



**DATE:** April 22, 2021

**TO:** Transportation Authority of Marin Board of Commissioners

**FROM:** Anne Richman, Executive Director *Anne Richman*  
David Chan, Programming and Legislation Manager  
Nicholas Nguyen, Principal Project Delivery Manager

**SUBJECT:** Regional Measure 3 (RM3) Letter of No Prejudice (LONP) and Associated Actions for the Marin Sonoma Narrows (MSN) Project (Action), Agenda Item No. 8

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## RECOMMENDATION

The TAM Board authorizes the Executive Director to:

1. Request an RM3 LONP from the Metropolitan Transportation Commission (MTC) for the MSN Project, when appropriate;
2. Execute resolution(s) and agreement required by MTC to accept federal discretionary funds for the construction phase of the MSN Project;
3. Execute a California Transportation Commission (CTC) Baseline Agreement to accept SBI Solutions for Congested Corridor Program (SCCP) funds for the MSN Project; and
4. Submit a request to the CTC to program Federal Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA) funds to the MSN Project, and Planning, Programming, and Monitor (PPM) activities, when appropriate.

On April 12, 2021, the Funding, Programs & Legislation Executive (FP&L) Committee reviewed the request to apply for a RM3 LONP for the MSN Project and recommended the TAM Board to authorize the Executive Director to exercise the four abovementioned tasks.

## BACKGROUND

In June 2018, Bay Area voters approved RM3 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 RM3 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 as much as possible. It is still unclear when the litigation will be resolved, as of date of this memo.

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

An LONP permits a project sponsor to incur costs on a project using non-RM3 resources, with the understanding that the costs incurred after the approval of the LONP may be eligible for reimbursement 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 RM3 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 its own risk, in that if RM3 is not available due to the litigation or other causes, the sponsor would not be repaid. MTC adopted an LONP process with the RM3 Policies and Procedures in December 2019.

### **DISCUSSION**

In January 2020, the TAM Board authorized staff to request LONPs from MTC for the Richmond-San Rafael (RSR) Bridge Access Improvement (101-580 Direct Connector Improvement) Project and the MSN Project. Since then, staff has requested and received approval from MTC for the following LONPs:

- \$5.6 million for the Project Approval & Environmental Document (PAED) Phase of the RSR Bridge Access Improvement Project
- \$7.1 million for the Right of Way (ROW) Phase of the MSN Project

The action taken by the TAM Board in January 2020 is still valid, but the staff memo indicated that TAM does not have sufficient local funds to proceed with the construction phase of the MSN Project absent the RM3 funds and would not be requesting an LONP for the construction phase at the time.

### **New LONP Request**

The circumstances around the MSN Project have changed since January 2020 in several ways.

First, design for the B7 Project (HOV lanes between North Novato and Olompali) has been completed, and the project can be advertised for construction as soon as September 2021 and proceed to construction as soon as February 2022, pending funding availability. As a reminder, the MSN Project has been completed through a series of phases based on operational priority and funding availability. Between Sonoma and Marin Counties, all HOV lane segments are either underway or completed except for the B7 segment in north Novato. In addition to the carpool lanes, new interchanges and frontage roads are being built to remove unsafe access from private properties and local roads. The project also includes continuous Class I and Class II bikeways between Novato and Petaluma. Accompanying this project is a necessary utility relocation project called the MSN B8 Project. Completion of the final remaining six-mile gap of HOV lanes for the entire MSN corridor will result in over 50 miles of continuous HOV lanes north of the Golden Gate Bridge through Marin and Sonoma Counties.

Second, in December 2020, the MSN B7 Project was awarded \$40.118 million in SB1 SCCP funds by the CTC. CTC policies require that TAM enter into a “Baseline Agreement” with the CTC to accept the SCCP funds for the MSN Project, discussed further below in this memo.

Third, with the MSN B7 Project ready for construction, MTC has expressed a willingness to program discretionary federal funds to help move the project to completion if an LONP for the construction phase is requested. MTC is considering this action in light of the delay with RM3, the desire to secure the SCCP funds, and the regional importance and partnership in completing this final mainline segment of the whole MSN corridor.

Therefore, staff is recommending requesting an LONP from MTC for up to \$80.878 million for the construction phase of the MSN Project as illustrated in the below table, with the MTC federal funds being the “up-front” funding to be repaid by RM3 once it clears litigation. The actual amount used could be less than \$80.878 million depending on the availability of other funds that may be realized in the near future.

<b>MSN Project</b>	<b>Cost</b>	<b>Funds Secured</b>	<b>Remaining Need</b>
Design (PS&E)	\$7,300,000	\$7,300,000	\$0
Right of Way (ROW)	\$7,345,000	\$7,345,000	\$0
Construction (CON)	\$120,996,000	\$40,118,000	\$80,878,000
<b>Total</b>	<b>\$135,641,000</b>	<b>\$54,763,000</b>	<b>\$80,878,000</b>

The \$80.878 million is proposed to come from three sources at present: \$75.6 million in federal discretionary funds from MTC (pending approval), \$1.12 million in CRRSAA funds as discussed below, and \$4.1 million in Measure AA funds available to the MSN project from Category 1 but not previously considered as part of the B7 funding plan.

**MTC Federal Discretionary Funds:** MTC staff anticipates seeking Commission approval to program the federal discretionary funds to the MSN Project on April 28, 2021. On April 14, MTC’s Programming & Allocations Committee approved forwarding the request to the full Commission.

**CRRSAA funds:** California is receiving approximately \$912 million from CRRSAA for highway programs. Under a recently approved sub-allocation distribution, the state gets 60% and the regions get 40% of these new funds, with approximately \$70 million coming to the Bay Area, to be divided between MTC and the counties. TAM is anticipated to receive approximately \$1.2 million from the Bay Area share, of which \$1,121,903 can be programmed for project(s) and \$59,048 for PPM activities. The CTC guidelines for the use of these funds allow all County Transportation Agencies (CTAs) to program up to 5% of their county share for PPM activities, which are reserved for CTAs to plan, program, and monitor projects. MTC expects TAM to program available funds from CRRSSA on the MSN Project to support an LONP request and PPM as statutorily allowed. Staff will submit requests to the CTC to program CRRSSA funds to the MSN Project and PPM when appropriate.

**Measure AA Funds:** Category 1 of the Measure AA Expenditure Plan designates \$12.4 million for the Marin Sonoma Narrows project. Approximately \$4.8 million was previously used for the environmental and design phases. An additional \$3.5 million was considered to be committed under the prior RM3 LONP approved for the project. The remaining \$4.1 million was being held for construction contingency but under this action would be used for a local funding contributing to the new LONP for the construction phase.

It is expected that if RM3 is upheld in litigation, MTC will use RM3 funds to repay the amount of federal discretionary funds used on the construction phase of the MSN Project. Additionally, TAM’s other funding contributions, such as CRRSAA, Measure AA and SB1 Local Partnership Program (LPP) funds could

potentially be repaid from the RM3 funds as well. Some of these detailed terms for the LONP are still being discussed between MTC and TAM staffs and are expected to be resolved in the coming weeks.

Caltrans, as the system owner/operator and the entity that will be issuing the construction contract, is aware of these funding discussions.

## **FISCAL IMPACTS**

There are no immediate impacts to TAM with authorizing the Executive Director to submit an LONP request or to submit a programming request to CTC for the CRRSAA funds for the MSN project. If approved by MTC and CTC respectively, TAM's budget for the approved project(s) will be amended to reflect any expenditures using non-RM 3 funds. The CRRSAA funds will be assigned to Caltrans as the implementing agency of the construction phase and therefore will not impact TAM's budget. The PPM is reimbursement based and if spent in FY 21/22, the related revenue and expenditure activities would be reflected in TAM's budget for FY 21/22.

For the Baseline Agreement to receive SCCP funds, TAM will work with CTC and Caltrans to also assign all funds directly to Caltrans as the implementing agency of the construction phase. TAM's budget will not be impacted if the SCCP funds are assigned to Caltrans.

## **NEXT STEPS**

Upon approval from the TAM Board, staff will prepare and submit an LONP request for the construction phase of the MSN Project for MTC's consideration at the appropriate time. The Executive Director will execute any necessary resolution(s) and agreement with MTC to facilitate the LONP and the programming of federal discretionary funds for the MSN Project. The Executive Director will also enter into a Baseline Agreement with the CTC to accept SCCP funds for the MSN Project. Lastly, the Executive Director will submit a request to the CTC to program CRRSAA funds to the MSN project and PPM activities when appropriate.

## **ATTACHMENT**

Attachment A: PowerPoint Presentation



# Regional Measure 3 Letter of No Prejudice Marin Sonoma Narrows Project

TAM Board Meeting  
April 22, 2021

# Background

- In June 2018, Bay Area voters approved RM3 to raise tolls on the region's state-owned toll bridges
- An estimated \$4.45 billion in RM3 toll revenues are expected to be collected
- RM3 funds will be used to fund highway and transit improvements in the toll bridge corridors and their approach routes to address the Bay Area's congestion problems
- RM3 currently in pending litigation

# Background, cont.

- Four projects in Marin were included in the RM 3 Expenditure Plan approved by the voters, including:
  - MSN Project,
  - Richmond-San Rafael Bridge Access (580) Improvements,
  - State Route 37 Improvements, and
  - San Rafael Transit Center
- Other projects in Marin are also potentially eligible for funds under other programmatic categories such as:
  - the Bay Trail Program, which is a regional competitive program and
  - the North Bay Transit Access Improvement Program (to be discussed at the next item of the meeting)

# Letter of No Prejudice

- 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 reimbursement once RM 3 funds are available
- Intent is to allow a project sponsor to advance a project that is ready to proceed to a deliverable phase



# Prior LONPs

- As authorized by the TAM Board in January 2020, staff has requested and received approval from MTC for the following LONPs:
  - \$5.6 million for the Project Approval & Environmental Document (PAED) Phase of the RSR Bridge Access Improvement Project
  - \$7.1 million for the Right of Way (ROW) Phase of the Marin Sonoma Narrows (MSN) Project

## Prior LONPs (cont.)

- Action taken by the TAM Board in January 2020 authorizing staff to request LONP for the MSN Project is still valid
- However, at that time staff indicated that an LONP for the construction phase of the MSN Project would not be requested because of insufficient local funds to proceed with the construction phase

# New Circumstances

- Design for the B7 Project (HOV lanes between North Novato and Olompali) has been completed, and the project can be advertised for construction as soon as September 2021 and proceed to construction as soon as February 2022
- In December 2020, the MSN B7 Project was awarded \$40.118 million in SB1 Solutions for Congested Corridors Program (SCCP) funds by the CTC
- MTC is proposing to program discretionary federal funds to help move the project to completion if an LONP for the construction phase is requested

# New LONP Request

- Staff anticipates requesting an LONP from MTC for up to \$80.878 million for the construction phase of the MSN Project
  - Could be less, depending on the availability of other funds that may be realized in the near future.

<b>MSN Project</b>	<b>Cost</b>	<b>Funds Secured</b>	<b>Remaining Need</b>
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<b>Total</b>	<b>\$135,641,000</b>	<b>\$54,763,000</b>	<b>\$80,878,000</b>

# LONP Sources

- The \$80 million LONP would be backed by:
  - \$76 million in MTC federal discretionary funds – pending at MTC
  - \$1.12 million CRRSAA funds – submitting request to CTC and MTC
  - \$4.1 million Measure AA – remaining available from Category 1
- If RM3 is upheld, MTC and TAM would be repaid

# CRRSSA Funds

- Federal Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA)
  - California is receiving approximately \$912 million from CRRSAA for highway programs
  - State gets 60% and the regions get 40% of these new funds
  - Approximately \$70 million will come to the Bay Area, to be divided between MTC and the counties
  - Marin is anticipated to receive approximately \$1.2 million from the Bay Area share (\$1.12m for project(s) and \$59k for PPM)
- MTC expects TAM to program CRRSAA funds to the MSN Project to support an LONP request

# Miscellaneous Notes

- MTC anticipates seeking Commission approval to program the federal discretionary funds to the MSN Project on April 28, 2021
- Caltrans, as the system owner/operator and the entity that will be issuing the construction contract, is aware of these funding discussions

# Recommendations

Authorize the Executive Director to:

1. Request an LONP from MTC for the MSN Project, when appropriate, for up to \$80.878 M;
2. Execute MTC required resolution(s) and agreement needed to accept federal discretionary funds;
3. Execute a CTC Baseline Agreement to accept SB1 SCCP funds for the MSN Project; and
4. Submit a request to the CTC to program CRRSAA funds to the MSN Project and PPM when appropriate



# FP&L Executive Committee

- On April 12, 2021, the FP&L Executive Committee reviewed the LONP request and recommended the TAM Board to authorize the recommendations as presented



# Questions