

STAFF REPORT

SUBJECT: Measure A Maintenance of Effort

MEETING DATE: May 12, 2010

AGENDA ITEM: 6

STAFF CONTACT: Sarkes Khachek, Steve VanDenburgh

RECOMMENDATION:

Direct staff to work with TTAC and the Citizen's Oversight Committee to prepare options for revising the MOE requirement for consideration by the board.

SUMMARY:

The Measure A Ordinance's Maintenance of Effort (MOE) provisions requires each of the cities and the County to annually expend 'local discretionary funds' on streets and roads to ensure that Measure A revenues are used to supplement rather than supplant local transportation investments. An MOE is required in all local transportation sales tax measures by state law as a taxpayer protection provision. Measure D also contained an MOE requirement and the State of California has an MOE requirement for local governments receiving Proposition 42 funding.

The Measure A Ordinance specifically 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, and subsequently adjusted annually by the rate of growth (or decline) of measure revenues.

Some TTAC members have expressed concern that it will be difficult for their jurisdictions to meet the MOE this year because of a decline in general fund revenues. At TTAC's request in April, SBCAG staff agreed to examine options to revise the MOE baseline expenditure amount downward to correspond with the decline in measure revenues received since FY 07/08. SBCAG staff conferred with County Counsel regarding making such an adjustment to the MOE requirement for FY 10/11. County Counsel advised staff that the existing ordinance does not provide any authority to make such an adjustment to the FY 10/11 MOE baseline. Counsel advised that any adjustment would require an amendment to the Measure A Ordinance that must be approved by a two-thirds supermajority vote of the SBCAG Board.

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. Changing the Ordinance after it was overwhelmingly approved by voters could be viewed as "lowering the bar" on discretionary spending on transportation infrastructure by local agencies. This may erode voter confidence that SBCAG and local agencies intend to fulfill the promises made in Measure A.

TTAC is recommending that the board authorize a process to identify options for revising the MOE requirement for consideration by the board. Staff supports the recommendation provided that the options are developed with input both from TTAC and the Citizen's Oversight Committee. Staff will report back to the board on the MOE options developed. The recommended action does not commit the board to making any changes to the MOE requirement at this time.

DISCUSSION:

Under the Measure A Ordinance, each of the cities and the County must 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, and subsequently adjusted annually by the rate of growth (or decline) of measure revenues (see Attachment A - Measure A Ordinance No. 5, Section 27). Under state law, Measure A funds must be used to supplement, rather than supplant, local expenditures for transportation purposes. The MOE requirement in Measure A addresses this state requirement by ensuring that each local agency continues to expend at least the same amount of local discretionary funding on street and road purposes as they did in the FY 07/08 base year. FY 07/08 was selected as the baseline year during the development of the Measure A Ordinance since the amount of local discretionary expenditures budgeted by each agency for that year were available prior to placing Measure A on the November 2008 ballot. Using 07/08 as the base year allowed each agency to estimate what their jurisdiction's MOE expenditure requirement would be prior to obtaining approval of the Measure A ordinance from their policy boards and from the voters. However, the report by the State Controller's Office that is used to determine each agency's actual MOE requirement was not published until February 2010—after the Measure D ordinance had been approved by SBCAG and placed on the November 2008 ballot.

Each local agency is required to annually submit to the state controller a certified financial statement which identifies all expenditures in the prior fiscal year for street and road work and the sources of funding for these expenditures. Revenues are categorized in these reports as discretionary or non-discretionary. The local discretionary revenue amount used for determining the Maintenance of Effort (MOE) baseline for Measure A is derived from three funding sources that jurisdictions must annually report to the State Controller:

1. *General Fund Monies Used for Street Purposes* – Local General Fund monies expended by jurisdictions for street and roads purposes.
2. *Motor Vehicle License Fees* – Fees collected by the State for motor vehicle registration that are returned to local agencies and may be spent on street and road purposes at a local agency's discretion.
3. *Traffic Safety Funds* – Fees collected from fines and forfeitures and returned to cities and counties. Funds shall be used exclusively for official traffic control devices, traffic law enforcement and traffic accident prevention and for the maintenance, improvement, or construction of public streets, bridges, and culverts within the city. Expenditures on streets and roads are reported to the State Controller.

Funds that must be spent on transportation purposes such as state gas taxes, special district funds (e.g., parking, lighting), STP, traffic impact fees, etc. are not considered discretionary by the State Controller's Office and are not included in calculation of the MOE amount. SBCAG does not determine which revenues are considered discretionary vs. non-discretionary. Amounts of discretionary/non-discretionary expenditures are reported in certified financial statements submitted to the State Controller's Office each year by local agencies. These

amounts are compiled by the State Controller and published in the Local Streets and Roads Transactions Report. At the close of each fiscal year, an independent audit of each agency's financial statements is completed and these audits verify whether the agency has met the MOE requirement.

Table 1 provides the discretionary expenditures from FYs 05/06 to 07/08 that were reported by jurisdictions to the State Controller's Office. The ordinance also states that if a local agency had extraordinary discretionary expenditures in FY 07/08, it may request approval from SBCAG that their MOE be calculated using an average of discretionary expenditures from FYs 05/06 - 07/08. SBCAG staff has assumed that agencies that would have a three year average lower than FY 07/08 will request that their 07/08 year be categorized as extraordinary.

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	-	-	-	\$27,501	No
Lompoc	\$390,518	\$1,518,485	\$1,516,648	\$390,518	No
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

Following the April TTAC meeting, staff reviewed the figures included in the State Controller's reports to confirm the revenues and discretionary figures by agency. Further, staff then evaluated the streets and roads expenditures reports submitted by some of the local agencies to determine if expenditures reported by jurisdictions for streets and roads purposes were correct.

SBCAG staff confirmed that Lompoc's discretionary figure for FY 07/08 was \$390,518 as reported to TTAC in April. The variance between Lompoc's FY 07/08 figure compared to their FY 05/06 and 06/07 figures was caused by the excess reporting of nearly \$1.2 million in street sweeping and street lighting expenditures which are considered 'non-discretionary'. Lompoc's FY 07/08 actual discretionary general fund expenditures will be used as their Measure A MOE baseline figure.

Staff also reviewed Solvang's streets and roads report for FY 07/08 and confirmed that the city's previously reported figure of \$394,176 included \$59,159 in Indian Gaming revenue that was allocated for the reconstruction of a specific intersection in Solvang. These funds are considered 'non-discretionary' and Solvang's local discretionary figure for FY 07/08 will be adjusted to \$335,017.

Additionally, staff evaluated the certified streets and roads reports submitted by the cities of Santa Barbara and Santa Maria for the three fiscal years to determine if expenditures reported by the local agencies are consistent with the discretionary expenditures reported by the State Controller. SBCAG staff can confirm that the expenditures reported by Santa Barbara and Santa Maria were consistent with the state's report and no changes will be made to their FY 07/08 baseline figure. Staff requested certified streets and roads reports for the city of Goleta, but they have not yet been provided at the time of the TTAC mailing.

The city of Guadalupe did not report any discretionary expenditures for streets and roads for FY 05/06 through FY 07/08. However, their Measure D MOE was \$27,501. Since SBCAG is prohibited from allocating Measure D funds to an agency that has not met the MOE requirement, Guadalupe has had \$82,503 (\$27,501 x 3) in Measure D funds withheld until the end of this calendar year at which time, if it cannot provide information demonstrating that the MOE requirement was met, its Measure D funding will be reallocated to other local agencies per the Measure D ordinance. This raises the question for the Measure A Maintenance of Effort: What should Guadalupe's MOE baseline be since no local discretionary expenditures were reported? SBCAG staff believes Guadalupe's baseline should be at least \$27,501. They should not be allowed to have a \$0 baseline for Measure A because they did not meet their Measure D baseline in FY 05/06 – 07/08.

TTAC Request to Examine the Measure A Maintenance of Effort Baseline for FY 10/11

Some members of TTAC have expressed concern their MOE baseline will be difficult to meet because of the downturn in economic conditions since FY 07/08. Local agencies have experienced significant declines in local discretionary revenues that impacts local agencies' ability to meet the MOE requirement. TTAC members requested that SBCAG staff examine options for adjusting the MOE baseline expenditure amounts to reflect the decline in revenues. SBCAG staff reviewed the decline in estimated and actual revenues for the Measure D program compared to estimates prepared for Measure A.

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.

The second scenario 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.

These two options were discussed with County Counsel as an approach to revising the Measure A MOE to reflect the changed economic circumstances. Unfortunately, it has been determined by County Counsel that the Measure A Ordinance does not make provisions to adjust the MOE to account for these revenue declines (Attachment B – Memo from County Counsel Stephen Underwood). County Counsel has determined that the method for calculating each agency's MOE requirement is clearly spelled out in Ordinance No. 5 and Counsel does not believe any adjustment could be adopted as a board policy but would instead require approval of an amendment to Ordinance No. 5.

Amending the Measure A ordinance requires a 2/3 vote of the board, a public hearing, notification of local agency policy bodies of the amendment, and a 45-day period during which those policy bodies can appeal, before the amendment goes into effect.

Next Fiscal Year

In FY 11/12, the Measure A Maintenance of Effort baseline figure will be adjusted in February 2011 to reflect the increase or decrease in Measure A revenues between the actual amount received in FY 09/10 and the actual and projected amount of revenue for FY 10/11 (the amount of actual revenues received for FY 10/11 will be available for only 3 of 4 quarters in February, so the last quarter will have to be projected).

COMMITTEE REVIEW:

SBCAG staff presented the Measure A Maintenance of Effort report to TTAC at its May 6th meeting. Some TTAC members continued to express concern that meeting the MOE requirement will be difficult for some jurisdictions. TTAC adopted the following recommendations:

1. Request that the following statement in the report to TTAC be removed or clarified in the report that goes to the SBCAG board:
"Using 07/08 as the base year allowed each agency to determine what their jurisdiction's MOE expenditure requirement would be prior to obtaining approval of the Measure A ordinance from their policy boards and from the voters."
2. Revise the Maintenance of Effort requirement so that it is fair and equitable for all local jurisdictions with a determined schedule for the completion revising the MOE.
3. Authorize the Chair of TTAC to submit a memo to the SBCAG Board to request the initiation of an MOE review process and to highlight the concerns that TTAC has regarding the Measure A MOE requirement and inconsistencies included the Streets and Roads reports submitted by local jurisdictions.

The issue will also be presented to the Measure A Citizen's Oversight Committee at its May 10th meeting and the Oversight Committee recommendations will be presented to the subregional committees on May 12th.

RECOMMENDATION:

Staff understands that some of the local agencies may have difficulty meeting the MOE requirement stated in the Measure A ordinance due to declining general fund revenues. Some members believe that the current MOE requirement is inequitable since it impacts various agencies to different degrees. Staff supports the TTAC recommendation to reexamine the current MOE requirement and to develop options for consideration by the board provided that the options are developed with input from both TTAC and the Citizen's Oversight Committee. The oversight committee is charged with "ensuring that all provisions, requirements and voter mandates specified in the Investment Plan and Ordinance are properly carried out." (LTA Ordinance No. 5, Section 22(A)). The MOE requirement is a taxpayer protection mandated by state law and any changes requiring amendments to the voter approved Measure A ordinance should be carefully considered.

ATTACHMENTS:

- A. Measure A Ordinance Section 27 – Maintenance of Effort
- B. Memo from County Counsel Stephen Underwood Regarding the Measure A MOE

Attachment A

Measure A Ordinance No. 5, Section 27 – 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.



COUNTY COUNSEL

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DATE: May 3, 2010
TO: Sarkes Khachek, Transportation Planner - SBCAG
FROM: Stephen D. Underwood, Chief Assistant County Counsel
RE: Maintenance of Effort – Measure A
CC: Jim Kemp, Executive Director, SBCAG

It is my understanding that in April SBCAG staff shared proposed Maintenance of Effort (MOE) baseline expenditure amounts for each local agency that they would use for the first year of Measure A (FY 10/11) when developing their programs of projects. Some local agency representatives expressed serious concerns about their ability to meet these expenditure requirements because of budget shortfalls and declining discretionary revenues. You were asked to examine some options that would allow the MOE expenditure amount to be adjusted.

SBCAG staff identified some options that you thought the SBCAG board could adopt as a policy and which would not require amending the language in the ordinance. You asked me whether the MOE requirements under Ordinance #5 would permit some opportunity to reduce the MOE's due to declining revenues.

I reviewed the staff report. I also reviewed ¶ 27 of Ordinance #5 as well. Under ¶ 27 you can do an MOE baseline approach, but there is no authority in the Ordinance to reduce the MOE requirement by either 14 or 19% as you proposed, based upon a reduction in overall Measure A funds. The ordinance language was specifically approved by the voters, and any amendments must be made under ¶ 21. I did not see anything in PUC § 18000 et seq., that would indicate that the MOE as provided in the Ordinance could be anything other than what is set forth in ¶ 27.

I don't think there is inherent authority to change the methodology set forth in the ordinance other than by amendment.