TAM staff is working with SCTA staff in light of this requirement regarding any LONP request for this project.

### **Richmond-San Rafael Bridge Access Improvement (101-580 Direct Connector Improvement) Project**

The consultant team for preliminary engineering and preparation of the environmental document was selected in late 2019 and has started work. Funding is currently provided by local TAM funds. Environmental clearance is planned for later 2023.

For this project, TAM has sufficient local funds to complete the environmental phase based on current project status; requesting an LONP for this phase only would preserve TAM's ability to seek reimbursement from MTC if RM3 funds are made available, while continuing the environmental process.

TAM does not have sufficient local funds to proceed with construction of the project absent RM3 funds and would not be requesting an LONP for the design or construction phases at this time.

### **FISCAL IMPACTS**

There are no immediate impacts to TAM with authorizing the Executive Director to submit LONP requests. If approved by MTC, TAM's budget for the approved project(s) will be amended to reflect any increased expenditures using non-RM 3 funds.

### **NEXT STEPS**

Upon approval from the TAM Board, staff will prepare LONP requests for MTC's consideration at the appropriate time.