

MEETING OF THE
TRANSPORTATION AUTHORITY OF MARIN
CITIZENS' OVERSIGHT COMMITTEE

June 17, 2019

5:00 p.m.

TAM Conference Room
900 Fifth Avenue, Suite 100
San Rafael, CA 94901



MEETING MINUTES

Members Present: Peter Pelham, Major Marin Employers
Bob Burton, Southern Marin Planning Area
Joy Dahlgren, Central Marin Planning Area
Charley Vogt, North Marin Planning Area
Scott Tye, West Marin Planning Area
Vince O'Brien, Bicyclists and Pedestrians Group
Kate Powers, Environmental Organizations
Kevin Hagerty, League of Women Voters
Paul Premo, Taxpayer Group
Allan Bortel, Marin County Paratransit Coordinating Council
Zach Macdonald, School Districts

Alternates Present: Janyi Allsep, Southern Marin Planning Area
Kay Noguchi, League of Women Voters
Nancy Okada, Environmental Organizations

Staff Members Present: Li Zhang, Chief Financial Officer
Bill Whitney, Principal Project Delivery Manager
Dan Cherrier, Principal Project Delivery Manager
David Chan, Manager of Programming and Legislation
Molly Graham, Public Outreach Coordinator
Helga Cotter, Senior Accountant
Grace Zhuang, Accounting and Administration Specialist

Chairperson Peter Pelham called the Citizens' Oversight Committee meeting to order at 5:03 p.m.

1. Introductions and Welcome

Chairperson Pelham welcomed everyone.

Chairperson Pelham swore in Member Bob Burton, Kevin Hagerty, Vince O'Brien, Janyi Allsep, and Kay Noguchi for their next 4-year terms.

2. Open Time for Public Expression

No comments made.

3. TAM Staff Report (Information)

Principal Project Delivery Manager Dan Cherrier presented the staff report. He spoke about the important milestone in striking down two challenges of the Regional Measure 3 (RM3), one by the Howard Jarvis Taxpayers Association, and the other one by Randall Whitney, but noted that both parties have indicated they may appeal and Metropolitan Transportation Commission (MTC) plans to wait until all appeals have run their course before releasing any RM3 funds.

Mr. Cherrier reported that Caltrans has amended its State Highway Operations and Protection Program (SHOPP) to provide \$10 million for an environmental study on the raising of Highway 37 in Marin County. The method for the raising of the roadway is still under investigation, but both embankment and causeway options are being considered. He reported that TAM also received a grant from Caltrans to conduct a feasibility study of a Bus on Shoulder program. The funding agreement is still being negotiated and a consultant will most likely be hired for this study. Mr. Cherrier explained that the study will most likely be focused on Southbound Hwy 101 between Northern Novato and North San Pedro Road, where there is a shoulder. He then discussed the feasibility of the Bus on Shoulder program of that section of the highway with inline bus stops, off ramps and existing auxiliary lanes.

Mr. Cherrier then reported that the installation of steel plates on the Richmond-San Rafael Bridge is supposed to be completed in the next few months and the multi-use path under construction is scheduled to open in September. He explained that the barrier for the path will be installed and tested after the plate installation has been completed. TAM has started the process for a traffic study to examine shared use of the path and Caltrans is planning to conduct a loading analysis this Fall to ascertain if the bridge can carry three lanes of traffic and the weight of the barrier. He discussed the weight of the deck and its effect on the bridge. Mr. Cherrier also discussed possible maintenance methods with Member Hagerty. Vice-Chairperson Burton wanted to ensure the third lane would not be open for vehicles at the same time as the upper deck. Mr. Cherrier assured him that all factors are taken into account and stated the barrier is more of an issue than the traffic.

Mr. Cherrier reported interviews were held for the selection of the 580-101 Direct Connector Project consultant team and staff will be recommending a selection in either July or August. The team selected would be for the entire project preparation until the actual design work begins. In response to Vice-Chairperson Burton, Mr. Cherrier confirmed that this is a separate project from the Bellam Blvd Project that will most likely be put out to bid towards the end of Winter.

Member Charley Vogt asked for an update on the Ramp Metering Project. Principal Project Delivery Manager Bill Whitney stated Caltrans is proceeding with the first phase of the project from the Golden Gate Bridge up to Sir Francis Drake Boulevard. Many ramps are being widened and Caltrans has been notifying the public of planned ramp closures timely. Construction is expected to be completed late Fall or early Winter and activation should begin next Spring. TAM has made a request to Caltrans to accelerate Phase 2 of the project by 4-5 years in the SHOPP, the remainder of the northbound onramp from San Rafael North and all the southbound ramps. Member Vogt commented on the heavy traffic around Novato, which he hopes will be improved by ramp metering, and Mr. Whitney confirmed infrastructure exists but may need to be upgraded before activation. Mr. Whitney clarified the widening of the Sir Francis Drake northbound onramp for Member Nancy Okada and how traffic signals would work in that area. Member Scott Tye asked if the metering is pre-programmed or could be adjusted as necessary to respond to traffic conditions. Mr. Cherrier stated that it tends to be pre-programmed.

Chairperson Pelham requested an updated on the Marin Sonoma Narrows Project and Mr. Cherrier reported that the construction bids for the latest project segment managed by Sonoma County came in right at the estimate. Mr. Whitney confirmed this section of the HOV lane will close the gap in Sonoma and TAM is working feverishly on the design for the last Marin section and getting the project ready for construction. He

also mentioned that TAM staff is working on various ways to close the funding gap for the Marin section as well.

Vice-Chairperson Burton expressed his concern about the new bike lane at TAM Junction. He reported that half of the cars drive in the bike lane which is a serious safety issue. He suggested that the bike lane be moved over for safety reason and it appears that there is enough pavement to do so. Mr. Cherrier stated that TAM would speak to the County to ask that it be addressed.

4. Review the Measure AA Reserve Policy Options and Make a Recommendation to the TAM Board (Action)

Chief Financial Officer Li Zhang provided background information on the issue, including an explanation of the reserve provisions explicitly noted in both the Measure A and Measure AA Expenditure Plans and the Strategic Plans that allow TAM the discretion to set aside up to 10% of annual sales tax collected. Ms. Zhang explained that a policy existed under the original Measure A Strategic Plan adopted in 2006 that allowed TAM to collect 5% for 5 years. She noted that the Measure A Strategic Plan has been reviewed every two years and the revenue and expenditure update is reviewed annually, and that the public and funding recipients are well informed about the current reserve policy.

Chairperson Pelham asked about the change in the reserve amount of Measure A over time. Ms. Zhang stated it was collected at 5% of the actual collection for the first five years of full revenue collection and then stop per the adopted reserve policy. She stated that staff had recommended the same reserve policy for Measure AA but was receiving resistance from Marin Transit. She explained the request for legal review and the status of the legal opinion.

Member Zack Macdonald asked about the purpose of the Reserve Policy, noting that the Measure AA Expenditure Plan specifically referenced potential economic decline as the reason for the reserve fund, a much more limited use than in Measure A. Ms. Zhang stated it also includes funding/project contingencies. Ms. Zhang then clarified again that the Strategic Plan expands on the potential eligible uses of the reserve funds.

Member Kate Powers asked what provisions were included in the Measure approved by the voters. Ms. Zhang stated the Expenditure Plan approved by the voters authorizes TAM to set aside a reserve fund of up to 10%. Ms. Zhang also explained the history of why the Measure A Reserve Policy was set at 5% for the first 5-year period. Member Powers asked whether the reserve is allowed in the voter approved Measure AA Expenditure Plan which Ms. Zhang confirmed that it is in the plan.

Member Tye commented on the original Measure A Strategic Plan development process. He stated that a Strategic Plan Sub-Committee made a recommendation that the 5%/5-year policy was set for a reserve, which the COC supported and the Board approved during that time.

Member Paul Premo asked if there was an estimated time that the legal review would be completed. Ms. Zhang stated County Counsel is currently reviewing it and she was informed this morning that they may have a draft opinion by the end of the day. Member Hagerty then asked what is being reviewed. Ms. Zhang explained the questions specifically referenced in the request for legal review are 1) whether TAM can set aside reserve taking revenue from some categories but not others, and 2) if categories that do not contribute to the reserve can access the reserve. Ms. Zhang explained, based on her discussions with County Counsel up to this time point, the legal opinion is clear on part 2 of the request that categories not contributing to the reserve should not be allowed to access it. What County Counsel is still reviewing is whether the reserve can be taken from some categories and not all. Her discussion with the review team implies that the general legal practice usually is that the reserve should be taken from all categories. On the other hand, the Expenditure Plan doesn't mandate

the set aside of the reserve, which means the TAM Board could decide not to set a reserve at all. However, staff believes that having a reserve is the right financial management strategy for the agency.

Vice-Chairperson Burton stated that in effect, Marin Transit would be responsible for 55% of the reserve needs for Measure AA. Ms. Zhang pointed out that TAM has been entrusted by the voters to oversee these funds. She added that none of the funds are assigned to a specific entity until work has been done and is ready to be reimbursed, although this is not Marin Transit's position or the position of some Board members.

Chairperson Pelham asked if it was correct that the use of the reserve funds do not have to be in the same proportions as the overall funds. Ms. Zhang confirmed yes and noted that funding recipients that access the reserve fund are required to pay it back to ensure that the percentages of funding in the end match the allocations the voters approved. She stated TAM has been trusted by voters to oversee the allocation and distribution of the funds as they are needed according to the policy elements, as well as delivery all projects/programs in the most cost-effective way. The reserve fund allows TAM to meet urgent needs across all the categories, such as local streets and roads and crossing guards, in a cost-efficient and timely way.

Member Vogt noted that a healthy reserve fund helps assure TAM's good credit rating and improves access to advantageous loan terms. Ms. Zhang discussed the potential upfront cash needs for the Marin Sonoma Narrows Project under the Measure AA Expenditure Plan which may require TAM to borrow in order to meet the cash flow needs. She agreed with Member Vogt that having the reserve fund in this case helps the agency's credit rating and allows for more favorable borrowing terms. Ms. Zhang reviewed the use of the reserve fund under Measure A, noting that TAM was able to borrow funds at favorable rates from MTC to meet the cash flow needs for the Highway 101 Gap Closure Project and also use the reserve fund to pay back the MTC loan timely. Member Vogt added that sales tax revenue is very dependent on the economic situation versus property tax revenue, which is the basis for most other government agencies' financing.

Member Powers asked if the \$1.21 million that was released to Marin Transit in 2016 would be deducted from Marin Transit's overall Measure A allocation or would it be paid back. Ms. Zhang explained the COC's recommendation with regard to that request and stated that the TAM Board had approved the release of \$1.8 million in reserve funds, with \$1.21 million to Marin Transit under the condition that excess revenue collected over the budgeted revenue level be used to replenish the reserve. She noted that the COC specifically requested the funds be replenished. Ms. Zhang noted that TAM had approximately \$1.5 million in excess of budgeted revenue last year, which were used to replenish the reserve funds, and will restore the reserve to its full funding level with the Measure A revenue coming in this year, before the start of Measure AA collection on April 1, 2019. Ms. Zhang then went through the specific recommendation regarding the release of reserve fund to Marin Transit at the November 7, 2016 COC meeting and highlighted the four caveats that former Chairperson V-Anne Chernock presented to the TAM Executive Committee at its November 14, 2016 meeting, including: ensure that all outside funding options have been considered; encourage Marin Transit to use a portion of its own reserve or funding set aside to fund at least half of the \$1.2 million that is being requested; require that Marin Transit and the contractor conduct rigorous value engineering to reduce the final cost of the project; and/or consider requiring Marin Transit to return unspent project contingencies to TAM's reserve fund.

Member Joy Dahlgren asked how the Measure A reserve will be distributed. David Chan, Manager of Programing and Legislation, stated that staff had presented a recommendation to release the Measure A reserve, but the Board wanted to wait on that decision until after the Measure AA Reserve Policy was determined. The expectation would be that the reserve will be released according to the percentages approved by the voters. Member Dahlgren asked if the Measure A reserve should be held on to for a few years to give the Measure AA reserve a chance to accumulate, which Member Vogt seconded. Mr. Chan pointed out that the two reserves have different eligibility requirements.

Member Dahlgren commented that Marin Transit's concerns were understandable given the decrease in its allocation from Measure A to Measure AA, since they were receiving an effective rate of 59.5% under Measure

A. Ms. Zhang acknowledged this fact and pointed out that the windfall under Measure A was only temporary. She added that Marin Transit was made aware ahead of time that the windfall funding increase from Strategy 2 would be going away.

Member Powers asked if Marin Transit has paid back the amount released in 2016 to the reserve fund or if the replenishment came from excess revenue collected. Ms. Zhang stated to make it simpler, funds were released from the reserve to all recipients according to the overall allocation and were replenished from excess revenue equally.

In response to Member Kay Noguchi, Ms. Zhang confirmed the agency would need to build up a reserve from Measure AA when the funds from Measure A are released.

Chairperson Pelham asked if there was any reason not to release the Measure A reserve immediately, since the two measures have different requirements. Ms. Zhang stated that the Measure A could be used to meet Measure AA contingencies where the two measures overlap, such as the Crossing Guard program. She noted Measure A could not be closed for good until the ongoing projects are completed.

Mr. Chan presented staff's recommendation on the Measure AA reserve funds with options of 5% over 5 years, 2.5% over 7 years, and 2.5% over 10 years. He confirmed that staff's recommendation is the first option, which should provide \$7 million in reserve funds. Member Hagerty asked and Mr. Chan confirmed that \$5 million should be the minimum reserve level.

Vice-Chairperson Burton suggested that distributing the Measure A reserve slowly over the next five years while accumulating the Measure AA reserve to minimize the impact on the total reserve fund level.

Ms. Zhang summarized Marin Transit's comment letter, which they are revising to stipulate that TAM could maintain a reserve but not from Marin Transit's share. Ms. Zhang and the Committee reviewed and discussed the four comments as presented below.

Comment 1: MT's Funding Share Change

She pointed out that Marin Transit stipulated they were not aware of a decrease in funding under Measure AA and the \$2.35 million off the top for Major Roads Projects. She reported on the Board's discussion on the matter, and its decision to bring it to the COC. Ms. Zhang reviewed a comparison of Marin Transit's allocations under both measures. She explained that Marin Transit had received a higher percentage than the 55% specified in the Measure A Expenditure Plan due to the fact that funds were provided to Strategy 2 under both the 7.5% share specified and the off-the-top bond reserve funds. The redistribution of the 7.5% for Strategy 2 allowed all other strategies to receive a higher percentage than specified in the Measure A Expenditure Plan. This is no longer the case under Measure AA and that they would only get the 55% of funds as specified in the Measure AA Expenditure Plan. The central disagreement is that Marin Transit's allocation was effectively 59.5% after the redistribution of the 7.5% Gap Closure share under Measure A Strategy 2, although the Expenditure Plan states Marin Transit's allocation to be 55%. Marin Transit's position is prior to the release of the Measure AA Expenditure Plan, Marin Transit staff was not aware of the decrease of funding share under Measure AA.

Ms. Zhang also explained the \$2.35 million set aside for the Major Road Reserve is to fulfill existing commitments to the Major Roads Projects that should be funded under Measure A for its original 20-year life span. Commitments under Measure AA will expire after 14 years, which will increase the total funding pie for all categories. Member Premo asked how the 14-year time period was decided. Mr. Chan said it was based on the estimated remaining funds that those Major Road Projects could have received under the remaining time of the Measure A if Measure AA was not approved. She noted that Marin Transit had the opportunity to comment on this when reviewing the draft Measure AA Expenditure Plan and did review and provide comments during the process.

Member Macdonald asked how the various funding shares were decided for each category and Member Tye and others who served on the Expenditure Plan Advisory Committee (EPAC) went through the prioritization and balancing process taken place during the development of Measure AA Expenditure Plan. Member Burton also commented on the argument that whether Marin Transit should continue to receive the 55% under Measure AA due to the cost effectiveness of the service as part of the discussion taken place during that time period.

Comment 2: Interest Fund Distribution Policy

Ms. Zhang discussed Marin Transit's comment related to equitable distribution of interest funds and its request to allocate interest fund proportionally based on the category funds held by TAM and in accordance with the Measure AA Expenditure Plan. Ms. Zhang reviewed the usage of interest funds in both the Measure A and Measure AA Expenditure Plans and the interest policy as approved by the TAM Board. Mr. Chan noted that County Counsel had also commented on the Measure A interest funds and agreed the interest funds do not have to be distributed according to the allocations of the overall funds, as long as they are distributed to eligible projects according to the Expenditure Plans. Member Powers asked if the County Counsel's opinion applied to Measure AA interest funds as well. Ms. Zhang stated that the Measure AA Expenditure Plan explicitly included the provision that all interest fund allocations will be solely determined by the TAM Board. Member Macdonald asked how interest is currently being managed and spent and Ms. Zhang and Mr. Chen then discussed the past and current funding commitments out of the about \$5 million interest fund pot. Ms. Zhang also went through the formal interest fund distribution policy that was just reconfirmed by the TAM Board and that the COC is not being put in a position to have to make a recommendation on this. Member Tye also pointed out that Marin Transit had the benefit of receiving over \$1 million in interest funds for its Yellow School Bus program.

Comment 3: Develop a Leveraging & Fund Swap Policy

Ms. Zhang discussed Marin Transit's comment suggesting the development of a leveraging and fund swap policy and reviewed TAM's fund swap policy. She noted that TAM staff believes the current TAM fund swap policy has served the County well, but could be revisited, if desired. Mr. Chan noted that any time TAM has participated in a fund swap, it has ensured the affected funding category is made whole. Mr. Chan and Ms. Zhang discussed with the Committee on various swap cases that took place in the past and confirmed that the fund swap policy, which is an agreement of all involved parties, is an important tool for TAM to help all local agencies in Marin deliver projects/programs in a more timely and cost effective way. Member Macdonald asked and Mr. Chan confirmed that the federal gas tax revenue received every three years are not being used to replace any of the sales tax revenues, but provides funding for specific project, which could be a sales tax funded project as well.

Comment 4: Adopt a Reserve Policy

Ms. Zhang discussed Marin Transit's most recent request regarding the reserve policy that was presented to TAM's Funding, Programs & Legislation Executive Committee at its May 13, 2019 meeting. This request stated that TAM should have a reserve but should not fund the reserve with the 55% Transit Category share since Marin Transit has its own reserve.

Ms. Zhang then reported on the discussions happened so far on the reserve policy, TAM's fiscal responsibility as the sales tax administrator and congestion management agency of Marin County, and the different purposes of Marin Transit's reserve and TAM's reserve. The Committee discussed and agreed that the TAM reserve really is not a redundant reserve of Marin Transit's since TAM's reserve is held for the usage and urgent needs of any eligible projects/programs under the Measure A and Measure AA Expenditure Plans and for the benefit of delivery projects/programs more cost effectively for the County.

Member Tye pointed out that Marin Transit is a different type of agency than many of TAM's other partners since they are in operations and are more susceptible to funding level changes. Ms. Zhang went through Marin Transit's current financial situation and shared the information from Marin Transit's FY2019-20 budget

approval process. The information shared illustrated a sound financial picture for Marin Transit in the next few years with three healthy reserves totaling more than \$27.6 million. Ms. Zhang reported that Marin Transit staff confirmed that they will not experience any financial difficulties over the next 2 years but may have funding shortages when they update their next Short-Range Transit Plan. Ms. Zhang informed the COC that both TAM staff and the TAM Board have made the commitment to help Marin Transit address the potential shortfall in whatever capacities that TAM is allowed when that time comes.

The Committee agreed that all facts and information provide by staff is sufficient for it to move forward and make its final recommendations on the various items.

Vice-Chairperson Burton moved support of staff's recommendation to collect a reserve from all categories, which Member O'Brien seconded. The motion passed unanimously.

Vice-Chairperson Burton moved support of staff's recommendation to collect a reserve of 5% over 5 years, which Member Hagerty seconded. The motion passed unanimously.

The Committee then discussed how to best present the COC's recommendation to the TAM Board. Member Macdonald suggested a letter to the TAM Board from the COC summarizing the discussions and actions taken by the COC, and the Committee talked about what should be included in the letter. Member Premo moved support of Vice-Chairperson Burton to present the COC's comments to the TAM Board at the June 27, 2019 Board Meeting, which Member Powers seconded. The motion passed unanimously.

Member Vogt requested the Committee to consider the recommendation to not release the \$5.8 million Measure A reserve right away as TAM staff proposed, instead, release it at the same speed of the Measure AA reserve is being collected. The Committee discussed the option and recognized the benefit of maintaining the \$5.8 million reserve level as collateral and ways to help TAM's credit rating in the case of borrowing. Member Vogt moved that the COC recommends the Measure A reserve be drawn down equally as the Measure AA reserve is built up over the next five years, which Member Tye seconded. The motion passed unanimously.

The Committee recessed for ten minutes for a dinner break and reconvened with all members present as indicated.

5. Update on the Measure A Compliance Audit Team RFP Process (Information)

Ms. Zhang reported that an audit team has been selected through a RFP process and thanked Member Vogt for his participation in the process. Ms. Zhang noted that the Measure A funding recipients to be audited during the 2019 Compliance Audit cycle as well as the audit team selected to conduct the work will be approved at the June 27, 2019 TAM Board meeting.

6. Committee Member Hot Items Report (Information)

There were no items to report.

7. Discussion on Next Meeting Date and Recommended Items for the Agenda

The next meeting is scheduled for September 16, 2019.

Member Tye moved and Member Premo seconded to adjourn.