



READ AND CONSIDERED  
DATE 9/13/22 BY [Signature]

August 31, 2022

**David Rabbitt, Chair**  
Sonoma County Board of Supervisors

**Barbara Pahre, Vice Chair**  
Golden Gate Bridge,  
Highway/Transportation District

**Judy Arnold**  
Marin County Board of Supervisors

**Melanie Bagby**  
Sonoma County Mayors' and  
Councilmembers Association

**Kate Colin**  
Transportation Authority of Marin

**Damon Connolly**  
Marin County Board of Supervisors

**Chris Coursey**  
Sonoma County Board of Supervisors

**Debora Fudge**  
Sonoma County Mayors' and  
Councilmembers Association

**Patty Garbarino**  
Golden Gate Bridge,  
Highway/Transportation District

**Dan Hillmer**  
Marin County Council of Mayors and  
Councilmembers

**Eric Lucan**  
Transportation Authority of Marin

**Chris Rogers**  
Sonoma County Mayors' and  
Councilmembers Association

**Eddy Cumins**  
General Manager

5401 Old Redwood Highway  
Suite 200  
Petaluma, CA 94954  
Phone: 707-794-3330  
Fax: 707-794-3037  
www.sonomamarintrain.org

Shelly J. Averill  
Presiding Judge  
Hall of Justice  
600 Administration Drive  
Santa Rosa, CA 95403

Robert Pittman  
County Counsel  
575 Administration Drive, Suite 105A  
Santa Rosa, CA 95403

Re: SMART's Response to Grand Jury Report: "**SMART Decision Making**": June 19, 2022

Dear Presiding Judge Averill:

This letter constitutes SMART's Board of Directors response to the above referenced report contained within the Sonoma County Grand Jury's Final Report for 2021-2022.

**FINDINGS:**

**F1.** The Board of Directors lacks adequate input from the Citizens Oversight Committee.

**Disagree** – In adopting Measure Q, the voters approved the establishment of one Citizens Oversight Committee (COC) for the limited purpose of adopting and updating the Strategic Plan. The Citizens Oversight Committee was established specifically to provide input on the strategic plan and as such has worked diligently to assist in drafting the strategic plan and all subsequent updates, the COC's input is reflected and incorporated into the strategic plan prior to its adoption by the SMART Board.

However, the SMART Board of Directors agrees the Grand Jury's recommendations have merit and agree to implement the recommendations associated with the Citizens Oversight Committee (R1, R2, R3, R4, R5, R6, R7, R8, R9 and R11.)

**F2.** The Citizens Oversight Committee reports to SMART management rather than directly to the Board of Directors.

**Disagree** – The COC reports directly to the Board of Directors in a variety of ways, either directly or through their input, advice and recommendations which are incorporated into the strategic plan. Notwithstanding, SMART had been reviewing additional reporting options to provide greater dissemination of the COC's work and to increase public feedback opportunities, as such the SMART Board of Directors agrees the Grand Jury's recommendations have merit and agree to implement the Civil Grand Jury recommendations associated with the Citizens Oversight Committee (R1 through R9 and R11.)

**F3.** The public has expressed concern about the Board of Directors strategic decisions made without the input of a citizens' oversight committee.

The SMART Board is not able to comment on this finding, as it is unable to determine the basis by which the Grand Jury made this determination. However, the SMART Board of Directors agrees to implement the Civil Grand Jury recommendations associated with the Citizens Oversight Committee (R1, R2, R3, R4, R5, R6, R7, R8, and R11.).

**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. **Agree.**

**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.

**Partially disagree** - The addition of freight operations did not come before the SMART Board for consideration until after the SMART Strategic Plan of 2019 had been adopted. Nevertheless, the Board held numerous open meetings to receive input from various groups, stakeholders and the public on the expansion of SMART's Right-of-Way, scope of freight operations, freight service contracting options, common carrier responsibility, financing, state and federal grant opportunities and funding for the acquisition and maintenance of the additional right-of-way and freight operation.

Nevertheless, the SMART Board of Directors believes that the Grand Jury's recommendations have merit and will implement the recommendations associated with the Citizens Oversight Committee (R1 through R9 and R11), ensuring that if new strategic topics arise the COC will have an opportunity to provide timely feedback to the Board of Directors.

**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.

**Disagree** -- In adopting Measure Q, the voters approved the establishment of only one committee (a Citizens Oversight Committee) for the limited purpose of adopting and updating the Strategic Plan. As such, the COC has fulfilled their independent oversight role and provided meaningful insight, input and advice in the drafting of the strategic plan and all subsequent strategic plan updates.

However, the SMART Board of Directors believes that the Grand Jury's recommendations have merit and will implement the recommendations associated with the Citizens Oversight Committee (R1 through R9 and R11), ensuring that COC will have an opportunity to provide timely feedback to the SMART Board of Directors.

**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.

**Partially disagree** - Under measure Q the COC was specifically formed to provide input and advice to assist the BOD in the adoption of the five-year strategic plan and the subsequent updates. SMART

evaluated and considered the recommendations for expanding the COC's advisory role beyond what was originally authorized under Measure Q. It was determined, at the time, that the additional staff resources and administrative cost burden required for the expansion, establishment and utilization of additional Committees was premature, particularly because SMART had not yet commenced revenue operations.

However, the SMART Board of Directors believes that the Grand Jury's current recommendations have merit and will implement the recommendations associated with the Citizens Oversight Committee (R1 through R9 & R11).

**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.

**Partially disagree** – Measure Q and its associated 2008 Expenditure Plan on their own were never intended to provide the necessary detail, training or information in order for the COC to preform their duties. In order to assist the COC in putting together the strategic plan the COC coordinated directly with SMART's staff and its executive team to receive detailed briefings on the financial, budgetary, capital plan, and strategic planning matters that affect the district.

Nevertheless, the SMART Board of Directors believes that the Grand Jury's recommendations have merit and will implement the recommendations associated with the Citizens Oversight Committee (R1 through R9 and R11), ensuring that any existing and new members receive additional training, information, and briefings.

**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. **Agree.**

**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.

**Partially disagree** – The SMART Board continues to believe that open Board meetings and the public comment periods at the meetings are important forums in which to obtain relevant and timely public input and advice. The Board also recognized the need to receive additional, focused input from the public and implemented several topic specific "listening sessions" which provided for a much wider open forum to receive input and advice from the community, user groups, stakeholders, and the public at large. In addition, the SMART Board of Directors also agrees that the Grand Jury's recommendations have merit and agrees to implement recommendations associated with the Citizens Oversight Committee (R1 through R9 and R11).

**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.

**Partially disagree** – Under measure Q the COC was specifically formed to provide input and advice to assist the SMART Board in the drafting the five-year strategic plan. In addition, the Board also recognized the benefits of receiving focused public feedback (through the various surveys and the

comments received at the BOD meetings) and further embarked on several focused "listening sessions" which provided a much wider open forum to receive input, feedback and advice from SMART's passengers, pedestrian and bicycle users groups, stakeholders, and the public at large. In addition, the SMART Board of Directors also agrees the Grand Jury's recommendations have merit and agrees to implement recommendations associated with the Citizens Oversight Committee (R1 through R9 and R11).

**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.

**Disagree** - In adopting Measure Q, the voters approved the establishment of only one committee (a Citizens Oversight Committee) for the limited purpose of adopting and updating the Strategic Plan. COC's input is incorporated and included in the draft Strategic Plan, which is reviewed by the SMART Board prior to its adoption. Notwithstanding, the SMART Board believes that additional reporting options could provide greater dissemination of the COC's work, their input and advice thereby also increasing public feedback opportunities. In addition, the SMART Board of Directors also agrees that the Grand Jury's recommendations have merit and agrees to implement recommendations associated with the Citizens Oversight Committee (R1 through R9 and R11).

**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. **Agree**

**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. **Agree**

**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.

**Partially disagree** – Though the freight business and impacts are difficult to predict, SMART has mitigated the potential for distraction from its primary mission by creating a small but experienced freight unit solely formed to autonomously perform the freight functions and grow the freight business.

**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.

**Disagree** — In 2014, when NWPco / NCRA commenced the unauthorized storage of LPG at Schellville, the SMART Board reviewed the matter and determine that it was ill-advised to continue to allow storage of hazard materials (including LPG) at any SMART location and that the risks and potential liability outweighed the benefits. SMART attended multiple public meetings in the communities affected by the LPG tanker storage, and ultimately determined to no longer store LPG in the Schellville area.

**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.

**Disagree** - SMART uses fund accounting, which is considered "accounting best practices" for public entities. Public entity fund accounting (unlike accounting for profit organizations) is a basic principle that governmental entities must follow based on Generally Accepted Accounting Principles (GAAP).

**F18.** Committee members who were interviewed by the Grand Jury could not provide requested documents because there was no central information repository.

**Agree** - SMART Board of Directors agrees the Grand Jury's recommendations have merit and agrees to implement recommendations associated with the Citizens Oversight Committee (R1 through R9 and R11).

#### **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. **Recommendation R1 will be implemented.**

**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. **Recommendation R2 will be implemented.**

**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. **Some of the Recommendation R3 will be implemented.**

**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. **Some of the Recommendations of R4 will be implemented.**

**R5.** The Board of Directors define and implement advisory committee bylaws for the Citizens Oversight Committee, by January 31, 2023. **Recommendation R5 will be implemented.**

**R6.** The Board of Directors define the length of terms for Citizens Oversight Committee members, by January 31, 2023. **Recommendation R6 will be implemented.**

**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. **Recommendation R7 will be implemented.**

**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. **Recommendation R8 will be implemented.**

**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. **Recommendation R9 will be implemented, however the evaluation will be timed to better coincide with SMART's strategic and budget review in 2023.**

**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. **Recommendation R10 will not be implemented because it is not warranted.**

**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. **Recommendation R11 will be implemented.**

Sincerely,

A handwritten signature in black ink, appearing to be 'DR' with a stylized flourish.

David Rabbitt, Chair  
SMART Board of Directors