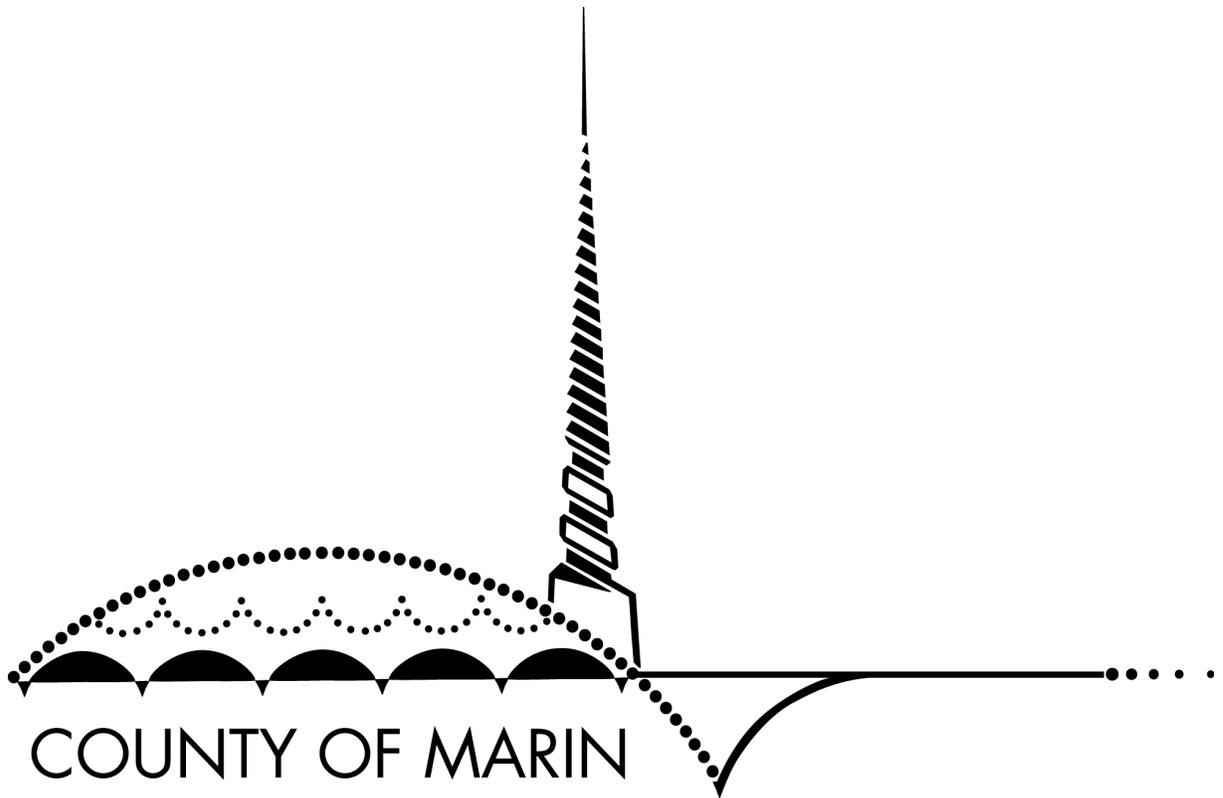
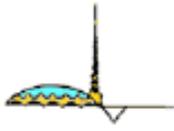

2013/2014 MARIN COUNTY CIVIL GRAND JURY

SMART – Down the Track

Report Date – April 25, 2014
Public Release Date – April 30, 2014





SMART - DOWN THE TRACK

SUMMARY

In late 2016, the Sonoma-Marín Area Rail Transit (SMART) is scheduled to begin passenger service between the Sonoma County Airport in North Santa Rosa and downtown San Rafael. The new rail system will provide Marin and Sonoma County residents with a convenient way to travel between the two counties. SMART is also working on a financing plan and logistics that would expand the system south to the area of the Larkspur ferry terminal, allowing it to connect to the San Francisco Bay Area regional transportation system. Ultimately, SMART also plans to expand its rail service north to Cloverdale.

In 2010, the Marin County Civil Grand Jury issued a report on the status of SMART and made a number of recommendations. As SMART moves closer to passenger service, the current Grand Jury felt it appropriate to look at how SMART is performing.

The management of SMART appears to be doing a good job in constructing the rail system on a reasonable timetable. The SMART team has exhibited flexibility and creativity in meeting the demands of the project. If SMART can obtain the necessary environmental and building permits in a timely manner and successfully negotiate its labor contracts, train service between downtown San Rafael and Santa Rosa could begin as scheduled in late 2016.

SMART has been successful in securing \$123 million in government grants over and above the sales tax revenues projected to be required to complete the fourteen station system that was approved by the voters. However, another \$230 million needs to be secured in order to complete the original plan (Cloverdale to Larkspur).

The SMART Board of Directors should play a more active role in representing the interests of the citizens of Sonoma and Marin Counties in governing and providing oversight of the SMART project. We found that some Board members do not have an adequate understanding of the financial and system operating issues. Understanding these issues is crucial to the fulfillment of their responsibilities to establish policy and provide oversight to SMART. In this report, we identify reasons for this lapse and offer suggestions as to how the situation can be improved.

Measure Q, the voter initiative that established the sales tax to fund the SMART train, includes a requirement that SMART develop a strategic plan to be updated at least every five years. The first strategic plan was published in 2009, and an update is due this year. The Grand Jury believes that SMART should update its strategic plan every two years to accommodate changing economic conditions and construction and operational issues.

Measure Q also mandates that the Board of Directors establish a Citizen's Oversight Committee (COC) to provide input and review of the strategic plan and its updates. The Grand Jury found that the COC is not as effective as it should be in providing input and monitoring the status of the strategic plan. The SMART Board has an opportunity to establish an organizational structure to enable the COC to be more effective. The SMART Board should consider the creation of Citizen Advisory Groups (CAG) to provide feedback and recommendations to the SMART Board and general manager on topics related to how the train system functions.



BACKGROUND

In 2002, the California State Legislature passed Assembly Bill (AB) 2224, which created the Sonoma-Marín Area Rail Transit District (SMART) to operate a passenger and freight rail service between Sonoma and Marin counties. The Bill established a comprehensive set of powers and duties regarding the formation of a passenger rail service and associated transit facilities from Cloverdale in Sonoma County to Larkspur in Marin County. The bill also permitted SMART to apply for state, regional and federal funds for costs associated with passenger rail service.

In addition, AB2224 established a twelve-member board of directors to govern the district, five each from Marin and Sonoma Counties and two from the Golden Gate Bridge, Highway and Transportation Board.¹ The twelve members of the SMART Board serve staggered four year terms.

In November 2008, Measure Q was placed on the ballot in Marin and Sonoma Counties, and passed with a combined 70% voter approval. The purpose of the Measure was to raise \$890 million via a sales tax levy over a 20-year period. The Measure imposed a quarter-cent sales tax beginning in April 2009 and ending in March 2029. Proceeds from the sales tax would provide SMART with funding for the design, construction, implementation, operation, maintenance and management of the train system along with a bicycle/pedestrian pathway from Cloverdale to Larkspur.

¹ California State Assembly Bill 2224, Chapter 3, Article 1

Due to the economic recession beginning in 2008, and the resulting decrease in sales tax revenues, SMART decided to scale back the initial project from fourteen to nine stations. Funding for a tenth station at the Sonoma County Airport was recently obtained and that station was added to Phase I, which will operate from North Santa Rosa to downtown San Rafael. Future phases of the SMART rail system will include extensions to Larkspur in Marin County and to Cloverdale in Sonoma County and will be constructed as funds become available.

In June 2010, the Marin County Civil Grand jury issued a report titled "SMART: Steep Grade Ahead." The report reviewed the status of SMART and made eight recommendations to the SMART Board of Directors. See Appendix A for the list of Grand Jury report findings and recommendations and the formal response from the SMART Board.

The SMART Board chose to accept all or part of six of the eight recommendations. The Grand Jury found that the SMART Board followed through on their commitments on five of those recommendations. These included developing additional budget reductions, modifying employer contributions to employee pension plans, reevaluating train ridership projections, adopting a vigorous marketing plan, and instituting program audits. The Board also agreed to expand the role of the Citizen's Oversight Committee (COC) by requesting the Committee to submit to the Board an annual written report regarding the strategic plan. However, the current Grand Jury could not find any evidence that the Board had requested such a report or that the COC has been expanded.

The SMART Board chose not to accept two of the recommendations. These recommendations were to increase the size of the Citizen's Oversight Committee and to defer plans for the project bicycle pathway until funding for that part of the project could be secured.



SMART Marketing Sign

APPROACH

To conduct this investigation, the current Grand Jury read the 2010 Marin County Civil Grand Jury report on SMART, reviewed the history of SMART and its governing documents, studied financial and other reports issued by SMART, reviewed Board and Citizen's Oversight Committee meeting agendas and minutes, and attended Board and COC meetings. We interviewed all members of the SMART Board of Directors, some members of the Citizen's Oversight Committee, SMART management staff, and interested citizens. A complete list of the documents reviewed and the people interviewed is provided below.

The Grand Jury reviewed formal documents associated with SMART including:

- June 2010 Marin County Civil Grand Jury Report "SMART: Steep Grade Ahead" and the SMART Board of Directors response to the Report.
- California State Assembly Bill 2224
- 2008 Measure Q Text and Expenditure Plan
- Administrative Code of SMART
- SMART 2009 Measure Q Strategic Plan
- SMART Annual Financial Report For The Fiscal Year Ended June 30, 2010
- SMART Annual Financial Report For The Fiscal Year Ended June 30, 2011
- SMART Annual Financial Report For The Fiscal Year Ended June 30, 2012
- SMART Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2013.
- SMART Single Federal Audit Report for Year Ended June 30, 2012
- SMART Single Federal Audit Report for Year Ended June 30, 2013
- SMART Fiscal Year 2012-13 Budget
- Financial documents supplied by SMART staff
- SMART Board meeting minutes (2011-2014)
- SMART Citizens Oversight Committee meeting minutes (2011-2014)

We closely examined the content of the SMART web site and researched local newspaper articles regarding SMART.

Grand Jury members attended meetings of the SMART Board and the Citizen's Oversight Committee, and attended public meetings in which citizens were briefed by SMART staff regarding future SMART operations.

The Grand Jury interviewed:

- All current SMART Board Members (as of the end of 2013)

- SMART management staff members
- Selected consultant contractors hired by SMART
- SMART Citizen's Oversight Committee members
- Bay Area Metropolitan Transportation Commission (MTC) staff member
- Interested citizens



Petaluma Station



MAP OF SMART RAILROAD

DISCUSSION

Planning and Funding Strategy

The plan envisioned in Measure Q and approved by the voters called for construction and operation of fourteen stations located in two counties. (See map on page 6). The Sonoma County stations include Cloverdale, Healdsburg, Windsor, Santa Rosa (Guerneville Road), Santa Rosa (Railroad Square), Rohnert Park, Cotati, North Petaluma and Downtown Petaluma. The Marin County stations included Novato (San Marin/Atherton), Novato (Hamilton), San Rafael (Civic Center), San Rafael (downtown) and Larkspur.

Due to the 2008 recession and the resulting decrease in projected sales tax, the SMART Board chose to build the project in phases. Phase I would be built immediately funded largely with available sales tax funds. Construction and operation of five of the fourteen stations (Cloverdale, Healdsburg, Windsor, Petaluma-North, and Larkspur) were deferred until funding could be procured.

In 2012 and 2013, SMART, in collaboration with the Sonoma County Transit Agency (SCTA), the Metropolitan Transportation Commission (MTC), and the Sonoma Board of Supervisors, was able to secure funding to add an additional station near the Sonoma County Airport. That station will be the tenth station constructed in Phase I of the project. SMART selected the site of the new station based on the high concentration of housing and work locations nearby. SMART will locate its train maintenance facility in that area. Locating the station in this area is also consistent with regional transportation goals to provide public transit connections to Bay Area commercial airports.

The projected cost of building the entire SMART system from Cloverdale to Larkspur is now \$658 million, \$117 million greater than the \$541 million originally anticipated in Measure Q.



Track work being done in front of the Petaluma Station

Table 1 illustrates the current projected cost to construct the entire SMART System, sources of revenue generated or secured to date, and the estimated additional capital funding required for completion.

Table 1

Current Projected Cost to Construct Entire SMART System	\$658 M
(Cloverdale to Larkspur)	
Current Identified Funding	
Bonds	\$180 M
Sales Tax Revenues	\$125 M
Government Grants	\$123 M
 Total Phase I Funding	 \$428 M
Future Funding Needed	\$230 M
<i>Source: February 2014 SMART GM Report on Progress and Status of SMART</i>	

SMART management is confident that in time they will be able to raise the required funds, largely from government grants, holding to the belief that it is easier to obtain grant monies after a train system is up and operating.

In March 2014, the SMART Board approved a \$20 million TIGER (Transportation Investment Generating Economic Recovery) grant request to the U.S. Department of Transportation to help fund the Downtown San Rafael to Larkspur extension. If SMART is successful in obtaining the grant, it will use that \$20 million, combined with another \$20 million expected to come from the Metropolitan Transportation Commission, to build the Larkspur extension.

Construction Status

Phase I construction of SMART is underway. Mainline track is complete from Guerneville Road in north Santa Rosa to downtown Petaluma. This includes seventeen miles of track, upgraded road crossings, repair and replacement of bridges, station footings and walls at four station sites, and signal work at seven crossings. A "pilot" two-car train is currently being built and will be delivered in the near future to undergo testing prior to the manufacture of additional vehicles.

SMART's main construction focus now is on the Petaluma to downtown San Rafael segment. Communications, signaling and train control system contracts have been awarded and design of those systems is underway.



Machine used to attach rail to concrete ties.



New subgrade in Santa Rosa



Rail Work on Cinnabar Bridge in Petaluma

SMART has faced many construction challenges to date. The SMART project team has exhibited flexibility and creativity in dealing with these issues. One example involved the need to rehabilitate an aging bridge built over the Petaluma River to accommodate the train. SMART estimated it would have to spend \$20 million now to rehabilitate the bridge and an estimated \$30 million in 20 to 25 years to replace it. Instead, SMART management decided to spend \$20 million now to purchase a used drawbridge in Texas and reinstall it here. The used bridge is expected to have a lifespan of 75 to 80 years.



Galveston, Texas Drawbridge Purchased by SMART

Another significant challenge has been the acquisition of the required project permits. SMART has worked with more than fifteen governmental regulating and permitting agencies including the US Army Corps of Engineers, the National Oceanic and Atmospheric Administration, the United States Coast Guard, the Federal Railroad Administration, the California Fish and Wildlife Department, the California State Lands and Public Utility Commissions, and numerous other state, regional, county and city agencies. Delays in securing permits from some of these agencies are common. Many are understaffed or experiencing turnover with the personnel who review permit applications. Sometimes agencies have competing or conflicting interests.

Despite the hurdles, SMART has been successful in obtaining many of these permits. For example, SMART was able to mitigate its use of 2.2 acres of wetlands needed for track way with the purchase and preservation of 56 acres of the wetlands area known as Mira Monte Marina. As of April 1, 2014, SMART has obtained permits for work from Santa Rosa to Petaluma and from the Petaluma River to the Marin Civic Center.



Pictures of Mira Monte Marina wetlands purchased by SMART as part of its environmental mitigation plan.

SMART still needs to secure permits for (1) work from the Marin Civic Center to downtown San Rafael, (2) work from the Sonoma County Airport to Santa Rosa, (3) work on the Petaluma River Haystack Bridge, and (4) work for many of the stations and the bicycle/pedestrian path. SMART's ability to complete construction work and begin operations in 2016 is largely dependent on resolving these permit issues.

Labor and Operating Challenges

Another significant challenge for SMART is the negotiation of labor contracts that will be affordable under the project budget. The State legislation that created SMART (AB 2224) mandates that SMART establish three collective bargaining units: transportation operators, maintenance workers and transportation dispatch and equipment servicing workers.²

The legislation also stipulates that employees who transfer to the district and into a collective bargaining unit shall be credited with any accrued seniority earned at the district from which they have transferred, and shall not suffer a loss in their rate of wages, pension benefits, pension accrual rights, health benefits, retiree health benefits, vacation accrual, or other seniority-based benefits, such as job bidding and transfer rights as a result of their transit to the district.

The SMART Board and management will need to be vigilant when negotiating and approving these labor agreements to ensure that they are consistent with the long-term financial viability of the project.

As we get closer to the start of passenger service, the Board should request management to prepare for their review and approval a formal start-up implementation plan that would outline the operating tasks and schedule necessary to begin operation of the train service. Measure Q requires SMART to prepare such a plan one year in advance of scheduled

² California State Assembly Bill 2224, Chapter 5, Article 2

service.³ The Grand Jury believes that it would be prudent for SMART to begin to develop a plan in advance of the one year requirement. The General Manager began to address operations with the Board in his February 19, 2014 report to the Board.⁴

The Role of the Board of Directors

The role of the SMART Board of Directors is defined in the State legislation that created the District⁵ and in SMART's Administrative Code.⁶

The Board is primarily responsible for owning, constructing, financing, operating and managing the passenger rail service, approving rates and charges, adopting rules for governance of the rail system, and arranging for audits and administrating labor relations.

The Board appoints a general manager for the Agency and may appoint a secretary, a chief engineer, a legal counsel, a controller, an auditor, a treasurer and other officers, assistants and deputies as the Board may deem necessary. The SMART Board has regular scheduled meetings once a month. Additional meetings are held as necessary.

The Grand Jury interviewed each board member (as of December 31, 2013) individually. We also attended a number of SMART Board meetings and reviewed past Board meeting minutes.

We found that the SMART Board members are capable people who are dedicated to serving the public. However, we have observed that many Board members are not as knowledgeable and informed on issues affecting SMART, as they should be, based on their responses during our interviews. For example, some members did not have a clear understanding of their roles as board members. Others were unclear regarding significant issues affecting SMART. Some Board members were unaware of the agency-announced schedule for the start of passenger service. Some could not remember if they had reviewed and/or approved financial information pertaining to actions that affect the construction and operation of SMART. We observed that subsequent to our interviews, some board members appeared to become more proactive in expressing their opinions and concerns at board meetings.

Most Board members were not aware of the role of the SMART Citizen's Oversight Committee (COC). Many could not recall any significant communication with the COC. Nonetheless, most Board members felt the COC was doing a good job.

³ SMART Measure Q 2008 Expenditure Plan, Section II B; Rail Corridor Ownership and Management

⁴ General Manager's February 19, 2014 memorandum to SMART Board: Subject- Progress and status update on SMART Phase 1 and pathway capital project elements, project revenues and expenditures, preparation activities for passenger rail service, and upcoming milestones.

⁵ California State Assembly Bill 2224, Chapter 3, Article 2

⁶ SMART Administrative Code, Article II, Section 2.01

There may be a number of reasons for the Board's lack of awareness:

1. Lack of Training

When an individual is selected to serve on the SMART Board, we have concluded that the formal training and information they are provided is not adequate. One Board member told us that new members are given a packet providing information about the agency and then given the opportunity to meet with the general manager and other key staff. However, the degree to which new Board members avail themselves of this is largely dependent upon the initiative of the new Board member.

The Grand Jury believes the Board needs to establish a formal, mandatory training process for new members. This could include a review of the history of SMART, the enabling legislation, the agency administrative code, formal reporting requirements (including a schedule for mandated reports), the purpose and function of the Citizen's Oversight Committee, the most current SMART strategic plan, and the Board meeting minutes for the last two years. The training could include an individual briefing with the general manager, the current board chairperson, the former board chairperson, and the chairperson of the Citizens Oversight Committee. A staff briefing with the chief financial officer and operations manager is also recommended.

We also recommend that the Board implement a mentoring program for new Board members. One Board member would be assigned to assist the new member in becoming familiar with Board practices and procedures, as well as other key issues.



SMART Board Meeting

2. Time Constraints

After interviewing all current SMART Board members, the Grand Jury has concluded that, with many Board members serving on multiple government boards and committees, they may be limited in their ability to devote the time required to focus on them all. For example, one SMART Board member serves on 22 boards and committees; another serves on 11. Whenever possible, Board members should be selective and prioritize the government boards and commissions they choose to serve. Furthermore, from what we were told, we believe that this would enable them to contribute more fully and to focus their energies, talents, and attention on the issues and problems of the specific entities in their care.

The Grand Jury acknowledges that it is not always possible to reduce the number of boards and commissions to which members are assigned. Most Board members have a lot of general knowledge about SMART issues but less knowledge about specific areas such as finance, operations, real estate and communications. The Grand Jury suggests that SMART Board members could be more productive if they focused on one or two areas of expertise. For example, some board members could focus on financial and real estate issues, while others focus on operations and communications issues. This could be achieved by assigning Board members to the specific standing committees (Executive, Real Estate and Operations) established by SMART's Administrative Code.⁷ The Grand Jury found that the Board has discontinued the use of these committees, and it seems appropriate to consider reestablishing them. In addition, the Board might create special committees related to critical issues such as finance, communications and customer relations.

3. Overreliance on Management

As a result of the interviews with Board members, we have concluded that because of the time constraints mentioned above, many Board members appear to rely too heavily on recommendations and assurances presented to them by management staff. While it is important that there be confidence and a good working relationship between Board and staff, Board members should be prepared to study the information provided to them, consult with more knowledgeable Board members on that subject, and question anything they do not understand before making decisions. Board members should not assume that staff has all the correct answers. For example, when we asked Board members whether SMART had a formal operations implementation plan, many Board members said they did not know but assumed that staff was working on such an operating plan.

Board members are representing the interests of the residents of Marin and Sonoma Counties and the public needs to be confident that the Board has a thorough understanding of the issues and is making highly informed decisions on their behalf. While the Board does not need to be involved in every detail of the SMART operation, it

⁷ SMART Administrative Code, Section 2.06

must have a sound knowledge base in order to execute its policy setting and oversight responsibilities prudently.

4. Accountability

There is very little accountability regarding Board members' performance. For example, if an elected official, county supervisor or city council member is not performing well, the consequence is they are not re-elected. However, SMART Board members are not elected directly by citizens and therefore are one-step removed from citizen review. Accordingly, they are not subject to the same consequences. The Grand Jury believes that by adopting the recommendations above, the SMART Board will be positioned to perform more effectively while providing the quality of leadership required to meet future challenges.

Contingency Planning

As policy makers, Board members need to look into the future. They must anticipate potential issues and work with management to develop strategies that minimize the impact of these problems. Based again on interview responses, the Grand Jury has determined that the SMART Board does not appear to be proactive. For example, when we asked Board members if they had a succession plan in place for the general manager position, most said there was no plan, but they would deal with it if and when the position became vacant.

It would be prudent for the Board (as part of its contingency planning) to work with management staff to develop succession plans for key management positions.

We asked Board members if there are plans for coping with another recession that could result in inadequate sales tax revenues to cover future operating costs. Most Board members indicated they were not aware of such a plan. They said that should a recession happen, SMART would most likely go to the State, Marin and Sonoma counties, or back to the voters to seek financial relief. Only a few Board members suggested that it would be prudent to establish a reserve account to be funded during positive economic periods. After the Grand Jury raised this issue with Board members and management staff, SMART management announced they will pursue establishing a reserve fund.

The Board needs to anticipate future problems and/or challenges and work with management to establish plans to address them.

Strategic Plan

Strategic planning is an organization's process of defining its direction and making the appropriate resource allocation decisions that align with that direction. Measure Q established the requirement that SMART develop an initial five-year strategic plan and

update it at least every five years.⁸ The SMART Strategic Plan, defined in the 2009 Plan, includes four elements:

- Explain the roles and responsibilities for development and maintenance of the Measure Q program.
- Detail the funding and expenditure plans for the Measure Q program, including construction, operating and maintenance costs, revenue projections and financing approaches.
- Describe the policies and procedures for the Measure Q program.
- Identify accomplishments and critical issues.

The first strategic plan was prepared and approved by the Board in 2009. The plan provided a good summary status of SMART in 2009 and the direction that the District desired to achieve.

The 2009 Strategic Plan Conclusion contained a commitment that SMART "will over the next two years prepare an update to this Strategic Plan to reflect changes in economic conditions and the implementation of the status of the project." The Grand Jury supports this approach. However, we could find no evidence that this was done. An updated version of the strategic plan is due this year.

As the train system is being built and passenger service is implemented, it is important that SMART update the strategic plan every two years to accommodate changing conditions. Additionally, SMART should update their five-year revenue and expense projections on an annual basis.

Citizen Input

Citizen's Oversight Committee (COC)

The name of this Committee is misleading and confusing. Measure Q mandates that a Citizens' Oversight Committee (COC) be established by the Board of Directors to provide input and review of SMART's strategic plan and subsequent plan updates.⁹ However, the SMART COC is not authorized to function as a traditional citizen's oversight committee. Such a committee would operate with a broad range of responsibilities and obligations and would report its findings to the public.

The Grand Jury could not find any information that establishes the size of the committee, the term of its members, the desired criteria or expertise required to serve on the committee, the selection process, the frequency of meetings or the methodology for communicating its recommendations to the SMART Board and management. These are important organizational issues.

⁸ SMART Measure Q 2008 Expenditure Plan, Section VI, Strategic Plan

⁹ SMART Measure Q 2008 Expenditure Plan, Section V, Implementing Guidelines

Having conducted interviews with committee members, the Grand Jury has concluded that the existing Citizen's Oversight Committee is not as effective as it could be, perhaps because the committee is poorly structured. We found that many members of the Board and the COC do not have a clear understanding of what the COC's responsibilities are or how information should be communicated between the COC and the Board. At one COC meeting in 2011, a COC member remarked, "I think if you went around the table and asked each member what they thought the role of the COC was, you would get very different answers."

The current COC could be more effective in providing input into the Agency's strategic plan if the committee structure was better defined. We recommend that the Board work with the COC to establish a more formal organizational structure and process for COC input to the Board. We recommend that the SMART Board clearly establish and define:

1. Purpose of the COC
2. Number of members
3. Term of service
4. Expertise required
5. Selection process
6. Meeting frequency
7. Methodology for communicating with Board and management

The Grand Jury also recommends that the SMART Board follow through on its response to the 2010 Marin County Civil Grand Jury report in which they committed to request the COC to prepare an annual report on the status of the current strategic plan. Additionally, we recommend that minutes of all COC meetings be posted on SMART's website.

Citizen Advisory Groups (CAG)

There is a role for citizen participation in SMART. This can be accomplished by using the existing COC to provide input into the strategic plan and by creating Citizen Advisory Groups (CAG) to provide advice and recommendations to the Board and the general manager on matters affecting system users.

CAGs have traditionally been used by transit agencies to receive input from its users about issues that are important to them. Too often people who sit on transit agency boards or who manage transportation systems are removed from the day-to-day transit experiences and issues important to system users. Citizen advisory groups provide system users with an opportunity to share their concerns with other citizens and to work together to create viable solutions that can be communicated to board members and management.

The SMART Board should establish CAGs to review issues such as schedules and fares, bicycle accommodations and regulations, ridership matters, and the use of the bike and pedestrian pathway. The Board could also utilize CAGs to solicit input regarding proposed changes in policies that affect riders and the implementation of new programs.

In our discussions with SMART management, we learned they are supportive of the citizen advisory group concept and they plan to recommend that the Board create CAGs after the start of passenger service. We found there may also be a role for CAGs before the start of passenger service.

The Grand Jury recommends that SMART adopt a similar organizational structure for CAG that was mentioned earlier in this report for the Citizens Oversight Committee.

Transparency & Communications

A public agency must be transparent to the citizens they serve. SMART is doing a good job in this area, with a few exceptions. All Board meetings are publicly noticed. Citizens unable to attend Board meetings can view the meetings live or at a later time using the SMART website. Board meeting materials, reports, and financial documents are also available on the website. People visiting the website are invited to sign up to receive email updates on the status of the project, meetings, and other agency news.

SMART's Marketing Department produces information and conducts meetings for the public. As SMART gets closer to the start of train service, their website should also be used to communicate information about train schedules, fares, parking and connections to other transit systems.

The Grand Jury recommends that SMART consider modifying its website to allow citizens to find all Board and COC meeting minutes more easily. Currently, the meeting minutes can only be found in the meeting materials for the next scheduled Board or Citizens Oversight Committee meeting. Additionally, we found that some of the minutes of the Citizen's Oversight Committee meetings had not been posted on the website.

The Grand Jury recommends that SMART also consider using the Citizen's Oversight Committee and Citizen's Advisory Group meetings to communicate and gather information from potential users and actual users (once passenger service starts) of the system.



FINDINGS

The Grand Jury finds that:

- F1. SMART management is doing a good job in completing the construction phase of the project that is likely to result in the start of passenger service from Santa Rosa to San Rafael in late 2016.
- F2. SMART has been successful in securing a portion of the needed government grants over and above the sales tax revenues necessary to complete the fourteen-station system approved by voters. An additional amount of funding still needs to be obtained to complete the project.
- F3. SMART management is focused primarily on construction of the project and has not yet developed a formal operating plan for the system.
- F4. Some SMART Board members do not have an adequate understanding of the financial and system operating issues to enable them to fulfill their role as Board members.
- F5. SMART's current organization structure is heavily dependent on the current management for whom there is no succession plan.
- F6. SMART did not complete the update of its 2009 Strategic Plan within two years as was committed in the Conclusion of the plan.
- F7. The SMART Board did not act on its commitment to the 2010 Marin County Civil Grand Jury to request the Citizen's Oversight Committee to submit to the Board an annual written report on the status of SMART's Strategic Plan.
- F8. SMART has not been updating its five-year revenue and expense projections on an annual basis.
- F9. SMART management has been responsive to establishing a contingency fund to help pay operational costs in periods in which sales tax revenues are inadequate to cover operating costs
- F10. Citizens Oversight Committee is not as active as it should be in providing ongoing input into the SMART Strategic Plan and monitoring the status of the plan.
- F11. SMART lacks a formal mechanism to receive input from citizens on operations issues.
- F12. SMART is making an effort to become more transparent in the way it operates; however, there is still room for improvement.

RECOMMENDATIONS

The Grand Jury recommends that:

- R1. There are no recommendations associated with Finding #1.

- R2. SMART continue to be aggressive in securing additional grants and other funding that will allow it to complete construction of the System.
- R3. SMART management continue its focus on developing a formal operations plan as it moves closer to the start of passenger service.
- R4. SMART Board establish training and mentoring process for new members that would better prepare them to fulfill their role as Board Members.
- R5. The SMART Board develop a formal succession plan for their key management staff.
- R6. SMART update its strategic plan by the end of 2014 and every two years thereafter.
- R7. The SMART Board require the Citizen's Oversight Committee to submit to them an annual written report on the status of the SMART's Strategic Plan.
- R8. SMART update its five-year revenue and expense projections on an annual basis.
- R9. The SMART Board formally establish and approve an operations contingency fund that can be used should sales tax revenues be inadequate to fund operating expenses.
- R10. SMART Board establish an organizational structure and process for the Citizen's Oversight Committee to provide ongoing input into SMART's Strategic Plan.
- R11. The SMART Board create Citizen Advisory Groups and establish an organizational structure to allow the groups to advise the Board and general manager on issues affecting SMART's operation.
- R12. SMART continue its efforts to become more transparent by posting all minutes of meetings of the Board of Directors and Citizen's Oversight Committee and modifying its website to have these posted independently of meeting agendas.



SMART train car being built

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the grand jury requests responses as follows:

From the following governing body:

- Sonoma-Marín Area Regional Transit Board of Directors: **Findings 2-12 and Recommendations 2-12**

The governing body indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code section 933 (c) and subject to the notice, agenda and open meeting requirements of the Brown Act.

BIBLIOGRAPHY

- Marin County Civil Grand Jury Report- SMART: Steep Grade Ahead (June 2010) and SMART Board of Directors response to report www.marincounty.org/depts/gj/reports-and-responses/reports-responses/2009-10/smart
- State of California Assembly Bill 2224
- Sonoma-Marín Area Rail Transit District Administrative Code
- Sonoma-Marín Area Rail Transit (SMART): www.sonomamarintrain.org
- Sonoma County Transit Authority: www.sctransit.com
- North Coast Rail Authority: www.northcoastrailroad.org
- Friends of SMART: <http://www.northbayrail.org/aboutus.html>
- Metropolitan Transportation Commission (MTC): www.mtc.ca.gov
- Marin Transit: www.marintransit.org
- Golden Gate Transportation District: www.goldengate.org
- Marin Independent Journal: www.marinij.com
- The Press Democrat: www.pressdemocrat.com

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

APPENDIX A

SMART BOARD OF DIRECTORS RESPONSE TO 2010 MARIN CIVIL GRAND JURY REPORT- SMART: STEEP GRADE AHEAD

The following information was contained in a letter dated August 12, 2010 from the SMART Board of Directors to the Marin Civil Grand Jury addressing the findings and recommendations that the Grand Jury made in their June 18, 2010 report on SMART.

FINDINGS

Finding #1: AB 2224 requires SMART to achieve a safe, efficient, and compatible system of passenger and freight service.

SMART Response: Agree

Finding #2: Measure Q expanded AB 2224 requirements to include a \$91 million bicycle/pedestrian pathway connecting the 14 rail stations from Cloverdale to Larkspur.

SMART Response: Agree

Finding #3: A decline in sales tax revenues and increased expenses result in a shortfall of \$155 million.

SMART Response: Partially disagree. A decline in sales tax revenues, a decline in bonding capacity, a reduction of projected sales taxes revenues and an increase in estimated costs resulted in a shortfall of \$155 million (2008\$) as identified in the 2009 SMART Strategic Plan.

Finding #4: After 15 months, the SMART Board has neither identified nor publicly discussed phasing or limits on project scope should adequate funding be obtained.

SMART Response: Partially disagree. While the SMART Board has not identified specific limits on project scope should adequate funding be obtained, the Board on several occasions has publically discussed phasing options (see minutes of Board of Directors Meetings of April 15, 2009, May 20, 2009 and January 20, 2010). At the May 19, 2010 Board of Directors meetings, a schedule was developed outlining the work to come over the next several months leading to a Program Implementation Strategy (See Response F11).

Finding #5: SMART retirement benefits are generous and could become unsustainable over time.

SMART Response: Disagree. "Generous" is a subjective term. SMART participates in the California Public Employee Retirement System at the "2 percent at 55" level, allowing vested employees to retire as early as age 55 with 2 percent of their salary, multiplied by their years of service, as their annual benefit. (i.e., a 55-year old with 10 years of services with SMART who earns \$100,000 a year would receive annual retirement benefits of \$20,000 - 2 percent x 10 years).

SMART currently pays both the employer share of CalPERS premium - 12 percent of salary and the employee share - 7 percent. While this may be deemed "generous" by the Grand Jury, it must be viewed in context with a complete salary and benefit package. Other public agencies offer different levels of CalPERS benefits, such as "3 percent at 60" or in the case of many public safety agencies, "3 percent at 50". Still other public agencies offer retiree healthcare benefits, which SMART does not do.

SMART currently has 10 employees, with plans to expand to 14 in the near future. As the agency grows, we will pay careful attention to the cost of benefits. See response to R2.

Finding #6: Ridership estimates are outdated and, even if correct; fail to offer significant inter-county traffic congestion relief.

SMART Response: Disagree. Ridership estimates in the 2006 SMART Final Environmental Impact Report were based on data available at that time. SMART is re-evaluating ridership projections.

Finding #7: The current staff and consultants appear to be experienced, capable and aware of the serious challenges to SMART sustainability.

SMART Response: Agree

Finding #8: The role of the Citizen's Oversight Committee, appointed by the Board, has no real oversight role and is limited to the development and review of the Strategic Plan and subsequent updates.

SMART Response: Disagree, The Citizen's Oversight Committee has an oversight role as defined in Measure Q: "A Citizen's Oversight Committee will be established by SMART Board to provide input and review of the Strategic Plan and subsequent updates," See staff report from the March 18, 2009 Board of Directors meeting. Also, see response to Recommendation R7.

Finding #9: The Operating and Coordinating Agreement for the shared freight/passenger service between SMART and NCRA/NWPCo has not been finalized.

SMART Response: Agreed. Negotiations are ongoing.

Finding #10: Considering the current demographics for the Bay Area region, and comparing it with SMART's projected territory, it is not clear how SMART will be able to be competitive with other transit options in the SMART corridor.

SMART Response: Disagree. SMART is not proposed to compete with other transit options such as buses and ferries. It is proposed to complement other transit options and expand commuters' choices. (See 2006 SMART Final EIR, "Impact on Other Transit Services" page 3.2-25 which states, in part " It should be noted that, according to the model results, the proposed rail project, compared to the Express Bus Alternative, increases the number of boarding passengers (peak period) by approximately 1,000 on Sonoma County transit lines (county and cities), and by 4,000 on GGT lines (all types- local, basic and express). SMART will work with GGT, MCTD, SCT, and other local transit providers to coordinate services at SMART stations during the final design of the project. This coordination will include the routing and assignment of stop locations for bus lines serving the bus bay locations identified for each potential SMART station in this Final EIR").

Finding #11: An independent program audit would help identify shortcomings and serious challenges to SMART's long-term sustainability.

SMART Response: Disagree. The statement assumes shortcomings to long-term sustainability, without the data to support such a conclusion. SMART is in the process of refining cost estimates by advancing the design of the project. We also will commission re-assessment of the bond market and our bonding capacity with KNN Public Finance, and a new sales tax revenue forecast for Beacon Economics, a statewide leader in this field. These updates will be supplemented by a value-engineering program, a risk assessment and a thorough review of costs, revenues and project options by the Board of Directors that will culminate in a Program Implementation Strategy. See Staff Report and Schedule of Major Program Activities and Board Decisions from May 19, 2010, Board Meeting.

RECOMMENDATIONS

Recommendation #1: In addition to pursuing additional funding to close the funding shortfall, the SMART Board develop alternative budget reduction options.

SMART Response: *The recommendations will be implemented as necessary following a thorough review of costs, revenues and other financial and program issues. See Response F11.*

Recommendation #2: As a young agency, SMART re-examine its generous contributions to the pension benefits program and commit to fully fund all costs annually.

SMART Response: *This recommendation will be implemented. The Executive Committee of the SMART Board of Directors in May agreed to review all employee benefits (see minutes of May 5, 2010, Executive Committee meeting). Also see Response to F5.*

Recommendation #3: SMART re-evaluate the train ridership projections, including a more refined ridership profile and an analysis of competing and partner transit agencies.

SMART Response: *This recommendation will be implemented. Ridership projections and analysis of other transit options as provided in 2006 SMART FINAL EIR (page 3.2-25) will be updated as necessary.*

Recommendation #4: SMART adopt a vigorous marketing plan to maximize ridership.

SMART Response: *This recommendation will be implemented. SMART will vigorously market its services at the appropriate time.*

Recommendation #5: SMART initiate an audit to assess the overall program in view of the current economic conditions, changing regulatory environment, and future outlook for transit funding.

SMART Response: *This recommendation will be partially implemented. SMART undergoes annual financial audits by each of our funding agencies, as well as a complete annual financial audit by the Sonoma County Auditor's Office. Re-assessment of economic conditions, bond markets and sales tax projections as well as continued investigation into alternative transportation funding sources, will take place as the agency moves toward a decision on Program Implementation Strategy this fall. This is essentially a program audit. See Response F11.*

Recommendation #6: The Board increase the number of members of the Citizens Oversight Committee and include members with more business and technical expertise.

SMART Response: *The recommendation will not be implemented. The current configuration of the COC provides broad community representation from both counties, with a broad range of business and technical expertise.*

Recommendation #7: The Board broaden the roles and duties of the Citizens Oversight Committee to function as a true oversight committee with responsibilities to initiate, review and report to the general public.

SMART Response: *This recommendation is implemented on an ongoing basis. The role of the COC is defined in Measure Q. Its meetings are duly noticed under the Brown Act and are open to the public. See staff report from the March 18, 2009, Board of Directors meeting. The Board of directors will request an annual written report from the COC regarding the Strategic Plan.*

Recommendation #8: In light of the \$155 million shortfall, the Board defer plans for the \$91 million bicycle/pedestrian pathway until additional funding can be secured.

SMART Response: This recommendation will not be implemented. As the Grand Jury notes, Measure Q defined the SMART project to include both a passenger train and an adjacent bicycle/pedestrian pathway. Measure Q was supported by nearly 70 percent of Marin and Sonoma voters.

The bicycle/pedestrian pathway is an integral part of the SMART project. The SMART Final EIR estimates it will attract 7,000 to 10,000 users a day. It will provide access to stations and general ridership for the rail project.

Until the SMART Board adopts a Program Implementation Strategy, it is premature to "defer" any part of the project. SMART is pursuing additional funding through a variety of sources. A greater variety of grant sources are available for bicycle-pedestrian projects than for rail projects. Both the Marin County and Sonoma Bicycle Coalitions have pledged to help SMART identify additional grant money for the SMART pathway.