

STAFF REPORT

SUBJECT: Measure A Maintenance of Effort

MEETING DATE: June 17, 2010

AGENDA ITEM: 12

STAFF CONTACT: Sarkes Khachek, Steve VanDenburgh

RECOMMENDATION:

- A. Adopt Measure A Maintenance of Effort baseline amounts for local agencies.
- B. Review options for revising maintenance of effort requirement and provide direction to staff.

SUMMARY:

With the downturn in the economy, some local agencies have expressed concern that they will have a hard time maintaining the same amount of local discretionary expenditures on streets and roads in FY 2010/11 as they did in FY 2007/08, as the Measure A ordinance requires. If an agency fails to meet the "Maintenance of Effort" requirements they may not be eligible to receive their full share of Local Street & Transportation Improvement measure funding in FY 2010/11. The board has therefore directed staff to work with TTAC and the Citizens Oversight Committee to develop options for board consideration that would provide relief from meeting the Maintenance of Effort requirement in Measure A.

SBCAG staff presented three options for discussion by TTAC at its June 3rd meeting. The option recommended by SBCAG staff would amend the ordinance to allow the local agency policy bodies the option of requesting relief from the FY 2010/11 MOE requirement by declaring that they have a fiscal hardship. If the SBCAG board approves a local agency's request for relief, a one-time, 19% reduction would be made to their MOE baseline for FY 2010/11. TTAC did not take action on any of the options presented and instead voted to form a joint subcommittee comprised of 4 members each from TTAC and the Citizen's Oversight Committee to evaluate options. A meeting of the joint subcommittee is scheduled for Monday June 14 and the outcome of that meeting will be reported to the board.

Before SBCAG can allocate Measure A revenues to the cities and county, each agency must certify that it will include in its FY 10/11 budget sufficient funds to meet the maintenance of effort requirement. The board needs to adopt an MOE baseline amount for each agency so that they know how much discretionary funding they must include in their budgets. The recommended MOE baseline amounts are shown in Table 1 of the staff report.

DISCUSSION:

The Measure A Ordinance requires local agencies to annually maintain an expenditure of non-measure 'local discretionary funds' for street and road purposes which, beginning in the first year of the program, is no less than that reported in the State Controller's Annual Streets and

Roads Report for Fiscal Year 2007/2008, adjusted annually by the rate of growth (or decline) of measure revenues. This is to ensure that the legislature's intent, that countywide transportation sales taxes supplement rather than supplant local transportation investments, is met. Measure D contained a similar "Maintenance of Effort" requirement and the State of California has an MOE requirement for local governments receiving Proposition 42 funding.

Some TTAC members have expressed concern that it will be difficult for their jurisdictions to meet the Measure A MOE this year because of a decline in general fund revenues. At TTAC's request, SBCAG staff developed options for adjusting by board policy the MOE baseline for FY 10/11. However, SBCAG's General Counsel advised that the ordinance did not allow for such an adjustment. An amendment to the ordinance would be required to adjust the MOE in FY 10/11. Staff then presented the Measure A Maintenance of Effort report to the Citizen's Oversight Committee at its May 10th meeting. The Oversight Committee recommended that SBCAG staff work with TTAC and the Citizen's Oversight Committee to prepare options for revising the MOE requirement for consideration by the board. In May, the SBCAG board agreed and directed staff to work with TTAC and the Citizens Oversight Committee to identify options for revising the MOE requirement for consideration by the board.

Status of the FY 2007-08 Baseline

Since the May TTAC meeting, SBCAG staff has continued to analyze the discretionary expenditures on streets and roads that local agencies have reported to the State Controller. The current status of baseline calculations is reflected in Table 1.

TABLE 1 - Local 'Non-Measure' Discretionary Expenditures on Streets and Roads

	FY 07/08	FY 06/07	FY 05/06	MOE Baseline	3 Yr. Average?
Buellton	\$126,754	-	-	\$126,754	No
Carpinteria	\$112,230	\$111,691	\$108,629	\$110,850	Yes
Goleta	\$741,770	\$669,227	\$687,228	\$699,408	Yes
Guadalupe	-	-	-	Pending	-
Lompoc*	\$1,725,626 \$390,518	\$1,518,485	\$1,516,648	\$1,586,920 \$390,518	Yes
Santa Barbara	\$9,453,720	\$9,070,501	\$9,164,644	\$9,229,622	Yes
Santa Maria	\$3,064,954	\$2,176,173	\$2,943,318	\$2,728,148	Yes
Solvang	\$335,017	\$2,022,905	\$687,309	\$335,017	No
County	\$1,443,401	\$1,838,160	\$2,817,591	\$1,443,401	No

* Reflects Lompoc's tentative FY 07/08 number based on letter sent by the city to State Controller on May 27, 2010

Guadalupe

The city of Guadalupe did not submit the required reports on streets and roads expenditures to the State Controller for FY 05/06 through FY 07/08. The city is in the process of filing the reports and, when SBCAG receives confirmation that the Controller has received an amended report, Guadalupe's MOE will be calculated.

Lompoc

The city of Lompoc's discretionary figure for FY 07/08 reported to the State Controller, and included in the May staff report, was \$390,518. The variance between Lompoc's FY 07/08 figure compared to their FY 05/06 and 06/07 figures was caused by underreporting street sweeping and street lighting expenditures which the city of Lompoc has indicated are indeed discretionary. The city of Lompoc sent a letter to the State Controller, dated May 27, 2010,

stating that the discretionary amount for FY 07/08 should be \$1,725,626. Assuming that the State Controller agrees, the city's MOE baseline will be \$1,586,920 based on a three year average. The new, tentative numbers for Lompoc are reflected in Table 1.

Options for Board Consideration

SBCAG staff presented the following three options to TTAC for consideration at its June 3rd meeting:

1. Amend the Ordinance to Accommodate Fiscal Hardships

One option would be to amend the ordinance. In developing an amendment, SBCAG staff has tried to resolve the concerns of local agencies but depart to the minimum extent possible from the voter-approved ordinance. The proposed amendment would give local agencies the *option* of declaring a fiscal hardship and requesting that the SBCAG board approve a downward adjustment of their MOE amount for FY 10/11 of 19%. The adjustment amount is based on the percent change between actual Measure D revenues available for allocation in FY 07/08 (\$32.3 million) and Measure D revenues projected to be available for allocation in FY 09/10 (\$26.1 million as projected through June 30, 2010). The difference between the actual revenues for allocation in FY 07/08 and the projected Measure D revenues available in FY 09/10 represents a 19% decrease.

The ordinance amendment, in bold under Attachment A, therefore:

- continues to use the State Controller's report of discretionary local expenditures, and uses an adjustment factor that is allowed in the ordinance. The difference is the amendment's adjustment for FY 10/11 is based on *Measure D* revenues and *projected Measure D revenues*, not actual collected Measure A revenues as the ordinance requires.
- is temporary, so that it will be in effect for as short a time as possible. The adjustment also does not carry over to next fiscal year.
- is optional for local agencies. It is hoped only agencies that have a true, compelling, and previously expressed hardship will request relief so that the public can see that this section of the voter-approved ordinance is still being implemented to the maximum extent possible throughout the county.
- is limited in scope since relief can only be granted to agencies that are able to provide substantial evidence of fiscal hardship. The amendment does not provide across-the-board relief to all agencies or to agencies that have not experienced hardship.

Amending the Measure A ordinance requires a public hearing and two-thirds vote of the board. An amendment becomes effective 45 days after the vote unless a city council, the board of supervisors, or the MTD board, votes to appeal the amendment and gathers resolutions of support, within 45 days of their appeal, from a majority of the cities representing a majority of the population and the board of supervisors. If resolutions of support are gathered and presented to SBCAG within the 45 days of filing an appeal, then SBCAG is required to rescind the amendment.

There are, of course, other variations of the option to amend the ordinance. For example, the board could reduce the baseline MOE amount for all local agencies by 19% without requiring any declaration of fiscal hardship by individual agencies.

Option 2. Interpret Section 27 of the Ordinance to Allow for Adjustment by Board Policy

When TTAC members previously requested that SBCAG staff examine options for adjusting the MOE baseline expenditure amounts to reflect the decline in revenues, SBCAG staff began developing an adjustment that would be implemented by board policy, requiring a majority vote of the board, so as to avoid amending an ordinance that had been in effect for less than two months.

The second option would be an adjustment based on an interpretation of the second sentence of Section 27 of the ordinance which requires that the MOE baseline be adjusted annually based on the percent change in Measure A revenues. The ordinance does not say when the annual adjustment has to occur—it could occur under this interpretation at the start of the fiscal year. And it doesn't say how the adjustment would be calculated, only that it should be based on revenues collected. SBCAG staff believed that this could be interpreted to mean revenues anticipated to be collected when Measure A was developed. This therefore resulted in two policy adjustment alternatives being developed.

During the development of the Measure A Investment Plan, in Fall 2007 - Spring 2008, the annual amount of Measure A available for allocation was projected to be \$35 million starting in FY 10/11. The most recent revenue estimate used in the Measure A Strategic Plan for FY 10/11 allocations was decreased to \$30.4 million. The difference between the allocation amount for FY 10/11 projected during the Investment Plan development and the estimate included in the Strategic Plan for 10/11 represents a 14% decrease. Therefore, one alternative could be for the board to reduce by policy the MOE baseline by a corresponding 14% for FY 10/11.

The second alternative that staff evaluated was the percent change between actual Measure D revenues available for allocation in FY 07/08 (\$32.3 million) and Measure D revenues available for allocation in FY 09/10 (\$26.1 million as projected through June 30, 2010). The difference between the actual revenues for allocation in FY 07/08 and the Measure D revenues available in FY 09/10 represents a 19% decrease. A second alternative could be to adjust the MOE baseline downward by 19% for FY 10/11.

These two alternatives were discussed with our General Counsel as an approach to revising the Measure A MOE to reflect the changed economic circumstances. Unfortunately, it has been determined by our General Counsel that the Measure A Ordinance does not make provisions to adjust the MOE to account for these revenue declines by "interpretation" and board policy. Counsel has determined that the method for calculating each agency's MOE requirement is clearly spelled out in Ordinance No. 5 and Counsel's opinion is that any adjustment requires approval of an amendment to Ordinance No. 5.

If the board elects to make an adjustment by board policy rather than amending the ordinance there is a risk that legal action could be being initiated against SBCAG based on objections to the interpretation of the ordinance being applied. Staff and Counsel advise against this option.

Option 3. No Change to the Ordinance

The third option would be to make no change to the ordinance. Although some local agencies have experienced a decline of discretionary revenues to the extent that meeting the existing MOE requirement will be difficult, there are risks associated with changing the voter approved MOE requirement. This requirement is one of several taxpayer safeguards that was included in Measure A to assure voters that Measure A funds would be used for the intended purposes. Some agencies expressing concerns initially about meeting the MOE have recently stated they

could meet it. If an agency were able to only partially meet it, they would therefore still receive a partial payment of their share of Measure A Local Street & Transportation Improvement funding. The ordinance actually anticipates that some agencies may periodically not meet their MOE. This could be because, by choice, local discretionary funds will be spent on competing priorities or because some agencies will experience periods of fiscal hardship. The ordinance therefore includes a methodology for redistributing funding by population to compliant agencies when such circumstances arise. Therefore a case could be made that no change should be made to the ordinance because the current situation is not an anomaly--the ordinance actually anticipates times when funds may have to be redistributed and prescribes how to redistribute funding—and providing relief is not part of the prescription.

COMMITTEE REVIEW:

TTAC did not take action on any of the options presented at its June 3rd meeting (including Option 1 recommended by SBCAG staff). Instead, TTAC voted to form a joint subcommittee comprised of 4 members from TTAC and the Citizen's Oversight Committee to further develop and evaluate options for providing relief from the MOE requirement. A meeting of this subcommittee is scheduled for June 14th and the board will receive a report on any outcomes from this meeting. It is staff's understanding that the subcommittee would present any recommendations to the full TTAC and Citizen's Oversight Committee for review before any recommendations are made to the SBCAG board.

RECOMMENDATION:

SBCAG staff believes that Option 1, a limited, focused, temporary amendment that would only be used by local choice, and after a public declaration of hardship, is a fair option. If local agencies are willing to go through the public scrutiny of seeking hardship relief from a voter-approved ordinance shortly after it has been implemented, it will be because they truly do have a hardship and not as a matter of convenience. This option, however, did not receive support from TTAC. The board may wish to provide direction on which option it prefers. Alternatively, the board can wait to see what recommendations emerge from the joint subcommittee process.

SBCAG staff recommends that the MOE baseline for each agency be adopted by the SBCAG board as reflected in Table 1. Per the ordinance, SBCAG can't allocate revenues to a local agency until it has certified that it has included in its budget for that fiscal year an amount of discretionary funding for streets and roads at least equal to the minimum Maintenance of Effort required by the ordinance. Adoption of the baseline would provide local agencies with a final confirmation from SBCAG of the number that SBCAG will be expecting them to certify. For Lompoc, the recommendation would include adopting the MOE in Table 1 assuming that the State Controller agrees with the numbers submitted on May 27. If any change is made to the number based on State Controller's comments, a subsequent action would need to be taken by the board to adopt a revised MOE number. For Guadalupe, the board will have to take a subsequent action to adopt an MOE baseline after they have submitted their reports to the State Controller. The MOE requirement for the upcoming fiscal year can be based on discretionary expenditures from FY 07/08 or a three year average of FY 05/06 through FY 07/08 "subject to approval by the Authority". The cities of Carpinteria, Goleta, Santa Barbara, Lompoc, and Santa Maria have indicated they want SBCAG to approve a three-year average, as reflected in Table 1.

ATTACHMENTS:

- A. Ordinance #5, Section 27 – Maintenance of Effort – Proposed Amendment Per Option 1 in **Bold**

Attachment A

Proposed Amendment to Ordinance No. 5, Section 27 – Measure A Maintenance of Effort

Section 27. Maintenance of Effort. It is the intent of the Legislature and the Authority that revenues provided from this sales tax be used to supplement existing local revenues being used for the purposes set forth in the Investment Plan. Each local agency receiving revenues pursuant to the Investment Plan shall annually maintain an expenditure of local discretionary funds for street and road purposes which is no less than that reported in the State Controller's Annual Report of Financial Transactions for Streets and Roads for the Fiscal Year 2007-2008 and adjusted annually by the percentage change in the amount of retail transaction and use tax receipts collected through the imposition of this measure.

If any local agency had extraordinary local discretionary fund expenditures for fiscal year 2007-2008, it may, subject to the approval of the Authority, use as a base for determining the required minimum level of local discretionary funds, the average amount of such funds reported to the State Controller for the three-year period of fiscal year 2005-2006 through 2007-2008.

The Authority shall not allocate any revenues pursuant to this ordinance to any eligible local agency in any fiscal year until that local agency has certified to the Authority that it will include in its budget for that fiscal year an amount of local discretionary funding for streets and roads purposes at least equal to the minimum Maintenance of Effort required by this Section. An annual, independent audit shall be conducted to verify that the Maintenance of Effort requirements were met. Any local agency which does not meet its Maintenance of Effort requirements in any given fiscal year, shall have its funding reduced in a following year by the amount by which the expenditure of the agency for such purposes was less than its required level. Any local streets and roads revenues not allocated pursuant to these Maintenance of Effort requirements shall be redistributed to the remaining jurisdictions according to their share of the total County population, excluding the agency who has failed to meet its requirements, and excluding its share of population.

- A. The governing body of a local agency may, after a public hearing and a majority vote of the members of that local agency, declare a fiscal hardship and request that the Authority grant it relief from meeting the Maintenance of Effort requirement in this section for fiscal year 2010-2011. The Authority may, after a public hearing and a majority vote of its members, grant relief based on substantial evidence of hardship presented by the local agency. Relief shall be limited to reducing by 19% the amount of local discretionary expenditures that that local agency reported to the State Controller for fiscal year 2007-2008 or an average of the three year period 2005-2006 through 2007-2008, in order for that local agency to be in full compliance with Section 27.**

Relief granted to a local agency for fiscal year 2010-2011 shall not carry over to fiscal year 2011-2012; The amount of discretionary expenditures the local agency must maintain in fiscal year 2011-2012 to comply with this section shall be based on the amount of local discretionary expenditures that the local agency reported to the State Controller for fiscal year 2007-2008 or an average of the three year period 2005-2006 through 2007-2008, as if no relief in fiscal year 2010-2011 had been granted.