

Approved: [Signature]  
Superior Court Judge  
Date: 9/22/14

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Marin County Board of Supervisors

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September 17, 2014

Honorable Kenneth J. Gnos  
Presiding Superior Court Judge  
Hall of Justice  
600 Administration Drive  
Santa Rosa, CA 95403

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA

SEP 26 2014

BY [Signature]  
Deputy Clerk

Re: SMART's Response to Grand Jury Report: "The Train has Left the Station Five Years Later- The Outlook for SMART" Report Date: June 25, 2014

Dear Judge Gnos:

This letter constitutes SMART's response to the above referenced report contained within the Sonoma County Grand Jury's Final Report for 2013-2014.

The Grand Jury's powers are defined by statute. The Grand Jury derives its power to require responses to its report pursuant to Penal Code sections 933 and 933.05. Since neither of those sections require a response from an appointed General Manager of a special district SMART's Board of Directors will respond as requested by the Grand Jury and required by the Penal Code.

Although the Grand Jury only required responses to recommendations 1 through 8, Penal Code sections 933.05(a);(b) require responses to all Grand Jury findings and recommendations. Consistent with that statute, and to provide maximum transparency, the Board of Directors will respond to all findings and recommendations contained in the Grand Jury report.

FINDINGS:

F1. The completion of Phase 1 in late 2016 will not satisfy what was promised to voters in 2008.

Response: SMART wholly disagrees.

There is no evidence to support the opinion expressed in this "finding." Few people, including professional economists, anticipated the economic downturn in 2007-2009.

The recession affected SMART just as it did other public and private entities, and the voters themselves. Responding to unexpected financial constraints, SMART acted prudently in deciding to phase the construction of the SMART rail system. SMART has taken pro-active measures, taking into account the fiscal impacts and construction delays caused by the recession, to insure that a passenger rail operation promised to the voters will commence in 2016.

F2. The current two-year delay in service caused by construction shortfalls represents a 10-percent loss in value generated by 20 years of sales tax revenue.

Response: SMART partially disagrees.

SMART agrees that the economic downturn caused construction shortfalls resulting in a delay of the commencement date for passenger service. However, that downturn impacted many public entities and private businesses causing delays in both public and private projects. To avoid a further delay, and to mitigate any loss in value, the Board of Directors made the prudent decision to commence the project in phases. The economic downturn also created opportunities, as SMART was able to negotiate reduced prices on significant contracts, allowing for example, the addition of the Atherton/San Marin Station as part of Phase 1. SMART does not agree that the recession caused delay represents a "10-percent loss in value".

F3. The Sonoma County Civil Grand Jury's financial analysis indicated that SMART faces potential funding challenges to complete the 73-mile project.

Response: SMART disagrees.

The Grand Jury's finding is based upon its own financial analysis that was not provided to SMART or the public. SMART can neither agree nor disagree with an analysis that it was not able to review because it was not provided to SMART.

F4. The Sonoma County Civil Grand Jury's financial analysis raises concerns with the forecasting assumptions and contingencies used to project future revenues generated by the ¼ cent sales tax.

Response: SMART disagrees.

Similar to the response to F3 above, SMART can neither agree nor disagree with an analysis that it was not able to review because it was not provided to SMART. However, it should be noted that SMART was able to issue bonds with the projected revenue generated by the sales tax pledged to pay debt service on the bonds.

F5. Operating plans and finances are dependent on sales tax revenues, and any shortfall could have serious consequences.

Response: SMART partially disagrees.

Similar to any other public entity dependent on tax revenue, a shortfall in anticipated revenue may result in a modification of the budget. However, even in the face of the recession of 2007-2009, SMART has demonstrated prudent handling of its financial resources to enable commencement of passenger operations in

2016. In addition, SMART has made great efforts to secure other available funding, including leveraging Measure Q funds. SMART will continue to implement sound financial practices, such as maintaining minimum reserves (including both operating and capital maintenance reserves), such that business cycles will not disrupt operations.

F6. While its name suggests that it performs a public oversight function, the Citizen's Oversight Committee has not provided broad oversight; its actual contributions to the SMART project have been confined to the mandated role of overseeing the Strategic Plan.

Response: SMART partially disagrees.

In 2008, through the approval of Measure Q, the voters established a Citizen's Oversight Committee and defined its role. The Citizens Oversight Committee was not established by the voters to provide broad oversight functions. Consistent with its voter approved role, the Citizen's Oversight Committee oversaw adoption of the 2009 Strategic Plan and is presently overseeing the 2014 Strategic Plan Update.

F7. SMART management has demonstrated resourcefulness throughout the construction phase and a prudent control of finances, but competent management is no substitute for effective Board governance.

Response: SMART partially disagrees.

SMART agrees that management has demonstrated resourcefulness and prudent control of finances. However, SMART's management's success is a direct result of the Board's effective governance. The Grand Jury report acknowledges such by finding that management changes have generated positive results and commending the Board for its handling of the management changes.

F8. The members of the Board of Directors have heavy time commitments, resulting in lack of sufficient attention for SMART and an absence of the effective oversight voters expected when Measure Q was adopted.

Response: SMART wholly disagrees.

Measure Q requires that Board members be appointed from the membership of other public entities (e.g., County Board of Supervisors; City Councils). It is common for public officials to sit on multiple public boards. Many SMART Directors also serve on other transit agencies resulting in a vital coordination of SMART's operational issues and funding goals. Representation on other transit agencies and entities along the SMART corridor allows the SMART Board to effectively oversee regional transit services and tax dollars to insure that funds and transit plans are targeted and coordinated to enhance the quality of life in all towns and cities along the SMART corridor.

F9. Although an economic crisis began in 2007, SMART failed to inform voters in the November 2008 election of the resulting risks to the revenue projections contained in the Measure Q Expenditure Plan.

Response: SMART wholly disagrees.

This finding is stale in that it relates to six year old events and does not involve actions of current management. This finding involves events that occurred long before the 2013-2014 Grand Jury was impaneled and does not

relate to the current method or system of SMART's operations.

F10. The Board of Directors failed to mitigate the serious impact of the economic downturn and of the land-use environmental approvals process.

Response: SMART wholly disagrees.

Once the impact of the economic downturn and the complexity of the environmental approval process were fully recognized SMART took affirmative measures to insure delivery of a passenger rail system. The economic downturn forced the project to be accomplished in phases. Phase I initially consisted of six stations between Santa Rosa and the Marin Civic Center. Due to the Board's effective oversight, including changing agency management and aggressively seeking other funding, Phase 1 is now scheduled to consist of 10 stations and service between the Sonoma County Airport and the City San Rafael.

F11. The Board of Directors would operate more efficiently and effectively if it were using the standing committees defined in the SMART Administrative Code.

Response: SMART wholly disagrees.

The Grand Jury has previously noted that Board members have numerous time commitments. Standing committees are advisory only to the full Board. Since all matters reviewed by a standing committee would ultimately be addressed by the full Board there does not appear to be any tangible benefit to either the public or SMART to use committees. In addition, use of the committees would increase SMART's costs to conduct the meetings.

F12. The lack of station parking, road-crossing disruptions, and failure to connect directly with the Larkspur ferry terminal will create serious logistical difficulties.

Response: SMART disagrees.

SMART can neither agree nor disagree or further respond to this finding because there is no support for this finding contained in the Grand Jury report.

F13. Once construction has been completed, public safety needs to become the highest priority.

Response: SMART partially disagrees.

SMART agrees that public safety is one of its highest priorities. However, SMART is not waiting until construction is completed. SMART has created a team of experts in the fields of rail operations, fire and police to address SMART's public safety needs and is presently in the process of developing appropriate plans well in advance of the start of passenger service.

Recommendations:

R1. The 2014 Strategic Plan Update include a comparison between the original financial plans in the Measure Q Expenditure Plan and the current outlook in the Updated Strategic Plan.

Response: This recommendation will not be implemented because it is not warranted.

The 2014 Strategic Plan Update is a forward looking document focusing on current and future financial plans and outlooks. It is not the purpose of the Update to compare past financial projections unless they are directly related to the current and future outlooks. Any interested party may compare the original financial plans contained in the 2009 Strategic Plan against the current outlook contained in the 2014 Strategic Plan Update.

R2. SMART engage the services of an independent economist to provide a forecast of the revenue to be generated by the ¼ cent sales tax.

Response: This recommendation will not be implemented because it is not warranted.

Economic forecasting is inexact. In fact, the 2009 Strategic Plan included an independent economic forecast which, according to the Grand Jury report, failed to adequately forecast the economic downturn. SMART does not believe that the expenditure of public funds for an independent forecast will add to the data and projections provided by staff and consultants. If, in the future, a need for an independent economic forecast is determined, SMART can obtain one at that time.

R3. The 2014 Strategic Plan Update provide a forecast of operating and maintenance costs associated with the future operation of the system.

Response: This recommendation has not yet been implemented but does mirror what has already been discussed with the Citizens Oversight Committee as part of the 2014 Strategic Plan Update process.

R4. SMART provide an annual update to long-term financial forecast which includes notification to the public of any risks associated with uncontrollable factors such economic fluctuations and the potential consequences of such risks in the its "Comprehensive Annual Report".

Response: This recommendation will not be implemented because it is not warranted.

SMART's first ever Comprehensive Financial Report (or CAFR) was reviewed by the Board in early 2014 and received a Certificate of Achievement from the Government Financial Officers Association (GFOA), which uses experienced finance officers to review these important reports. The GFOA found that SMART's report met all the recommended elements based on best practices set by the GFOA. The report also contained financial statements that were reviewed by SMART's independent auditor, a requirement of Measure Q.

R5. SMART appoint a Citizen's Advisory Committee to investigate and report on concerns regarding scheduling, fares, pedestrian/bicycle pathways, connecting services and safety.

Response: This recommendation will not be implemented because it is neither warranted nor reasonable at this time.

In adopting Measure Q, the voters approved establishment of only one committee (a Citizens Oversight Committee) for the limited purpose of adopting and updating the Strategic Plan. At this point, the additional staff resources and administrative costs required for the establishment and utilization of a Citizen's Advisory Committee outweigh the benefit of the purely advisory committee. Nonetheless, SMART may consider the establishment of such an advisory committee if it is warranted as SMART gets closer to the start of passenger

operations in 2016.

R6. The Board of Directors utilize standing and advisory committees to more effectively fulfill its obligation to provide comprehensive oversight on major policy issues.

Response: This recommendation will not be implemented because it is not warranted.

The current Board has provided effective comprehensive oversight, implemented by competent management, on major policy issues. The additional staff time, Board member time and costs associated with utilizing standing and advisory committees would create a costly and unneeded administrative process at a time when the SMART Board provides effective oversight in a fiscally prudent manner.

R7. Management issue a quarterly status report addressing the development, operations, and financial matters currently facing SMART, which could be provided in conjunction with the regular General Managers reports to the Board of Directors.

Response: This recommendation will not be implemented because it is not warranted.

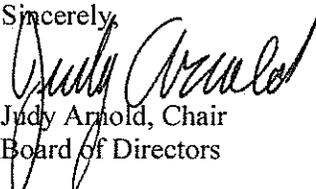
SMART management already issues monthly reports to the Board that contain all updated information the Board requires including project operations and financial matters facing SMART.

R8. The Board of Directors create an ad hoc Safety Committee to provide conscientious oversight of the system's safety policies and elevate the overall importance of safety.

Response: This recommendation will not be implemented because it is not warranted.

SMART agrees that safety should be a highest priority. SMART has retained professional police, fire and rail operations experts to insure the highest level of public safety. SMART believes that the entire Board of Directors should provide the transparent oversight of the extremely important public safety policy issues. SMART does not believe that the recommendation of the Grand Jury to establish a taxpayer funded ad hoc committee, which by law may not be subject to the Brown Act, is either in the best interest of the public or provides transparent oversight for this high priority.

Sincerely,

  
Judy Arnold, Chair  
Board of Directors