

SMART Decision Making

Citizen Feedback is Critical for Success

SUMMARY

The Sonoma-Marín Area Rail Transit (SMART) District (District) was established by [state legislation](#) in 2002 to form a passenger rail system. [Measure Q](#) of 2008 provided twenty years of funding by taxpayers and established the structure of the organization, with a Board of Directors (BOD), General Management, and a [Citizens Oversight Committee](#) (COC). Through Measure Q, the District received the proceeds of a quarter-cent sales tax that could be used to solicit a war chest of bond funding. That is, projected tax revenue could be used to back a bond issue and immediately obtain a large amount of funding to design, construct, and operate a passenger rail service along the Highway 101 corridor through a significant portion of Marin and Sonoma Counties.

The Measure, as many came to recognize, was passed at the outset of the “Great Recession.” Consequently, sales tax revenues fell short of Measure Q expectations, and the District was unable to obtain anticipated funding that would permit the construction and operation of the entire vision. Therefore, the District’s BOD opted to build out in phases—delaying the start of passenger service and the completion of the full system. When passenger service finally began in 2017, it was negatively impacted by a series of wildfires and floods in the District that added to the stresses of opening the service—all of which affected ridership to some extent. And then came the unimaginable: COVID-19. Ridership plummeted during the pandemic brought on by COVID-19, dropping fare revenue to a fraction of projections. The District could not have foreseen or planned for this series of unfortunate events, but they powered on in determination to deliver the vision of passenger service.

In 2018, while SMART was still developing infrastructure and working to recapture ridership, the State offered to pay SMART to take on the freight services of the financially strapped [North Coast Railroad Authority](#) (NCRA), which regulated a small private freight operation in the region. The State’s offer included payment for the outstanding obligations of the NCRA, provided for a hiking trail along a scenic part of the route, and gave SMART both freight transport assets and extended control of freight operation along lines to the east and north of SMART’s existing route along the Highway 101 corridor.

The BOD voted to accept the State’s offer on freight service in 2020, despite having no prior freight experience or staff to develop the business, and with no input from the COC. SMART began consolidating that business, using outside operational resources at first and working on expanding it into a profitable—or at least a break-even—financial venture. Then the BOD took an unusual and aggressive step in closing a locally unpopular activity of the prior freight owner: a highly profitable storage operation for liquefied petroleum gas (LPG) tank cars in Schellville. This action responded to requests from Sonoma Valley residents who reported concerns about possible environmental contamination. Still, the action left the freight business in a money-losing situation from the outset and was done with no proposed alternative to cover the lost revenue.

Immediately before the consideration of freight, SMART placed Measure I, a sales tax extension, on the March 2020 ballot. This measure sought to extend the quarter-cent sales tax funding into

2059 in order to renegotiate or re-issue bond funding. SMART suffered a defeat at the ballot box. The failed tax measure left SMART with unsettled finances and having to determine service and build-out reductions or delays. This failed tax measure was generally attributed to the public's lack of confidence in the SMART operation which was itself attributed to a lack of transparency and communication. SMART began to hold periodic "[Listening Sessions](#)" to address these issues.

The 2021-2022 Sonoma County Civil Grand Jury (Grand Jury) reviewed how both the SMART BOD and the COC interacted with and listened to the public and believes that the public criticisms are valid. The Grand Jury proposes a set of changes to how the SMART BOD interacts with the public and how the BOD receives input from the public and advisory committees. The changes proposed are not new concepts, and similar ideas have been addressed in other forums. SMART's own BOD and COC have repeatedly acknowledged a disconnect between the voter expectations of oversight and the activities of the COC. The 2013-2014 Sonoma County Civil Grand Jury and the 2013-2014 Marin County Civil Grand Jury both recommended enhanced oversight and public input. These recommendations were [discounted in responses by the BOD](#). In 2020, prior to the vote for an extended sales tax levy, the League of Women Voters also made recommendations for enhanced oversight and public input. These recommendations, however, were never implemented.

The changes this Grand Jury proposes include a more defined and expanded role for the COC and/or the addition of committees to advise the BOD and make recommendations. These changes are intended to improve the BOD's responsiveness, transparency, and overall efficiency. In this report we recommend that the BOD clarify the definition of "citizen oversight" as noted in Measure Q.

Sonoma County has a large investment in the SMART system, and is developing community plans around the SMART stations. Any proposed citizens' oversight committees and advisory changes need to be implemented soon, as the financial clock is ticking. The County will not be well-served if the District does not achieve its charter or becomes insolvent.

In addition to this current community vision, SMART continues to be an entity of interest to the State. Discussions are underway to connect SMART's transit and freight services to routes in the East Bay and Capitol Corridor. Citizens should have a greater understanding of proposed plans with the ability to provide input before final decisions are made. SMART must also enhance its communication in general to improve its ability to successfully reintroduce tax funding prior to the expiration of Measure Q in 2029. The Grand Jury wishes to see SMART succeed far into the future, but greater interaction with citizens through a restructured COC and/or additional advisory committee(s), is recommended to win back the public's trust and facilitate that success in ridership and at the ballot box.

GLOSSARY

- AB 2224 California Assembly Bill, "Sonoma-Marin Area Rail Transit District", which established a district to "own, operate, manage, and maintain a passenger rail system within the territory of the district"
- BOD SMART Train Board of Directors, with the members as defined in the District creation legislation
- COC Citizens Oversight Committee, formed by the BOD per the directives of the Measure Q Expenditure Plan of 2008

- District The Sonoma-Marín Area Rail Transit District
- Measure I Sonoma and Marin County Measure in 2020 to extend the funding of the SMART Railroad District to 2059 (Defeated)
- Measure Q Sonoma and Marin County Measure in 2008 to fund the SMART Railroad District for passenger rail service from 2009 through 2029 (Passed)
- Measure R Sonoma and Marin County Measure in 2006 to fund the SMART Railroad District with Sales Tax initiative (Defeated)
- NCRA North Coast Railroad Authority, a State-created entity established in 1989 to sustain and control the rail system in the North Coast region of California
- NWPCo Northwest Pacific Railroad Company, a privately owned freight rail company operating under the controls of NCRA
- SB 1029 California Senate Bill, “North Coast Railroad Authority Closure and Transition to Trails Act, which authorized SMART to expand into freight service
- SMART Sonoma-Marín Area Rail Transit

BACKGROUND

A Citizen’s Complaint to the 2021–2022 Grand Jury served to initiate investigation into the SMART freight operation, which was established in 2020. During this investigation, the issue in the complaint was resolved, but the Grand Jury observed other matters related to the operation of SMART that are of public interest. Those matters became the focus in this investigation.

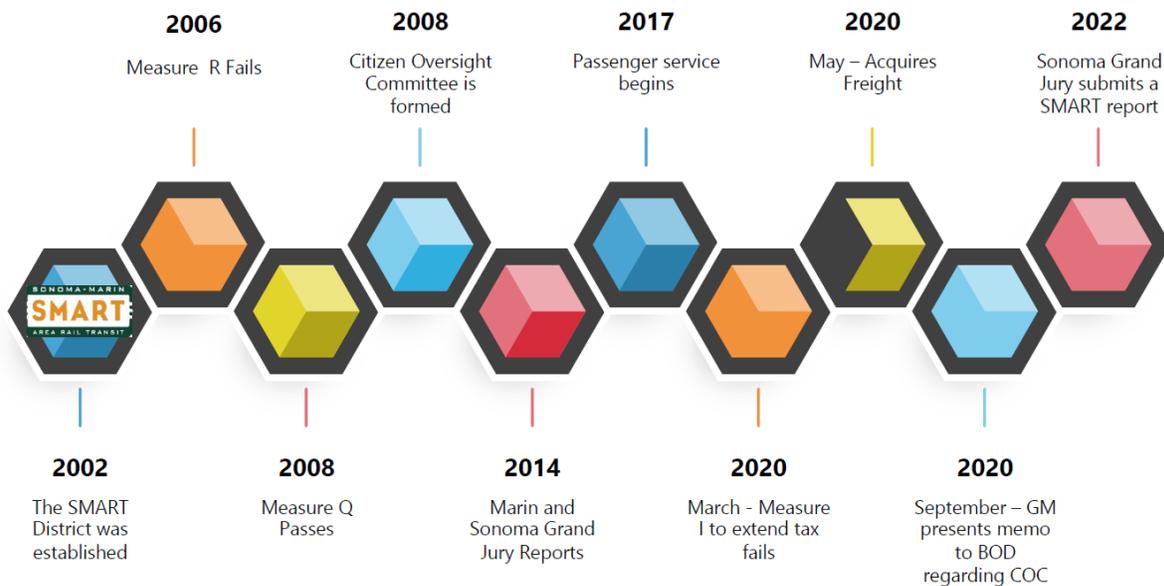


Figure 1: SMART Timeline

2002

The Sonoma-Marín Area Rail Transit District was established by state legislation on September 3, 2002 and became effective on January 1, 2003. Its original charter was the transportation of passengers and their incidental baggage. Its twelve-member BOD was specifically designed to be comprised of officials from Marin and Sonoma Counties, supplemented with two members

from the Golden Gate Bridge, Highway, and Transportation District. In addition to initial funding from Federal, State, and regional sources, the SMART Board sought to obtain additional funding through a sales tax measure.

2006-2008

In November 2006, Measure R, a sales tax increase was proposed to the voters. It was rejected by a close vote (65.3% in favor; 66.67% required for approval). In November, 2008, the SMART Board returned to the voters with Measure Q which was approved, providing a quarter-cent sales tax in both Marin and Sonoma Counties for twenty years.

[Measure Q contained a 2008](#)

[Expenditure Plan](#), which was adopted by the SMART board. The Measure called for an annual financial report to include the status of any project authorized to be funded in the Plan, and the creation of a Strategic Plan to be updated at least every five years. The 2008 Expenditure Plan promised that a COC would be created. The Measure Q “Argument In Favor,” contained in the ballot materials, stated that taxpayers would be protected by independent citizens oversight and annual audits of funds spent.



Figure 2: SMART Station in Cotati

The 2008 Expenditure Plan outlines the role of the COC in exactly one sentence stating, “A Citizens Oversight Committee will be established by the SMART Board to provide input and review on the Strategic Plan and subsequent updates.” The only structure provided for the COC was, “The committee will be composed of citizens from the SMART District, appointed by the Board.” Those two sentences comprised the entire description of the COC within Measure Q.

2014

In 2014, both the Sonoma County and the Marin County Grand Juries produced reports on the SMART District. Both reports contained recommendations regarding citizen input and oversight of operations.

The 2013-2014 Sonoma County Grand Jury recommended appointment of an additional Citizen’s Advisory Committee and [more effective use of standing advisory committees](#) to provide comprehensive oversight on major policy issues. SMART responded that the BOD was competent to handle that, and the cost and burden were too high. SMART acknowledged that they would reconsider their position after implementing rider service, if warranted. The 2013-2014 Marin County Grand Jury recommended that the BOD establish an organizational structure and process for the COC to provide ongoing input concerning the Strategic Plan. SMART responded by stating they had already implemented this by following the process outlined in Measure Q. As stated above, Measure Q contains no such organizational structure or process details. The Marin Grand Jury also recommended appointment of an additional Citizen’s Advisory Committee, and SMART’s response was the same as their response to the Sonoma Grand Jury.

2017

Full passenger service began August 25, 2017, which was a delay from the 2014 date anticipated with the passage of Measure Q.

The Grand Jury found no evidence that the BOD reconsidered its position on the COC.

2020

In March, 2020 ballot Measure I proposed an extension of the current tax, scheduled to expire in 2029. The language of Measure I stated that the COC will continue to provide input and review the Strategic Plan. SMART also stated that the COC "...is composed of citizens from the SMART District, appointed by the Board for a specific term." In point of fact COC members are not appointed for specific terms, and many continue to hold their positions on the COC since its creation in 2008.

In the accompanying ballot material, the "Argument Against Measure I" stated that SMART had disagreed with almost all of the findings and recommendations of two Grand Jury reports (the 2013-2014 Sonoma Grand Jury and the 2013-2014 Marin Grand Jury reports). The "Argument Against Measure I" also stated that these rejected recommendations would have improved financial oversight and communication with the public. There was no rebuttal to this part of the Argument. Measure I failed for lack of a supermajority, with approval rates of only 52.3% in Sonoma County and 55.7% in Marin County.

In August 2020, the BOD held a listening session with the League of Women Voters representatives. Again, the BOD received recommendations to enhance community involvement and expand the role of the COC. Again, the BOD did not act on these independent recommendations.

On September 2, 2020, the SMART General Manager sent a memo to the BOD regarding the COC. The memo stated: "During our public discussion on the outcome of Measure I, your Board received feedback from both the public and members of the Citizens Oversight Committee (COC) about a change in the structure, scope of duties, membership and the frequency of the COC meetings." The memo contained a chart of Bay Area transportation agencies which showed that most had public input committees (see Appendix A).

The memo: 1) suggested defining the scope and issues the COC should be considering; 2) suggested the members' qualifications and diversity should be defined, and members should have limited terms; 3) recommended that the COC should meet, at minimum, at least twice a year; and 4) suggested that the name "Advisory" might be more descriptive of its actual function rather than the name "Oversight".

The BOD decided that any decision regarding the COC should be delayed while they conducted further Listening Sessions from the public. Listening Sessions were conducted until December 16, 2020. To date, no changes have been made to the COC and no additional advisory committees have been created—over a year after the last listening session was held.

METHODOLOGY

The Grand Jury reviewed a broad range of relevant public information related to the SMART District. Additionally, the Grand Jury interviewed members of the BOD, members of the SMART system management, and members of the COC. The Grand Jury requested documentation that was relevant in informing these decision makers and guiding their actions.

The reviews included:

- Legislation that created and amended the SMART District
- Assessments of proposed legislation on the transfer of Freight to SMART, and of business viability of that action
- Funding Measures and associated Plans
- SMART District meetings
- Local journalism reporting of SMART activities
- Documents solicited by the Grand Jury

DISCUSSION

SMART Ballot Measures

The consent of the governed is never more powerfully demonstrated than at the ballot box. This is particularly true when the voters are asked to tax themselves. The SMART District must, by law, rely on “retail transactions and use tax” revenue. Although State or Federal agencies may provide grants, the overwhelming majority of SMART’s resources derive from this sales tax (or the promise of continuing income from it when bonds are sold).

In 2006, Measure R, the proposal for funding SMART through an increase in sales taxes was narrowly defeated by voters. The Measure required 66.67% of voters’ approval, but received 65.3%. The proposed tax was necessary to create a continuous revenue stream, which could also be leveraged for the sale of bonds and to pursue government grants. The bonds were necessary to fund capital improvements necessary for SMART to fulfill its mission of providing a passenger rail system.

Two years later the SMART District again went to the voters to enact a quarter-cent sales tax with Measure Q, which was approved (69.6% affirming). Both measures had included the promise to create a COC to “provide input and review on the Strategic Plan and subsequent updates.” It is clear that the majority of voters wanted a passenger rail service, and the second time a super-majority demonstrated they were willing to pay for it.

SMART Structure and Funding

Subsequent to the election, SMART BOD established its structure within the basic outline of its original legislation and its campaign commitments. The structure included the General Manager, the General Manager’s staff, and the COC.

Due to the 2007-2008 “Great Recession,” sales tax revenues did not meet expectations during SMART’s initial development. Also, while SMART sold bonds to quickly obtain large resources, the bond issue was limited by the funding stream from the tax levy. SMART recognized these impacts, and reported that the build-out of the system would take place in phases, with the scheduling of those phases driven by availability of funds.

In addition to defining the structure, the Board established advisory committees, including the COC promised in the election. The advisory committees were to provide information and guidance to the board, where deeper research and independent input were desired. The committees established at the outset of SMART development phase were the Vehicle Advisory Committee, Station Advisory Committee, and Transit Coordinating Committee, and the COC.

Citizens Oversight Committee

The COC, created by SMART, included members with expertise in finance as well as members with an association in relevant groups, such as Sonoma County Alliance or Friends of SMART. However, there were no stated provisions for qualifications of members, training requirements, term limits, bylaws, policies and procedures, reporting requirements, or frequency of meetings. The scope of duties for the COC was left at the minimal definition provided in Measure Q and the 2008 Expenditure Plan: to provide input and review on the Strategic Plan and subsequent updates. It was unclear to whom the COC should provide this input and review.

Although the Board established the committee, the committee became aligned with the SMART management team (i.e., the General Manager, the CFO, the Chief Engineer, etc.) who interfaced with the Committee. The Chair of the COC was appointed by the General Manager. The COC also met at the request of the SMART staff, who discussed details of the development and operation of the system with COC members. Finally, the views of the COC were presented at Board meetings by the SMART staff, at times with no COC participation.

The COC, itself, has had some discussion about its role in evaluating SMART beyond the five-year Strategic Plans and updates. They have not, however, adopted further definition of their structure or suggested an expanded role. There is nothing in the language of Measure Q that limits the role of the COC, but the COC interpreted the two sentences relating to them in Measure Q to justify limiting their role.

SMART Infrastructure

Over the next nine years, SMART created the infrastructure required to run passenger rail service in Sonoma and Marin counties. This was a monumental task considering the complex regulatory system governing rail service. Federal, State, and even Bay Area regulatory agencies were involved. Despite all that, construction was complete enough to begin the first phase of passenger rail service in August of 2017. Over the years since, service has been expanded and additional stations and service is planned in the future, as funding becomes available.

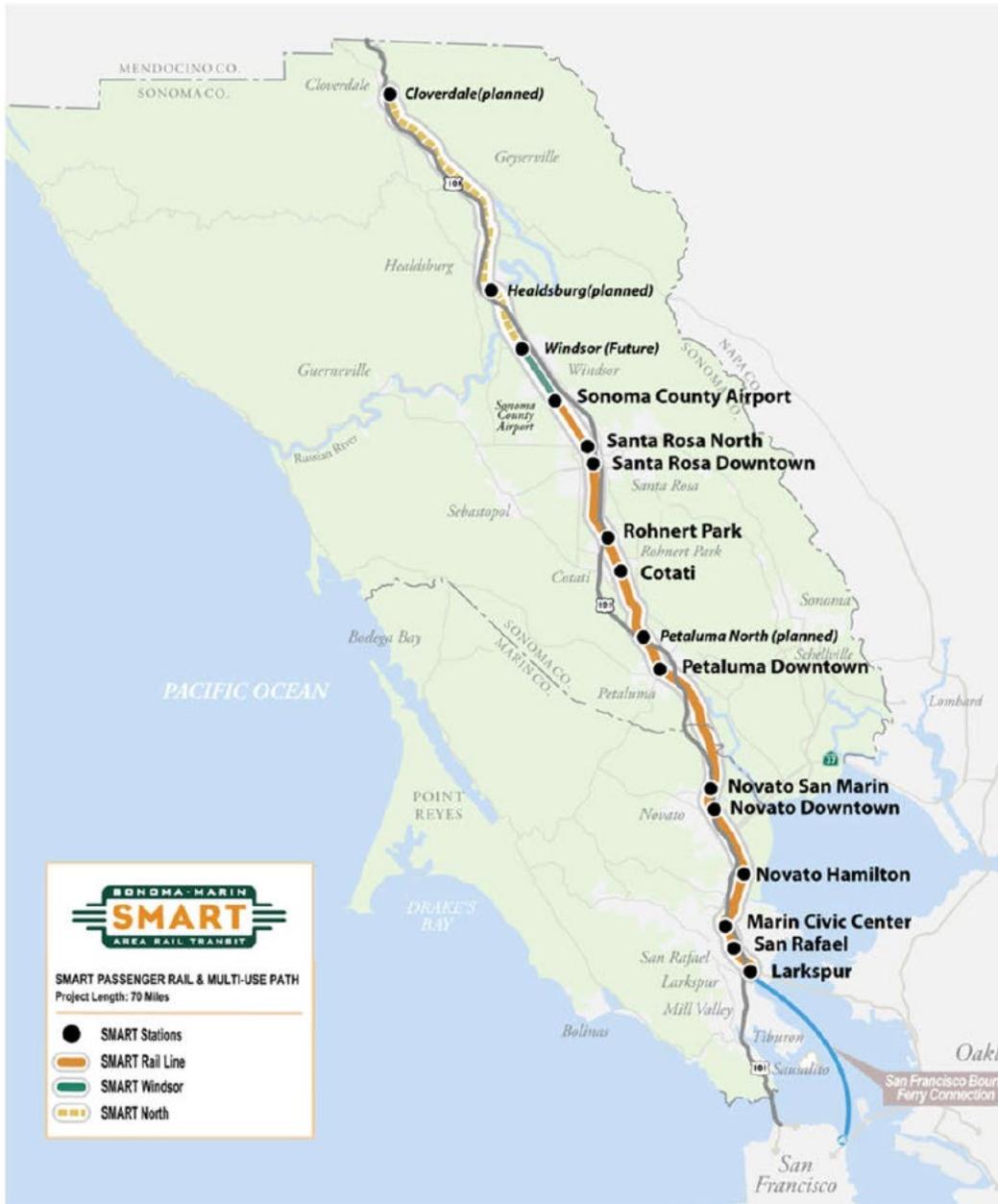


Figure 3: SMART Passenger Route

Disasters Impact the Transit System

Three devastating wildfires and major flooding that occurred between 2017 and 2019 disrupted use of the transit system. First were the Tubbs and Nuns fires in October, 2017 which devastated large parts of Santa Rosa and Sonoma County, followed by the Kincadee Fire in 2019. And there was a Russian River and Laguna de Santa Rosa flood. Each of these events disrupted the use of the transit system for some period of time. Next came what was unquestionably the worst phase for passenger service. The pandemic caused by Covid-19 changed the way we worked, socialized, and traveled. With the prolonged lock-downs, commuter traffic drastically diminished and is just now beginning to recover.

Back to the Voters with Measure I

Just as the pandemic was hitting in March, 2020, SMART tried to extend the sales tax measure beyond the initial 20 years in order to plan for the future and extend service to the Sonoma-Mendocino County line. Measure I received 52.34% approval in Sonoma County and 55.66% approval in Marin County to affirm the extension—dropping significantly from the Measure Q level of 69.6%, and well below the 2/3 supermajority required. So what happened to voter sentiment between 2008 and 2020?

The opponents to Measure I argued against the Measure with criticisms that focused on the reduced funding and delays:

- “SMART built less than 2/3 of the promised rail line and 1/3 of the bike paths. They do not have the funds to finish.”
- “At \$2.4 billion dollars in new taxes, Measure I is too much for something that does so little, with no accountability.”
- “SMART is Costly, Inefficient, and built on Broken Promises.”
- “SMART began rail service over three years behind schedule and massively over budget.”
- “Poor Management and Bad Decisions.”

However, there was more presented to voters in advance of the vote: the news reports that the SMART management team declined to provide ridership reports to journalists in 2019 suggested to some that the SMART team was not meeting public transparency standards. This issue was taken up by the League of Women Voters in not supporting the Measure.

Public Feedback Through Listening Sessions

Finally, after the defeat of Measure I, the SMART management team recognized a need for more citizen input, and scheduled “Listening Sessions” to provide for public feedback. This expanded citizen input to SMART management and the Board, but it did not provide the evaluation and recommendation-developing strength of a well-established, informed citizen oversight committee. The Grand Jury was unable to find evidence of any changes made by the BOD from the input received in the Listening Sessions, and the Listening Sessions were not offered with assurance that they would be consistently held or directed to all matters of public interest or strategic value to SMART and Sonoma County.

The Grand Jury believes that if the criticisms from their opponents and Listening Session speakers are judged by SMART to be valid, the BOD and SMART management, should reconsider how the COC could help to promote public confidence. Regaining voter approval is essential given that SMART has now taken on providing freight service above and beyond its core mission of providing passenger service.



Figure 4: SMART Freight Routes

SMART Takes on Freight Operations Without Oversight

In 2018, Senate Bill 1029 proposed turning over to SMART the freight operation under the jurisdiction of the North Coast Railroad Agency. As noted before, the SMART BOD considered this matter, and opted to do so. This action underscored the concerns of transparency and oversight, as it provoked a number of questions by local media and by citizens.

The BOD lost a valuable opportunity to build public support when it decided to accept the freight operations with little public disclosure or discussion on the pros and cons. The BOD also circumvented the only oversight established within SMART by deciding to transport freight without asking for the opinion or advice of the COC. In fact, the [2019 Strategic Plan](#) included no financial provisions for the freight operations even though the wheels were well in motion for the transfer to SMART.

While the 2019 Strategic Plan mentioned freight, the Grand Jury did not find evidence that the BOD or the COC discussed the impact on the District in any meaningful way. Given the voter rejection of Measure I, will SMART now have to cut service or development? If so, how will they do that? These are questions voters may have and the BOD should consider. These are questions that the BOD should be asking the COC to provide guidance on or solicit public feedback about.

Storing Tank Cars in Schellville

Another issue arose almost immediately after SMART took on freight service, and it also took place without broad public discussion and COC input. The Northwest Pacific Railroad Company (NWPCo) had stored liquefied petroleum gas (LPG) tank cars in Schellville since 2016. It was a



Figure 5: Tank Cars in Schellville

profitable element of their business, but was controversial in the Sonoma Valley. There were reported fears for safety, environmental protection, and for their unsightly appearance. SMART reported their desire to eliminate the tank car storage in Schellville during their November 17, 2021 Board meeting. During that meeting, they reported holding two small, non-Board meetings with local community members on the matter. These meetings, on November 14 and November 15, had two and three SMART representatives, respectively, meeting with small groups of community members. Following those limited meetings, the BOD met on November 17 to discuss their position on the LPG storage issue. They made their decision to

close down the LPG storage without taking formal citizens' advisory input. The decision was made to take the action at the earliest opportunity, prior to developing a replacement revenue source that could keep their freight service profitable.

What is the SMART Thing to Do Moving Forward?

SMART is now entering a period of some financial hazard. If the sales tax is not extended, its taxpayer revenue base will disappear in 2029. The operating reserves may be utilized and depleted over the next five years. The freight service offers some valuable opportunities to SMART with regard to providing a new revenue stream, but it could put a strain on the management staff and the finances of SMART if not carefully managed.

The BOD must be prepared to determine if and when freight service becomes untenable and threatens their core mission of providing passenger service. SMART also faces future pressure to expand freight and passenger service eastward out of Sonoma and Marin counties. This pressure could come from the same State forces that led SMART to accept freight service on its existing rail line. The public deserves a robust discussion on the merits of this potential future expansion, and the Grand Jury hopes the BOD would not make any critical decisions without meaningful public discussion or COC input. SMART's consideration of public opinion on these matters will likely be critical to successfully soliciting extended tax revenue in the near future.

Engaged citizen representation and involvement are important to SMART and to Sonoma County. Formal, independent citizen representation in the Board meetings can provide insight and depth to crucial decisions.

Furthermore, the infrastructure of the COC should be established, including technology systems tied to and supported by the District. The Grand Jury found that some requested documents pertaining to the COC could not be readily obtained because they were stored on computers that were not part of SMART infrastructure (i.e., they were on external computers) and the documents were no longer accessible. This suggests that committee members do not necessarily

have uniform, easy access to important information, that collaboration could be inhibited, and that information could be lost.

Lastly, the Grand Jury found that freight and passenger service funds and expenditures are tracked in separate accounts on the books and records of the District, but were not segregated in separate bank accounts. The Grand Jury is concerned that this could potentially lead to short term “float” of passenger service funds being used to pay for freight expenses, which would be a breach of Measure Q allowed uses. Measure Q requires that sales tax proceeds be used for “passenger” related services. Although the Grand Jury did not find evidence that this was occurring, best practices would dictate that the monies should be segregated to eliminate the potential for misuse.

CONCLUSION

The SMART District has suffered a number of disruptions in its short life that have put it at risk of losing public confidence and trust, some within and some outside its control. Without decisive and visible steps to bolster public confidence, it could conceivably lose funding such that it never fulfills the vision originally provided to the public. One powerful step toward rebuilding public confidence and trust—with the possible added benefit of gaining a greater brain trust in decision-making—is to give the public a greater insight into the SMART management and a greater voice to decision makers.

The SMART tax funding was originally proposed with the Sample Ballot statement that “Independent Citizens’ Oversight and annual audits are MANDATORY to ensure funds are spent properly” (emphasis in the original). There are two definitions of oversight: 1) the action of overseeing something; 2) an unintentional failure to notice or do something. In order to fully achieve the independent citizens’ oversight—in the first sense—the SMART BOD must redefine and re-energize the existing COC, and/or must establish additional advisory committees. The BOD, COC, and prominent citizens groups have addressed this, but it has not been implemented; it is past time to do so.

FINDINGS

The Sonoma County Civil Grand Jury determined that:

- F1. The Board of Directors lacks adequate input from the Citizens Oversight Committee.
- F2. The Citizens Oversight Committee reports to SMART management rather than directly to the Board of Directors.
- F3. The public has expressed concern about the Board of Directors strategic decisions made without the input of a citizens’ oversight committee.
- F4. A well-informed and responsive citizens’ advisory group has the potential to positively influence the final terms of crucial actions prior to the vote of the Board of Directors.
- F5. The SMART Strategic Plan of 2019 did not adequately address the addition of freight operations, and was not updated for consideration by an advisory committee and the public.
- F6. The Citizens Oversight Committee has not fulfilled its oversight role as represented in Measure Q election materials and it has failed to serve as a fully independent advisor on important SMART issues.

- F7. The Board of Directors and the Citizens Oversight Committee have maintained the responsibility of the Citizens Oversight Committee at what was defined loosely in the 2008 Expenditure Plan of Measure Q—addressing only the minimal responsibility of reviewing the five-year strategic plan—despite recommendations from former Sonoma and Marin County Grand Juries and members of the League of Women Voters to expand the advisory role.
- F8. The requirements of Measure Q and its associated 2008 Expenditure Plan are not sufficiently detailed to provide for a well-trained, well-informed, well-regulated, and suitably responsive Citizens Oversight Committee.
- F9. Measure Q does not prohibit or limit the development of committee roles or additional committees to provide the Board of Directors with informed and independent public opinion.
- F10. The Board of Directors response to the Grand Jury reports of 2014 indicated that comment periods in Board of Directors meetings are sufficient to obtain public input, but failed to recognize the importance of well-informed advisory committees.
- F11. The Board of Directors responded to prior Grand Jury reports that the Citizens Oversight Committee fulfilled the Measure Q requirements with regard to the five-year Strategic Plan, but failed to recognize their responsibility to provide suitable public feedback and oversight, as promised in election materials.
- F12. The lack of required formal reports from the Citizens Oversight Committee to the Board of Directors has created an environment where input from the Citizens Oversight Committee is not required or generally expected prior to decision making.
- F13. Bylaws for the Citizens Oversight Committee do not exist and if developed could provide structure and a set of rules to guide the Committee’s operations and activities.
- F14. The undefined term of service in the Citizens Oversight Committee has the potential to allow Committee members to remain for long periods of time or permanently, which could lead to stagnation of ideas, and to leadership and committee fatigue.
- F15. The ultimate financial and management impacts of taking on the freight business are very difficult to predict, and accepting the freight business creates the potential risk of distraction from SMART’s primary purpose of implementing and operating a passenger rail system.
- F16. The lack of district-wide public discussion of the LPG storage facility in Schellville contributed to the hasty closure of the facility rather than a phased or delayed closure that would have given the SMART management an opportunity to mitigate the financial loss.
- F17. Implementing accounting best practices would separate the Measure Q monies from freight or other future ventures into separate bank accounts in addition to their separate bookkeeping accounts.
- F18. Committee members who were interviewed by the Grand Jury could not provide requested documents because there was no central information repository.

RECOMMENDATIONS

The Sonoma County Civil Grand Jury recommends that:

- R1. By January 31, 2023, the Board of Directors expand the role of the Citizens Oversight Committee beyond the minimal requirements of the Measure Q Expenditure Plan to achieve expectations of citizen oversight and accountability. (F1, F2, F3, F5, F6, F7, F8, F9, F10, F11, F12, F13)
- R2. By January 31, 2023, the Board of Directors consider additional advisory committees to generate informed, independent advice on important matters under consideration, including but not limited to increasing ridership, building public trust, new lines of business, sale of assets, finance, and other significant decisions. (F1, F2, F3, F4, F7, F8, F9, F10)
- R3. By January 31, 2023, the Board of Directors reassess the SMART organizational structure such that the Citizens Oversight Committee and any future advisory committees report directly to the Board. (F1, F2, F3, F4, F9, F11)
- R4. By January 31, 2023, the Board of Directors require written Citizens Oversight Committee analysis and recommendations prior to all strategic decisions whether or not incorporated in the five-year Strategic Plan. (F1, F2, F3, F5, F6, F7, F11, F12)
- R5. The Board of Directors define and implement advisory committee bylaws for the Citizens Oversight Committee, by January 31, 2023. (F7, F12, F13, F14)
- R6. The Board of Directors define the length of terms for Citizens Oversight Committee members, by January 31, 2023. (F14)
- R7. By January 31, 2023, the Board of Directors develop suitable training programs for new and existing members of the Citizens Oversight Committee regarding their newly defined role and proper public committee protocols, such as the Brown Act rules. (F1, F4, F6, F7, F8)
- R8. By December 31, 2022, the Board of Directors direct the Citizens Oversight Committee to prepare written recommendation reports to be presented at or entered into the record of the Board of Directors meetings. (F1, F2, F3, F4, F6, F10, F11, F12)
- R9. The Board of Directors direct the General Manager to provide a timeline to evaluate the financial viability of freight services by March 31, 2023. (F4, F15, F16)
- R10. The Board of Directors and the General Manager establish separate bank accounts for the monies associated with passenger transit (Measure Q, et al.) and with freight or other future ventures, by December 31, 2022. (F17)
- R11. The Board of Directors direct advisory committees to develop and implement a policy to keep documents and information related to their advisory role centrally located and remotely accessible, by January 31, 2023. (F18)

REQUIRED RESPONSES

Pursuant to Penal Code §§ 933 and 933.05, the Grand Jury requires responses as follows:

- SMART Board of Directors (R1, R2, R3, R4, R5, R6, R7, R8, R9, R10, R11)

The governing body indicated above should be aware that their comments and responses must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

INVITED RESPONSES

The Grand Jury invites the following to respond:

- SMART General Manager (R9, R10)
- SMART Citizens Oversight Committee (R1, R3, R4, R5, R6, R7, R8)

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APPENDIX A

SMART Board of Directors packet of September 2020

This chart was part of the SMART Board of Directors' packets on September 2, 2020, prepared by the previous General Manager. The Grand Jury reviewed most of the listed Transit Agency websites and found the majority of the Public Advisory Committees report directly to their respective Board of Directors.

Many advisory committees meet monthly or quarterly and have clear expectations and guidelines for their advisory committee membership, for example:

- Promote an open and inclusive public involvement process
- A majority of the membership elects the chairperson
- Membership Terms and methods of appointment
- Committee by-laws
- Review of critical issues
- Application process available on-line

PUBLIC ADVISORY COMMITTEES IN TRANSPORTATION:

Most, but not all, operating transit agencies have public input committees for various reasons. Large agencies have many committees for many reasons (and significant staff resources devoted to that effort), but most have only one or two. Most transit operations include some role for public input on accessibility, passenger concerns and general input. Below is a high level sample of Bay Area transportation agencies and the number of advisory committees listed with the scope covered by the committees. This is based on the best information available on agencies websites:

Agency	Number of Committees	Scope of Committees
TRANSIT AGENCIES		
ACE	1	Passenger issues
BART	9	Accessibility, bicycles, business opportunities, earthquake and capital bonds oversight, language and civil rights issues, transit security
Caltrain	4	Rail Customer needs and policies, project designs, bicycles, local policy input
Golden Gate Transit	3	General Advisory on Bus and Ferry; Accessibility
Marin Transit	2	Paratransit and Marin Access
Napa Valley Transportation Authority (NVTA)*	4	General advisory, bicycle and pedestrian issues, paratransit, and tax oversight (*NVTA is also a Planning Agency)
Petaluma Transit	1	General Advisory
Santa Rosa City Bus	1	Paratransit Issues
Soltrans	1	Fares, Short Range transit plan, general work plans
Sonoma County Transit	0	n/a
Valley Transportation Authority (VTA)	6	Tax measure oversight, bike and pedestrian issues, seniors/disabled, local jurisdiction input.
TRANSPORTATION PLANNING AGENCIES		
Sonoma County Transportation Authority (SCTA)	3	Policy and project decisions, input and funding compliance, paratransit, bike/ped
Transportation Authority of Marin (TAM)	1	Review and report on mandated expenditures