

Balancing Accountability and Flexibility in California's Local Option Sales Taxes

March 2020

A Research Report from the Pacific Southwest
Region University Transportation Center

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TECHNICAL REPORT DOCUMENTATION PAGE

1. Report No. PSR-18-33 TO-012	2. Government Accession No. N/A	3. Recipient's Catalog No. N/A	
4. Title and Subtitle Balancing Accountability and Flexibility in California's Local Option Sales Taxes		5. Report Date March 2020	
		6. Performing Organization Code N/A	
7. Author(s) Martin Wachs, UCLA https://orcid.org/0000-0002-6739-1654 Jeremy Marks, UCLA Hannah King, UCLA Jaimee S. Lederman, UCLA Tamara Guy, UCLA		8. Performing Organization Report No. PSR-UCLA-18-33	
9. Performing Organization Name and Address METRANS Transportation Center University of Southern California, RGL 216 Los Angeles, CA 90089-0626		10. Work Unit No. N/A	
		11. Contract or Grant No. USDOT Grant 69A3551747109 Caltrans Grant 65A0674, Task Order 3411	
12. Sponsoring Agency Name and Address Caltrans DRISI 1727 30th Street, MS 82 Sacramento, CA 95816		13. Type of Report and Period Covered Final report (Feb. 2019 – Jan. 2020)	
		14. Sponsoring Agency Code USDOT OST-R	
15. Supplementary Notes Report URL: https://www.metrans.org/research/balancing-accountability-and-flexibility-in-californias-local-option-sales-taxes			
16. Abstract Voter-approved Local Option Transportation Sales Taxes (LOSTs) are a major source of revenue for transportation programs in California. LOSTs list projects and programs for voter approval that are to be implemented over long periods of time, often twenty or more years. To respond to changing conditions, agencies often need to amend voter-approved plans. Implementing agencies must be accountable to voters, balancing the need to fulfill commitments made against needs that change over time. Using the text of ballot measures, public utility codes, periodic agency reports, and case studies that included interviews of public officials, this study examines, provisions regarding accountability in California LOSTs, and procedures for amending proposed expenditures. It also reviews lawsuits brought in relation to accountability and plan amendments. It analyzes the ways in which California counties achieve needed flexibility within a framework that demands accountability to the voters. Requirements and patterns differ among counties, but most measures have been adapted to changing circumstances.			
17. Key Words TRT Terms: Taxes Identifier Terms: Equity Based Land-Use Transportation Problem; Projects of Regional and National Significance Subject Areas: I21: Planning of Transport Infrastructure		18. Distribution Statement No restrictions.	
19. Security Classif. (of this report) Unclassified	20. Security Classif. (of this page) Unclassified	21. No. of Pages 90	22. Price N/A

Form DOT F 1700.7 (8-72)

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About the Pacific Southwest Region University Transportation Center

The Pacific Southwest Region University Transportation Center (UTC) is the Region 9 University Transportation Center funded under the US Department of Transportation's University Transportation Centers Program. Established in 2016, the Pacific Southwest Region UTC (PSR) is led by the University of Southern California and includes seven partners: Long Beach State University; University of California, Davis; University of California, Irvine; University of California, Los Angeles; University of Hawaii; Northern Arizona University; Pima Community College.

The Pacific Southwest Region UTC conducts an integrated, multidisciplinary program of research, education and technology transfer aimed at *improving the mobility of people and goods throughout the region*. Our program is organized around four themes: 1) technology to address transportation problems and improve mobility; 2) improving mobility for vulnerable populations; 3) Improving resilience and protecting the environment; and 4) managing mobility in high growth areas.

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Disclosure

Martin Wachs, PhD, Jeremy Marks, Hannah King, Jaimee Lederman, PhD, and Tamara Guy, conducted this research titled, "Balancing Accountability and Flexibility in California's Local Option Sales Taxes" at the Urban Planning Department, Luskin School of Public Affairs, UCLA. The research took place from September 2018 to March 2020, and was funded by a grant from the Pacific Southwest Regional University Transportation Center in the amount of \$71,092, and by a grant from the University of California Mobility Research Program in the amount of \$32,865. The research was conducted as part of the Pacific Southwest Region University Transportation Center research program.

Acknowledgements

The authors thank the many parties who made this project possible. First, we thank the Pacific Southwest Region University Transportation Center and the California Department of Transportation for providing the research funding that made this project possible. Tyler Monson served as the project monitor for Caltrans and offered helpful suggestions and comments throughout the conduct of the research. He also reviewed and commented on an early draft of the report. In addition to the named authors, Stephanie Kellogg helped prepare the spreadsheet showing the characteristics of the California sales tax measures. Juan Matute, Whitney Willis, and Kathy Sekine, all staff members of the UCLA Institute of Transportation Studies, provided guidance and administrative support throughout the conduct of the study.

Abstract

Voter-approved Local Option Transportation Sales Taxes (LOSTs) are a major source of revenue for transportation programs in California. LOSTs list projects and programs for voter approval that are to be implemented over long periods of time, often twenty or more years. To respond to changing conditions, agencies often need to amend voter-approved plans. Implementing agencies must be accountable to voters, balancing the need to fulfill commitments made against needs that change over time. Using the text of ballot measures, public utility codes, periodic agency reports, and case studies that included interviews of public officials, this study examines, provisions regarding accountability in California LOSTs, and procedures for amending proposed expenditures. It also reviews lawsuits brought in relation to accountability and plan amendments. It analyzes the ways in which California counties achieve needed flexibility within a framework that demands accountability to the voters. Requirements and patterns differ among counties, but most measures have been adapted to changing circumstances.

Balancing Accountability and Flexibility in California's Local Option Sales Taxes

Executive Summary

As the traditional sources of surface transportation funding in the U.S.—state and federal motor fuel taxes—wane in the face of inflation, increasing fuel efficiency, and (particularly at the federal level) political opposition to fuel tax rate increases, local and regional governments are taking transportation financing into their own hands. In many cases, local jurisdictions—most often counties—have put transportation finance measures directly to the voters in the form of local option sales taxes (LOSTs) for transportation. Measures are increasingly being placed before voters across the country by which taxes are to be increased in order to support transportation. For example, 55 measures to raise taxes for transportation were put before voters across the country in 2018, of which 61.8% were approved to create an estimated \$31.7 billion in revenue. The majority of these were sales taxes, though property taxes, payroll taxes, and other forms of taxation were also placed before the voters in different states.

Despite rising reliance on LOST revenues, these measures, and support for them have been little studied, except by university research centers in California. This report is the fifth resulting from studies at the UCLA Institute of Transportation Studies and the Mineta Transportation Institute at San Jose State University.

LOSTs began in California forty years ago, and this state has become the most reliant of all on sales tax revenue to fund transportation. LOSTs central features are lists of projects and programs that will be funded should the voters approve the measures. Voters are presumed to be motivated by the explicit commitments that those lists create. The lists of funding commitments have been developed with the priorities of communities clearly in mind, and where measures have been approved agencies are obligated under the penalty of law to comply with the voters' directives. Communities and citizens' interest groups have sued when they believed that voter-approved commitments have been breached.

On the other hand, measures have been enacted that remain in force for long periods—decades or more—and in some cases, permanently. Because they are approved by a supermajority of those voting, LOSTs inherently embody a tension between accountability and flexibility. During the lifetime of an enacted sales tax measure, transportation technology can change dramatically, planned projects can be abandoned because of environmental challenges, new proposals can replace older ideas, especially when new leaders are elected, and governments must from time to time amend their plans. Regional transportation plans and transportation improvement plans are required by state law and under federal law metropolitan planning

organizations are required to update these plans periodically and those plans are required under 49 USC 5303 to be “fiscally constrained,” which means that their funding must be reasonably assured. For these reasons when plans provide for implementation of voter-approved projects and programs there must be some provision for amending them plans while also complying with the voters’ directives. Balancing the will of the voters with the need for flexibility means that departures from voter-approved plans need to be provided for, but if voter-approved measures are to be meaningful those amendments should be rare and carefully executed.

In this study, we gathered information from as many California transportation sales tax ballot measures as possible to assess the arrangements made across the state for auditing, reporting, and assessing the consistency of expenditures with plans contained in the measures. We also examined language in measures themselves and in the California Public Utilities Code that governs what counties may and cannot amend in expenditure plans to reflect changing needs and changing project contexts. In addition, we conducted several case studies in selected counties that included interviews of numerous public officials in addition to reviewing many documents from those counties. We also studied several lawsuits that challenged decisions made by local governments under LOSTs and resulted in court decisions that set precedents for future LOSTs. We found that in general public officials have attempted to fully implement terms of the measures for which they are responsible and that where compliance was complex working arrangements and general guidelines have been used to enable compliance.

Voters in California counties have enacted several dozen LOSTs over four decades, in a few cases having approved as many as four or five measures over several decades in a single county. This study delved into the ways in which tensions between accountability and flexibility have been addressed when measures are implemented, finding that for the most part a balance has been established between them. State law and the California Public Utilities Code create rules and conditions that apply to all counties and the measures address additional requirements to meet local needs. The balance between accountability and flexibility is addressed systematically in the State’s Public Utilities Code, and to a considerable extent LOST accountability and flexibility provisions in specific measures are tailored to the particular needs of counties whose situations differ from one another. There are LOSTs in California’s rural counties in which local roads are the paramount concern, and there are others in some of the nation’s most populous, prosperous, technologically advanced, and rapidly changing counties in which public transit capital investments dominate local transportation spending.

Despite the dramatic diversity among measures in California over time, mechanisms have been established in most counties to ensure that measures are implemented faithfully in accord with the wishes of the electorate, and that procedures are in place that make it possible, though difficult, to amend voter-approved plans. The most important finding of this study is that LOSTs in California vary sufficiently from one county to another to reflect their diverse demographics,

topography, and politics while revealing a clear tendency toward achieving a balance between accountability and flexibility.

To address accountability, California LOST measures contain a wide variety of provisions for reviewing, auditing, and reporting expenditures. To provide for flexibility they contain even more variety in provisions that allow for but limit the frequency and nature of amendments to expenditure plans. Information on sales tax revenue that is collected and how it is spent is systematically audited, made available on a regular schedule to interested organizations and individuals, and widely reported in the media. In addition to audits, most measures provide for citizen or expert review panels, composed in reflection of local interests and differences among communities. Those bodies review audit outcomes, evaluate compliance with the measures, consider emerging trends, and recommend potential improvements.

Amendments to expenditure plans that have been approved by voters were found to be allowable and possible but subject to systematic hurdles clearly intended to make them rare and thus to occur only when there is widespread agreement that they are necessary and appropriate. Procedures differ from one county to another, and changes must in some cases be approved by citizens' advisory committees, by a super-majority vote of a super-majority of city councils in a county, by a two-thirds supermajority of county transportation authorities, and in some cases by a super-majority of county supervisors.

And, some measures restrict the frequency of consideration of amendments to periods as infrequent as once in two years or even once in a decade. All amendments require that some of the most sweeping changes - like the rate of taxation or the length in years a measure will be in effect - be resubmitted to the voters for approval.

While we found that many counties experienced periodic flurries of concern that arose because some parties felt aggrieved by routine administration of LOST measures or shortchanged by proposed amendments, but threats of legal action were fairly rare and actual lawsuits even rarer. The fact that they have so far occurred with such low frequency indicates that LOSTs, while politically challenging and sensitive to local conditions, have over time been skillfully crafted to balance accountability and flexibility.

The increasingly frequent adoption of voter-approved transportation tax measures across the country has created a large national constituency interested in information about California's experience with such measures. We recommend that to support research on the California measures and to facilitate the sharing of California's experience with other interested states and counties across the nation that a California LOST clearinghouse be created so that information about the measures is made available and that it is indexed by one institution. Because LOSTs are unique to the counties for which they were written while having many common features required by state law and arising from the imitation of successful practices, the primary beneficiaries of a clearinghouse or similar resource would be California county staff when considering and developing new measures or modified implementation procedures. The

clearinghouse should contain all the original measures that were approved or defeated by the voters, election results, amendments, annual audit reports, and all other official documents of LOST-funded projects. In addition, such a collection could be augmented by reports of lawsuits, settlements, and verdicts that relate to LOSTs in California.

Introduction

As the traditional sources of surface transportation funding in the U.S.—state and federal motor fuel taxes—wane in the face of inflation, increasing fuel efficiency, and (particularly at the federal level) political opposition to fuel tax rate increases, local and regional governments are taking transportation financing into their own hands. In many cases, local jurisdictions—most often counties—have put transportation finance measures directly to the voters in the form of LOSTs for transportation. LOSTs have proven increasingly popular, with 55 sales taxes measures for transportation put before voters across the country in 2018, of which 61.8% were approved to create an estimated \$31.7 billion in revenue (Eno Center for Transportation, 2018). Despite rising reliance on LOST revenues, these measures, and support for them have been little studied, except for specific case studies. LOSTs began in California forty years ago, and this state has become the most reliant of all on sales tax revenue to fund transportation. The UCLA Institute of Transportation Studies and the Mineta Transportation Institute at San Jose State University have produced half-dozen studies of LOSTs over the past decade, which together codify what is known about electoral politics surrounding LOSTs, the evolution of the content of LOST measures over time, and the nature of projects that they support. This report is the latest in a continuing series of analyses produced by those institutes in collaboration with one another. Studies of the challenges, successes, and setbacks experienced in California elections and the implementation of its transportation sales tax measures are important because they inform future policy in this state and also because other jurisdictions can learn valuable lessons from California as they seek to replicate what has worked in the Golden State and to avoid problems we have encountered.

LOSTs for transportation are created by county voter-approved ballot measures that enact a sales tax increase -- typically between $\frac{1}{2}$ percent and 1 percent -- for a number of years specified in the measures to fund programs that meet countywide and local transportation needs. Addressing the growing gap between transportation program needs and funding available from federal and state fuel taxes, LOSTs have been enacted in so many California counties that they rival fuel taxes in importance as a source of revenue and exert growing influence on transportation politics and policy in California.

Almost all ballot measures list rather specifically the transportation projects and operations expenditures that will be funded by the proposed sales tax revenues. Voters are assumed to vote for or against the measures because of their valuations of the proposed expenditures. Listing intended expenditures is considered crucial to the increasing popularity of LOSTs because it is widely believed that voters want to know what they will get for their money and that they will not support taxes that are only vaguely designated for transportation improvements. LOST expenditure plans are developed before the ballot measures are filed with the county registrar/recorder of voters. They are often crafted by countywide transportation agencies in collaboration with coalitions of otherwise diverse groups in communication with local elected officials, advocacy groups, and the public through multiple rounds of focus groups

and meetings which can be open to the public and media or can sometimes be conducted behind closed doors.

Because LOSTs must be approved in California by a supermajority of two-thirds of those casting ballots, measure sponsors strive to create geographically balanced expenditure plans that serve different interest groups and fund multiple modes of transportation to appeal to voters having diverse preferences. Proponents of LOSTs argue that voter approval at the county level promotes regional transportation decision-making that brings planning in line with the mobility and accessibility needs of constituents. Critics respond that “ballot box planning” replaces systematic or analytical planning with political logrolling. Whatever one’s opinion, the expenditure plan is in each LOST the specific and tangible outcome of the complex negotiations that create the ballot measures. Of course, negotiations continue throughout the regional planning, environmental review, design and implementation processes.

Researchers, including the authors of this report, have in past studies examined the growing frequency of LOST elections in California, taken stock of the types of projects included in the measures, analyzed geographic voting patterns in comparison with the locations of proposed projects, and statistically studied social and demographic correlates of voting outcomes. We have in earlier studies also considered the matter of equity - comparing the characteristics of those who pay the taxes and those who receive the benefits of the investments. Similarly, we have examined the roles of arguments about equity in election campaigns in which proposed LOST measures have been enacted or defeated at the polls.

The results of prior studies have increased our collective understanding of the politics of California transportation ballot measures and the knowledge produced by them has informed efforts to enact new LOSTs and other transportation funding measures in recent years. LOSTs are still a relatively recent innovation, however, and earlier studies left quite a few unanswered questions. This study addresses some of those remaining questions.

The fact that a LOST lists transportation projects and programs that will be funded and that voters care about the projects that are listed lead to some obvious questions that have not been examined in-depth and so are the subject of this study. What assurances are there that funds raised by enacted sales taxes are actually spent in the manner that voters were promised? How are public officials held accountable for departures from promises, especially if economic downturns result in insufficient revenue to implement intended outcomes?? Are there periodic reviews, formal audits, and penalties if public officials do not act in a manner that is clearly consistent with the promises made in the measures?

Fulfilling promises can sometimes prove to be impossible and measures should allow for the possibility that unanticipated events may occur and changes are needed in expenditure plans. For example, a critical environmental review or a court decision may result in the cancellation of a project that was included in an expenditure plan or in changes to a proposed project that are so extensive that it barely resembles the project based on which voters considered the

measures. To comply with voter-approved instructions, changes in expenditure plans should be rare, but to allow realistic responses to unforeseen circumstances they should be provided for. An example of particular relevance to California is the recent enactment of SB 743, which requires mitigation through project based changes and auxiliary enhancements when new developments lead to increased vehicle miles of travel. It is conceivable that such mitigations will in the future lead to necessary changes in transportation programs or projects approved by the voters.

In this study, we gathered information from as many California transportation sales tax ballot measures as possible to assess the arrangements made across the state for auditing, reporting, and assessing the consistency of expenditures with plans contained in the measures. We examined language that provides for the possibility that expenditure plans can be amended to reflect changing needs and changing project contexts. In addition to reviewing, codifying, and interpreting language in measures themselves and in the California Public Utilities Code that governs what counties may and cannot do we conducted several case studies in selected counties that included interviews of numerous public officials in addition to reviewing many documents from those counties. We also identified and studied lawsuits brought against counties by parties who believed that LOSTs violated other state laws or that agencies failed to implement the will of the voters. We found that in general public officials have attempted to fully implement terms of the measures for which they are responsible and that where compliance was complex working arrangements and general guidelines have been used to enable compliance.

California LOST measures contain a wide variety of provisions for reviewing, auditing, and reporting expenditures and even more variety in provisions that allow for, but limit, the frequency and nature of amendments to expenditure plans. For LOSTs to fulfill their objectives amendments to the expenditure plans should be provided for but rare. We report on our findings about amendment procedures and interpret them. When provisions of LOST measures are unclear or when parties disagree as to what they are intended to accomplish, challenges can occur which threaten and sometimes result in lawsuits. Most often, but not always, disputes arise over the expenditure plans approved by the voters. Thus, in addition to examining measures' language and reviewing amendments, we examine threatened and actual court cases that ensued when parties disagreed so vehemently that their differences were not settled by negotiation, agreement or amendment.

We hope this report contributes to the growing understanding of the value and history of LOSTs in California and finally we offer general conclusion and policy recommendations based on our research. To this end, a spreadsheet detailing all LOSTs in California is available, [here](#).

Literature Review

Background

Since the 1970s, the growing gap between transportation program needs and revenue has been narrowed in many places across the U.S. by Local Option Sales Tax (LOST) measures for transportation. LOSTs for transportation have proven to be popular among voters; 55 sales taxes for transportation were put before voters across the country in 2018, who approved 61.8% for an estimated \$31.7 billion in revenue ("Transportation at the Ballot Box 2018," 2018). Since 1976, California residents have voted on 76 LOSTs to fund transportation in 30 of the state's 58 counties. As of 2018, active LOST measures in 25 counties, home to 88 percent of the state's population (U.S. Census Bureau, 2015), produce over \$4 billion per year for transportation construction and maintenance (Wachs, 2010).¹ Voters in some counties have approved LOST measures as many as five separate times (Albrecht, Brown, Lederman, Taylor, & Wachs, 2017).

Counties turned toward LOSTs to cover gaps needed for transportation investments. California's transportation revenue crisis has been well documented (Perry, Kredell, Perry, & Leonard, 2017). Adjusted for inflation, federal transportation funding has decreased for decades. Per vehicle mile of travel, the funding fall has been even steeper. The federal tax of 18.4 cents per gallon and the statewide gasoline excise tax of 18 cents per gallon remained the same after 1993 without adjustment for inflation or increased fuel efficiency. Senate Bill (SB) 1, the Road Repair and Accountability Act (Beall, Chapter 5, Statutes of 2017), attempted to address the shortfall. One element, a statewide 12 cent per gallon of gasoline excise tax increase adjusted for inflation annually went into effect in November 2017, yet statewide bond measures and a fuel tax "swap"² during the 24 years between state motor fuel tax increases did not meet California's transportation investment needs.

LOST transportation measures are part of a growing collection of voter-approved multi-year tax measures that include expenditure plans which dedicate the revenue to specific projects on a specific schedule—as opposed to revenue for general funds spent at the discretion of a legislative body. Specifying projects appeal to voters, as do taxes levied in small increments (often a half-cent or cent per dollar) over a very large number of transactions which can raise a

¹ This figure is equivalent to \$4.5 billion in 2017 dollars and is likely higher as new measures have been enacted since 2010, though there is no reliable available source of current LOST revenues in California.

² The California fuel tax "swap" was legislation passed in 2010 that traded the existing fuel sales tax for a variable excise tax with the express purpose of relieving the state General Fund from transportation debt financing. Additional background and policy implications of the swap is detailed in Brown, Garrett, and Wachs (2016).

great deal of money despite their low rates (Hannay & Wachs, 2007). Specific expenditure plans engender voter trust (Beale, Bishop, & Marley, 1996; Crabbe, Hiatt, Poliwka, & Wachs, 2005), but they also tie the hands of public officials who consider them to be rigid amidst constantly changing conditions (Goldman & Wachs, 2003). The presence of the expenditure list is often cited as one of the reasons for the increasing popularity of LOSTs as a local transportation finance measure (Beale et al., 1996; Crabbe et al., 2005; Hamideh, Oh, Labi, & Mannering, 2008), and these measures are sometimes referred to as “ballot-box planning” (Calavita, 1992; Goldman & Wachs, 2003; Hannay & Wachs, 2007; Lowe, Pendall, Gainsborough, & Nguyen, 2014) because the voters decide what to build. We are aware of no previous studies looking at how well project delivery matches expenditure plans presented in the measures over the life of the sales taxes.

Although California LOSTs are approved by voters by two-thirds majorities, project delivery challenges and expenditure plans of LOST measures raise equity concerns along income, modal, geographic, and temporal lines. Sales taxes and fuel taxes support transportation investments and both are regressive when expressed as the amount paid as a proportion of household income. How much people pay in fuel taxes rises with their fuel use, corresponding roughly to road use; however, fuel taxes are regressive when expressed as a portion of income. Transportation sales taxes, by contrast, are not directly tied to travel. Every consumer pays the tax when purchasing many goods. This means light users of transportation systems pay more in transportation sales taxes per mile traveled than heavy users. Thus, transportation sales taxes can be seen as “doubly regressive” (Dill, Goldman, & Wachs, 1999). Itemized expenditure plans—lists of how much money is to be spent on which projects—often accompany LOST measures, including prioritization of those projects. When a specific project is delivered affects the benefits of a plan. Since LOSTs typically are enacted to last 20 or more years, delivery time and cost increases of high priority projects affect later projects in the expenditure plans. For example, an expenditure plan that proposed widening a rural highway a decade before commencing an urban public transit project can deprive the urban area of benefits if it goes over budget and takes longer to complete than forecasted. Differences between promises listed in LOST measures and actual project delivery increase concerns over their fairness. Since project lists are voter approved, they are intended to not easily be adjusted.

Limited literature addressing project management indicates that projects and services funded by LOST revenue could differ from those enumerated in the expenditure plan for a variety of reasons. Costs rise for unforeseen reasons. Some projects may be delayed or changed due to financial or environmental permitting roadblocks. Some may be delayed due to differences between initial plan designs and regulation-compliant designs. Some LOST ordinances are crafted with the flexibility that enables planners to adjust projects to changing conditions over the typical 30-year sales tax lifespan—for example, by requiring review after 10 years or by specifying procedural mechanisms for amendments to project lists. The ability to deviate from the list of projects presented to voters raises potential issues of accountability. Are voters getting what they think they are paying for? It also raises questions of equity. Is the perceived

equitable balance of projects among income groups, modes, locations, and project priority that led to measure enactment maintained over the long-term as projects are delivered? Flexibility to deviate from project lists in the measures may make sense because it allows officials to adapt to changing local conditions, but it also violates a central precept of LOST “ballot-box planning,” that voters can expect that what they see in the ballot measure will in due course be what they see on the ground.

Those placing transportation measures before the voters usually intend to deliver on commitments included in them but conditions governing regional transportation planning are constantly changing. Metropolitan planning organizations, for example, must update their regional plans every four years and each updated plan must be “fiscally constrained” in the sense that included projects and programs must be fundable and not wishful thinking. But requirements change. In 2009 the reduction of greenhouse gases was added as a formal requirement of regional transportation planning after adoption by the state of SB375 (Government Code 65080; 23 cfr 450). This requirement has to be met in counties in which LOSTs were adopted prior to passage of this law.

As LOSTs continue to increase in popularity and as expenditure plans are more carefully crafted to ensure passage, stipulations included in measures may hedge against the risk that a transportation agency may not deliver on its promised expenditure plan or that new federal or state obligations will affect implementation. A recent trend in the LOST expenditure plans is to prioritize specific projects by designating them to receive funding earlier and others later, with the later ones conditioned upon the availability of funding after the priority projects are completed. Additionally, a ballot measure may include projects in its expenditure plan that strike a popular balance along several dimensions of equity. Actual project delivery, however, might not have been carefully specified in the expenditure plan or, even if it was specified, it might not have been implemented accordingly. Alterations to the listed projects raise equity issues over time. If projects that benefit lower-income constituents and underserved areas are abandoned while projects serving wealthier and politically powerful interests are delivered as promised, programs seen to be equitable on election day could prove to be far less so when implemented.

This research extends a series of recently completed projects at the UCLA Institute of Transportation Studies (ITS) and the Mineta Transportation Institute at San Jose State University focusing on LOSTs. Prior projects have explored the history of LOSTs in Los Angeles, reasons why non-transit users are willing to fund transit through LOSTs, the equity implications of project lists, and have compared sales taxes to other transportation finance mechanisms. This project expands upon the knowledge and findings of the earlier research, addressing a missing link in our understanding: what happens after the ballot box when projects are implemented?

We reviewed relevant literature with regard to accountability and project management. We surveyed existing expenditure plans and ballot measure ordinances to identify language that

allows for flexibility in project delivery. We also used case studies to identify specific projects that were not delivered in the manner or time frame outlined in an expenditure plan and to find out why that happened. Of particular interest was whether the changes to project delivery and service provisions could lead to transportation systems that are less equitable than those presented to voters.

Passing LOST Measures

Prior LOST studies tended to focus on factors that influence the passage or failure of LOST ballot measures. These studies point to many influential factors in passing measures, including the development of the expenditure plan (Beale et al., 1996; Crabbe et al., 2005), public marketing campaigns (Haas, Massey, Valenty, & Werbel, 2000), contextual and socio-economic factors (Hamideh et al., 2008; Hannay & Wachs, 2007), and voter political ideology (Green, Neiman, Bockman, & Sirotnik, 2013; Manville, 2019). For example, Hannay and Wachs (2007) and Haas et al. (2000) report that measures are more likely to pass if they dedicate funding to a mix of highway and transit projects rather than to a single mode. While evidence from passing Measure M in Los Angeles County showed that voters who supported the measure did so to fund transit even though those same voters are unlikely to use transit given their demographics (Manville, 2019; Manville & Cummins, 2015).

Expenditure plans are particularly important to passing LOST measures because the plans build support by dedicating revenue to specific projects located at particular places in order of priority, often on a specific schedule. They increase the popularity and passage rates of transportation taxes (Beale et al., 1996; Crabbe et al., 2005; Hamideh et al., 2008). The connection seems to be that expenditure plans build voter trust, which is particularly important in areas where voters do not trust the discretion of their elected officials (Beale et al., 1996; Crabbe et al., 2005). Expenditure plans in counties having suburban voter bases can promise that their tax money will be distributed fairly (Crabbe et al., 2005). The specificity of plans reassures voters that they will see the benefits of their tax dollars in projects located near them (Hannay & Wachs, 2007). Although intended to increase the efficiency and likelihood of project delivery, some LOST measures lack mechanisms to enable public officials to adapt to changing conditions over the several-decade timelines of the expenditure plans (Goldman & Wachs, 2003). Importantly, failure to keep to the expenditure plan could erode voter support for future measures and endanger future transportation revenue (Beale et al., 1996).

Avenues of Accountability

Research in political science and transportation points to several possible avenues of accountability for delivering on promised LOST measure projects. As a basic tenet of democracy, accountability means to keep governments beholden to promises and citizens' expectations (Madison, 1778; Yusuf, Jordan, Franklin, & Ebdon, 2017). Voting is considered one broad mechanism of accountability (Madison, 1778; Yusuf et al., 2017). In addition, LOSTs tend to include specific governance mechanisms to ensure that agencies deliver on promises, such as implementing the projects and distributing the funds as listed in expenditure plans (Afonso,

2017; Albrecht et al., 2017; Wang, 2002). These two avenues of accountability, a broad check via voter behavior and specific checks via mechanisms within the LOST measures themselves, provide pressure to deliver on LOST promises.

Accountability and Local Elected Officials

Research provides conflicting evidence as to whether voters hold politicians accountable for delivering projects and programs. On one hand, several studies support the theory that voters may adhere to political ideology over and above a failure to deliver on specific program or project promises (Franko, Tolbert, & Witko, 2013; Green et al., 2013; Sances, 2018). Voter party affiliation thus affects the extent to which voter behavior can act as an avenue of accountability (for incumbent elected officials). On the other hand, several studies point to failing services or infrastructure as relevant to holding elected representatives accountable via their re-electability (Burnett & Kogan, 2016; Green et al., 2013, 2013; Macmanus, 2004). In Ohio, fiscally failing school districts saw higher elected school board and administrator turnover (Thompson, 2019). In Florida, “voters dissatisfied with elected officials' infrastructure decisions have increasingly tossed them out of office,” replacing incumbents with challengers to the offices of mayor and city councilor (Macmanus, 2004). Concern for local infrastructure issues outweighed concerns for local services in both high- and low-growth cities, especially larger cities (Macmanus, 2004). In San Diego, California, local road quality as measured by pothole complaints--a specific issue voters generally understand as under local control--affected support for incumbent mayors and city councilmembers (Burnett & Kogan, 2016). Thus, the state of local transportation infrastructure at the time of voting, without regard for the timing of prior infrastructure promises, can act as an accountability measure on majority-party incumbent politicians over and above the effects of party-line adherence.

Timing complicates matters further. The length of time and decision-making chains between passing LOSTs and implementing transportation projects makes connecting the delivery of projects promised in LOST measures to particular people difficult. Taking a project from idea to implementation requires coordinating many actors from municipal to regional to statewide organizations. Research shows that, in the end, elected representatives take credit for projects that finish during their terms and divert blame for unfinished or underperforming projects to non-elected bureaucratic leaders within institutions (Nielsen & Moynihan, 2017).

Furthermore, models fit to observed election outcomes indicate that long-term policies, such as transportation infrastructure investments, that make it into on-the-ground implementation tend to be durable beyond the influence of election cycles (Callander & Raiha, 2017). This means that voters are unlikely to end the policy or project in later rounds of elections. This holds true even when voters know that the already-started projects are delayed and costing more than originally promised (Callander & Raiha, 2017). In these instances, politicians are not held accountable for the overruns.

Considering all of the above, voter behavior may be a necessary, but insufficient check on governments keeping LOST promises. The consequences of not delivering on promises may fall on local elected officials up for re-election (Burnett & Kogan, 2016; Green et al., 2013; Macmanus, 2004; Thompson, 2019). Yet, party loyalty, long timelines, and policy inertia affect the efficacy of voting as an accountability measure (Callander & Raiha, 2017; Franko et al., 2013; Green et al., 2013; Lee, Moretti, & Butler, 2004; Nielsen & Moynihan, 2017; Sances, 2018). Thus, LOST measures must turn toward governance mechanisms for accountability once enacted (Afonso, 2017; Albrecht et al., 2017; Wang, 2002).

Accountability via Governance and Transparency

Accountability, defined as holding people or agencies “answerable for decisions or actions,” is a necessary part of good governance that requires transparency (Cameron, 2004, p. 59). As mentioned above in the section entitled “Passing LOST Measures”, including accountability mechanisms increases the likelihood of passing the measures (Albrecht et al., 2017). Some mechanisms precede any given measure. For example, all LOST measures must meet state-mandated requirements and restrictions for local sales taxes (Afonso, 2017). These restrictions include guidelines around sales tax revenue earmarks, limiting whether earmarks may exist or to what they may be applied, such as transportation (Afonso, 2017). Thus, accounting for revenues and expenditures to the State of California from LOSTs is one step of accountability. Further, “administrative accountability concerns the extent to which an administrative agency is answerable to its supervisory constituencies for the tasks assigned to it” (Wang, 2002, p. 351). In the case of LOSTs, the supervisory constituencies include not only the state, but also the general public (particularly voters), organizational hierarchies, and any required oversight committees created by the measures. Also, each measure tends to include mechanisms of accountability to ensure that spending of the revenue raised by LOSTs matches the intent and promises within the measure (Albrecht et al., 2017). Yet, a supervisory constituency needs information to hold an administrative agency accountable.

Public administration and policy researchers hold transparency to be a necessity for citizens to keep government accountable (Cameron, 2004; Yusuf et al., 2017). Research often focuses on three types of government transparency, administrative, political, and budget, having to do with three different sets of activities—decision making, policy making, and policy outcomes (Cucciniello, Porumbescu, & Grimmelikhuijsen, 2017). To enable responsible agencies and interested people to have an understanding of what happened and why, LOST programs and projects involve all of these transparency types and activities. Indeed, “[a]ccess to information is an essential characteristic of accountability—virtually all accountability relies on the availability of relevant and timely information” (Cameron, 2004, p. 59). To be transparent, government financial information also must be readily available and understandable (Yusuf et al., 2017). When information is relevant, timely, readily available, and understandable, transparency enables stakeholders, such as voters, to hold actors, such as elected officials, accountable.

Research on the effectiveness of transparency leading to specific governance outcomes is mixed, yet budget transparency appears to be one of the most actionable (Cucciniello et al., 2017). For example, once Ohio introduced a public fiscal stress label system for its school districts, voters often replaced incumbent board members when the state sanctioned fiscally failing districts (Thompson, 2019). Unlike elected representatives who must run for re-election, however, people vote once on a measure. That is why LOST measures include specific mechanisms such as citizens' oversight committees, limits on administrative costs, expenditure plan amendment processes, and annual audits. Specific accountability mechanisms vary from measure to measure, particularly with regard to amendments due to project delivery challenges.

Project Management and Delivery

Many factors can interfere between LOST ballot measure passage and project implementation. Things can go awry with project timeliness, scope, priorities, and cancellations--all of which affect costs. The importance of cost overruns has resulted in a large literature consisting of many studies spanning many decades that are well-documented (Sun & Meng, 2009). For expenditure plans, time and cost overruns on higher priority projects change the timing and funding availability for lower-priority promised projects.

The primary theoretical debate among those who study delays and overruns is the relative effect of inadvertently poor initial estimates and inefficient management of projects versus purposeful bias in initial estimates to get project proposals approved. Siemiatycki (2009) reviewed the literature and found that answers in the debate relied on bodies of work from two different research approaches, that of outsider-academics and insider-auditors. Academics access and correlate aggregate sets of data such as census tract demographics and ballot measure outcomes (Siemiatycki, 2009). Auditors access and correlate fine-grained internal data from the companies and/or agencies they audit (Siemiatycki, 2018). As a result of differences in the nature of the data available, the questions each can ask, answer, and advise differ fundamentally. Politicians rarely emphasize the nature of the research studies when campaigning to inform voters. The influence and political pressure of power hierarchies to skew initial estimates put forth for project proposals, such as those in LOST measures, is documented and debated (Flyvbjerg, Holm, & Buhl, 2002; Flyvbjerg, Skamris Holm, & Buhl, 2005; Love, Sing, Ika, & Newton, 2019). Low estimates used to build voter-friendly expenditure plans could doom projects lower on the priority list and future transportation funding measures if higher-priority project delays and cost overruns eat time and tax revenues. Thus, considering findings that support stances along the spectrum of the theoretical debate points both to functional mechanisms that result in changes to LOST projects and to potential influences on voter sentiment and behavior concerning to LOST measures.

Problematic factors in implementing promised LOST projects include delays due to differences between initial plan designs and regulation-compliant designs (Sun & Meng, 2009), changes due

to unanticipated regulatory permitting roadblocks (Hecht & Niemeier, 2002), change orders between public client and private contractors (Love, Ika, Ahiaga-Dagbui, Locatelli, & Sing, 2019; Sun & Meng, 2009; Yap, Abdul-Rahman, Wang, & Skitmore, 2018), and changes in local conditions over time (Yap et al., 2018). Construction of infrastructure projects involves uncertainty and coordinating complex, interdependent stages (Sun & Meng, 2009). When a plan is approved, construction managers attempt to value engineer this complex undertaking; they optimize material inputs, material staging, construction processes, permitting timing, and all aspects of the entirety of the project to reduce costs (Yap et al., 2018). Changes to approved plans often affect the coordination of these stages, which causes cost increases and time delays. Unanticipated permitting roadblocks, such as those due to on-or-in-the-ground environmental conditions or mid-project regulation changes, can cause significant delays (Hecht & Niemeier, 2002; Sun & Meng, 2009). Unanticipated failures in the quality of workmanship at any point of the multistage construction can require costly and time-consuming deconstruction and rework (Love, Ika, et al., 2019; Yap et al., 2018). Requests to change parts of the design can arise anywhere along the line from the client, for instance, the California Department of Transportation (Caltrans), or a subcontractor, such as a pile driving company (Love, Ika, et al., 2019). In addition to environmental and regulatory conditions, industry conditions that affect material and labor costs fluctuate locally over time (Love, Ika, et al., 2019). The competency of the project team engineering and coordinating the undertaking affects the entirety of the project (Yap et al., 2018). Experienced project teams know and budget all of this.

The latest research shows a continuance of cost overruns even as improvements came to technical estimates and management processes (Love, Sing, et al., 2019); thus, other factors influence on-time and on-cost project delivery. Although some audits of projects in California show voter-approved highway projects to be more efficient than projects planned by Caltrans, research comparing such highway projects to those planned by Caltrans did not show significantly different project design or development costs (Hecht & Niemeier, 2002). Sometimes project oversight efforts for better project management have increased costs. For example, federally-funded projects with budgets large enough to trigger public agency oversight have been found to increase delays and cost overruns in some circumstances (Calvo, Cui, & Serpa, 2019). Changes spurred by required reviews listed in the measure or changes allowed by procedural mechanisms specified in the measure for amendments to project lists could also lead to delays and cost overruns. Many factors potentially increase the time and costs between LOST measure promises and LOST project outcomes, endangering projects further down the priority lists. This research sought to identify those factors.

Summary of Flexibility and Accountability Provisions in Ordinance Language

Methodology

We conducted online searches to identify and obtain the various provisions governing the creation of Local Transportation Authorities, as well as the imposition and implementation of local option sales taxes in California. To obtain relevant state law guidance contained in the California Public Utilities Code, we conducted an online review of Public Utilities Code Section 12 through Public Utilities Code Section 19, using the California Legislative Information database at leginfo.legislature.ca.gov. As noted below, some of the provisions contained in these sections relate generally to all counties in the state of California, while other provisions in these sections apply more specifically to individual counties (or groups of counties) in California.

To identify and obtain information about the rules governing expenditure plan amendments under specific measures, we conducted an online search to obtain the ordinances and expenditure plans for as many passed California local option sales taxes as possible. Specifically, we queried Google for the ordinances and expenditure plans of each such local option sales tax measure using the following keywords: (1) each measure's name in quotes (e.g., "Measure T"), (2) each corresponding county's name in quotes (e.g., "Madera County"), (3) the year each measure was approved by voters (e.g., "2006"), and (4) the words "Ordinance" and "Expenditure Plan." We reviewed all pages of search results generated for each measure and archived relevant results. It should be noted that we were unable to find both the ordinance and expenditure plan for some passed California local option sales tax measures. Indeed, we find significant variance in the degree to which counties across the state have archived these materials online. Moreover, no central online repository exists where researchers can study all such LOST ordinances and expenditure plans. As such, in some cases, our analysis relies only on an ordinance, or only on an expenditure plan (and not both). We have excluded measures from our analysis for which we have failed to obtain either an ordinance or an expenditure plan.

A table summarizing flexibility and accountability provisions by measure can be found, [here](#).

State Law Guidance – The Public Utilities Code

California's Public Utilities Code (PUC) contains general and county-specific provisions that govern the creation of Local Transportation Authorities to oversee and administer transactions and use taxes (i.e., LOSTs levied to fund transportation projects). These provisions, contained in PUC Divisions 12 through 19, grant counties the authority to create Local Transportation Authorities for these purposes, but do not *require* their creation. In most cases, a county must create a Local Transportation Authority before it can levy a local option sales tax (LOST). The PUC also contains both general and county-specific rules governing the creation, implementation, and amendment of transportation expenditure plans.

In this report, the term “General provisions” refers to rules that are widely applicable to all counties in the state, whereas “county-specific provisions” are rules that only apply in individual counties. General rules are assumed to apply in counties that lack any county-specific provisions and are governing unless superseded by a county-specific provision. At least one county-specific LOST-related PUC provision applies to a group of counties: “The Bay Area County Traffic and Transportation Funding Act,” enacted in 1986, enables any one of the nine counties that comprise the San Francisco Bay Area to “either create a county transportation authority or to authorize the [Metropolitan Transportation Commission (MTC)] to implement a retail transactions and use tax for the purpose of funding a local transportation expenditure plan.”³ Thus, any Bay Area county is authorized to levy a LOST measure without creating a Local Transportation Authority, if it instead authorizes the Bay Area Metropolitan Transportation Commission (MTC) to implement the tax.

Adopting and Imposing LOST Transportation-Expenditure Plans

PUC Division 19, Chapter 5⁴ contains general provisions governing the creation of Local Transportation Authorities, the imposition of retail transactions and use taxes, and the creation and amendment of transportation expenditure plans created to govern tax revenue expenditure.

Section 180050 contains general rules governing the creation of a Local Transportation Authority:

“A county board of supervisors may create an authority to operate within the county to carry out this division, or may designate a transportation planning agency designated pursuant to Section 29532 of the Government Code or created pursuant to the Fresno County Transportation Improvement Act pursuant to Division 15 (commencing with Section 142000), or a county transportation commission created pursuant to the County Transportation Act (Division 12 (commencing with Section 130000)) in existence in the county on January 1, 1988, to serve as an authority.”

³ CA PUC §§ 131000 - 131304. County Traffic and Transportation Funding in the Nine-County San Francisco Bay Area. Added by Stats. 1986, Ch. 301, Sec. 3. Accessed at: https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=PUC&division=12.5.&title=&part=&chapter=&article=

⁴ CA PUC §§ 180000 - 180264. Local Transportation Authorities, Transactions and Use Taxes. Added by Stats. 1987, Ch. 786, Sec. 1. Accessed at: https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PUC&division=19.&title=&part=&chapter=5.&article=

Section 180201 contains the general rules governing the imposition of a local option sales tax, and specifies the various conditions that must be met before a county's imposition of such a tax:

"[I]f the tax ordinance is adopted by a two-thirds vote of the authority and imposition of the tax is subsequently approved by a majority of the electors voting on the measure, or by any otherwise applicable voter approval requirement, at a special election called for that purpose by the board of supervisors, at the request of the authority, and a county transportation expenditure plan is adopted[.]"

"Special" Sales Taxes in California

Sec 180201 was adopted pursuant to California's Proposition 13. Under 1978's Proposition 13, the imposition of new "special" taxes in California required two-thirds approval from the electorate, and under 1986's Proposition 62, the imposition of both new "special" and new "general" taxes in California required two-thirds approval from the electorate. In 1987, a new local option sales tax proposed by the Santa Clara County Transportation Authority to fund transportation projects in Santa Clara County received approval from a majority—but less than two-thirds—of the county electorate. The Santa Clara County Auditor-Controller, Carl Guardino, refused to sign bonds for the measure until the tax was determined to be valid. The Local Transportation Authority then filed a writ of mandate in the appellate court to compel the County Auditor-Controller to validate the tax measure and sign the bonds in question. The appellate court subsequently found that the tax measure was invalid because it failed to meet the two-thirds voter approval requirement provisions of Proposition 62 (imposed at Cal. Gov't Code § 53722) and Proposition 13 (imposed at Cal. Const. art. XIII A, § 4), and the California Supreme Court affirmed in *Santa Clara County Local Transportation Authority v. Guardino* (1995). Thus, subsequent local option sales taxes would require two-thirds approval from the electorate for initial

Amending LOST Transportation Expenditure Plans

Section 180206 contains the general provisions that serve to govern expenditure plan adoption:

"A county transportation expenditure plan shall not be adopted until it has received the approval of the board of supervisors and of the city councils representing both a majority of the cities in the county and a majority of the population residing in the incorporated areas of the county."

Sec. 180207 contains the general provisions that govern LOST expenditure plan amendments:

“The authority may annually review and propose amendments to the county transportation expenditure plan adopted pursuant to Section 180206 to provide for the use of additional federal, state, and local funds, to account for unexpected revenues, or to take into consideration unforeseen circumstances. The authority shall notify the board of supervisors and the city council of each city in the county and provide them with a copy of the proposed amendments. The proposed amendments shall become effective 45 days after notice is given.”

Measure-Specific Amendment Procedures

In contrast to the general provisions referenced above, some PUC Divisions governing LOST measure adoption and implementation only apply to certain counties. Division 12.8 (“Imperial County Transportation Commission”)⁵ concerns Imperial County, Division 15 (“Fresno County Transportation Authority”)⁶ has exclusively to do with Fresno County, and Division 12.5 (“County Traffic and Transportation Funding in the Nine-County San Francisco Bay Area”)⁷ applies specifically to the nine-county San Francisco Bay Area. These PUC Divisions often contain rules that differ from and supersede the generally-applicable expenditure plan amendment rules at PUC Division 19, Section 180207. County-specific provisions of the PUC are typically adopted after the county has passed a LOST ordinance that contains that provision. To illustrate, the following is a non-exhaustive list of examples:

- **Sec. 130350.4(e)** specifies that the Los Angeles County Metropolitan Transportation (MTA) Authority must “notify the Legislature prior to the adoption of amendments to the adopted expenditure plan.”⁸
- **Sec. 130407(b)(1)**, which applies to the administration of transaction and use taxes in Orange County, specifies that “[i]f the proposed amendment deletes a project which is included in the original adopted expenditure plan and which is located entirely within a

⁵ CA PUC §§ 132800 - 132824. Imperial County Transportation Commission. Added by Stats. 2009, Ch. 56, Sec. 1. Accessed at:

https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=PUC&division=12.8.&title=&part=&chapter=&article=

⁶ CA PUC §§ 142000 - 142277. Fresno County Transportation Authority. Added by Stats. 1986, Ch. 301, Sec. 4. Accessed at:

https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=PUC&division=15.&title=&part=&chapter=&article=

⁷ CA PUC §§ 131000 - 131304. County Traffic and Transportation Funding in the Nine-County San Francisco Bay Area. Added by Stats. 1986, Ch. 301, Sec. 3. Accessed at:

https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=PUC&division=12.5.&title=&part=&chapter=&article=

⁸ CA PUC §§ 130350.4. Added by Stats. 2008, Ch. 302, Sec. 1. Effective January 1, 2009. Accessed at:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PUC&sectionNum=130350.4.

city, the proposed amendment shall become effective only if the city council of the affected city, by resolution, concurs with the deletion of the project.” 130407(b)(3) specifies how cities in Orange County that are affected by proposed expenditure plan changes can “adopt a resolution protesting the proposed amendments.”⁹

- **Sec. 131203**, which applies to the Metropolitan Planning Organization in the nine counties San Francisco Bay Area (i.e., the Metropolitan Transportation Commission), specifies that “an amendment to the county transportation expenditure plan proposed by the commission is subject to approval by the advisory committee.”¹⁰
- **Sec. 142259**, which applies to the Fresno County Transportation Authority, specifies that “any amendments shall not delay or delete any project in the initial plan without the transportation planning agency holding a public hearing and documenting within the plan the reason why the amendments are being recommended to the authority and are necessary relative to conditions beyond control of the authority.”¹¹

We, therefore, conclude that, if a county *does not* have county-specific provisions spelled out in the PUC that differ materially from the generally applicable provisions regarding retail transactions and use taxes, then proceedings in that county are governed by generally applicable PUC rules. If a county *does* have county-specific PUC provisions, then those rules govern tax administration. Counties with county-specific rules in the PUC governing the administration of transactions and use taxes are: Orange, Los Angeles, San Bernardino, Imperial, Fresno, Tuolumne, San Diego, Riverside, Ventura, Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma Counties. Therefore, we assume that all other counties in California are governed by the general provisions in the PUC.

Findings Related to LOST Expenditure Plan Amendment Provisions

For practical reasons, we have limited the scope of our analysis to 41 LOST measures that have been approved and enacted, and for which we have been able to access ordinances and/or expenditure plans. While the generally-applicable PUC language at Sec. 180206 indicates that a county transportation expenditure plan “shall not be *adopted* until it has received the approval of the board of supervisors and of the city councils representing both a majority of the cities in

⁹ CA PUC §§ 130407. Added by Stats. 1983, Ch. 1320, Sec. 1. Accessed at: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PUC&sectionNum=130407.

¹⁰ CA PUC §§ 131203. Added by Stats. 1986, Ch. 301, Sec. 3. Effective July 14, 1986. Accessed at: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PUC&sectionNum=131203.

¹¹ CA PUC §§ 142259. Repealed and added by Stats. 2001, Ch. 474, Sec. 17. Effective January 1, 2002. Accessed at: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PUC&sectionNum=142259.

the county and a majority of the population residing in the incorporated areas of the county” [emphasis ours], the same requirement does not apply to *amending* an expenditure plan (unless specified in the language of a LOST ordinance or its expenditure plan).

A plurality of twenty measures among those we studied includes rules specifying that the ordinance and/or expenditure list can be amended only by receiving two-thirds approval from a specified governing body (which is almost always the Local Transportation Authority's Board of Directors). In one notable exception to these two-thirds voting requirements, Santa Clara County's 2016 Measure B requires the Local Transportation Authority to approve expenditure plan amendments by three-fourths vote.¹² In a few other cases, Local Transportation Authorities must “recite findings of necessity” in favor of a given amendment to initiate the amendment process, prior to subsequent processes. It is unclear whether and when such recitations of necessity require two-thirds votes to pass.

Some ordinances require multiple levels of approval before amendments can go into effect. In addition to requiring that an amendment obtain two-thirds approval from a specified governing body, 14 of the measures require that amendments also obtain approval by a “simple majority vote” of another specified governing body (most often a County Board of Supervisors). Similarly, 11 LOST measures require that expenditure plan amendments obtain approval from “a majority of the incorporated cities representing a majority of the [county's] population.” For example, the “Bay Area County Traffic and Transportation Funding Act” at PUC Division 12.5, which applies to all nine counties in the Bay Area, specifies: “A majority of the board of supervisors, and a majority of the local governments representing a majority of the population of the county in the incorporated areas by a majority vote of their respective councils, are required for the adoption of the draft county expenditure plan [or to amend the county expenditure plan].”¹³ This language derives from PUC Sec. 180206, which contains a similar rule.

Five measures contain provisions requiring a Local Transportation Authority to obtain the approval of the “original project sponsor” before effectuating amendments that will affect the sponsor's project, and three LOST measures contain provisions that require Local Transportation Authorities to give the “highest priority to the projects in the initial [expenditure] plan” when considering amendments during implementation.

¹² Santa Clara County. (2016). *Complete Text of Measure B*. Accessed at: <https://ucla.app.box.com/file/317515282220>

¹³ CA PUC §§ 131000 - 131304. County Traffic and Transportation Funding in the Nine-County San Francisco Bay Area. Added by Stats. 1986, Ch. 301, Sec. 3. Accessed at: https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=PUC&division=12.5.&title=&part=&chapter=&article=

Funding Reallocation

Some measures include provisions that allow for funding reallocations among projects or among categories of projects. When those provisions are present, reallocation is not, technically, an amendment to the measure. In other cases, such reallocations require a more formal amendment of the expenditure plan according to the measure's provisions for amendment.

Seventeen measures specify that certain conditions must be fulfilled when funding is re-allocated between projects and/or program categories. Two common examples of such conditions are requirements that revenue must remain in the same geographic area or the same funding or program category when expenditure plans are amended (for example, if a transit project is removed, the funding must be reallocated to a different transit project) or requirements that a Local Transportation Authority must adopt a finding that the purpose and need of the original project will be fulfilled by the new project when funding is transferred by way of an expenditure plan amendment. For example, the expenditure plan for Alameda County's 2014 Measure BB specifies that "[s]hould a planned project become undeliverable, infeasible or unfundable due to circumstances unforeseen at the time this Plan was created [...], funding for that project will be reallocated to another project or program of the same type[.]"¹⁴ Similarly, the expenditure plan for San Mateo County's 2004 Measure A2 specifies that "[a]vailable tax proceeds can be re-allocated only to project(s) within the same Program Category as the original listed project."¹⁵ Relatedly, before a project or program may be eliminated under Orange County's 2006 Measure M2, the Local Transportation Authority Board must first adopt an official finding that "the transportation purpose of the program or project to be eliminated will be satisfied by a different program or project."¹⁶

Other measures provide more flexibility by allowing tax revenues to be reallocated between programs, projects, and/or geographic areas. Santa Clara County's 2016 Measure B specifies that the Local Transportation Authority "may modify the Program for any prudent purpose, including [...] to shift funding between project categories."¹⁷ Similarly, Riverside County's 2002 Measure A2 expenditure plan specifies that: "[t]he Commission may make maximum use of

¹⁴ Alameda County Transportation Commission. (2014). *2014 Alameda County Transportation Expenditure Plan*. Accessed at: <https://ucla.app.box.com/file/317519999546>

¹⁵ San Mateo County Transportation Authority. (2004). *2004 Transportation Expenditure Plan*. Accessed at: <https://ucla.app.box.com/file/317513940194>

¹⁶ Orange County Transportation Authority. (2006). *Measure M2 - Ordinance No. 3*. Accessed at: <https://ucla.app.box.com/file/317516204273>

¹⁷ Santa Clara County. (2016). *Complete Text of Measure B*. Accessed at: <https://ucla.app.box.com/file/317515282220>

available funds by temporarily shifting allocations between geographic areas and transportation purposes.”¹⁸

Unforeseen Circumstances Language

Language specifying that counties may amend ordinances and/or expenditure plans in order to respond to “unforeseen circumstances” or “emergencies” occurs frequently in the LOST measures that we reviewed. As referenced above, this language is consistent with Section 180207 of PUC Division 19, Chapter 5, which provides that county transportation commissions “may annually review and propose amendments to the county transportation expenditure plan [...] to take into consideration unforeseen circumstances.” However, certain county-specific provisions also include this “unforeseen circumstances” phrase to describe circumstances in which expenditure plan amendments may be warranted (e.g., PUC § 131203, relating specifically to transactions and use taxes in the San Francisco Bay Area: “Amendments may provide for the use of additional federal, state, and local funds to account for unexpected revenue fluctuations or to take into consideration unforeseen circumstances”). “Unforeseen circumstances” are instances in which transactions and use tax revenues differ substantially from revenue projections, or where environmental review, natural disasters, political or public opposition, and/or legal challenges disrupt project delivery. In such circumstances, jurisdictions are afforded flexibility and can make expenditure plan amendments. Fully 33% of enacted measures whose ordinances and/or expenditure plans we have been able to obtain cite PUC § 180207, directly, or reference it indirectly. In this instance, a direct reference is defined as one where the ordinance or expenditure plan in question contains language such as: “The expenditure plan can be amended pursuant to 180207.” An indirect reference occurs when a measure, ordinance, or expenditure plan incorporates language from § 180207 and inserts the name of the relevant decision-making body in place of “the authority” in § 180207. We understood all such references to be considered citations to § 180207 (direct meaning that § 180207 is cited by number, indirect meaning where § 180207’s language is employed).

Mandatory Reevaluation

To enable agencies to respond to changing revenue trends and implementation conditions, all measures we reviewed contain provisions requiring regular (e.g., annual) expenditure plan re-evaluation. Such re-evaluation is most frequently “annual” because PUC Sec. 180207 provides that county transportation commissions “may annually review and propose amendments to the county transportation expenditure plan [...] to take into consideration unforeseen circumstances.” For example, the Alameda 2014 Measure BB ordinance includes a requirement that the Alameda County Transportation Commission annually adopt a budget “that projects expected sales tax receipts, other anticipated revenues and planned expenditures for

¹⁸ Riverside County Transportation Commission. (2002). *Riverside County Transportation Improvement Plan*. Accessed at: <https://ucla.app.box.com/file/317506073882>

administration, programs and projects.”¹⁹ In contrast, the Fresno 2006 Measure C ordinance requires biennial Expenditure Plan updates²⁰, and the Marin County 2018 Measure AA Expenditure Plan describes a requirement that “the TAM (Transportation Authority of Marin) Board of Commissioners [...] review the Expenditure Plan every six years to consider amendments.”²¹ Some measures are more explicit that the Local Transportation Authority may *only* consider expenditure plan amendments once per year. For instance, San Joaquin County's 2006 Measure K2 specifies that “[t]he [Local Transportation] Authority shall act on only one package of amendments per fiscal year.”²²

Public Review and Meeting Requirements

The Ralph M. Brown Act, codified in Title 5 of California's Government Code (sections 54950-54963), contains broadly applicable requirements relating to public transparency. The Act dictates that the actions of “public commissions, boards and councils and the other public agencies in this State [...] [must] be taken openly and [...] their deliberations [must] be conducted openly.”²³ The provisions of the Brown Act apply to the bodies that adopt and implement LOSTs. Many measures we reviewed enumerate requirements relating to public comment periods, public notice provision, and public meetings, especially as related to LOST ordinance and expenditure plan amendments. For instance, PUC Division 12, Chapter 4²⁴ specifies that the Los Angeles County MTA must “notify the Legislature prior to the adoption of amendments to the adopted expenditure plan” as to their nature, reason, and impact. Los Angeles 2016 Measure M²⁵ specifies that LA Metro must hold a public meeting on proposed amendments prior to adoption, provide public notice of such meeting to the Los Angeles

¹⁹ Alameda County Transportation Commission. (2014). *County of Alameda Measure BB - Complete Text*. Accessed at: <https://ucla.app.box.com/file/317513860565>

²⁰ Fresno County Transportation Authority. (2007). *Measure C - Enabling Legislation*. Accessed at: <https://ucla.app.box.com/file/317514134340>

²¹ Transportation Authority of Marin. (2018). *2018 Final Expenditure Plan*. Accessed at: <https://ucla.app.box.com/file/317513948944>

²² San Joaquin Council of Governments. (2015). *Measure K Renewal - 2015 Ordinance and Expenditure Plan*. Accessed at: <https://ucla.app.box.com/file/317520059513>

²³ California Government Code, §§ 54950 - 54963. *Meetings*. Added by Stats. 1953, Ch. 1588. Accessed at: https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=2.&chapter=9.&part=1.&lawCode=GOV&title=5.

²⁴ PUC §§ 130200 - 130455. *Powers and Functions*. Added by Stats. 1976, Ch. 1333. Accessed at: https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=PUC&division=12.&title=&part=&chapter=4.&article=

²⁵ Los Angeles County Transportation Authority. (2016). *Ordinance #16-01: Los Angeles County Traffic Improvement Plan*. Accessed at: <https://ucla.app.box.com/file/317513845491>

County Board of Supervisors, the city council of each city in Los Angeles County, and the public, and provide all parties with a copy of the proposed amendment(s) prior to the meeting. Madera County's 2006 Measure T ordinance specifies that all Investment Plan (i.e., project list) updates "will be subject to public review and public hearings."²⁶ Marin County's 2004 Measure A expenditure plan specifies that expenditure plan amendments may not be adopted prior to a "noticed public hearing and a 45-day public comment period" taking place.²⁷ Because of the Brown Act, public notice and open deliberations are expected even where language of this type is not included in ordinances or measures.

Amendment Protest Procedures

Seven measures we reviewed specify procedures whereby organized entities can formally protest the adoption of proposed amendments to LOST ordinances and/or expenditure plans by Local Transportation Authorities. Santa Barbara County's 2008 Measure A ordinance allows local jurisdictions in the county and/or the Santa Barbara Metropolitan Transportation District to formally appeal any proposed amendment by "majority vote of its policy body[.]"²⁸ If the appellant subsequently obtains "resolutions supporting the appeal of the amendment(s) from a majority of the cities representing a majority of the population" in the incorporated areas of the county, as well as from the county's Board of Supervisors, then the amendments in question are rescinded. Fresno County's 1986 Measure C enables any local jurisdiction, or the county, itself, to "object" to a proposed expenditure plan amendment and trigger a hearing on the proposed amendment.²⁹ San Joaquin County's 2016 Measure K Renewal allows a local jurisdiction to "override" proposed expenditure plan amendments by a simple majority vote of its "policy decision-making body" and subsequent expressions of support through resolutions from a "majority of the cities representing a majority of the population residing within the incorporated areas of the county and from the Board of Supervisors."³⁰

Tiering

Seven of the measures we studied organize project lists by priority-level, often using the term "tiers." This allows for expenditure plans to list projects that will only be implemented if there is

²⁶ Madera County Transportation Authority. (2006). *Ordinance No. 2006-01*. Accessed at: <https://ucla.app.box.com/file/317513660388>

²⁷ Transportation Authority of Marin. (2018). *2018 Final Expenditure Plan*. Accessed at: <https://ucla.app.box.com/file/317513948944>

²⁸ Santa Barbara County Local Transportation Authority. (2015). *Ordinance No. 5*. Accessed at: <https://ucla.app.box.com/file/317520205106>

²⁹ *California Senate Bill 878*. (1986). Accessed at: <https://ucla.app.box.com/file/317509040500>

³⁰ San Joaquin Council of Governments. (2015). *Measure K Renewal - 2015 Ordinance and Expenditure Plan*. Accessed at: <https://ucla.app.box.com/file/317520059513>

enough funding, and therefore an amendment would not be required to remove or add these projects to an expenditure plan at a later date. For example, Alameda 2000 Measure B divides projects into Tier 1 and Tier 2 priorities.³¹ The Fresno 2006 Measure C extension also prioritizes projects by tier.³² San Francisco's 2003 Proposition K ordinance³³ details a process for funding projects of different priorities or tiers:

"Each New Expenditure Plan program or project [...] shall be funded using sales tax revenue up to the total amount for that program or project in Priority 1. If, after funding all Priority 1 projects in a subcategory, the latest Prop K Strategic Plan Update cash flow analysis forecasts available revenues in excess of Priority 1 levels, the Authority Board may allow programming of Priority 2 revenues within the subcategory, subject to the category percentage caps and program or project dollar amount caps for Priority 2 established in the New Expenditure Plan. After funding at least 80% of Priority 2 project dollar amounts, the Authority Board may program Priority 3 requests, if the latest Prop K Strategic Plan forecasts revenues beyond the total Priority 2 level."

Amendments Requiring Resubmission to Voters

While it is typical for amendments that change the rate or duration of a local option sales tax to require re-submission to the electorate, five measures, in addition, require that some other types of amendments obtain majority approval from a county electorate. For example, Merced County's 2016 Measure B requires county voters to approve of amendments affecting the measure's funding categories or fund allocation formulas.³⁴ Similarly, Napa County's 2012 Measure T specifies that: "[a]mendments constituting expenditures for new programs or new projects that were not a part of the voter-approved Expenditure Plan or referred to in the Local Streets and Roads Maintenance Program may only be approved with the subsequent consent of the electorate."³⁵ Orange County's 1990 Measure M1 dictates that any "proposed changes in expenditures among the four major funding categories of freeway projects, regional street and road projects, local street and road projects, and transit projects [...] shall be ratified by the

³¹ Alameda County Transportation Authority. (2000). *Alameda County's 20-Year Transportation Expenditure Plan*. Accessed at: <https://ucla.app.box.com/file/317513797604>

³² Fresno County Transportation Authority. (2018). *Measure C Extension - Strategic Implementation Plan*. Accessed at: <https://ucla.app.box.com/file/395082666756>

³³ San Francisco Department of Elections. (2003). *Full Ballot Text of Proposition K*. Accessed at: <https://ucla.app.box.com/file/317520220020>

³⁴ Merced County Association of Governments. (2016). *Proposed 2016 ½ Cent Transportation Sales Tax Measure Expenditure Plan*. Accessed at: <https://ucla.app.box.com/file/317520151132>

³⁵ Napa Valley Transportation Authority. (2012). *Ordinance No. 2012-01: Napa Countywide Road Maintenance Act*. Accessed at: <https://ucla.app.box.com/file/317520258124>

electors before going into effect.”³⁶ Though such requirements exist, we could not identify a case in which such an amendment was placed before county voters. Thus, we conclude that such amendments are so demanding that local agencies work hard to avoid them.

Provisions Requiring the Automatic Reprogramming of Funds

At least two measures contain provisions that require the automatic reprogramming of measure funds in cases where little or no progress has been achieved toward implementing a given measure-funded project after a specified amount of time. These provisions are presumably intended to ensure that funds are allocated to the projects most likely to reach completion, thereby ensuring that each measure meets intended goals. For example, San Francisco City and County's 2003 Measure K specifies that "[i]f a project has not achieved any given project milestone within a period of 5 years, the funds earmarked for the project shall be subject to re-programming by the Transportation Authority Board, by a 2/3 vote."³⁷ Similarly, Alameda County's 2014 Measure BB specifies that any measure-funded project "will be given a period of seven years from the first year of revenue collection (up to December 31, 2022) to receive environmental clearance approvals and to have a full funding plan for each project," before its funding can be re-allocated to other eligible projects.³⁸

Conclusion

Amendments that cause project delivery outcomes to deviate from what was originally promised to voters are generally treated as a last resort by implementing authorities — though delays in delivering on promises can be politically embarrassing. In general, LOST measures in California attempt to create a balance between affording Local Transportation Authorities the flexibility needed to respond to changing and unforeseen circumstances, while remaining accountable to the project lists, timelines, and budgets promised to county voters in each measure's original expenditure plan. In structuring rules that govern when and how expenditure plan amendments are adopted, policymakers aim to strike a pragmatic balance among competing interests while assuring that all amendments are made in accordance with principles of public accountability.

³⁶ Orange County Transportation Authority. (2011). *Measure M: Ordinance No. 2*. Accessed at: <https://ucla.app.box.com/file/317516894768>

³⁷ San Francisco Department of Elections. (2003). *Full Ballot Text of Proposition K*. Accessed at: <https://ucla.app.box.com/file/317520220020>

³⁸ Alameda County Transportation Commission. (2014). *County of Alameda Measure BB - Complete Text*. Accessed at: <https://ucla.app.box.com/file/317513860565>

History of Amendments and Project Changes Across Measures

Methodology

We conducted online searches to obtain publicly available evidence of amendments to LOST measure ordinances and expenditure plans. We used Google and search functions on the websites of Local Transportation Authorities. We queried using search terms that included each measure's name (e.g., Measure A), the corresponding county's name (e.g., Santa Clara), the year a measure was approved by county voters (e.g., 2000), the name of the document containing each measure's project list (most often an "expenditure plan," but occasionally named an "investment plan"), and the word "amendment". We then reviewed all search results, and kept a running tally of amendments by measure. Because the websites of Local Transportation Authorities do not all archive all amendments and versions of each measure's ordinance and/or expenditure plan, it is unlikely that this search resulted in a complete and comprehensive listing of all amendments that have ever taken place; we are confident that we identified all amendments for which there is publicly available evidence online.

We sought to understand the degree to which amendments have resulted in "substantive changes," which we define as changes that affect projects specifically enumerated for funding by inclusion in a measure's expenditure plan (or equivalent measure documentation). We took into account that the procedures for amending a LOST ordinance typically differ from those for amending an expenditure plan that is required by the ordinance. If the share of measure-allocated funding for an enumerated project was reduced by an expenditure plan amendment, that was considered to be one amendment and one substantive change. Similarly, if one enumerated project was cancelled and another was added via an expenditure plan amendment, we considered this to be one measure amendment and two substantive changes. While Local Transportation Authorities often amend project timelines and budgets by amending or creating long-term "Strategic Plan" documents rather than by amending ordinances or expenditure plans, we did not thoroughly study those practices. If a project timeline was extended or had its measure-allocated funding reduced by amendment of or by issuing a new "Strategic Plan", we did not define that as a "substantive change", and did not consider the amendment of a "Strategic Plan" to be a measure amendment. It is possible that our findings do not account for some project-level changes that were made by way of Strategic Plan updates and/or amendments.

For an example of what is meant by a "substantive change," consider the case of Alameda County's 1986 Measure B. In July 2005, an amendment to the Measure B Expenditure Plan replaced the Hayward Route 238 Bypass Project with the City of Hayward's Proposed Route 238/Mission-Foothill-Jackson Corridor Improvement Project. This was considered to be one amendment and two substantive changes, since the amendment in question cancelled a project and replaced it with another.

Findings

Of the 51 California LOST measures enacted since 1976, we found that at least 84 ordinance and/or expenditure plan amendments have been made resulting in at least 68 substantive changes to project lists. At least 21 measures have undergone at least one ordinance and/or expenditure plan amendment, and 17 measures have been changed substantively. At least 16 measures have been both amended and “substantively changed”. For 30 measures, we found no evidence of an amendment or substantive change. For 34 measures, we found no evidence of any substantive changes. These totals do not add up to 51 measures because, for some, we identified expenditure plan amendments and no substantive changes, while for others, we identified substantive changes but no expenditure plan amendments. Our findings are summarized in Table 1.

The vast majority of ordinance and/or expenditure plan amendments and “substantive changes” have affected well under half of the California LOST measures, leading us to conclude that a minority of measures account for most amendments and changes.

Table 1. History of Amendments and “Substantive Changes” Across LOST Measures

Total # of Adopted LOST Measures	Total # of Amendments	Total # of “Substantive” Changes	# Measures w/ at least 1 Amendment
51	84	68	21
# Measures w/ at least 1 “Substantive” Change	# Measures w/ at least 1 Amendment and at least 1 “Substantive” Change	# Measures w/ no evidence of Amendments	# Measures w/ no evidence of “Substantive” Changes
17	15	30	34

See:

<https://docs.google.com/spreadsheets/d/1PAs62StlclFJXSxABsasVTvAMgQhirtxMA6cuGnxCfl/edit#gid=1932752670>

Public Oversight of LOST Measure Implementation

Because LOSTs are enacted by a supermajority of votes of the people of the state, and procedures for amending them have been shown in preceding sections to ensure that changes are rare and carefully justified, it follows that there is also a strong commitment to assuring that the provisions of the measures are actually carried out in strict compliance with the will of the public as expressed in the measures that they approved. Thus, California's LOST measures include provisions designed to ensure public oversight of tax collection and expenditures. All voter-approved LOST measures require regular independent auditing of measure administration and implementation, and many require that county Transportation Authorities

appoint independent public oversight committees. In this chapter, we review the ways in which oversight and accountability are ensured across the state.

Independent Financial and Performance Auditing

All California LOST measures enacted are subject to regular independent financial and/or performance auditing under the auditing requirement enumerated in the section of the state's Public Utilities Code governing the creation of County "Transportation Authorities." Such authorities must "cause a postaudit of the financial transactions and records of the authority to be made at least annually by a certified public accountant."³⁹ Similar wording appears in many of the ordinances that we examined. For instance, Fresno County's 1986 Measure C ordinance (as well as its enabling legislation, located at PUC section 142105) requires the Fresno County Transportation Authority to "[c]ause a post audit of the financial transactions and records of the authority to be made at least annually by a certified public accountant."⁴⁰ Similarly, Los Angeles County's 2016 Measure M requires that the Los Angeles County Metropolitan Transportation Authority "contract for an annual audit, to be completed within six (6) months after the end of the fiscal year being audited, for the purpose of determining compliance by Metro with the provisions of this Ordinance relating to the receipt and expenditure of Sales Tax Revenues during such fiscal year."⁴¹ In another example, Sacramento County's 2004 Measure A2 ordinance describes "annual fiscal and periodic performance audits [...] performed in accordance with generally accepted auditing standards and Government Auditing Standards issued by the Comptroller General of the United States and based on performance standards adopted by the Authority Board for each program or project funded in whole or in part with sales tax funds."⁴² As described below, independent public oversight committees are often charged with contracting with and supervising independent auditors and, in some cases, are even empowered to dictate the scope of auditing.

Public Oversight Committees

In addition to regularly required audits, many LOST measures require the creation of independent bodies to oversee and review each measure's implementation. In general, these oversight committees are intended to ensure that measure implementation proceeds in accordance with the project lists, budgets, and timelines promised to voters. The public

³⁹ CA PUC §§ 180000 - 180264. *Local Transportation Authorities: Administration*. Added by Stats. 1987, Ch. 786, Sec. 1. Accessed at:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PUC&sectionNum=180105.

⁴⁰ *California Senate Bill 878*. (1986). Accessed at: <https://ucla.app.box.com/file/317509040500>

⁴¹ Los Angeles County Transportation Authority. (2016). *Ordinance #16-01: Los Angeles County Traffic Improvement Plan*. Accessed at: <https://ucla.app.box.com/file/317513845491>

⁴² Sacramento Transportation Authority. (2004). *Ordinance No. STA 04-01*. Accessed at: <https://ucla.app.box.com/file/317513809394>

oversight committees created by LOST measures go by different names as specified in the ordinances — examples include Citizens' Advisory Committee, Citizens' Oversight Committee, Independent Taxpayer Oversight Committee, Expenditure Plan Oversight Committee — but the scope of their responsibilities is largely consistent across measures. By and large, these bodies are assigned responsibilities including the receipt and review of independent audit findings and other financial information related to LOST measure implementation. The oversight groups are importantly charged with making recommendations that are typically included in annual reports published by the county's Local Transportation Authority and made available to the public. In limited cases, these oversight bodies may be empowered to issue formal recommendations regarding LOST measure expenditure plans and proposed amendments (though recipient Local Transportation Authorities are not in every case obligated to implement the recommendations, or even to respond to them). These committees are also typically charged with holding public meetings or hearings to share findings from independent audits. Many are required to author annual reports/letters on measure implementation and progress towards stated goals.

At least 32 of the LOST measures that have been enacted in California have created such committees to oversee LOST measure implementation. The vast majority of the committees have advisory roles, in that they cannot themselves veto proposed expenditure plan amendments. Rather, they are typically responsible for supervising independent auditing, reporting the findings of auditing at public meetings and/or hearings, and authoring reports and/or letters to the local Transportation Authority on an annual basis. Presumably, the framers of LOST measures, on the one hand, wanted to ensure that reviews occur and that the public is provided with information but, on the other hand, did not wish to dilute decision authority. For example, Merced County's 2016 Measure V created a "Citizens Oversight Committee" that "may receive, review and recommend any action or revision to plans, programs, audits or projects[.]"⁴³ This committee has "full access to the [...] independent auditor and will have the authority to request and review specific information," but lacks any voting or veto power with respect to proposed Expenditure Plan amendments. Similarly, the "Independent Citizens' Oversight Committee" created by Santa Clara County's 2000 Measure A is tasked with holding public hearings, annually issuing public reports, publishing findings made by an Independent Auditor, and authoring an Annual Report.⁴⁴ Though these committees are usually advisory in nature, committee reports are published online and reported in the media, and they often influence the actions taken by the Local Transportation Authorities to whom they formally report.

⁴³ Merced County Association of Governments. (2016). *Proposed 2016 ½ Cent Transportation Sales Tax Measure Expenditure Plan*. Accessed at: <https://ucla.app.box.com/file/317520151132>

⁴⁴ Santa Clara County. (2000). *Complete Text of Measure A*. Accessed at: <https://ucla.app.box.com/file/317510654331>

In a limited number of cases, oversight or advisory committees have more direct power with respect to LOST measure implementation. For instance, Orange County's 1990 Measure M1 created a "Citizens Committee" with the power to approve (and, presumably, deny), by a two-thirds vote, "amendments to the [Expenditure] Plan which change the funding categories, programs, or projects[.]"⁴⁵ Similarly, Orange County's 2006 Measure M2 created a "Taxpayer Oversight Committee" that also has the power to approve (and, presumably, deny), by a two-thirds vote, "any amendment to the [Expenditure] Plan proposed by the [Orange County Transportation] Authority which changes the funding categories, programs or projects[.]"⁴⁶ Moreover, the Measure M2 ordinance specifies that the Orange County Transportation Authority must respond in writing when the Taxpayer Oversight Committee requests in writing that the Local Transportation Authority explain perceived deviations from the Expenditure Plan.

In similar circumstances, most measures do not appear to require any formal response from implementing authorities. Los Angeles County's 2008 Measure R charges its "Measure R Independent Taxpayer Oversight Committee of Metro" with a potentially substantive role related to Expenditure Plan amendments; per the Measure R ordinance, this committee must: "Review any proposed amendments to this Ordinance, including the expenditure plan, and make a finding as to whether the proposed amendments further the purpose of this Ordinance."⁴⁷ Los Angeles County's 2016 Measure M grants the "Measure M Independent Taxpayer Oversight Committee of Metro" the same authority: "review any proposed amendments to the Ordinance, including the Expenditure Plan, and make a finding as to whether the proposed amendments further the purpose of the Ordinance."⁴⁸ Finally, Monterey County's 2016 Measure X specifies that the Local Transportation Authority may only consider proposed Investment Plan amendments after the "Citizens Oversight Committee" created by the measure makes a recommendation on the proposed change by a two-thirds vote.⁴⁹

The review groups are, in some instances, structured in response to idiosyncratic county frictions and traditions, creating conditions and responsibilities that, on the surface, may seem unusual to those unfamiliar with local history. Santa Barbara County's 2008 Measure A creates

⁴⁵ Orange County Transportation Authority. (2011). *Measure M: Ordinance No. 2*. Accessed at: <https://ucla.app.box.com/file/317516894768>

⁴⁶ Orange County Transportation Authority. (2006). *Measure M2 - Ordinance No. 3*. Accessed at: <https://ucla.app.box.com/file/317516204273>

⁴⁷ Los Angeles County Metropolitan Transportation Authority. (2008). *Ordinance # 08-01: Traffic Relief and Rail Expansion Ordinance*. Accessed at: <https://ucla.app.box.com/file/317514410456>

⁴⁸ Los Angeles County Transportation Authority. (2016). *Ordinance #16-01: Los Angeles County Traffic Improvement Plan*. Accessed at: <https://ucla.app.box.com/file/317513845491>

⁴⁹ Transportation Agency for Monterey County. (2016). *Ordinance No. 2016-01*. Accessed at: <https://ucla.app.box.com/file/317514028295>

two “Subregion Committees,” in addition to a countywide Citizens Oversight Committee. These represent Santa Barbara County’s North County and South Coast subregions, respectively, and mirror an explicit distinction in the expenditure plan between funding programs in these two subregions, reflecting a longstanding divergence of policy priorities between these parts of the county.⁵⁰ Each of these “Subregion Committees” is tasked with issuing recommendations to the County Transportation Authority “by majority vote, [regarding] the policies and guidelines required to implement [each Subregion’s] Program of the Investment Plan,” and also issues “recommendations to the Authority regarding the programs to be funded by [each Subregion’s] discretionary programs, excluding the Local Street and Transportation Improvement Program.”⁵¹ This exclusion reflects the desire of local governments to retain control over expenditures within their boundaries. Moreover, each Subregion Committee “must approve, by majority vote, any amendment to [its] [...] Subregion Program prior to an Authority vote on the amendment[.]”⁵² Similarly, Napa County’s 2012 Measure T created an Independent Taxpayer Oversight Committee which reviews 5-year lists of projects submitted by each city and town in the County, as well as by the County itself. The Committee “make[s] a finding that such projects are consistent with the intent of the measure,” The possibility that a required finding may be withheld gives the committee a potentially substantive role relating to the measure’s Expenditure Plan.⁵³

The majority of LOST measures that create independent public oversight committees include specifications as to how each committee’s membership should be comprised, though some measures are more specific than others. The variation in specifications of qualifications for membership is illustrated by examples included in Table 2. For instance, Alameda County’s 1986 Measure B specifies that its “Citizens Advisory Committee” be selected to represent “a cross-section of the community,”⁵⁴ but fails to specify how compliance with this requirement will be determined and certified. San Joaquin County’s 2016 Measure K Renewal Expenditure Plan specifies that its “Citizens Review Committee” must be comprised to “fairly [represent] the geographical, social, cultural, and economic mix of the region”⁵⁵, but also fails to specify how

⁵⁰ Santa Barbara County Local Transportation Authority. (2015). *Ordinance No. 5*. Accessed at: <https://ucla.app.box.com/file/317520205106>

⁵¹ Ibid.

⁵² Ibid.

⁵³ Napa Valley Transportation Authority. (2012). *Ordinance No. 2012-01: Napa Countywide Road Maintenance Act*. Accessed at: <https://ucla.app.box.com/file/317520258124>

⁵⁴ Alameda County Transportation Authority. (2001). *Ordinance No. 2: 0002-86*. Accessed at: <https://ucla.app.box.com/file/317513728167>

⁵⁵ San Joaquin Council of Governments. (2015). *Measure K Renewal - 2015 Ordinance and Expenditure Plan*. Accessed at: <https://ucla.app.box.com/file/317520059513>

compliance will be determined. Other measures are more explicit regarding how independent oversight committee membership is to be comprised. Tulare County's 2006 Measure R specifies that its "Citizens' Oversight Committee" must include "[o]ne representative from an environmental advocacy group," "[o]ne representative from an advocacy group representing bicyclists and pedestrians, and/or transit," "[o]ne member who is a professional in the field of audit, finance and/or budgeting with a minimum of five years in a relevant and senior decision-making position in the public or private sector," and so on.⁵⁶ Los Angeles County's 2008 Measure R somewhat uniquely specifies that its "Independent Taxpayer Oversight Committee of Metro" must be comprised of "[t]hree persons, each [...] a retired Federal or State Judge."⁵⁷

Conclusion

LOST measures in California contain a diversity of provisions that aim to promote public accountability throughout the course of measure implementation, ensuring that, where practicable, Local Transportation Authorities implement each measure substantially in accordance with project lists, timelines, and budgets that are promised to voters. While all measures we reviewed are subject to regular independent auditing procedures, many measures also require the creation of independent oversight committees to represent the interests of the general public during implementation. By requiring the creation of such committees, which are often granted explicit or *de facto* veto power over proposed expenditure plan amendments, implementing counties can serve to bolster public accountability. Future research might explore which types of public accountability provisions are most highly correlated with the attainment of voter-desired outcomes during measure implementation.

Table 2. Independent Oversight Committee Membership Specifications

County, Measure Name (Year)	Committee Name	Membership Specifications	Source
Merced, V (2016)	Citizen's Oversight Committee	"One member appointed by each City and the County (Total of 7); One representative from the building industry; One representative from the agricultural industry; One representative from an ethnic community group; One representative from a major private sector Merced County employer; One representative from an advocacy group	Here

⁵⁶ Tulare County Transportation Authority. (2006). *Ordinance No. 2006-01*. Accessed at: <https://ucla.app.box.com/file/318048675772>

⁵⁷ Los Angeles County Metropolitan Transportation Authority. (2008). *Ordinance # 08-01: Traffic Relief and Rail Expansion Ordinance*. Accessed at: <https://ucla.app.box.com/file/317514410456>

		representing bicyclists and pedestrians, and/or transit; One member who is a professional in the field of audit, finance, and/or budgeting with a minimum of five years in a relevant and senior decision-making position in the public or private sector; One representative from an environmental advocacy group" and four at-large representatives to be filled by Merced County residents through an application process.	
Napa, T (2012)	Independent Taxpayer Oversight Committee	"One member who is a professional, retired or active, in the field of municipal audit, finance and/or budgeting with a minimum of five years in a relevant and senior decision-making position in the public or private sector; One member who is a licensed civil engineer, retired or active, with at least five years of demonstrated experience in the fields of transportation in government and/or the private sector; One member who is a Certified Public Accountant (CPA) and experienced in financial audits; One member shall be a representative of a Napa region Chamber of Commerce; One member from a bona fide taxpayers association; and Two members from the public at-large."	Here
Los Angeles, R (2008)	Independent Taxpayer Oversight Committee of Metro	"[T]hree persons, each [...] a retired Federal or State Judge."	Here
Santa Barbara, A (2008)	Citizens Oversight Committee	"[A]n appropriate balance of transportation users representing the geographic, social, cultural, and economic interests of the county."	Here

San Joaquin, K (2006)	Citizens Review Committee	Must be comprised so that it "fairly represents the geographical, social, cultural, and economic mix of the region."	Here
Tulare, R (2006)	Citizens' Oversight Committee	"One member will be appointed by each City and the County. (Total of 9); One representative from a major private sector Tulare County employer, nominated by the Tulare County Economic Development Corporation; One representative from the building industry, nominated by the Tulare County Building Industry Association; One representative from the agriculture industry, nominated by the Tulare County Farm Bureau; One representative from the Hispanic community, nominated by the Tulare Kings Hispanic Chamber of Commerce; One representative from an advocacy group representing bicyclists and pedestrians, and/or transit; One member who is a professional in the field of audit, finance and/or budgeting with a minimum of five years in a relevant and senior decision-making position in the public or private sector; One representative from an environmental advocacy group" and three at-large applicants.	Here

Lawsuits and Local Option Sales Taxes in California

This section explores different types of lawsuits filed in connection with LOST measures in California, citing examples that illustrate their impact. Disputes about compliance with measures approved by voters and arguments as to whether or not agencies have implemented the intent of measures, when not resolved amicably, can end up in court. For this reason, lawsuits brought against transportation agencies constitute a very important source of information. Legal decisions, whether verdicts in trials or settlements agreed to by contending parties, reveal strong differences of opinion, resolve challenges, and create precedents followed in the future in other jurisdictions. Lawsuits are a tactic by which opponents of LOST measures (and/or of specific LOST-funded transportation projects) can delay or impede implementation. In this chapter, we summarize the nature and outcome of lawsuits brought

against counties over the implementation of LOSTs. Legal challenges can necessitate project list changes. Most often, the lawsuits we reviewed targeted specific projects based on perceived failures to comply with the relevant state or federal environmental impact analysis requirements. In other cases, lawsuits charged that LOST measures were not distributing project funding on an equitable basis. Still, other lawsuits called into question whether the inclusion of a project list represents a commitment by local governments to build all of the projects. If a commitment to build a project is understood to have been made, does this require local authorities to perform environmental impact analyses before drafting project lists?

This chapter illustrates how some lawsuits have shaped LOST implementation, including how legal challenges contributed to (and, in some cases, necessitated) project-level changes during measure implementation. We discuss the implications of our findings for implementing authorities interested in maintaining a pragmatic degree of flexibility in implementation while remaining accountable to the specific project lists, budgets, and construction timelines approved by voters.

Methodology

We identified relevant legal challenges serially (i.e., by measure) through a structured online search. Sequentially, we queried Google for lawsuits relevant to each voter-approved LOST measure in California, by using the following targeted keywords: (1) each measure's name in quotes (e.g., "Measure T"), (2) each corresponding county's name in quotes (e.g., "Madera County"), (3) the year each measure was approved by voters (e.g., 2006), and (4) the word "Lawsuit." In addition to searching for the word "lawsuit," Google's algorithm generates results that include any synonyms for the keyword "lawsuit" (e.g., litigation, sue, suing, complaint, etc.), bolstering the comprehensiveness of this search. We then reviewed all pages of the Google search results that this search generated for each LOST measure, noting any relevant litigation. Our search results included reporting on relevant lawsuits by newspapers and other local media sources, as well as original court filings from official public webpages and litigation repositories. In all instances, we attempted to obtain the original court filings for petitions and judicial findings, though in a few cases we were only able to find one or the other and have relied on contemporaneous media reporting to ascertain outcomes. To identify further examples of LOST-relevant lawsuits, we also searched of the Nexis Uni online database of legal briefs, pleadings, and motions using the same search terms. We reported on all of the relevant challenges identified using this search process and that we deemed sufficiently germane. A limited number of identified challenges are excluded because they appeared frivolous. The legal challenges identified through this search process have been divided up into discrete challenge categories, arrived at by researchers for ease and clarity of discussion in the report.

Environmental Review-Related Legal Challenges

Many legal challenges related to LOST measures and project lists involve charges of non-compliance with state and/or federal environmental review requirements, a common vehicle

for citizen suits in California. Most such lawsuits that we reviewed target specific projects enumerated in LOST expenditure plans.

A very important suit resulted in a decision making it clear that LOSTs themselves need not be the subject of environmental impact analysis before an election although projects funded by the LOSTs are subject to environmental review requirements. A lawsuit related to Santa Barbara County's 2008 Measure A acknowledged and upheld the flexibility of LOST expenditure plans. Plaintiffs in *Sustainable Transportation Advocates of Santa Barbara v. Santa Barbara County Association of Governments* (2009) aimed to block the placement of Santa Barbara County's 2008 Measure A on the ballot because environmental review of the proposed projects had not taken place prior to the submission of the measure's expenditure list to voters.⁵⁸ The court held that the submission of the Measure A expenditure plan to voters "does not constitute a binding commitment to construct the projects set forth in the investment plan," and that the activity is therefore not required to be preceded by certification of an Environmental Impact Report (EIR).⁵⁹ Our interpretation of this court finding is that expenditure plans do become binding when they are approved by the voters if not before, and that they are binding is the reason for the amendment and review processes presented earlier. Subsequent proceedings in Los Angeles County affirmed this view of expenditure plan submission. In *City of South Pasadena v. Los Angeles County Metropolitan Transportation Authority* (2011), a court of appeals affirmed an earlier trial court decision that the inclusion of the 710 Tunnel project in the Los Angeles County Measure R expenditure plan did not qualify as a "project" under the California Environmental Quality Act (CEQA), and therefore was not required to be preceded by an EIR certification.⁶⁰ Both of the aforementioned decisions follow from the so-called "funding mechanism exemption" at CEQA Guidelines section 15378, subdivision (b)(4)⁶¹, which provides — for purposes of CEQA — that the following are excluded from the definition of a project: "[t]he creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant impact on the environment." CEQA environmental review requirements can be time-intensive and quite costly to meet. Had the courts instead determined that Local Transportation

⁵⁸ "Finding/Opinion." *Sustainable Transportation Advocates of Santa Barbara v. Santa Barbara County Association of Governments* (2009). Court of Appeals of California, Second District, Division Six. Accessed at: <https://www.leagle.com/decision/incaco20091014020>

⁵⁹ Ibid.

⁶⁰ "Opinion/Finding." *City of South Pasadena v. Los Angeles County Metropolitan Transportation Authority* (2011). Case No. B221118, Court of Appeals of California, Second District, Division Six. Accessed at: <https://www.leagle.com/decision/incaco20110322011>

⁶¹ "Definitions." Title 14. California Code of Regulations Chapter 3. Guidelines for Implementation of the California Environmental Quality Act Article 20. Definitions (2019). Accessed at: <http://www.resources.ca.gov/ceqa/guidelines/art20.html>

Authorities do need to complete environmental review before submitting LOST expenditure plans to voters, this would have severely limited the flexibility of county agencies charged with implementing LOSTs in California.

Other suits addressed the timing of the transportation projects included in LOSTs in relation to the timing of land development in the same geographic areas. In *Town of Danville, et al. v. County of Contra Costa, et al.* (1994), the Town of Danville and the City of San Ramon (alongside numerous non-governmental co-plaintiffs) sued Contra Costa County to invalidate EIR certification of road improvements partially funded with revenues from Contra Costa's 1988 Measure C, because of the County's adoption of both a General Plan Amendment and a Specific Plan for the Dougherty Valley project.⁶² Both parties entered into a settlement delineating "certain principles to govern development in the Dougherty Valley[.]"⁶³ The settlement included assurances sought by plaintiffs that road improvements would precede proposed housing construction — thereby mitigating the traffic impacts expected to result from the housing project prior to its construction.⁶⁴

In *Caldecott Fourth Bore Coalition v. California Department of Transportation* (2007), a settlement was agreed to after plaintiffs challenged the Caltrans' decision to approve the EIR for the Caldecott Fourth Bore project enumerated for funding under Alameda County's 2014 Measure BB.⁶⁵ Under the settlement, Caltrans agreed to study additional transportation management issues in the project area, fund surface street improvements in the City of Berkeley, and adopt measures intended to mitigate the project's construction impacts relating to light, noise, and soil.⁶⁶ By entering into this settlement agreement, Caltrans ensured that project implementation would continue in earnest.

When projects are funded by LOSTs, they may be challenged on a wide variety of grounds that are widely used to oppose transportation projects that are funded by other mechanisms. In *San Franciscans for Sustainable Transit, Inc. v. City and County of San Francisco et al.* (2017), opponents of the Geary Bus Rapid Transit (BRT) project to be funded by San Francisco County's

⁶² "AGREEMENT TO SETTLE LITIGATION RELATING TO THE DOUGHERTY VALLEY GENERAL PLAN AMENDMENT, SPECIFIC PLAN AND ENVIRONMENTAL IMPACT REPORT." *Town of Danville, et al. v. County of Contra Costa, et al.* (2014). Case No. C 93-00231, Contra Costa County Superior Court. Accessed at: <https://www.contracosta.ca.gov/DocumentCenter/View/25997/DV-SettlementAgreement?bidId=>

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ "Settlement Agreement." *Caldecott Fourth Bore Coalition v. ... of Transportation* (2009). Case No. RG07355832, Alameda County Superior Court. Accessed at: <http://www.fourthbore.org/wp-content/uploads/2011/11/20090122caldecott-fourth-bore-final-agreement.pdf>

⁶⁶ Ibid.

2003 Proposition K alleged that the project's certified EIR contained "fatal substantive flaws" because it failed to analyze a no-build option and utilized "outdated data" and "unsubstantiated models."⁶⁷ In particular, the plaintiffs alleged that the project's EIR insufficiently analyzed the impacts of transportation network companies (TNCs) on traffic, transit ridership, and the environment.⁶⁸ Ultimately, a superior court judge ruled in favor of the City and County of San Francisco by concluding that "substantial evidence" existed to support the final certification of the project's EIR (Pendergast, 2018).

Equity-Related Legal Challenges

Another category of lawsuits charge inequity in LOST measure design and/or implementation, and have implications related to measure implementation and the flexibility of county authorities to amend voter-approved project lists. One such challenge occurred when implementing authorities in Los Angeles County attempted to reallocate discretionary funding collected through the county's 1990 Measure C to cover a budget shortfall affecting the Southern California Rapid Transit District, which operated bus transit service and also funded municipal transit systems in the county. The budget shortfall arose because "the vast majority of [Measure C] funds [were spent] on new rail projects while consistently defunding the bus system and claiming business hardship" (Mann, 2004). Bus ridership far outweighed rail ridership in Los Angeles County, at the time. In *Labor/Community Strategy Center v. Los Angeles County Metropolitan Transportation Authority* (1994), co-plaintiffs the NAACP Legal Defense and Education Fund and the Bus Riders' Union, launched a class-action lawsuit against the Los Angeles County Metropolitan Transportation Authority (MTA), challenging a set of proposed changes to transit fares and services meant to ease the budget shortfall and accompany the Measure C discretionary funding reallocation.⁶⁹ The lawsuit, which culminated in a pre-trial settlement by consent decree, arose when plaintiffs alleged that the distribution of Measure C funding was modally inequitable between rail and bus. The consent decree precluded a definitive resolution of the matter, though the MTA agreed to reduce crowding on bus routes and maintain higher funding levels for bus routes for a further ten years. Subsequent attempts by the original plaintiffs to obtain an extension of the aforementioned settlement agreement

⁶⁷ "Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief." *San Franciscans for Sensible Transit, Inc. v. City and County of San Francisco et al* (2017). [Case Number Unknown] San Francisco County Superior Court. Accessed at: <https://static1.squarespace.com/static/599b62abccc5c570cf872f4f/t/5a38356fe4966b79a0f3bca2/1513633138767/Petition2317.pdf>

⁶⁸ Ibid.

⁶⁹ "Opinion." *Labor/Community Strategy Center v. Los Angeles County Metropolitan Transportation Authority* (2009). Case No. 06-56866, United States Court of Appeals, Ninth Circuit. Accessed at: <https://caselaw.findlaw.com/us-9th-circuit/1298593.html>

beyond the originally specified ten-year period were denied by a Los Angeles District Court and Appellate Court, respectively (*ibid.*).

Los Angeles County's 1990 Measure C has also been challenged on the basis of geographic equity. While not explicitly the subject of a lawsuit, an audit of the Los Angeles Department of Transportation (LADOT)'s management of funds and grants obtained under Proposition C found that the City of Los Angeles — despite comprising nearly 40 percent of the county's population — appeared to be the recipient of a disproportionately small amount — 27% — of the annual "Call for Projects" grants made available under Proposition C (Office of the Los Angeles City Comptroller, 2014). Los Angeles County's 2016 Measure M also faced a legal challenge launched by constituent municipalities, which alleged geographic and temporal inequity in the distribution of Measure M funding across the county. In *City of Carson et al. v. Dean C. Logan in his official capacity as County Registrar-Recorder/County Clerk for the County of Los Angeles* (2016), seven Los Angeles County municipalities filed suit in Los Angeles County Superior Court, alleging that the Measure M ballot language "conveys a false impression of equal distribution of projects over time."⁷⁰ More specifically, the plaintiffs alleged that, under Measure M, "projects in the western and northern regions of the county will be completed much sooner [...], while south county regions will not see local return until 2039-2040."⁷¹ Ultimately, the Los Angeles Superior Court denied the plaintiffs' petition and ruled in favor of the County of Los Angeles, finding that the plaintiffs had failed to convince the court that Measure M's ballot language lacked clarity or specificity (*City News Service/Daily Breeze*, 2016).

Ballot Language and Transparency-Related Challenges

Another category of legal challenges to LOST measures involves charges that county authorities have not acted transparently in putting measures before voters, and/or that the ballot language describing a given measure to county voters is not adequately constructed or understandable to readers.

For instance, opponents of Los Angeles County's 2016 Measure M alleged in *City of Carson et al. v. Dean C. Logan in his official capacity as County Registrar-Recorder/County Clerk for the County of Los Angeles* (2016) that the measure's ballot language was "misleading" because it failed to specify details regarding the tax's rate, duration, and expected revenue generation.⁷²

⁷⁰ "Petition for Writ of Mandate." *City of Carson et al. v. Dean C. Logan in his official capacity as County Registrar-Recorder/County Clerk for the County of Los Angeles* (2016). Case No. BS-164554, Los Angeles County, Central District, Superior Court. Accessed at: http://clkrep.lacity.org/online/docs/2015/15-0002-s213_pc_9-12-16.pdf

⁷¹ *Ibid.*

⁷² "Petition for Writ of Mandate." *City of Carson et al. v. Dean C. Logan in his official capacity as County Registrar-Recorder/County Clerk for the County of Los Angeles* (2016). Case No. BS-164554, Los Angeles

Moreover, plaintiffs alleged that the measure's ballot language failed to specify most of the projects it would fund and did not offer enough detail regarding geographical project distribution.⁷³ Instead, plaintiffs alleged that the measure's authors had taken a "kitchen-sink approach" by offering overly broad explanations of the need for the measure (e.g., to reduce congestion, perform needed sidewalk and roads maintenance, expand public transit, etc.) (Mazza, 2016). Ultimately, as described in the previous section, the Los Angeles Superior Court denied the plaintiffs' petition and ruled in favor of the County of Los Angeles, finding that the plaintiffs failed to convince the court that the measure's ballot language lacked sufficient clarity or specificity (City News Service/Daily Breeze, 2016).

In California, the Brown Act requires open and accessible public government meetings, and this law has been used to challenge the transparency of LOST implementation. For instance, a Madera County resident filed a civil suit against the Madera County Board of Supervisors, alleging that the Board violated the Brown Act when they added an off-agenda "emergency item" during a public meeting in order to transfer road funds enumerated under Madera County's 1989 Measure A for use in unincorporated areas of the county to build a bridge in an incorporated area (*The Ranchos Independent*, 2007). Similarly, an unsuccessful lawsuit launched by a resident of San Bernardino County alleged that county authorities had violated the Brown Act by failing to mention the words "toll" or "express lane" in a public notice about the "Interstate 10 Corridor Project" — a toll lane addition — that was slated to receive funding through San Bernardino County's 2004 Measure I2 (*San Bernardino County Sun/The Press-Enterprise*, 2017). However, that the vast majority of Brown Act-related suits filed in connection with LOST measures have been resolved in favor of the Local Transportation Authorities suggests that the courts have tended to interpret many of these suits being as frivolous in nature, and also strengthens the capacity of Local Transportation Authorities to design and implement LOST measures that are ambitious in reach.

Conclusion

The legal challenges described in this section suggest several important findings for Local Transportation Authorities charged with administering California's LOST measures. The cases reveal a pattern. Agencies have a great deal of latitude to determine their expenditure plans and flexibility over the lifetime of the measure, as long as agencies ensure transparency during measure implementation and comply with review and amendment procedures as specified in approved measures.

Environmental-review-focused legal challenges will likely continue to serve as a tried-and-true means of delaying — if not altogether preventing — the construction of transportation

County, Central District, Superior Court. Accessed at: http://clkrep.lacity.org/online/docs/2015/15-0002-s213_pc_9-12-16.pdf

⁷³ Ibid.

infrastructure projects in California. Importantly, however, the landmark decisions overviewed above unequivocally establish that Local Transportation Authorities need not complete the environmental review processes specified in the CEQA statute before a measure's project list is submitted to county voters. LOSTs afford Local Transportation Authorities the "flexibility to pursue environmental review and design simultaneously rather than sequentially" (Wachs, 2003), which can enable project funding to be secured more quickly than may be possible using other funding mechanisms. Moreover, LOSTs tend to receive high levels of voter support because of their inclusion of specific project lists (Beale et al., 1996; Crabbe et al., 2005). Dutiful compliance with relevant state and federal environmental review requirements can maximize the likelihood that LOST-funded projects will withstand CEQA and NEPA lawsuits.

The transparency-related legal challenges to LOST measures overviewed in this section underscore the importance of drafting ballot language that is both clear and concise. For instance, the inclusion of a specific list of projects to be funded with measure revenue (as opposed to broadly specified funding categories and overly-general language explaining how funds will be spent) reduces flexibility in the future but insures increases the chances of successful implementation. By being as clear as possible regarding public meeting schedules, agendas, and notices, Local Transportation Authorities can strive for unequivocal compliance with the transparency requirements of California's Brown Act. That the vast majority of the lawsuits reviewed in this section were resolved in favor of the implementing jurisdiction suggests that, for the most part, LOST measures in California have been designed to conform with these recommendations regarding clarity and concise language.

Interpretations, Conclusions, and Recommendations

Interpretations and Conclusions

Because they are approved by a supermajority of those voting, LOSTs inherently embody a tension between accountability and flexibility. LOSTs' central features are lists of projects and programs that will be funded should the voters approve the measures. Voters are presumed to be motivated by the explicit commitments that those lists create. The lists of funding commitments have been developed with the priorities of communities clearly in mind, and where measures have been approved agencies are obligated to comply with the voters' directives. That accountability is seen by most counties as a solemn obligation, and communities and citizens interest groups have sued when they believed that commitments have been breached.

On the other hand, measures have been enacted that remain in force for long periods – decades or more – and in some cases permanently. During their lives, transportation technology can change dramatically, planned projects can be abandoned because of environmental challenges, new proposals can replace older ideas, and governments must amend their plans. Regional Transportation Plans and Transportation Improvement Plans are required by state law to be updated periodically to best reflect the transportation needs of a

region, which can conflict with the long-term expenditure lists included in measures. Balancing the will of the voters with the need for flexibility means that departures from voter-approved plans need to be provided for but should be rare and carefully executed.

Voters in California counties have enacted several dozen LOSTs over four decades, and, in a few cases, having approved as many as four or five measures in a single county. This study delved into how tensions between accountability and flexibility have been addressed and we found that for the most part a balance has been established between them. The balance is addressed systematically in the State's PUC, and to a considerable extent LOSTs' accountability and flexibility provisions are tailored to the particular needs of counties whose situations differ from one another. There are LOSTs in California's rural counties in which local roads are the paramount of concern, and there are others in some of the nation's most populous, prosperous, technologically advanced, and rapidly changing counties in which public transit capital investments dominate local transportation spending. Despite the dramatic diversity among measures in California over time, mechanisms have been established in most counties to ensure that measures are implemented faithfully and that procedures are in place that make it possible, though difficult, to amend voter-approved plans. The most important finding of this study is that the flexibility inherent LOST ordinances in California vary sufficiently from one county to another to reflect their diverse demographics, topography, and politics while revealing a clear tendency toward an admirable balance between accountability and flexibility.

Information on sales tax revenue that is collected and how it is spent is systematically audited, made available on a regular schedule to interested organizations and individuals. In addition to audits, most measures provide for citizens or expert review panels, composed reflecting local interests and differences among communities. Those bodies review audit outcomes, evaluate compliance with the measures, consider emerging trends, and recommend potential improvements.

Amendments to expenditure plans that have been approved by voters were found to be allowable and possible but subject to systematic hurdles that are clearly intended to make them rare and thus to occur only when there is widespread agreement that they are necessary and appropriate. While procedures differ from one county to another, expenditure plan changes must in some cases be approved by citizens' advisory committees, by a super-majority vote of a super-majority of city councils in a county, by a two-thirds supermajority of county transportation authorities, and in some cases by a super-majority of county supervisors. And, some measures restrict the frequency of consideration of amendments to periods as infrequent as once in two years or once in a decade. All measures require that some of the most sweeping changes to the nature of the tax – like the rate of taxation or a measure's length in years a measure will be in effect – be resubmitted to the voters for approval.

While we found that many counties experienced periodic flurries of concern that arose because some parties felt aggrieved by the routine administration of LOST measures or shortchanged by proposed amendments, threats of legal action were fairly rare and actual lawsuits were even

rarer. The fact that they have so far occurred with such low frequency indicates that LOSTs, while politically challenging and sensitive to local conditions, have over time been skillfully crafted to balance accountability and flexibility.

Recommendations

LOSTs have become a regular, permanent fixture of California's transportation policy landscape. They produce a substantial proportion of the state's transportation revenue and have changed the nature of transportation politics in our state. The increasingly frequent adoption of voter-PUC approved sales tax transportation measures across the country has also created a large national constituency interested in information about California's vast experience with such measures. We recommend that to support research on California's measures and to facilitate the sharing of California's experience with other interested states and counties across the nation, that a California LOST clearinghouse be created so that information about the measures is available and indexed by one institution. Because LOSTs are unique to the counties for which they were written while having many common features required by state law and arising from the imitation of successful practices, the primary beneficiaries of a clearinghouse or similar resource would be California county staff considering new measures or modified implementation procedures. The clearinghouse should contain all the original measures that were approved or defeated by the voters, election results, amendments, annual audit reports, and all other official documents of LOST-funded projects. In addition, such a collection could be augmented by reports of lawsuits, settlements, and verdicts that relate to LOSTs in California.

To carry out this study that resulted in this report, we began by assembling as many LOST measures we could find that had ever appeared on ballots in any California county. While we were able to assemble a library that included all recent measures, both successful and unsuccessful, we were surprised that some of the earliest measures, especially those that had failed to be enacted, and those considered by less populous and rural counties, were unavailable from county clerks, registrar-recorder offices, major public and university libraries, or the Self-Help Counties Coalition.

Modest staffing and resource maintenance costs could be provided by the research funding account created by SB 1. It could be maintained by the Institute of Transportation Studies Library at UC, Berkeley, or possibly by the California State Library or by the Self-Help Counties Coalition. Such a collection is warranted by the large number of measures and the long history that has grown over the decades since the adoption of the first LOSTs.

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Data Management Plan

Products of Research

This research relies upon data collected from original and amended LOST measure ordinances and expenditure plans, as well as on available academic and grey literature on LOST measures. Some information has been obtained from local transportation authority websites, county-level election board websites, and other online election archives. Aside from this report, researchers produced a “County-Level California LOST Measure Data Repository” that contains descriptive information on the 86 county-level LOST measures considered by California voters since 1976.

Data Format and Content

The “County-Level California LOST Measure Data Repository” is formatted as a spreadsheet file, with columns filterable and sortable according to the user’s preferences and research interests. A primary sheet (“LOST Details”) contains information on 86 passed and failed county-level LOSTs considered by California voters from 1976 through June 2020. The data points contained in this informational spreadsheet fall into six distinct categories: (1) Measure Information; (2) Project List and Expenditure Plan; (3) Local Returns; (4) Other; (5) Ballots, Support, and Opposition; and (6) Public Oversight. A secondary sheet (“Document Tracking”) provides hyperlinks to access all available LOST measure ordinances and expenditure plan documents, all archived digitally and publicly accessible in a Box.com archive.

Data Access and Sharing

This [data repository](#) and an accompanying [“user guide”](#) are stored on a Google Drive. The hyperlinks contained therein link either to publicly accessible files archived on Box.com, or to publicly accessible webpages.

Reuse and Redistribution

These data may be reused and redistributed, and researchers will work to update the database as needed, including to add new LOST measures and edit, as past measures become accessible.

Dataset citation: Marks, Jeremy; Wachs, Martin; Matute, Juan (2020), California County-Level Local Option Sales Tax (LOST) Data Repository, UCLA ITS Google Drive, Dataset, https://drive.google.com/file/d/1JGIXQrp2EqX1RmSGhQp1-vKw_TthnrYt/view?usp=sharing

Appendices

Appendix A: Case Study - Fresno County Measure C Extension (2006)

Background

Fresno County voters approved the first Measure C in 1986. It created a half-cent sales tax to fund transportation system improvements in Fresno County and its constituent cities,⁷⁴ with priority given to the improvement of the state highway network.⁷⁵ The half-cent sales tax was authorized by the enabling legislation to be levied for a period of up to 20 years, with the possibility for the tax to be discontinued before the end of the 20-year period if all of the projects specified in the enabling legislation were completed.⁷⁶ The enabling legislation provided a list of projects to be funded by Measure C revenues and specified that projects identified in the initial plan were to be given priority in subsequent plan amendments.⁷⁷ Highway capital improvements were allocated 75 percent of Measure C revenues,⁷⁸ and the remaining 25 percent of revenues were allocated to local governments to use to meet local transportation needs.⁷⁹ A formal expenditure plan, however, was left to the responsibility of the Fresno County Transportation Authority Board,⁸⁰ who adopted the first Measure C expenditure plan in 1988 (Fresno County Transportation Authority, 2007, p.3). Over its 20-year lifespan, the original Measure C “delivered more than \$1 billion of improvements to state highways, county roadways, and city streets” (Fresno County Transportation Authority, 2018).

The first Measure C was slated to expire in 2007. An extension was placed before voters in 2002. The 2002 effort failed, garnering only 54% of the vote in an election in which 42% of registered voters went to the polls (League of Women Voters of California, 2002). In the opinion of Ed Eames who would serve on the Steering Committee formed in the wake of the proposed extension's defeat, it failed, at least in part, because the proposed renewal did not require following Measure C expenditure plans to allocate sufficient funds to improve public transportation, instead of emphasizing highway expansion as a means to improve air quality and reduce congestion (Eames, 2006). Under the 2002 proposal, 13 percent of Measure C funds

⁷⁴ Senate Bill 878 1986 (CA) s.142250(a)

⁷⁵ Senate Bill 878 1986 (CA) s.142254

⁷⁶ Senate Bill 878 1986 (CA) s.142250(c)

⁷⁷ Senate Bill 878 1986 (CA) s.142260(a)

⁷⁸ Senate Bill 878 1986 (CA) s.142254

⁷⁹ Senate Bill 878 1986 (CA) s.142257

⁸⁰ Senate Bill 878 1986 (CA) s.142251

would have been allocated to public transportation while 24 percent would have been allocated to increasing roadway capacity (Sprawl Watch Clearinghouse, 2002). Many supporters were understood to have favored building new roads, while some opponents were identified as being opposed to new development and/or opposed to new taxes. However, many opponents of the extension, including the League of Women Voters, the Sierra Club, and the Fresno Americans with Disabilities Act (ADA) Advisory Council, were not opposed to an extension per se. They opposed this particular extension because they believed it allocated insufficient funding to transit and they reported an interest in crafting, according to the summary of their comments by Jim Davis writing for *The Fresno Bee*, “a new, better version of Measure C” (Davis, 2002).

After the failure of the 2002 effort to enact legislation extending Measure C, the Fresno County Board of Supervisors organized a 24-person Steering Committee that included representatives from local governments, business, labor, and stakeholder groups including the League of Women Voters, Sierra Club, Taxpayers' Association, a cycling interest group, environmental organizations, rail interests, business groups, labor, faith-based organizations, and representatives of disabled and senior groups (Council of Fresno County Governments, 2006, p.3). After deliberating for two years, the Steering Committee created a final allocation and expenditure plan. The 2006 measure included a significant increase in the amount of funding allocated to transit, an emphasis on sidewalks and curb cuts in newly constructed and existing roads and streets), and funding allocated to transportation improvements around accessible, affordable, transit-oriented higher-density housing (Council of Fresno County Governments, 2006, pp.4-6; Eames, 2006).

The revised Measure C proposal was placed before voters in November 2006 and passed with 78 percent of the vote, with 47% of registered voters turning out (League of Women Voters of California, 2006). Unlike the 1986 Measure C vote, which listed priority projects but did not provide a formal expenditure plan, voters in the 2006 election voted on an expenditure plan for the Measure C extension. The expenditure plan projected that the measure would generate \$1.7 billion in new revenues over a period of time lasting from July 1, 2007 to June 30, 2027; it promised that the revenues would be used to “provide a balance between public transit, road improvements, and other transportation programs that improve mobility and air quality within the County and each of the cities” (Council of Fresno County Governments, 2006, p.4).

However, the “great recession” coming soon after the election greatly affected the real estate market, and economic growth slowed significantly. As a result, sales tax revenues were considerably less than expected. By 2010, Measure C revenues were 14 percent under their initially projected level (Clemings, 2011). Some projects intended to be funded with those revenues were delayed, some promised transit service improvements did not materialize and in at least one case “auditors say Measure C funds may have been used to cover unrelated deficits” (*ibid.*). However, funds from the American Recovery and Reinvestment Act of 2009

(Public Law. 111-115) replaced some of the local sales tax revenues projected to be generated under Measure C (*ibid.*).

Expenditure Plan

Amendment Procedure

Fresno Council of Governments staff in conjunction with member agencies and stakeholder groups update the project list associated with the expenditure plan every two years. Priority must be given to still-incomplete projects listed in the enabling legislation for the 1986 Measure C (Council of Fresno County Governments, 2006, p. A-1). Staff sends the draft expenditure plan to the Fresno Council of Governments Policy Board, which schedules public hearings and, based on this input, updates the plan. The updated expenditure plan is then transmitted to the Measure C Authority Board, who must then approve the plan by a majority vote. The proposed amendment must also be approved by the county's board of supervisors and "a majority of cities constituting a majority of the population residing in the incorporated area of the county."⁸¹

Oversight

The renewed measure is overseen by the Fresno County Transportation Authority Board consisting of two members from the Board of Supervisors (consisting of one member from a rural district either 1, 4, or 5 and one member from an urban district either 2 or 3) chosen by the Board; two representatives for the City of Fresno (including the mayor and a member appointed by the city council); one member representing the City of Clovis (appointed by the city council); two representatives of other cities in the county (including one representative appointed by a committee comprised of mayors of cities west of State Road (SR) 99 and one representative appointed by a committee comprised of mayors of cities east of SR 99); and two public members at large (one appointed by the Fresno County Board of Supervisors and residing outside incorporated Fresno or Clovis and the other appointed jointly by the city councils of Fresno and Clovis and residing within incorporated Fresno or Clovis) (Council of Fresno County Governments, 2006, p. A-1). The selection criteria for the Authority Board are largely a continuation of the selection criteria included in the enabling legislation for the 1986 Measure. However, these revised criteria specify one additional city representative and one additional public member. The revised criteria are also more specific about the residency requirements for certain Board members. For example, the 1986 legislation did not specify requirements for where the public members at large must live. In addition, the 2006 legislation requires certain Authority Board members to be selected by the County Board of Supervisors that were required to be selected by other Authority Board members under the 1986 legislation.

⁸¹ Public Utilities Code, Division 15, Section 142260

The renewed measure also established a 13-Member Citizen Oversight Committee to review proposed plans, projects, audits, and projects associated with Measure C revenues and ensure that funds are being spent as specified in the enabling legislation. Staffing and technical support for the Citizen Oversight Committee is mandated to be provided by the Fresno Council of Governments. Six of the positions on the Oversight Committee are comprised of public-at-large seats, with the remaining seven positions comprised of representatives from community organizations. Members of the Oversight Committee are selected by the Fresno County Mayors' Selection Committee (comprised of the 15 mayors within Fresno County) and the Chair of the Fresno County Board of Supervisors (Council of Fresno County Governments, 2006, p. A-10).

Local Spending Oversight

The Authority Board commissions annual independent audits of the expenditures and accounts associated with all categories of Measure C funds. Audits are conducted on accounts and expenditures associated with local agencies as well as accounts and expenditures associated with the Authority Board. Audits are reviewed by the Citizen Oversight Committee as well as the Transportation Authority (Council of Fresno County Governments, 2006, p. A-1; p.A-10).

2006 Expenditure Plan

Under the 2006 expenditure plan, presented in Table F1, there were six categories of expenditures. The expenditure category having the largest share of funds was local transportation programs, which funds improvements to local roads, pedestrian facilities and trails, and bicycle facilities, and received 34.6 percent of all revenue. The regional transportation program funding improvements to the movement of goods, people, and services throughout Fresno County received 30.4 percent of funds. The regional public transit program received 24 percent of revenues, the alternative transportation program received six percent, and the environmental enhancement program (primarily focused on improving air quality and nonspecific "environmental improvements") received 3.5 percent of revenues. Finally, 1.5 percent of revenues were reserved for administrative and planning purposes.

Table F1. Fresno Measure C Extension Expenditure Plan

MEASURE "C" REAUTHORIZATION SALES TAX REVENUE	20 YEAR MEASURE "C" FUNDING TOTAL	AVERAGE ANNUAL MEASURE "C" FUNDING TOTAL	% OF MEASURE "C" FUNDING
	\$1,714,400,000	\$85,720,000	100.00%
FUNDING ALLOCATION PROGRAMS			
1. Regional Public Transit Program	\$412,100,000	\$20,605,000	24.0%
<i>Public Transit Agencies</i>	<i>\$337,100,000</i>	<i>\$16,855,000</i>	<i>19.7%</i>
Fresno Area Express (FAX)	\$235,000,000	\$11,750,000	13.7%
Clovis Transit	\$33,700,000	\$1,685,000	2.0%
Fresno County Rural Transit Agency (FCRTA)	\$68,400,000	\$3,420,000	4.0%
<i>Public Transportation Infrastructure Study (PTIS) / Transit Consolidation</i>	<i>\$5,100,000</i>	<i>\$255,000</i>	<i>0.3%</i>
<i>ADA / Seniors / Paratransit</i>	<i>\$13,700,000</i>	<i>\$685,000</i>	<i>0.8%</i>
<i>Farmworker / CarVan Pools</i>	<i>\$19,900,000</i>	<i>\$995,000</i>	<i>1.2%</i>
Farmworker Van Pools	\$9,950,000	\$497,500	0.6%
CarVan Pools	\$9,950,000	\$497,500	0.6%
<i>New Technology Reserve</i> (If construction is not imminent in 15 years, money will be reallocated based on greatest need)	<i>\$36,300,000</i>	<i>\$1,815,000</i>	<i>2.1%</i>
2. Local Transportation Program	\$593,600,000	\$29,680,000	34.6%
<i>Local Allocation</i>	<i>\$525,300,000</i>	<i>\$26,265,000</i>	<i>30.6%</i>
Street Maintenance (50% of Local Allocation)	\$262,650,000	\$13,132,500	15.3%
ADA compliance (1.75% of Local Allocation) ^{*1}	\$9,192,750	\$459,638	0.5%
Flexible Funding (48.25% of Local Allocation)	\$253,457,250	\$12,672,863	14.8%
<i>Pedestrian/Trails</i>	<i>\$53,300,000</i>	<i>\$2,665,000</i>	<i>3.11%</i>
Urban (Clovis and Fresno Spheres of Influence)	\$37,000,000	\$1,850,000	2.16%
Rural	\$16,300,000	\$815,000	0.95%
<i>Bicycle Facilities</i>	<i>\$15,000,000</i>	<i>\$750,000</i>	<i>0.9%</i>
3. Regional Transportation Program	\$520,800,000	\$26,040,000	30.4%
Urban (50%)	\$251,900,000	\$12,595,000	14.7%
Rural (50%)	\$251,900,000	\$12,595,000	14.7%
Fresno Airports	\$17,000,000	\$850,000	1.0%
4. Alternative Transportation Program	\$102,500,000	\$5,125,000	6.0%
<i>Rail Consolidation</i> (If construction is not imminent in 15 years, money will be used for grade separations instead)	<i>\$102,500,000</i>	<i>\$5,125,000</i>	<i>6.0%</i>
5. Environmental Enhancement Program	\$59,800,000	\$2,990,000	3.5%
School Bus Replacement	\$39,900,000	\$1,995,000	2.3%
Transit Oriented Infrastructure for In-Fill ^{*2}	\$19,900,000	\$995,000	1.2%
6. Administration/Planning Program	\$25,600,000	\$1,280,000	1.5%
Fresno County Transportation Authority (FCTA)	\$17,000,000	\$850,000	1.0%
Council of Fresno County Governments (Fresno COG)	\$8,600,000	\$430,000	0.5%

^{*1} Jurisdictions receiving less than \$200,000 annually from the total local transportation funds available will be exempt from the provision. (Likely exempt jurisdictions would be Firebaugh, Fowler, and San Joaquin).

^{*2} Name of Funding Program to be determined.

Source: Measure C Extension Expenditure Plan (2006)

Regional Public Transit Program

The regional public transit program dedicates 24 percent of Measure C revenues to the three transit agencies in Fresno County (Fresno Area Express, Clovis Transit, and the Fresno County Rural Transit Agency) to fund transit service expansion, subsidize the mobility of older adults and people with disabilities, enhance the mobility of farmworkers and commuters, invest in new transit technologies, plan for the future of public transit in Fresno County, and fund the study by a team of consultants of the possibility of consolidating transit service in Fresno County. Notably, the original expenditure plan enables Measure C funds to be transferred to a regional transit agency if a regional transit agency consolidation were to occur.

Local Transportation Program

The local transportation program receives 34.6 percent of Measure C revenues under the original expenditure plan. An additional 15 percent of Measure C funds are allocated to the County and its cities for street maintenance, repair, and the expansion of local infrastructure. Another 15 percent is provided to local agencies in the form of “flexible” funding that can be applied as agencies see fit. Smaller amounts are also dedicated for ADA compliance retrofits (0.5 percent) and improvements to pedestrian, trail, and cycling infrastructure (4 percent).

Regional Transportation Program

The regional transportation program funds projects providing for the improved movement of people, services, and goods throughout Fresno County and receives a total of 30.4 percent of Measure C revenues. Twenty-nine percent of Measure C revenues are dedicated for regionally significant street and highway improvements, with County funds divided equally between urban and rural areas.

The 2006 expenditure plan for the Measure C extension classified most Regional Transportation Program projects into two tiers. Tier 1 projects (*Table F3* and *Table F4*) have programming and implementation priority, and Tier 2 projects (*Table F5* and *Table F6*) can be funded only if sufficient funding exists after Tier 1 projects are built. Projects are further subdivided into Urban (

Figure F1) and Rural (*Figure F2*) projects. The 2006 expenditure plan lists projects in “generalized priority order,” with specific delivery timelines determined during expenditure plan updates based on factors including projections of costs, benefits, project readiness, and funding availability (Fresno County Transportation Authority, 2006, p.8).

Table F3: Fresno Measure C Extension Regional Transportation Funding- Urban Tier 1

Project Identifier	Project Name	Project Limits	Project Description	Uninflated Costs	Inflated Costs ^{*1}	Cumulative Inflated Costs
Tier 1 Projects						
A	SR 180 East	Clovis to Temperance	New 4 Lane Freeway within 6 Lane Right of Way	\$ 33,479,701	\$ 63,169,246	\$ 63,169,246
B	SR 180 West	Brawley to Hughes/ West	Funding Shortfall	\$ 6,995,758	\$ 13,199,544	\$ 76,368,790
C	SR 41/SR 168/SR 180	Added Capacity for Safe Connection Between State Routes	New Braided Ramps	\$ 29,981,821	\$ 56,569,474	\$ 132,938,265
D	Willow Avenue	Barstow to Copper	Complete to 6 Lane Divided/retrofit bike paths	\$ 13,991,517	\$ 26,399,088	\$ 159,337,353
E	Temperance Avenue	Bullard to Shepherd	Widen to 4 Lane Divided	\$ 5,996,364	\$ 11,313,895	\$ 170,651,247
F	Ventura Blvd.	SR 41 to SR 99	Widen to 4 Lane Divided	\$ 5,000,000	\$ 9,428,246	\$ 180,079,493
G	SR 99	Monterey Avenue	Bridge Improvement/Improved access to downtown from West Fresno	\$ 1,000,000	\$ 1,885,649	\$ 181,965,142
H	California Avenue	Ventura to West	Widen to 4 Lane Divided	\$ 7,995,152	\$ 15,085,193	\$ 197,050,335
I	Peach Avenue	SR 180 to Jensen Avenue	Widen to 4 Lane Divided	\$ 24,984,851	\$ 47,141,229	\$ 244,191,564
J	SR 41	SB Aux. Lane, Tulare to "O"	Widen/Aux. Lanes and Improve On & Off Ramps	\$ 3,000,000	\$ 5,656,947	\$ 249,848,511
K	Herndon Avenue	SR 99 to DeWolf	Complete to 6 Lane Divided/retrofit bike paths	\$ 30,000,000	\$ 56,569,474	\$ 306,417,986
L	Shaw	Sunnyside - McCall	Complete to 6 Lane divided traffic signal upgrades, grade crossing	\$ 31,580,852	\$ 59,586,513	\$ 366,004,499
M	SR 99	North & Cedar Avenue	Improve Interchange	\$ 24,984,851	\$ 47,141,229	\$ 413,145,727
N	Veteran's Boulevard	Herndon to Grantland	Connection and grade separation	\$ 60,000,000	\$ 113,138,949	\$ 526,284,676
Urban Tier 1 Total					\$ 526,284,676	

*1 Original project costs were estimated by Local Agencies, and were in 2004 Dollars. A 5% annual inflation was applied through 2017.

Source: Measure C Extension Expenditure Plan (2006)

Table F4: Fresno Measure C Extension Regional Transportation Funding- Rural Tier 1

Project Identifier	Project Name	Project Limits	Project Description	Uninflated Costs	Inflated Costs ^{*1}	Cumulative Inflated Costs
Tier 1 Projects						
A	SR 180 West	Yuba Ave. to James Ave.	Passing lanes	\$ 9,993,940	\$ 18,856,491	\$ 18,856,491
B	SR 180 East	Temperance to Academy	Widen to 4 Lane Divided Expressway	\$ 14,491,214	\$ 27,341,913	\$ 46,198,404
C	SR 180 East	Academy to Trimmer Springs	Widen to 2 Lane Expressway on 4 Lane Right of Way	\$ 38,976,368	\$ 73,540,317	\$ 119,738,721
D	SR 180 East	Trimmer Springs to Frankwood	Widen to 2 Lane Expressway on 4 Lane Right of Way	\$ 42,674,126	\$ 80,517,218	\$ 200,255,939
E	Friant Road	Copper to Millerton	Widen to 4 Lane Divided	\$ 16,490,002	\$ 31,113,211	\$ 231,369,150
F	Golden State Boulevard	American to Tulare County Line	Corridor Improvements	\$ 34,978,792	\$ 65,997,720	\$ 297,366,870
G	SR 269	Bridge located between SR 198 & Huron	New Bridge & Channel to Address Seasonal Road Closures Due to Flooding	\$ 16,989,699	\$ 32,056,035	\$ 329,422,906
H	SR 180 West	Extend to Interstate 5 (I-5)	As a 2 Lane Undivided	\$ 39,975,762	\$ 75,425,966	\$ 404,848,871
I	Mountain View Avenue	Bethel to Tulare County Line	Widen to 4 Lane Divided	\$ 5,496,667	\$ 10,371,070	\$ 415,219,942
J	Mendocino Avenue	Manning to Industrial Park	Widen to 4 lane Divided	\$ 1,998,788	\$ 3,771,298	\$ 418,991,240
K	SR 99	American Avenue	Interchange Improvements	\$ 24,984,851	\$ 47,141,229	\$ 466,132,469
L	I-5	At SR 198	Construct Interchange Improvements	\$ 7,995,152	\$ 15,085,193	\$ 481,217,662
Rural Tier 1 Total					\$ 481,217,662	

*1 Original project costs were estimated by Local Agencies, and were in 2004 Dollars. A 5% annual inflation was applied through 2017.

Source: Measure C Extension Expenditure Plan (2006)

Table F5: Fresno Measure C Extension Regional Transportation Funding- Urban Tier 2

Project Identifier	Project Name	Project Limits	Project Description	Uninflated Costs	Inflated Costs ^{*1}	Cumulative Inflated Costs
Tier 2 Projects						
AA	SR 99	Stanislaus & Tuolumne (Dntn Access)	Improve On & Off Ramps	\$ 7,995,152	\$ 15,085,193	\$ 541,369,869
BB	SR 41	"O" St. to Herndon	Widen/Aux. Lanes and Improve On & Off Ramps	\$ 162,000,000	\$ 305,475,161	\$ 846,845,030
CC	Friant Road	Shepherd to Copper	Widen to 6 Lane Divided	\$ 9,993,940	\$ 18,856,491	\$ 865,701,521
DD	SR 99	Shaw Avenue	Improve Interchange	\$ 34,978,792	\$ 65,997,720	\$ 931,699,241
EE	Traffic Synchronization	Selected Regionally Significant Corridors	Signal Synchronization (Coordination of Traffic Signals) in Clovis & Fresno	\$ 24,984,851	\$ 47,141,229	\$ 978,840,469
FF	Herndon Avenue	DeWolf to McCall	Widen to 4 Lane Divided	\$ 5,796,485	\$ 10,936,765	\$ 989,777,234
GG	SR 99	Fresno to Clinton	Add North & Southbound Auxiliary Lanes	\$ 59,963,643	\$ 113,138,949	\$ 1,102,916,183
HH	Shields Avenue	Blackstone Avenue	Add Dual Left Turn Lanes to the Intersection	\$ 1,998,788	\$ 3,771,298	\$ 1,106,687,481
II	Shields Avenue	SR 99	New Overcrossing	\$ 59,963,643	\$ 113,138,949	\$ 1,219,826,430
JJ	McCall Avenue	Griffith to Shaw	Widen to 6 Lane Divided	\$ 10,993,334	\$ 20,742,141	\$ 1,240,568,570
KK	Shepherd Avenue	Cedar to SR 168	Widen to 4 Lane Divided	\$ 15,490,608	\$ 29,227,562	\$ 1,269,796,132
LL	SR 41	McKinley to Shields	Add North and Southbound Auxiliary Lanes	\$ 9,993,940	\$ 18,856,491	\$ 1,288,652,624
MM	SR 99	Ashlan to Madera County Line	Widen to 6 Lane Freeway	\$ 29,981,821	\$ 56,569,474	\$ 1,345,222,098
NN	Traffic Management Center	Caltrans		\$ 9,993,940	\$ 18,856,491	\$ 1,364,078,589
OO	Minnewawa	Shepherd to Copper	Complete to 4 lanes	\$ 34,978,792	\$ 65,997,720	\$ 1,430,076,309
Urban Tier 2 Total					\$ 903,791,634	
Urban Projects Total					\$ 1,430,076,309	

*1 Original project costs were estimated by Local Agencies, and were in 2004 Dollars. A 5% annual inflation was applied through 2017.

Source: Measure C Extension Expenditure Plan (2006)

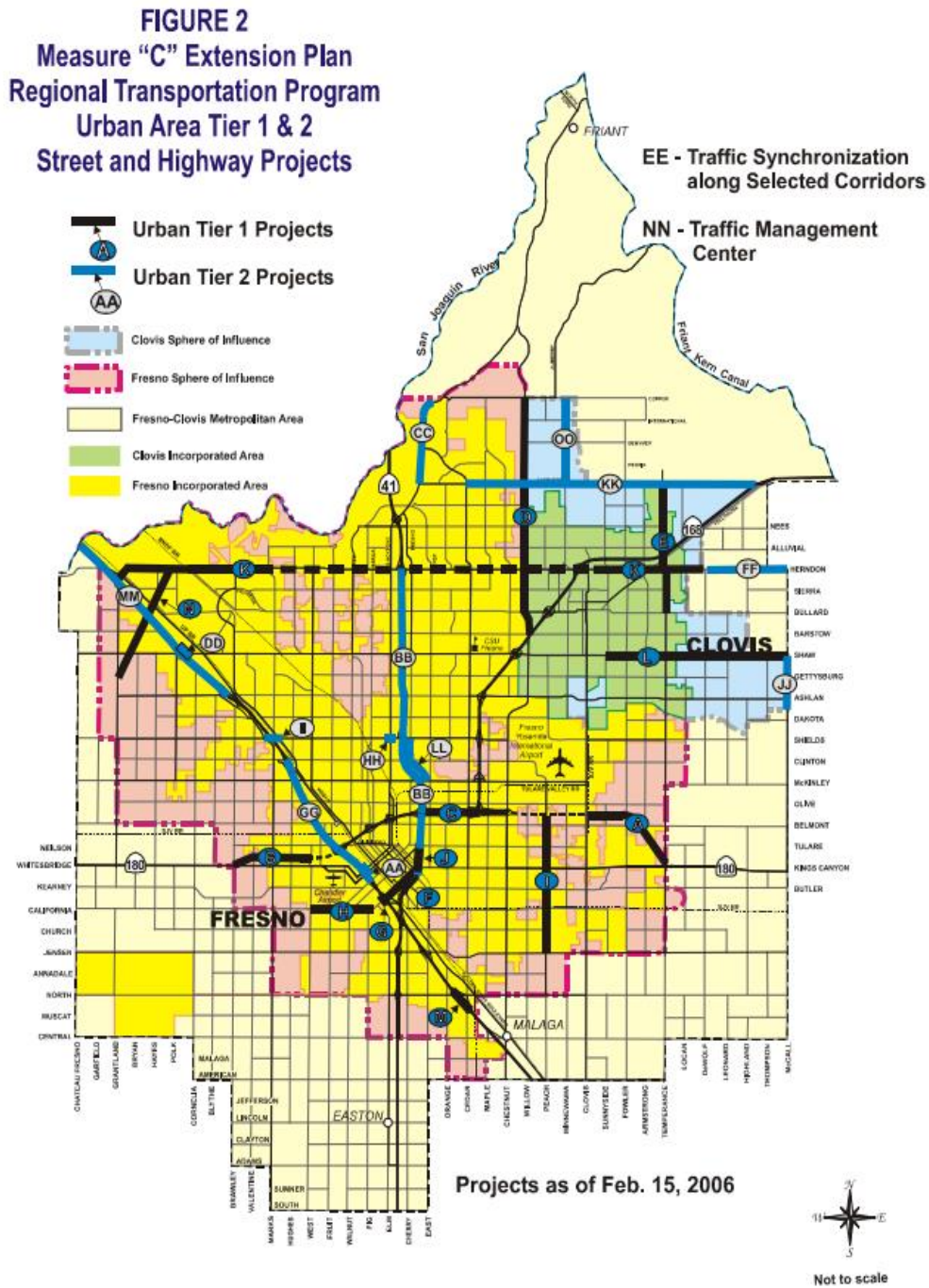
Table F6: Fresno Measure C Extension Regional Transportation Funding- Rural Tier 2

Project Identifier	Project Name	Project Limits	Project Description	Uninflated Costs	Inflated Costs ^{*1}	Cumulative Inflated Costs
Tier 2 Projects						
AA	SR 99	Interchange @ Central Chestnut	Interchange Improvements	\$ 24,984,851	\$ 47,141,229	\$ 528,358,890
BB	SR 145	Nielson to South of Kerman	Widen to 4 Lane Divided	\$ 22,986,063	\$ 43,369,930	\$ 571,728,821
CC	SR 33	At SR 180 Intersection	Widen to 4 Lane Divided	\$ 8,245,001	\$ 15,556,605	\$ 587,285,426
DD	Academy Parkway	South of Mountain View to SR 99 Kamm/Bethel Interchange	New Diagonal Connector Road	\$ 23,386,250	\$ 44,125,000	\$ 631,410,426
EE	SR 41	Central / American	Upgrade Intersections to Interchanges at Central & American	\$ 49,969,702	\$ 94,282,457	\$ 725,692,883
FF	Millerton Road	Friant to Sky Harbor	Widen to 4 lane Divided	\$ 11,992,729	\$ 22,627,790	\$ 748,320,673
GG	Manning Avenue	Reedley City Limits to Alta	Widen to 4 lane Divided	\$ 3,697,758	\$ 6,976,902	\$ 755,297,575
HH	SR 43	Selma to Kings County Line	Widen to 4 lane Undivided	\$ 89,945,464	\$ 169,708,423	\$ 925,005,997
II	McCall	Shaw to 168	Complete the 4-lane connection	\$ 34,978,792	\$ 65,997,720	\$ 991,003,717
JJ	SR 180 E	Frankwood to Cove	2 LU to 2 L Expressway on new alignment	\$ 40,975,156	\$ 77,311,615	\$ 1,068,315,332
Rural Tier 2 Total					\$ 587,097,671	
Rural Projects Total					\$ 1,068,315,332	

*1 Original project costs were estimated by Local Agencies, and were in 2004 Dollars. A 5% annual inflation was applied through 2017.

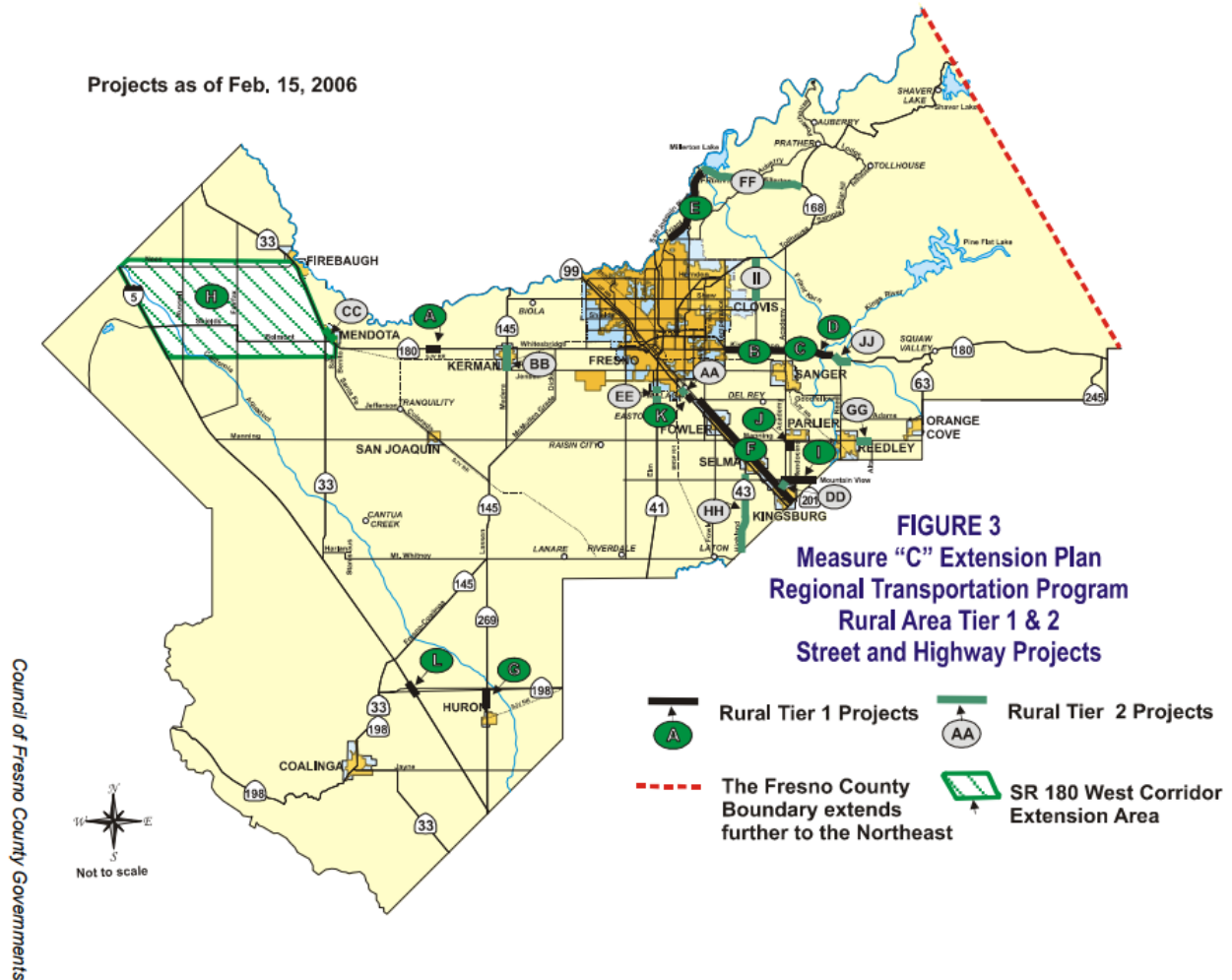
Source: Measure C Extension Expenditure Plan (2006)

Figure F1: Fresno Measure C Extension Regional Transportation Funding- Urban Tier 1 & Tier 2 Projects



Source: Measure C Extension Expenditure Plan (2006)

Figure F2: Fresno Measure C Extension Regional Transportation Funding- Rural Tier 1 & Tier 2 Projects



Source: Measure C Extension Expenditure Plan (2006)

The remaining one percent of regional transportation program funds is dedicated to improvements at Fresno Yosemite International Airport and Fresno Chandler Airport (*Table F7*).

Table F7: Fresno Measure C Extension Regional Transportation Funding- Airports Capital Improvement Program Projects

18-YEAR CAPITAL IMPROVEMENT PROGRAM PROJECTS

TIER 1 Airport Improvement Projects	
Rehabilitate Taxiway B4 and Construct Taxiway C4	Rehabilitate Taxiway B8 Branch 02
Rehabilitate Taxiway B10 Branch 03 and Demolish Taxiway B9	Rehabilitate Taxiway B5 Branch 02
Rehabilitate Taxiway C	Acquire Land for Runway 30L Runway Protection Zone
Rehabilitate Hold Pad TWC	Rehabilitate Taxiway B11 Branch 01
Part 150 Noise Mitigation Programs	Rehabilitate Taxiway B7 Branch 01
Construct "T" Hangars Northside	Rehabilitate GA Apron
Construct Taxiway Northside	Air Cargo Expansion Phase 2
Rehabilitate AC/PCC Concourse Apron East Side	Rehabilitate Taxiway B5 Branch 03
Construct Box Hangars Northside	Rehabilitate ARFF Station
Rehabilitate and Extend Runway 11R-29L	Rehabilitate Taxiway B11 Branch 03
Construct Taxiway H and Infrastructure	Rehabilitate Taxiway B11 Branch 02
Improve North Airfield Drainage	Update Pavement Maintenance Plan Study
Rehabilitate Terminal Building Phase 4	Extend Runway 11L-29R to 10,000'
Rehabilitate Taxiways	Rehabilitate Taxiway B2 Branch 02, 03
Construct Apron (Phase 3) and Airport Access Road	Rehabilitate Concourse PCC Apron North Side
Rehabilitate Taxiway B2	Rehabilitate Concourse AC Apron Northeast Side
Rehabilitate AC/PCC Concourse Apron West Side	Acquire Land for Approach
Rehabilitate Taxiway B Including SMGCS	Rehabilitate GA Crossings
Rehabilitate Hold Pad TWB	Rehabilitate Taxiway B4 Branch 01
Acquire Land for Runway 12R Extension	Acquire Security and Communication Equipment
Install Taxiway B, C, B4/C4, B6, B10/C10, B12/C12 SMGCS Lighting	Rehabilitate Taxiway B5 Branch 01
Rehabilitate Taxiway B6 Branch 02, 03	Rehabilitate Runway 11L-29R
Construct Runway 30L-12R Extension to 4200' with Grade Separation Phase 1 & Phase 2	Expand General Aviation Apron
Install PAPI Runway 12R	Rehabilitate Taxiway B8 Branch 01, 03
Rehabilitate Taxiway C10, C12 Apron, A Apron	Terminal Building
Maintenance Apron	
TIER 2 Airport Improvement Projects	
Extend Runway 11L-29R to 12,000'	Rehabilitate Runway 11L-29R
Part 150 Noise Mitigation Programs	

FYI - Fresno Yosemite International Airport
Source: City of Fresno, Department of Airports

FC - Fresno-Chandler Airport

Source: Measure C Extension Expenditure Plan (2006)

Alternative Transportation Program

The alternative transportation program (six percent of Measure C revenues) provides matching funds to consolidate rail lines throughout Fresno County. Permissible activities include safety improvements, relocation of the BNSF Railway Company tracks adjacent to the Union Pacific Railroad tracks, construction of over- and under-passes to separate vehicle and rail traffic, and funding efforts to leverage local funds to gain state, federal, or other agencies to fully fund rail consolidation. Although the Fresno Council of Governments was interested in aligning this program to support California High-Speed Rail Authority (CHRSRA) development, the consultant's report for the rail consolidation project notes that the CHRSRA "directed that the HST [High Speed Train] alignment should be developed independently from freight realignment." As a result, "the scope [of the realignment analysis] was revised so freight rail realignment and HST alignment alternatives would be developed separately" (Council of Fresno County Governments, 2010, p. 1-1). Details of the realignment study were left under the purview of the Fresno Council of Governments and subsequently approved by the Measure C

Authority Board; because details of the realignment were not specified in the 2006 enabling legislation or expenditure plan, the formal Measure C amendment process did not apply.

Environmental Enhancement Program

A small percentage (3.5 percent) of Measure C revenues are dedicated to the environmental enhancement program, which funds two different efforts aimed at improving air quality and “the environment” (Fresno County Transportation Authority, 2006, p.6). Around 1 percent of revenues are dedicated to the transit-oriented infrastructure for in-fill development program, which funds construction of transportation facilities in dense, transit-oriented in-fill developments. Another 2 percent of revenues are dedicated to the School Bus Replacement Program, which funds the replacement of around 900 old school buses that emit toxic fumes and lack seat belts.

Administration/Planning

A small percentage of Measure C funds are reserved for administrative and planning purposes, including updates to programs funded by the expenditure plan, developing allocation program requirements, and the administration/performance of specific activities associated with other Measure C program activities. This funding category is intended to fund activities related to Measure C administration itself by the Authority Board and Fresno Council of Governments. Local governments have significantly more flexibility in their administration and programmatic activities because they receive, as discussed previously, around 35 percent of funds allocated to the local transportation program.

Amendment History

The five amendments to Measure C are listed in

Table F8 below (Fresno County Transportation Authority, 2018).

Table F8: Fresno Measure C Amendment History

<i>Amendment #</i>	<i>Amendment Description</i>	<i>Fresno COG Approval Date</i>	<i>FCTA Approval Date</i>
1	Establishes the new Measure C High-Speed Rail Facilities Program (\$25 million allocation)	September 30, 2010	October 20, 2010
2	Modifies the Pedestrian Trails Subprogram to allow some Measure C funded maintenance activities on trails constructed or extended at least partially with non-Measure C revenue	January 29, 2015	February 25, 2015
2A	Amendment #2A made the provisions of Amendment #2 permanent	July 27, 2017	August 16, 2017
3	Modifies Amendment #1 and makes available \$500,000 of the \$25 million set aside for the High-Speed Rail Facilities Program to secure properties necessary for the Fresno site of the California High-Speed Rail HMF prior to the selection of the facility site by the CHSRA	January 26, 2017	February 8, 2017
4	Modifies the Pedestrian and Bicycle Facilities Subprogram to include construction of Class III and IV Bicycle Facilities and to allow other types of bicycle facilities approved for use in California by inclusion in Caltrans Highway Design Manual (HDM)	July 27, 2017	August 16, 2017
5	Provides matching funds (50%) from the Measure C Regional Transportation Program on a one-for-one basis to a Caltrans grant for increased litter abatement activities for a 2-year period beginning on April 18, 2018. The other 50% of matching funds would come from any Measure C eligible agency that chooses to participate in the program	March 30, 2018	April 18, 2018

Source: Measure C Extension Expenditure Plan (2006)

People Interviewed for Fresno Case Study:

Tony Boren, Fresno Council of Governments, Executive Director

Mike Leonardo, Executive Director, Fresno County Transportation Authority

Appendix B: Case Study - San Diego County *Transnet* Measure (1987)

Background

San Diego County approved its first LOST, known as TransNet, in 1987. The half-cent sales tax was levied starting in 1988, was in place for 20 years, and expired in 2008.

In 2004, anticipating the coming expiration of TransNet, voters approved a measure that extended the half-cent sales tax through 2048. The extension measure was formally listed on the ballot as Proposition A, but in the local media the 2004 measure continues to be commonly referred to as TransNet Extension or, even more simply, by the name that had been given to the original measure - TransNet. When the measure is explained in the media in general but imprecise terms, it is often stated that for over sixty years the funds raised are intended to be programmed so that roughly one-third will be spent on highways, one-third on transit, and the remaining third on local streets and roads.

More precisely, the 2004 TransNet Extension created a set of rules and procedures by which it funds a mix of highway, transit, bike and pedestrian, and local road projects, and dedicates funding to environmental conservation and measures to mitigate the environmental impacts of projects.

A noteworthy feature of the 2004 extension is that to be eligible to receive local return funds generated by the sales tax, each of the 18 municipalities in the county were required to have in place a program to collect an exaction of \$2,000 per new dwelling unit constructed and to contribute revenues from the local exactions to matching the programs funded by the TransNet Extension. The required development fees have escalated annually since they were initially set at \$2,000 to reflect steady growth in the costs of alleviating congestion. TransNet rules allow municipalities to collect the fee at different times in the development process or in different ways, but new dwelling units are defined in county-wide measures which, for example, allow cities to enact exclusions from fee payment for only a very few forms of residences, such as board and care facilities housing elderly and disabled citizens. Interviews with SANDAG and municipal officials confirmed that all municipalities in San Diego County have programs in place

to collect the required exactions, and that many cities levy several exactions on new residential development that exceed TransNet requirements and, for example, also produce revenue for public safety programs.

In November of 2016, another ballot measure, also known Measure A, was placed before the voters. If successful, it would have raised the transportation sales tax by another 0.5%. The measure was favored by 58.4% of those voting but required a two-thirds majority to be enacted and thus it failed. In general, support for the measure was stronger in urban and politically liberal areas and weaker in rural, suburban, and more conservative parts of the county. The 2004 measure remains in place and provides San Diego County with a substantial proportion of the transportation revenue available to programs in the region. There are reports in the news media and several interviewees reported that discussions are underway of the possibility of including another transportation sales tax on the ballot at the time of the 2020 Presidential election, but that the potential measure under discussion would most likely raise money only for capital investments and operating subsidies for the two public transit operators in the County – North County Transit District and the San Diego Metropolitan Transit System. Plans for such a measure remain preliminary, and it is not yet determined who would administer the funds if such a measure were to be enacted.

The 2004 measure, or TransNet Extension, which raises over a quarter of a billion dollars per year, is managed by the San Diego Association of Governments (SANDAG) which is one of only two county transportation and land use agencies in California that serves at once as the Regional Transportation Planning Agency (RTPA) under California law, the Metropolitan Planning Organization (MPO) under federal law, and the Congestion Management Agency (CMA) under state law. This means that SANDAG has the responsibility to prepare and regularly update the regional long-range (thirty year) transportation plan required by federal and state law, and that it also prepares and manages the flow of funds to the list of current projects that comprise the county's short-term (five-year) Transportation Improvement Program (TIP). Because it has these multiple powers and responsibilities, the SANDAG Board of Directors is also the San Diego Transportation Commission.

Its multiple roles make SANDAG the focus of transportation policy in the San Diego region, and tensions arise constantly over the use of TransNet Extension funds. TransNet was planned to be consistent with the Regional Transportation Plan (RTP) and there is a broad consensus that it should be periodically amended in order to remain consistent. The money managed by SANDAG under the measure is critically important to the region and is the source of many policy debates even though other direct expenditures by Caltrans, the cities within the county, and transit agencies constitute a majority of county transportation spending. For the current five-year budget period which began in 2017, TransNet is estimated to provide more than \$2.5

billion, about a third of the county's transportation funding, with the Federal share 35%, the state contributing 16%, and local government sources contributing another 16%⁸².

Under its new Director, Hasan Ikhata, SANDAG is discussing whether to undertake major revisions in the near future to far more aggressively reduce greenhouse gas emissions from transportation. Potential revisions being widely discussed - and currently very controversial - would reduce future spending on highway projects, including reducing commitments made in the past to highways not yet widened or built, while increasing investment in public transit, pedestrian serving, and cycling programs.

Expenditure Plan

Under the original expenditure plan, presented in *Table SD1*, the vast majority (97%) of sales tax revenue produced by the measure is dedicated to funding what is known as the Congestion Relief Program, which is largely a capital investment program⁸³. This program is divided into three categories: Major Transportation Corridor Improvements (48.9% of measure revenues), Transit System Improvements (16% of measure revenues), and Local System Improvements (32% of measure revenues).

Table SD1: San Diego Transnet Extension Expenditure Plan

⁸² https://www.sandag.org/uploads/./projectid_34115158.pdf

⁸³ TransNet Extension, ORDINANCE AND EXPENDITURE PLAN, Commission Ordinance 04-01

#	Expenditure Plan Component	Total TransNet Requirement (40-year Total)	Percent of Net	Percent of Total
1	Congestion Relief Program			
2	Major Transportation Corridor Improvements:	\$6,850	50.5%	48.9%
3	Freeway, Highway, & Transit Capital Projects	\$5,150	38.0%	36.8%
4	Project Specific Transit Operations	\$1,100	8.1%	7.9%
5	Freeway, Highway, & Transit Project Environmental Mitigation	\$600	4.4%	4.3%
6	Local System Improvements	\$4,480	33.0%	32.0%
7	Local Street & Road Projects	\$3,950	29.1%	28.2%
8	Local Street & Road Project Environmental Mitigation	\$250	1.8%	1.8%
9	Smart Growth Incentive Competitive Grant Program	\$280	2.1%	2.0%
10	Transit System Improvements -	\$2,240	16.5%	16.0%
11	Continuing Bus/Rail Support and Improvements, including Senior/			
12	Disabled/Youth Transit Passes and Specialized Senior/Disabled Transportation Services			
13	Sub-Total	\$13,570	100.0%	N/A
14	Bicycle, Pedestrian & Neighborhood Safety Grant Program	\$280 *		2.0%
15	Administration	\$140 *		1.0%
16	Oversight Committee	\$10 *		0.1%
17	TOTAL TransNet Funding Requirement	\$14,000		100.0%
18	TOTAL TransNet Funds Available	\$14,000		100.0%
* These categories deducted "off the top" prior to other allocations.				

Source: San Diego Transnet Expenditure Plan (1987)

Major Transportation Corridor Improvement Program

The Major Transportation Corridor Improvement Program funds capital investment programs for both highway and transit corridor improvements.

This expenditure plan explicitly consists of 16 highway programs and 11 transit improvements, illustrated in a map as *Figure SD1*. The ordinance includes an appendix that specifies the projects that will be undertaken in each of the program corridors and provides maps detailing each segment. Priority is given to projects included in the original 1987 TransNet measure that were uncompleted at the time of the vote on the extension in 2004, such as the eastern portions of the SR 52 and SR 76 highways. The ordinance does not provide a schedule or prioritization for listed projects beyond those mentioned above. Additional revenue under this program may be spent on operating support for transit improvements and funding for required environmental mitigation, but cost escalation in many of the capital cost items led to less money being spent on these allowable items.

Figure SD1: Proposed Projects Under San Diego Transnet Extension



Source: TransNet Extension, ORDINANCE AND EXPENDITURE PLAN, Commission Ordinance 04-01

Transit System Service Improvements

TransNet dedicates 16% of measure revenues to improving transit services, particularly increasing investment in Bus Rapid Transit and increasing services for elderly and disabled citizens by expanding paratransit service and funding subsidized transit passes for seniors, persons with disabilities, and students.

Amendments

Like most LOSTs, TransNet faces continuing tension between remaining responsive to the wishes of the voters who enacted it while allowing sufficient flexibility to respond to changing conditions over the long life of the measure. Indeed, the measure itself included lists of particular projects but also stated that it should be amended from time to time to achieve consistency with the RTP. As land and construction costs have escalated, for example, and there has not yet been enough money to build all the highway projects enumerated when TransNet

was put before the voters, there is a growing consensus that more capital investment is needed in public transit. While representatives of some – especially rural - communities are demanding that past promises be fulfilled, environmentalists and other vocal and active constituencies are advocating that funds programmed for highways be reallocated to transit, bicycling, and pedestrian improvement projects. This is particularly salient because successive RTPs are increasingly shifting toward traffic management and investment in transit and smart growth.

The ordinance that governs the TransNet Extension provides that expenditure plans can be amended by a rollcall vote of the commission – which is the SANDAG Board - and entered into the minutes, with two-thirds of the Commission concurring, consistent with the Commission's standard voting mechanism. Because TransNet was enacted by vote of the county electorate, however, the ordinance that governs it also specifies that certain amendments to structural and high priority elements of the program incorporated in the measure may not be amended by the commission and instead must be submitted to the voters in referenda. Amendments that must be submitted to the voters include changes to the following sections of the ordinance:

- Section 2D: Transportation Project Environmental Mitigation,
- Section 3: Imposition of the tax itself in compliance with the California PUC,
- Section 4E(1): Giving priority to incomplete projects in the 1987 expenditure plan,
- Section 8: Maintenance of effort,
- Section 9: Regional Transportation Congestion Improvement Plan (including development fees),
- Section 11: Independent Taxpayer Oversight Committee.

Amendment History

The six amendments to San Diego County's *Transnet* measure are listed below, in **Table SD2**.

Table SD2: Amendment History of San Diego Transnet

Amendment Year	Amendment Description
2006	Complete Sprinter Rail Project
2008	Requires San Diego to put a measure on the ballot to fund Habitat Conservation Plans within six years of passing Transnet. If the measure passes, funding in Transnet dedicated to conservation is reallocated to other transportation purposes.
2009	Established procedure for reviewing development fee plans enacted by each city.
2012	Extends conservation measure requirement to eight years since passage of measure.

2017	● Possibly cancel construction of two proposed HOV lanes on Interstate (I)-805. ● Use Transnet funds to repay costs for SR 125 toll road acquisitions. ● Further extend requirement for conservation measure to 12 years after passage (2016).
2019	Changes eligibility and term limits for Independent Taxpayer Oversight Committee Members

The 2009 amendment modified the 2008 requirement that funding for conservation be placed before the voters within six years because plans were being made to include conservation funding in the measure that was eventually placed on the ballot in 2016 and defeated. The 2012 package of amendments responded to the impending bankruptcy of the public-private partnership of toll road SR 125, allowed for that road to be acquired by SANDAG, and allowed for the fact that acquiring that toll road would make some planned high-occupancy vehicle (HOV) lanes I-805 redundant because they would be parallel to SR 125. Changes in the terms of the Independent Taxpayer Oversight Board were sought to rationalize the staggered terms of service. And, there was a strong consensus that transit pass benefits to the elderly and disabled were too costly and that led to the most recent amendments.

While amendments to the ordinance itself should occur rarely after careful scrutiny and public debate, the Commission also has adopted a set of (currently) 23 practical rules that operationalize the principles included in the ordinance and those have been amended far more frequently. SANDAG Policy Document No. 31, TransNet Ordinance and Expenditure Plan Rules lists each operating rule and the amendments that have been made to them over time⁸⁴.

Oversight

The SANDAG Board has general oversight responsibility for the administration of the TransNet program, and there is deeper annual fiscal oversight by an Independent Taxpayers Oversight Committee (ITOC) that reports to that Board.

Both the original TransNet and the extension require annual independent fiscal and compliance audits or all regional and local spending of measure revenues. The 2004 extension additionally introduced the ITOC to increase accountability. The ordinance specifies that the ITOC will “function in an independent, open and transparent manner to ensure that all voter mandates are carried out as required in the Ordinance and Expenditure Plan, and to develop positive,

⁸⁴ https://www.sandag.org/organization/about/pubs/policy_031.pdf

constructive recommendations for improvements and enhancements to the financial integrity and performance of the TransNet program.” Members of the ITOC are appointed to fill roles defined by their expertise in particular fields and whose expertise is considered complementary:

- Biology/Environmental Science,
- Private Sector Senior Decision Maker;
- Real Estate/Right-of-Way Acquisition;
- Construction Project Management;
- Municipal/Public Finance;
- Professional Licensed Engineer;
- Traffic/Civil Engineering;
- San Diego County Assistant Auditor and Controller, ex officio, non-voting member.

The terms of the members are staggered to ensure that there is an institutional memory and all members will not depart from their service at the same time. Members receive no compensation for their service and may serve at most two four-year terms. The ITOC conducts a fiscal audit of the program and of each jurisdiction's expenditures annually. It hires an independent firm of auditors and certified public accountants and makes their reports public after reviewing them and voting in public session to accept them. Its results are presented to the SANDAG Board and are made public.

The financial audit of all jurisdictions in 2017 found that:

- Each city had complied with the requirements to have a separate fund for TransNet
- All jurisdictions had complied with the requirement that seventy percent be spent on regional capacity enhancing projects and thirty percent on local street and highway maintenance.
- All jurisdictions except for the city of Lemon Grove were found to be compliant with the maintenance of effort requirement and the audit reported the plans by which Lemon Grove was planning to overcome its problem.
- All jurisdictions except the city of Escondido were found to have adequate fund balances of thirty-percent of expected expenditures in their TransNet accounts and the report described the ways in which Escondido planned to comply.
- All jurisdictions but three – National City, the city of Encinitas, and the city of Escondido – had contributed required amounts from their local exaction fees to the TransNet account, and plans were included to correct those shortcomings.

In addition to performing its fiduciary duties, the ITOC participates in a complete programmatic review of the TransNet Program every ten years which is primarily a project of the SANDAG Board. The major program decade review completed in 2017 found compliance and appropriate progress had been made with respect to five of the seven major goals and purposes of Transnet – related to obtaining matching state and federal funds, expanding

freeways, expanding and maintaining roads, expanding transit service available to senior citizens and disabled people, and expanding commuter express bus, trolley, and COASTER commuter rail service. In each case, data were presented to support these findings⁸⁵.

While acknowledging progress in the foregoing areas, the 2017 programmatic review concluded and reported to the public that the program had fallen short on two of its most important objectives – relieving congestion and improving traffic safety. Once again, data demonstrated the extent of the failure to meet the hoped-for targets. The ten-year programmatic review is informing ongoing conversations about potential amendments and the highest priorities that should influence potential future sales tax initiatives.

Local Spending Oversight

Every year, each jurisdiction must update a five-year list of projects to be funded by local return revenues. Each jurisdiction must hold a public hearing on the project list, and then submit the final list to the Commission to verify consistency with the ordinance and the RTP. The project list is additionally reviewed by the ITOC.

The ordinance specifies that highest priority shall be given to funding “improvements to regional arterials, grade separation projects, and related facilities contributing to congestion relief.” It does not provide further details of which types of projects are included or how they should be prioritized.

People Interviewed for San Diego Case Study

José A. Nuncio, P.E., TransNet Department Director, San Diego Association of Governments

Stewart Halpern, Member of ITOC

Tracy Drager, Assistant Auditor and Controller County of San Diego, non-voting ex officio member of ITOC

Benjamin Battaglia, Administrative Services and Fiscal Manager, City of San Diego, Transportation and Storm Water Department

Ed Deane, Deputy City Engineer, City of San Marcos

Frank Rivera, Principal Civil Engineer, City of Chula Vista Engineering & Capital Projects Department

⁸⁵ https://www.sandag.org/uploads/projectid/projectid_341_15158.pdf

Appendix C: Case Study - Alameda County Measure B (1986)

Background

Alameda County approved its first LOST, known as Measure B, in 1986. This half-cent sales tax was levied starting in 1987 and remained in place for 15 years, expiring in 2002. In 1998, anticipating the expiration of Measure B, Alameda County voters were presented with a measure to renew the 1986 measure for an additional 15 years from 2002 to 2017. The extension measure obtained a majority of the vote (58%) but failed because it fell short of the two-thirds vote required for passage.

The passage of Alameda County's 1986 Measure B authorized the formation of a new county-level administrative body to administer all funds that would be generated by the tax. Membership of this newly formed "Alameda County Transportation Authority" was comprised entirely of elected officials, specifically: five members of the Alameda County Board of Supervisors; two representatives appointed by the Mayors Conference from Hayward, Fremont, Newark, Union City, Pleasanton, Livermore, and Dublin; one representative appointed by the Mayors Conference from San Leandro, Oakland, Alameda, Albany, Berkeley, Emeryville, and Piedmont; and one representative designated by the Mayor of Oakland. 1986 Measure B also authorized the Alameda County Transportation Authority to issue bonds for the purposes of building new transportation projects (but not for local entity funding).

Alameda County's 1986 Measure B increased the county's sales tax from 6.5% to 7%, as had been made possible by SB 878, which enabled any of the nine counties constituting the San Francisco Bay Area to seek voter approval to enact sales taxes of up to 1% in order to fund local transportation improvements. SB 878, however, also required counties to identify projects for funding by the measure *before* seeking voter approval, and thus, the Alameda Countywide Transportation Committee worked to develop a transportation expenditure plan — including determinations of costs and estimations of revenue — to accompany the text of the countywide sales tax measure presented to voters on the ballot.

Expenditure Plan

The 1986 Alameda County Measure B Expenditure Plan presented to county voters proposed to fund a mix of highway (e.g., Nimitz freeway completion, SR 238 - Hayward) and rail projects (e.g., rail extension to Dublin Canyon), mostly contingent upon the availability of local matching funds (e.g., locally-raised funds assembled by cities, districts, developers, etc.).

All projects in the original Expenditure Plan are designated "Number 1 priority" projects. In addition to providing funding for discrete physical transportation projects, the 1986 Measure B Expenditure Plan also allocated funding for local transportation entities (e.g., Alameda-Contra Costa Transit District (AC Transit), Paratransit, and other local entities) as an annual percentage of total 1986 Measure B revenue. Finally, 17.78% - 18.9% of total annual revenue was allocated to fund Local Streets and Roads. Each infrastructure project listed in the original Measure 1986 Expenditure Plan was expected to be funded partially using local "match" funds, and the Plan

specifies: “[w]ith the exception of the Livermore Route 84 project, no project will be built unless the matching funds are acquired.”

The Executive Summary of the 1986 Measure's Expenditure Plan specifies that the county expected to raise “roughly \$56 million a year, beginning in 1987” from the tax measure, and furthermore, that an annual growth estimate of 2.3% was used to calculate the expected revenue generation of the measure across its 15-year lifetime (this rate was provided by MTC). Thus, the revenue projection for the life of the measure was estimated at around \$990 million. Of this total revenue generation projection, \$502.5 million (or 50.76%) was expected to be spent on regional highway and road projects (i.e., Nimitz Freeway, Route 238/Route 84, Airport Roadway, Route 13/Route 24 Interchange, I 580-680 Interchange Modification, Route 84, and Marina Boulevard/Fairway Drive Circulation Improvements), \$183 million (or 18.49%) was expected to be spent on “Local Streets and Roads”, and \$170 million (or 17.17%) was expected to be spent on rail transit projects (i.e., Dublin Canyon Rail Extension/Warm Springs BART Extension). In addition, \$130 million (or 13.13%) of the total revenue generation estimate for the tax was to be spent annually funding local transportation entities (i.e., A.C. Transit, Paratransit), and \$4.5 million (or 0.45%) would be used to fund general county administration of 1986 Measure B, for an overall total of 100%.

Amendments

The rules governing amendments to the Expenditure Plan for 1986 Alameda Measure B are not unusual or different from other local option sales tax measures reviewed for this project. However, the clarity with which Alameda County authorities have described the amendments that have taken place and their rationale does stand out as unique.

With regard to rules governing Expenditure Plan amendments, the 1986 Measure B Ordinance specifies that: “Amendments [to the Expenditure Plan] may provide for the use of additional Federal, State, and local funds to account for expected revenue fluctuations, or to take into consideration unforeseen circumstances.” Specifically, the Ordinance requires that “[a]ny amendment to the County Transportation Expenditure Plan proposed by the Authority, which adds or deletes a project or is of major significance, shall be submitted for approval in the same manner as the adopted plan was approved pursuant to the enabling legislation.” Moreover, the Ordinance specifies that: “Any amendment shall take into account that all appropriate actions shall be taken to give highest priority to the projects in the initial plan and any amendments shall not delay or delete any project in the initial plan without the approval of the project sponsor.”

California PUC sections 131304 and 131050 serve as the legislation enabling Alameda County's to “add, delete a project, or make changes of major significance.” Thus, any and all such amendments proposed by the Alameda County Transportation Authority to the 1986 Measure B Expenditure Plan are required to receive approval from “[a] majority of the board of supervisors, and a majority of the local governments representing a majority of the population of the county in the incorporated areas by a majority vote of their respective councils”. It

follows, therefore, that the rationale behind an Expenditure Plan amendment must fall into one of the following categories (from California PUC section 131053): (a) "There would be a significant negative regional impact as a result of the proposed projects"; (b) "There would be insufficient funds available to implement the proposed projects"; (c) "Conflicts exist within the county transportation expenditure plan"; or (d) "The estimates of proceeds from any proposed retail transactions and use tax ordinance are not reasonable."

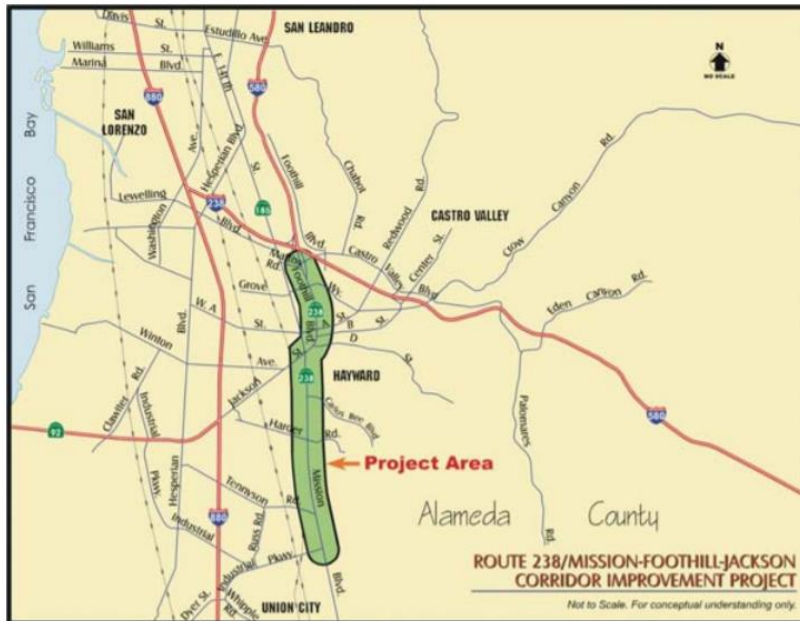
Measure B Project Changes

Two amendments were made to the Alameda County 1986 Measure B Expenditure Plan: (1) in July 2005 (replacing the Hayward Route 238 Bypass Project with the City of Hayward's Proposed Route 238/Mission-Foothill-Jackson Corridor Improvement Project); and (2) in June 2006 (replacing the Route 84 Historic Parkway Project with the I-880 to Route 238 East-West Connector Project). The Alameda County Transportation Authority details these changes and the supporting rationale in two "Proposed Amendment" documents that are publicly available online.

As described in the Alameda County 1986 Measure B Expenditure Plan Amendment #1 (2005), the Route 238 Hayward Bypass Project that was included in the original Expenditure Plan was "embroiled in controversies since Caltrans commenced the project design in the mid-1960's." Specifically, the project fell victim to a succession of lawsuits from environmental and social justice groups, including the Sierra Club and the Legal Aid Society of Alameda County (representing La Raza Unida of Southern Alameda County), who jointly filed a suit that resulted in an injunction that remained in effect until as late as 2005. After being further impeded by "a series of changes in the environmental statutes and regulations, as well as regional and local transportation plan updates," a second lawsuit against the project, filed by the Hayward Area Planning Association and the Citizens for Alternative Transportation Solutions, led to a final ruling that Measure B funds "could not be used in the delivery of the Hayward Bypass Project[.]"

As early as 2002, the Alameda County Transportation Authority (ACTA) and the City of Hayward had been working to identify a replacement for the highly controversial Hayward Bypass Project. Specifically, these groups sought a project that could meet the original purposes of Measure B, and which could, therefore, represent a viable candidate to receive Measure B funds. To that end, City of Hayward's proposed Route 238/Mission-Foothill-Jackson Corridor Improvement Project was identified and, in April of 2005, was approved by the ACTA Board as an addition to the 1986 Measure B Expenditure Plan that replaced the Hayward Bypass Project. Citing 1986 Measure B's enabling legislation at PUC 131304 and 131050 (allowing Bay Area transportation authorities to "add, delete [projects], or make changes of major significance"), the ACTA replaced the Route 238 Hayward Bypass Project with another Hayward-based roadway project (Fig. A1) that was estimated to cost nearly 31% more (\$91.5M vs. \$70M) than the original project.

Figure A1: Alameda Measure B Amended Route 238/Mission-Foothill-Jackson Corridor



Source: Alameda County Measure B Proposed Expenditure Plan Amendment (Amendment 1)

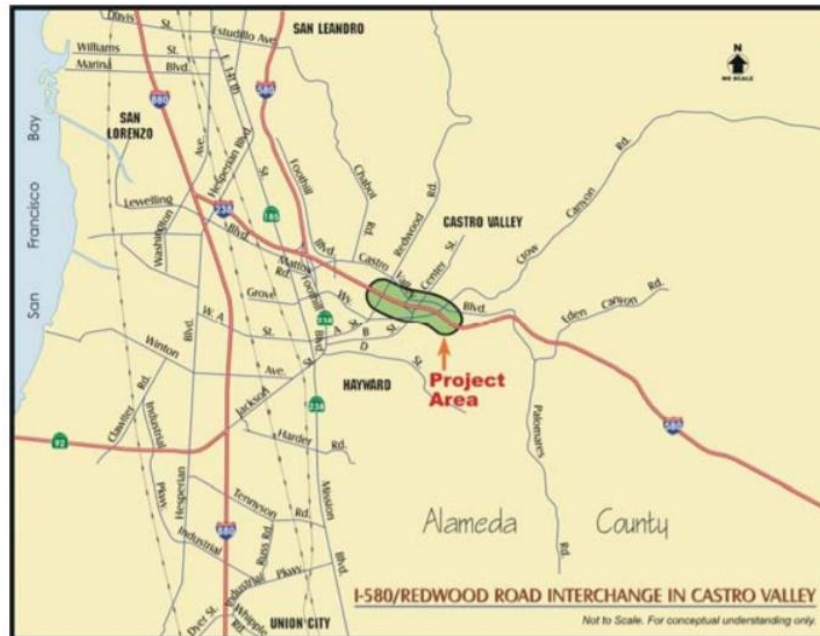
In addition to the Route 238/Mission-Foothill-Jackson Corridor Improvement Project, 1986 Measure B Amendment #1 funded the Castro Valley Local Traffic Circulation Improvement Project (Fig. A2), the I-580/Redwood Road Interchange Project in Castro Valley (Fig. A3), and the Central Alameda County Freeway System Operational Analysis (Fig. A4), while also adding new Implementing Guidelines.

Figure A2: Alameda Measure B Castro Valley Local Traffic Circulation Improvement Project

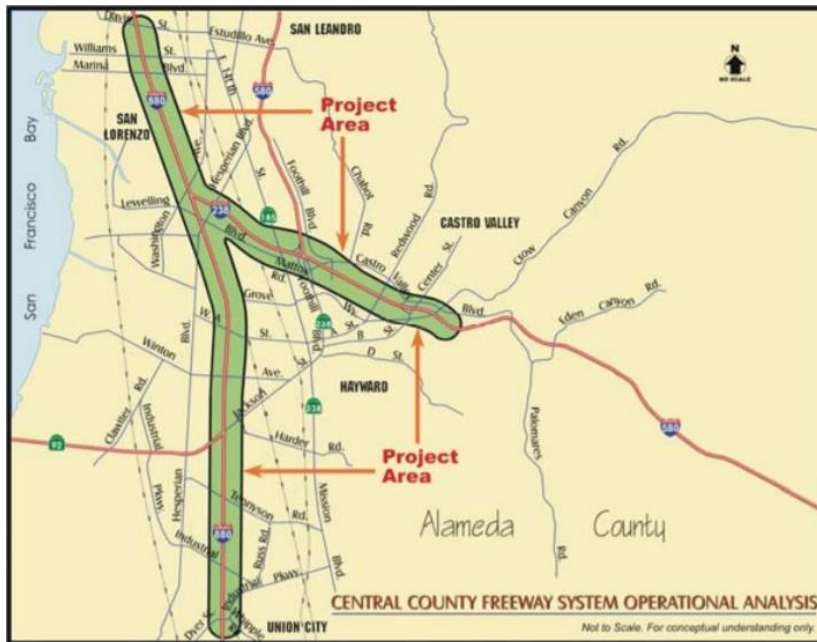


Source: Alameda County Measure B Proposed Expenditure Plan Amendment (Amendment 1)

Figure A3: Alameda Measure B I-580/Redwood Road Interchange Project in Castro Valley



Source: Alameda County Measure B Proposed Expenditure Plan Amendment (Amendment 1)

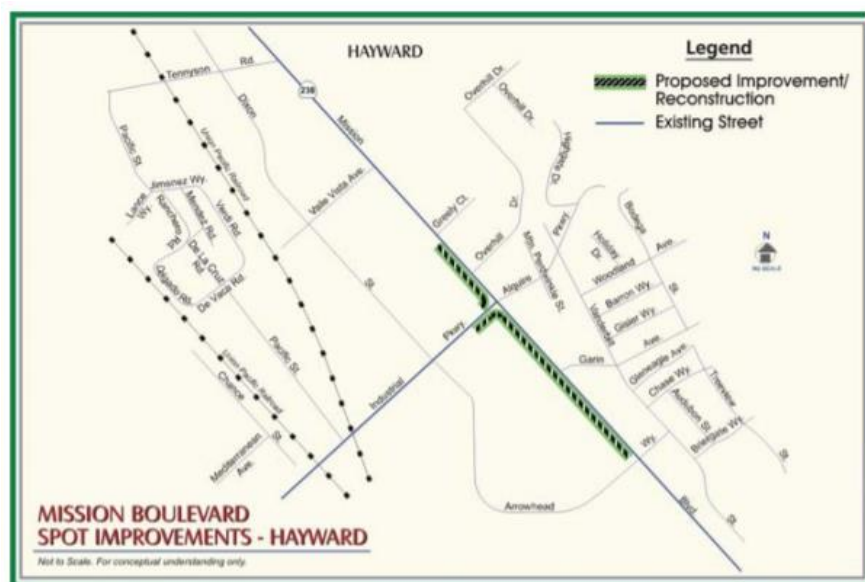
Figure A4: Alameda Measure B Central Alameda County Freeway System Operational Analysis

Source: Alameda County Measure B Proposed Expenditure Plan Amendment (Amendment 1)

These Implementing Guidelines are noteworthy, as they appear to have been adopted in response to the controversy surrounding the Hayward Bypass Project. For example, the guidelines specify that projects will—from approval of Expenditure Plan Amendment #1—have just five years to obtain “environmental clearance, approval from all agencies having jurisdiction over the proposed improvements, support from the community, and full commitment of funds from all sources required to develop and construct the project.” They also specify that Measure B funds may only be applied to projects that are enumerated in the original Measure B Expenditure Plan or a subsequent Amendment, and that Measure B funding may not be used to cover project costs “in excess of the amount of Measure B funding identified in the Amendment” (i.e., that “Measure B funding [...] [is] capped at the amounts identified in the Amendment.”).

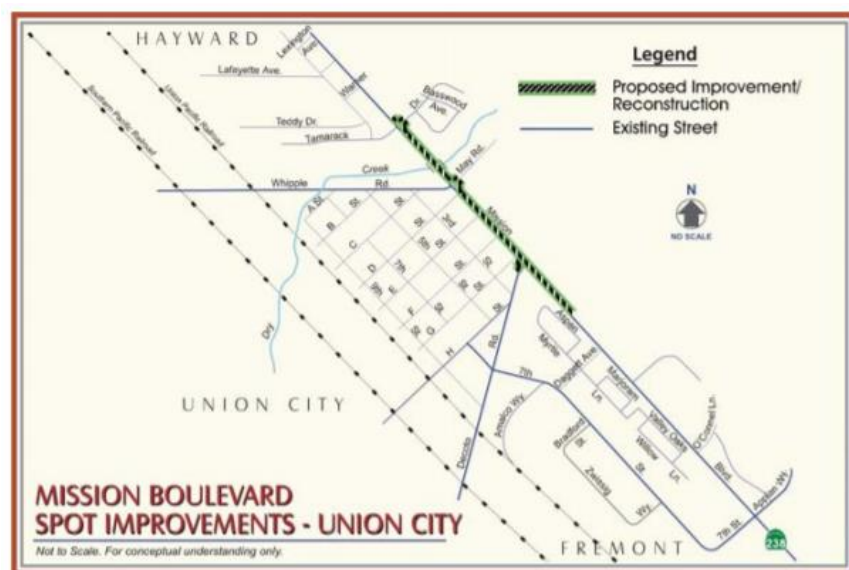
A second amendment to the 1986 Measure B Expenditure Plan, in 2006, removed all reference to the “Route 238 and Route 84 Project” and replaced it with the Route 238 (Mission Boulevard) Spot Improvements Project across the Hayward (Fig. A5), Union City (Fig. A6), and Fremont (Fig. A7) Segments, and added another new project referred to in Amendment #2 as: “Option 2 East-West Connector Project between I-880 and Mission Boulevard (Route 238) in Fremont and Union City” (Fig. A8).

Figure A5: Alameda Measure B Route 238 Spot Improvements Project- Hayward Segment



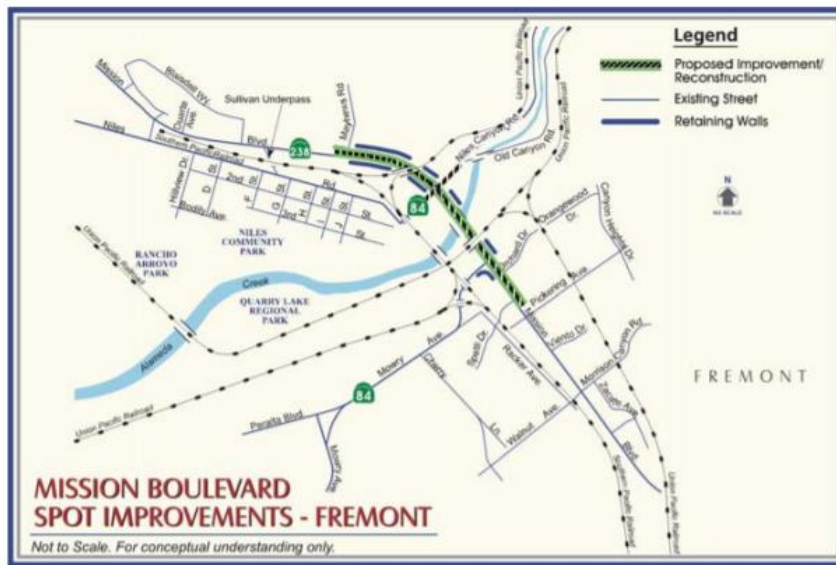
Source: Alameda County Measure B Proposed Expenditure Plan Amendment (Amendment 2)

Figure A6: Alameda Measure B Route 238 Spot Improvements Project- Union City Segment



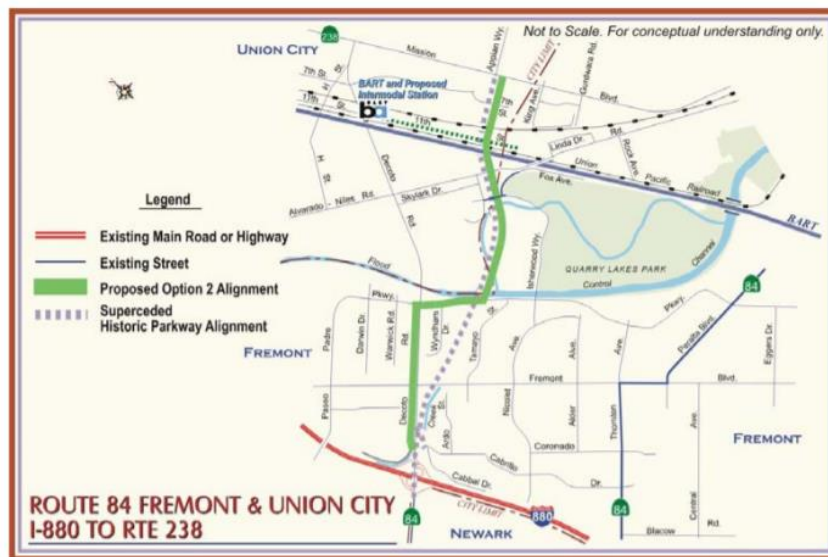
Source: Alameda County Measure B Proposed Expenditure Plan Amendment (Amendment 2)

Figure A7: Alameda Measure B Route 238 Spot Improvements Project- Fremont Segment



Source: Alameda County Measure B Proposed Expenditure Plan Amendment (Amendment 2)

Figure A8: Alameda Measure B Option 2 East-West Connector Project



Source: Alameda County Measure B Proposed Expenditure Plan Amendment (Amendment 2)

At the time of this amendment, “[m]ost of the 10 major projects authorized by the 1986 Expenditure Plan [had] been completed or [were] under construction, and those that [were] still in the design and environmental review stage [were] scheduled to begin construction in the next few years.” The text accompanying this second amendment describes how, similar to the plight of the Hayward Bypass Project at the time of the previous Measure B Expenditure Plan amendment in 2005, the Route 84 Historic Parkway Project had encountered substantial local opposition, which was so outspoken that the Federal Highway Administration (FHWA) had

refused to certify the project's EIR/Environmental Impact Study (which had already been completed and obtained Caltrans' approval, in 2002).

In light of the FHWA's refusal to certify, ACTA worked closely with Union City and the city of Fremont to identify a project alternative to the Route 84 Historic Parkway Project that could be argued to meet the original purposes of Measure B, thereby serving as a viable candidate for receipt of Measure B funding. The groups identified a series of alternative improvements to east-west mobility that could serve to connect I-880 and Route 238, and, in 2006, the ACTA Board voted to approve and include these improvements as replacing the Route 84 Historic Parkway Project in the twice-amended 1986 Measure B Expenditure Plan.

Oversight

Measure B funds are overseen by the nine-member Alameda County Transportation Authority. Each member of the Authority has to be an elected official. The Authority is required to be comprised of five members from the Alameda Board of Supervisors; two members appointed by the Mayors Conference from the cities of Hayward, Fremont, Newark, Union City, Pleasanton, Livermore, and Dublin; one member appointed by the Mayors Conference from the cities of San Leandro, Oakland, Alameda, Albany, Berkeley, Emeryville, and Piedmont; and one member designated by the mayor of Oakland. The Authority is governed by the Alameda County Transportation Authority Administrative Code. The authority can amend the code upon approval of 2/3 of the Authority membership, with two weeks' written notice. Authority members are compensated \$100 for each Authority board meeting, up to a limit of \$400 monthly. They are also compensated for relevant business costs and can receive a per diem of \$25 for travel costs.

The Authority is required to consult and coordinate with "other transportation funding agencies" in allocating measure revenues (Measure B Ordinance, p.1). It is required to prepare a report on the progress of measure projects in the first quarter of every calendar year. It is also required to have its financial records audited at least yearly by a certified public accountant. The Authority appoints three advisory committees- a Citizens Advisory Committee; a Technical Advisory Committee; and a Paratransit Committee. The Citizens Advisory Committee is mandated to represent a "cross-section" of community stakeholders. The Technical Advisory Committee consists of one representative from the Bay Area Rapid Transit (BART), one representative from Alameda County Transit, one representative from the Livermore Transit Authority, the Alameda County Public Works Director, and give other public work directors selected by the Alameda County Technical Advisory Committee representative of the county. The Authority is also empowered to appoint other committees as necessary.