



DATE: April 2, 2021
TO: STA Board
FROM: Janet Adams, Deputy Executive Director/Director of Projects
RE: I-80 Managed Lanes Letter of No Prejudice (LONP)

Background:

In June 2018, the Bay Area voters approved Regional Measure 3 (RM 3). RM3 will raise the bridge toll in three stages: \$1 on January 1, 2019 (in effect); \$1 on January 1, 2022; and \$1 on January 1, 2025. For Solano County, RM 3 provides dedicated funding to important capital projects such as \$300 million for the Bay Area Express Lanes.

At this time, RM 3 remains under litigation initiated in April 2019 by the Howard Jarvis Taxpayers Association and an individual claiming the toll increases are a tax rather than a fee and thus require a two-thirds majority to pass. The Bay Area Toll Authority's (BATA's) policy is to hold all funds in escrow until such time as the litigation is resolved regarding RM 3. As a result, RM 3 funding are not currently available to fund projects or transit service.

The I-80 Managed Lanes Project (Project) relies on RM 3 funds as part of the local match requirement to the \$123.4 M of SB 1 funds awarded to which provides for a fully funded project ready for construction in 2021. This Project has a commitment to the California Transportation Commission (CTC) to seek an allocation for construction by August 2021. A delay in the allocation of bridge toll funds would put the SB1 grant funds at risk. With the RM 3 lawsuits, BATA is not able to allocate these funds to projects. Further, with the revenues down on the Bay Area bridges, BATA does not have other bridge toll funds to loan to the Project, as such STA staff has been working with [MTC/BATA](#) staff to use other federal/state funds to keep this Project fully funded and on schedule.

Discussion:

As stated above, [MTC/BATA](#) staff has been working with the STA to facilitate the use of non-bridge toll funds to this project. The total [RM 3](#) bridge toll funds committed to the Project is \$101.7 M, Attachment A provides the details of the Project funding plan. Of this \$101.7 M, \$85 M is from the Bay Area Express Lanes [programmatic category](#) and \$16.7 M was originally State Transportation Improvement Program (STIP) that were loaned to this project from the I-80/I-680/State Route 12 Package 2A Project to keep that construction schedule on track. RM 3 funds dedicated to the Interchange were to payback this loan. However, these RM 3 funds are of course not available, so the total need is the \$101.7 M.

The specific work to be completed with these RM 3 funds include activities necessary for awarding the civil construction of the project, schedule to bid this summer. Additionally, the funds are for the toll systems and support elements like design support during construction and project management.

Given that RM3 litigation has not been resolved, STA staff has requested [MTC/BATA](#) commit up to \$101.7 M of state and federal discretionary funds to the Project. This commitment would be paid back by RM 3 funds dedicated to the Bay Area Express Lanes and the I-80/I-680/SR12 Interchange Project. An additional source of contribution to fill this \$101.7 M need is the Coronavirus Response and Relief Supplemental Appropriation Act of 2021 (H.R. 133). As part of this funding distribution, \$1.9 M ~~could~~ [will](#) flow through the STIP to Solano County from the CTC. At their meeting on March 24, 2021, CTC ~~staff has recommended~~ [approved a scenario that would provide](#) providing Solano County with \$1.9 M [in STIP funds](#). ~~Should this happen, then t~~ These STIP funds ~~would~~ [will](#) be programmed to the I-80 Managed Lanes, [less funds for Planning, Programming, and Monitoring \(PPM\)](#). However, depending on how long it takes for the RM 3 funds to be made available, a portion of these STIP funds may be used to pay interest on the LONP. The terms of this have not been finalized with BATA staff. Overall [MTC/BATA](#) will take this item to their March Commission meeting for information and action in April.

Should the RM 3 litigation not be resolved in favor of BATA, then this loan would not be repaid and viewed as a regional commitment to a project located in Solano County. To move forward with this funding strategy, the STA requests a Letter of No Prejudice (LONP) so that these discretionary federal and state funds being fronted by [MTC/BATA](#) would be re-paid with RM 3 funding. As a result, STA Board will be required to approve a LONP Resolution [and a Resolution of Local Support](#), along with the LONP. [Furthermore, a resolution of local support for matching funds for this project is required by MTC, which is shown in Attachment C.](#)

At their March 31, 2021 meeting, the STA TAC unanimously approved to forward the recommendation to the STA Board for approval at the April 14, 2021 meeting.

Fiscal Impact:

None to STA. This action will allow BATA to commit up to \$101.7 M state and federal funding as an advance backed by RM 3 funds dedicated to the Project and ensure that construction activities are not delayed due to the RM 3 lawsuit.

Recommendation:

Approve [the following](#):

- [1. Reso No. 2021-06 Letter of No Prejudice \(LONP\) as shown in Attachment B; and](#)
- [2. Reso No. 2021-07 Resolution of Local Support as shown in Attachment C](#) for up to \$101.7 million in RM 3 funds for construction of the I-80 Managed Lanes Project.

Attachment:

[A. A-I-80 Managed Lanes Funding Plan](#)

[B. Reso No. 2021-06 LONP I-80 Managed Lanes](#)

[C. Reso No. 2021-07 Resolution of Local Support for I-80 Managed Lanes](#)

RM3 Implementing Agency Resolution of Project Compliance – Letter of No Prejudice Request

**SOLANO TRANSPORTATION AUTHORITY
RESOLUTION No. 2021-06**

**A RESOLUTION OF THE SOLANO TRANSPORTATION AUTHORITY
AUTHORIZING AN ALLOCATION FROM THE METROPOLITAN
TRANSPORTATION COMMISSION FOR THE SOLANO I-80 EXPRESS LANES
PROJECT**

WHEREAS, SB 595 (Chapter 650, Statutes 2017), commonly referred as Regional Measure 3, identified projects eligible to receive funding under the Regional Measure 3 Expenditure Plan; and

WHEREAS, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 3 funds, pursuant to Streets and Highways Code Section 30914.7(a) and (c); and

WHEREAS, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 3 funding and

WHEREAS, Letter of No Prejudice (LONP) requests to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 3 Policies and Procedures (MTC Resolution No. 4404); and

WHEREAS, Solano Transportation Authority is an eligible sponsor of transportation project(s) in the Regional Measure 3 Expenditure Plan; and

WHEREAS, the Solano I-80 Express Lanes Project is eligible for consideration in the Regional Measure 3 Expenditure Plan, as identified in California Streets and Highways Code Section 30914.7(a); and

WHEREAS, the Regional Measure 3 LONP request, attached hereto in the Initial Project Report and LONP Request Form, and incorporated herein as though set forth at length, lists the project, purpose, schedule, budget, expenditure and cash flow plan for which Solano Transportation Authority is requesting that MTC issue an LONP for Regional Measure 3 funds; now, therefore, be it

RESOLVED, that Solano Transportation Authority, and its agents shall comply with the provisions of the Metropolitan Transportation Commission's Regional Measure 3 Policies and Procedures; and be it further

RESOLVED, that Solano Transportation Authority will fund the scope of work covered under the LONP with State Transportation Improvement Program Funds; and be it further

RESOLVED, that Solano Transportation Authority proceeds with this scope of work at-risk, in the event that RM3 funds do not become available for allocation; and be it further

RESOLVED, that Solano Transportation Authority will only be eligible for reimbursement for this scope of work from RM3 funds following an allocation by MTC, for expenses incurred following the date of the LONP approval; and be it further

RESOLVED, that Solano Transportation Authority certifies that the project is consistent with the Regional Transportation Plan (RTP); and be it further

RESOLVED, that the year of funding for any design, right-of-way and/or construction phases has taken into consideration the time necessary to obtain environmental clearance and permitting approval for the project; and be it further

RESOLVED, that the Regional Measure 3 phase or segment is fully funded, and results in an operable and useable segment; and be it further

RESOLVED, that Solano Transportation Authority approves the LONP request and updated Initial Project Report, attached to this resolution; and be it further

RESOLVED, that Solano Transportation Authority approves the cash flow plan, attached to this resolution; and be it further

RESOLVED, that Solano Transportation Authority has reviewed the project needs and has adequate staffing resources to deliver and complete the project within the schedule set forth in the LONP request and updated Initial Project Report, attached to this resolution; and, be it further

RESOLVED, that Solano Transportation Authority is an eligible sponsor of projects in the Regional Measure 3 Expenditure Plan, in accordance with California Streets and Highways Code 30914.7(a); and be it further

RESOLVED, that Solano Transportation Authority is authorized to submit an application for an LONP request for Regional Measure 3 funds for I-80 Managed Lanes Project in accordance with California Streets and Highways Code 30914.7(a); and be it further

RESOLVED, that Solano Transportation Authority certifies that the projects and purposes for which RM3 funds are being requested is 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.) and if relevant the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et. seq. and the applicable regulations thereunder; and be it further

RESOLVED, that there is no legal impediment to Solano Transportation Authority making LONP requests for Regional Measure 3 funds; and be it further

RESOLVED, that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of Solano Transportation Authority to deliver such project; and be it further

RESOLVED, that Solano Transportation Authority shall indemnify and hold harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of Solano Transportation Authority, its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM3 funds. Solano Transportation Authority agrees at its own cost, expense, and risk, to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, BATA, and their Commissioners, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments. In addition to any other remedy authorized by law, so much of the funding due under any future allocation of RM3 funds to this scope as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages, and be it further

RESOLVED, that Solano Transportation Authority shall, if any revenues or profits from any non-governmental use of property (or project) that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the Metropolitan Transportation Commission is entitled to a proportionate share equal to MTC's percentage participation in the projects(s); and be it further

RESOLVED, that assets purchased with RM3 funds including facilities and equipment shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life, that the Metropolitan Transportation Commission (MTC) shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to MTC in the same proportion that Regional Measure 3 funds were originally used; and be it further

RESOLVED, that following an allocation of RM3 funds for this scope of work Solano Transportation Authority shall post on both ends of the construction site(s) at least two signs visible to the public stating that the Project is funded with Regional Measure 3 Toll Revenues; and be it further

RESOLVED, that Solano Transportation Authority authorizes its Executive Director or his/her designee to execute and submit an LONP request for the construction phase with MTC for Regional Measure 3 funds in the amount of up to \$101,700,000, for the project, purposes and amounts included in the project application attached to this resolution; and be it further

RESOLVED, that the Executive Director or his/her designee is hereby delegated the authority to make non-substantive changes or minor amendments to the LONP request or IPR as he/she deems appropriate; and be it further

RESOLVED, that a copy of this resolution shall be transmitted to MTC in conjunction with the filing of the Solano Transportation Authority application referenced herein.

Ron Rowlett, Chair
Solano Transportation Authority

I, Daryl K. Halls, the Solano Transportation Authority Executive Director, do hereby certify that the above and foregoing resolution was introduced, passed and adopted by said Authority at the regular meeting thereof held this day of April 14, 2021.

Daryl K. Halls, Executive Director
Solano Transportation Authority

Passed by the Solano Transportation Authority (STA) Board on this 14th day of April, 2021 by the following vote:

Ayes: _____
Nos: _____
Absent: _____
Abstain: _____

Attest: _____
Johanna Masiplat
Clerk of the Board

Resolution of Local Support

Resolution No. 2021-07

Authorizing the filing of an application for funding assigned to MTC and committing any necessary matching funds and stating assurance to complete the project

WHEREAS, the Solano Transportation Authority (herein referred to as APPLICANT) is submitting an application to the Metropolitan Transportation Commission (MTC) for 101.7 million in funding assigned to MTC for programming discretion, which includes federal funding administered by the Federal Highway Administration (FHWA) and federal or state funding administered by the California Transportation Commission (CTC) such as Surface Transportation Block Grant Program (STP) funding, Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding, Transportation Alternatives (TA) set-aside/Active Transportation Program (ATP) funding, and Regional Transportation Improvement Program (RTIP) funding (herein collectively referred to as REGIONAL DISCRETIONARY FUNDING) for the I-80 Managed Lanes (herein referred to as PROJECT) for the Bay Area Express Lane Network (herein referred to as PROGRAM); and

WHEREAS, the United States Congress from time to time enacts and amends legislation to provide funding for various transportation needs and programs, (collectively, the FEDERAL TRANSPORTATION ACT) including, but not limited to the Surface Transportation Block Grant Program (STP) (23 U.S.C. § 133), the Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. § 149) and the Transportation Alternatives (TA) set-aside (23 U.S.C. § 133); and

WHEREAS, state statutes, including California Streets and Highways Code §182.6, §182.7, and §2381(a)(1), and California Government Code §14527, provide various funding programs for the programming discretion of the Metropolitan Planning Organization (MPO) and the Regional Transportation Planning Agency (RTPA); and

WHEREAS, pursuant to the FEDERAL TRANSPORTATION ACT, and any regulations promulgated thereunder, eligible project sponsors wishing to receive federal or state funds for a regionally-significant project shall submit an application first with the appropriate MPO, or RTPA, as applicable, for review and inclusion in the federal Transportation Improvement Program (TIP); and

WHEREAS, MTC is the MPO and RTPA for the nine counties of the San Francisco Bay region; and

WHEREAS, MTC has adopted a Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) that sets out procedures governing the application and use of REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, APPLICANT is an eligible sponsor for REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, as part of the application for REGIONAL DISCRETIONARY FUNDING, MTC requires a resolution adopted by the responsible implementing agency stating the following:

- the commitment of any required matching funds; and
- that the sponsor understands that the REGIONAL DISCRETIONARY FUNDING is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional REGIONAL DISCRETIONARY FUNDING; and
- that the PROJECT will comply with the procedures, delivery milestones and funding deadlines specified in the Regional Project Funding Delivery Policy (MTC Resolution

- No. 3606, revised); and
- the assurance of the sponsor to complete the PROJECT as described in the application, subject to environmental clearance, and if approved, as included in MTC's federal Transportation Improvement Program (TIP); and
 - that the PROJECT will have adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and
 - that the PROJECT will comply with all project-specific requirements as set forth in the PROGRAM; and
 - that APPLICANT has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and
 - in the case of a transit project, the PROJECT will comply with MTC Resolution No. 3866, revised, which sets forth the requirements of MTC's Transit Coordination Implementation Plan to more efficiently deliver transit projects in the region; and
 - in the case of a highway project, the PROJECT will comply with MTC Resolution No. 4104, which sets forth MTC's Traffic Operations System (TOS) Policy to install and activate TOS elements on new major freeway projects; and
 - in the case of an RTIP project, state law requires PROJECT be included in a local congestion management plan, or be consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the countywide transportation agency; and

WHEREAS, that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and

WHEREAS, there is no legal impediment to APPLICANT making applications for the funds; and

WHEREAS, there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

WHEREAS, APPLICANT authorizes its Executive Director, General Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

WHEREAS, MTC requires that a copy of this resolution be transmitted to the MTC in conjunction with the filing of the application.

NOW, THEREFORE, BE IT RESOLVED that the APPLICANT is authorized to execute and file an application for funding for the PROJECT for REGIONAL DISCRETIONARY FUNDING under the FEDERAL TRANSPORTATION ACT or continued funding; and be it further

RESOLVED that APPLICANT will provide any required matching funds; and be it further

RESOLVED that APPLICANT understands that the REGIONAL DISCRETIONARY FUNDING for the project is fixed at the MTC approved programmed amount, and that any cost increases must be funded by the APPLICANT from other funds, and that APPLICANT does not expect any cost increases to be funded with additional REGIONAL DISCRETIONARY FUNDING; and be it further

RESOLVED that APPLICANT understands the funding deadlines associated with these funds and will comply with the provisions and requirements of the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) and APPLICANT has, and will retain the

expertise, knowledge and resources necessary to deliver federally-funded transportation and transit projects, and has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and be it further

RESOLVED that PROJECT will be implemented as described in the complete application and in this resolution, subject to environmental clearance, and, if approved, for the amount approved by MTC and programmed in the federal TIP; and be it further

RESOLVED that APPLICANT has reviewed the PROJECT and has adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and be it further

RESOLVED that PROJECT will comply with the requirements as set forth in MTC programming guidelines and project selection procedures for the PROGRAM; and be it further

RESOLVED that, in the case of a transit project, APPLICANT agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution No. 3866, revised; and be it further

RESOLVED that, in the case of a highway project, APPLICANT agrees to comply with the requirements of MTC's Traffic Operations System (TOS) Policy as set forth in MTC Resolution No. 4104; and be it further

RESOLVED that, in the case of an RTIP project, PROJECT is included in a local congestion management plan, or is consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the countywide transportation agency; and be it further

RESOLVED that APPLICANT is an eligible sponsor of REGIONAL DISCRETIONARY FUNDING funded projects; and be it further

RESOLVED that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and be it further

RESOLVED that there is no legal impediment to APPLICANT making applications for the funds; and be it further

RESOLVED that there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and be it further

RESOLVED that APPLICANT authorizes its Executive Director, General Manager, City Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and be it further

RESOLVED that a copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application; and be it further

RESOLVED that the MTC is requested to support the application for the PROJECT described in the resolution, and if approved, to include the PROJECT in MTC's federal TIP upon submittal by the project sponsor for TIP programming.

Instructions for Using the Resolution of Local Support

- A project sponsor receiving Surface Transportation Block Grant Program (STP), Congestion Mitigation Air Quality Improvement Program (CMAQ), Active Transportation Program (ATP), Regional Improvement Program (RIP), or other regional discretionary funds must adopt a resolution of local support prior to grant funds being added to the Transportation Improvement Program (TIP). The template to be used is found on the MTC website: <http://mtc.ca.gov/our-work/fund-invest/federal-funding/obag-2>
- Sponsors should always use the template posted on the website to ensure they have the latest version.
- The sponsor may not make changes to the template with the exception of format changes or additional language to suit the jurisdiction's resolution conventions. These changes may not modify or condition / limit the MTC resolution language. If your legal counsel feels strongly about making language changes given specific circumstances surrounding a project, he/she needs to discuss these with the MTC General Counsel.
- The three bulleted statements on page 2 of the resolution that apply to transit, highway, and RTIP projects may be deleted, if they do not apply.
- After a project sponsor has adopted a resolution of local support for a project, it does not need to go back to the board if the project subsequently receives additional grants from the above fund sources, unless the project scope has changed significantly. If there are scope changes the sponsor should consult with MTC programming staff.
- The resolution of local support must be transmitted to MTC when a project / grant funds are added to the TIP. The sponsor will attach a PDF of the adopted resolution to the Fund Management System (FMS) application when the sponsor requests a TIP amendment. A schedule containing upcoming due dates for TIP revisions can be found at: <http://mtc.ca.gov/our-work/fund-invest/tip/tip-revisions-and-amendments>

If you have further questions regarding the resolution please contact the following MTC staff:

Mallory Atkinson (STP/CMAQ funds) at matkinson@mtc.ca.gov or 415-778-6793
Kenneth Kao (ATP/RIP funds) at kkao@mtc.ca.gov or 415-778-6768
Adam Crenshaw (TIP and FMS) at acrenshaw@mtc.ca.gov or 415-778-6794