



DATE: November 14, 2016

TO: Transportation Authority of Marin Finance and Policy Executive Committee

FROM: Dianne Steinhauser, Executive Director
David Chan, Programming Manager

SUBJECT: Program Debt Reserve Funds (Action), Agenda Item No. 7a

RECOMMENDATION

Present an action item for the TAM Board to program the remaining Debt Reserve Funds to the Major Road under Strategy 3.1 of the Measure A Strategic Plan, per attached amounts, with the condition that amounts will be revised once costs are known for the Richmond San Rafael Bridge Approach Project, estimated at the end of 2017,

BACKGROUND

The Measure A Expenditure Plan, approved by voters in November 2004, states that TAM will have the authority to bond and use other financing mechanisms for the purposes of expediting the delivery of transportation projects and programs and to provide economies of scale. Bonds, if issued, will be paid with the proceeds of the transportation sales tax.

The Measure A Strategic Plan, subsequently adopted in June 2006, envisioned approximately \$30 million in debt capacity is reserved in the Strategic Plan to meet the cash flow needs of the Highway 101 Gap Closure Project, estimated at \$25 million and other eligible projects, estimated at \$5 million.

The Measure A Strategic Plan in 2007, and TAM adopted Debt Policy in that same year, further refined the need for debt issuance to include the cash flow needs of the Highway 101 Gap Closure Project and Major Roads projects under Strategy 3.1 of the Sales Tax Expenditure Plan.

The Expenditure Plan indicates that allocations to strategies and sub-strategies are made after taking “off-the-top” expenses for administration, debt service and bond issuance costs. Based on the \$30 million estimation, \$2.35 million was taken off-the-top for debt service and debt issuance costs annually, beginning in FY 05/06. This amount was envisioned as \$2.6 million in the voter approved expenditure plan, but the resultant set-aside was less.

As noted in the Measure A Strategic Plan, issuing debt was originally anticipated to meet the cash demand for the Highway 101 Gap Closure Project. However, an infusion of \$12.5 million in federal funds loaned by the Metropolitan Transportation Commission (MTC) in 2007 in exchange for future Measure A funds alleviated this demand. The MTC loan secured offered more favorable terms and lower interest expenses to TAM compared to private bond financing.

TAM made the first payment on the loan from MTC in FY 08/09 and the last payment was made in FY 15/16, fulfilling all loan obligations. The total payment was slightly more than \$13.25 million, of which \$12.5 million was principal and approximately \$753,000 was interest.

Available Funds

As a result of setting aside \$2.35 million annually, the favorable terms from the MTC loan, and a slower than anticipated delivery schedules from Major Road projects, TAM does not anticipate needing the set-aside for debt issuance. The funds are available for re-programming. TAM staff sought an opinion from County Counsel, who serves as TAM's regular legal counsel and who are very familiar with TAM's programs including our Measure A Sales Tax program. In their review, County Counsel advises the following:

“Yes, the Measure A Expenditure Plan actually requires that the TAM Board reprogram the surplus financing funds into other programs or projects within the same strategies they were originally allocated to benefit (either Strategy 2 (Highway 101 Improvements), or Strategy 3 (Major Roads and Local Infrastructure).”

County Counsel's opinion on the matter is attached as Attachment A.

Prior Allocations

There have been two prior allocations with Debt Reserve Funds:

- 1) In July 2011, the TAM Board programmed approximately \$6 million to Major Road projects that were scheduled to receive \$6 million in State Local Partnership Program (SLPP) funds from the State Proposition 1B Bond Program. The TAM Board diverted the SLPP funds from Major Road projects to the SMART project and replaced them with Debt Reserve Funds. Dedicating the funds to Major Roads was consistent with the intended use of the funds, as noted in Counsel's opinion, above.
- 2) In July 2016, the TAM Board allocated \$7.7 million in Debt Reserve Funds to the Richmond San Rafael Bridge Approach Project that includes improvements to the East Sir Francis Drake (ESFD) corridor and the Bellam Boulevard off-ramp and intersection. Note the East Sir Francis drake corridor is a Major Road project under Strategy 3.1 of Measure A, and the Bellam Boulevard off-ramp improvements were part of the original Highway 101 Improvements, but were unfunded. The use of Debt Reserve was consistent with allowable uses per counsel's opinion.

The allocation of \$6 million to major road projects and \$7.7 million to the Richmond San Rafael Bridge Approach Project currently leaves approximately \$7.5 million in Debt Reserve Funds unprogrammed by the end of the Measure A Program in FY 24/25.

It should be noted that the total amount of \$7.5 million will not be fully collected until FY 24/25. Since \$13.7 million was previously programmed to two groups of projects, these projects are projected to drawdown on the Debt Reserve Funds until FY 21/22. Consequently, the Debt Reserve Funds will not show a positive cash flow until FY 21/22.

PROPOSALS FOR THE UNPROGRAMMED DEBT RESERVE FUNDS

There are three proposals under consideration for the remaining Debt Reserve Funds:

1. Additional Needs for the Richmond San Rafael Bridge Approach Project

While the amount for the Major Road projects was capped at \$6 million, the Richmond San Rafael Bridge Approach Project is still eligible for a future allocation if the project needs more than \$7.7 million. Therefore, the unprogrammed amount of \$7.5 million may be used to offset the final delivery costs of the Richmond San Rafael Bridge Approach Project. Whether more funds are needed will be determined after the construction of the project is advertised and a bid is accepted, which will be known by end of 2017. Staff is proposing to reserve Debt Reserve Funds to cover the difference needed to deliver the Richmond San Rafael Bridge Approach Project.

2. Local Road Projects under Strategy 3.2 of the Measure A Strategic Plan

If the Richmond San Rafael Bridge Approach Project does not need more funding, approximately \$7.5 million remains unprogrammed. There has been ongoing dialogue on how to program these funds. At the July 2016 TAM Board meeting, Marin County asked the TAM Board to consider distributing the funds when they become available in FY 21/22 to all jurisdictions for local road projects using the 50% population/50% lane mile formula established in Strategy 3.2 of the Measure A Program.

Marin County Department of Public Works requested the TAM Board to program the entire amount of \$7.5 million to local road projects. If the entire amount is not available, Marin County requested a minimum of \$2.7 million to be consistent to the amount requested from the OBAG 2 Call for Projects.

Under the OBAG 2 Call for Projects, the Municipal Public Works Association (MPWA) agreed among themselves to submit three applications for local road projects for \$2.7 million in requests from Marin County, San Rafael, and Novato. The amount of \$2.7 million in federal funds would be distributed to all jurisdictions in accordance to the 50% population/50% lane mile formula. Marin County and San Rafael would request for individual projects equal to the amounts of the formula distribution and Novato would request its share and the total amounts of all remaining jurisdictions. Novato would accept the federal funds then distribute local funds to the remaining local jurisdictions, with a 25% discount for handling federal funds.

However, the three applications submitted did not merit funding under the evaluation criteria established for the OBAG 2 Call for Projects. The projects fell below the cutoff line for funding. Note several Local Road projects were funded from the OBAG2 exercise. OBAG2 funded a variety of improvements in the County, with funds distributed roughly as follows:

Category	# of Funded Applications	Funding Amount	Percentage of Funded
Transit Capital	3	\$3,180,000	29%
LSR/Highway	5	\$3,291,000	30%
Bicycle/Pedestrian	11	\$3,218,000	29%
Safe Routes to School	2	\$979,000	9%
Planning	2	\$324,000	3%
Total	23	\$10,992,000	100%

Staff notes that TAM must change its Debt Policy and amend the Strategic Plan in order to assign any Debt Reserve to other than Major Roads and Highway 101 Improvements. Staff also notes that per

Counsel's opinion, TAM may need an amendment to the Measure A Sales Tax Expenditure Plan if the TAM Board decides to allocate Debt Reserve to an entirely different Strategy such as Local Transit or Safe Routes to School. Staff does not recommend pursuing an amendment to the Sales Tax Expenditure Plan.

3. Major Road Projects under Strategy 3.1 of the Measure A Strategic Plan

While staff has considered Marin County's proposal to distribute Debt Reserve Funds to local road projects, staff is proposing the TAM Board to consider acting within the existing Expenditure Plan for Measure A sales tax and within the existing long-standing Debt Policy and Strategic Plan policies, and distribute the funds to Major Road projects under Strategy 3.1 of the Measure A Program.

The Major Road category includes five Planning Areas – North, South, West, Central, and Ross Valley. There are projects underway in each of the Planning Areas. A number of these projects are expected have costs that exceed the amounts available in Strategy 3.1. Debt Reserve Funds would be used to supplement funds in the Major Road category.

Attachment B is a chart that summarizes the amounts where Debt Reserve Funds are programmed to local road project and major road projects.

Attachment C is a list of projects in order of priority in each Planning Area. Note these priorities were adopted in 2006 by the TAM Board after a lengthy prioritization process spelled out in the transportation Sales Tax Expenditure Plan, and followed as such. Staff recommends staying with these current priorities.

Timing of fund reimbursement

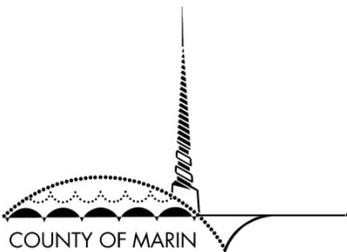
Note previous mention that the near term Debt Reserve funds will be spent on the Richmond San Rafael Bridge approaches. With positive cash flow for the remaining Debt Reserve funds of \$7.5 million not occurring until FY 21/22, TAM can allocate funds to sponsors when they need them, with the condition that if funds are required to be reimbursed before funds are collected and resultant positive cash flow occurs, then TAM will apply 3% per year discount rate, paid out of the allocation to the sponsor. For example, if the need to access the cash is 3 years sooner than cash flow allows, discount applied of $3 \times (3\% \times X)$, which will be 9% cost to the sponsor.

NEXT STEP

Present an action item for the TAM Board to program the remaining Debt Reserve Funds to the Major Road under Strategy 3.1 of the Measure A Strategic Plan, per attached amounts, with the condition that amounts will be revised once costs are known for the Richmond San Rafael Bridge Approach Project, estimated end of 2017,

ATTACHMENT

Attachment A: County Counsel's Letter dated July 11, 2016
Attachment B: Debt Reserve Fund Scenarios for Local Roads and Major Roads
Attachment C: Priority Major Road Projects by Planning Areas



Steven M. Woodside
COUNTY COUNSEL

July 11, 2016

Jack F. Govi
ASSISTANT COUNTY COUNSEL

Ms. Steinhauser:

Renee Giacomini Brewer
SUPERVISING DEPUTY

I am in receipt of your July 5, 2016 e-mail, which presents the following legal question:

Mari-Ann G. Rivers
David L. Zaltsman
Michele Keno
Patrick M. K. Richardson
Stephen R. Raab
Steven M. Perl
Sheila Shah Lichtblau
Edward J. Kiernan
Jessica Mills Sutherland
Brian C. Case
Jenna J. Brady
Valorie R. Boughey
Kerry L. Gerchow

Whether funds previously allocated to the dual Strategy#2 and Strategy#3 purposes of financing 101 Gap Closure construction and other local infrastructure projects – financing funds that will be surplus due to TAM’s cost-effective loan strategy through MTC and the timing of TAM’s project sponsor’s capital expenditures – can be reprogrammed to other programs or projects within Strategy#2 and/or Strategy#3, per the Expenditure Plan?

After reviewing (1) the enabling legislation for Measure A; (2) the Measure A Expenditure Plan; and (3) relevant case law, I offer the following short answer to the question presented:

Yes, the Measure A Expenditure Plan actually requires that the TAM Board reprogram the surplus financing funds into other programs or projects within the same strategies they were originally allocated to benefit (here, either Strategy#2 and/or Strategy #3).

DEPUTIES

Background: the \$2.35 million/year Debt Servicing & Financing Allocations Stand as Dual Strategy#2 (101 Gap Closure construction) and Strategy#3 (infrastructure projects) Allocations

Jeanine Michaels
ADMINISTRATIVE ASSISTANT

The 2006 Strategic Plan, at pages 22 and 23, explains the nature of the \$2.35 million/year financing allocations that are the subject of this memo:

From the net revenues remitted to TAM, the following off-the-top allocations are made consistent with the Expenditure Plan:

Marin County Civic Center
3501 Civic Center Drive
Suite 275
San Rafael, CA 94903
415 473 6117 T
415 473 3796 F
415 473 2226 TTY
www.marincounty.org/cl

- 1% of sales tax receipts to TAM administration of the sales tax,
- 4% of sales tax receipts to sales tax overall program administration
- **Debt service and financing costs needed for up to \$30 million in debt incurred for the 101 Gap Closure project and other eligible projects;**
- 5% of sales tax receipts reserved annually for the first five years of the Strategic Plan

Accordingly, starting with the 2006 Strategic Plan, TAM began to set aside \$2.35 million/year for debt servicing and financing costs. Specifically, as stated in the 2006 Strategic Plan, these funds were allocated to financing the “101 Gap Closure project and other eligible projects.” In other words, as allowed for by the Expenditure Plan, this annual “off-the-top” allocation was made for the broad purpose of construction financing for the “101 Gap Closure project and other eligible projects.”

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Of the four strategies set forth in the Expenditure Plan, only Strategy#2 and Strategy#3 potentially involve projects that would involve large-scale construction financing. Thus, the \$2.35 million/year debt servicing & financing allocations that were made over the last 10 years now stand as dual Strategy#2 (101 Gap Closure construction) and Strategy#3 (infrastructure projects) allocations.

Legal Considerations Under The Local Transportation and Improvement Act

The Local Transportation Authority and Improvement Act of 1986 (“LTAIA”) specifies that a local transportation authority shall “specify the purposes for which the revenue derived from the tax will be used.” (Cal. Pub. Util. § 180202). Beyond this statement of “specific purposes,” there is no other required content in an LTAIA expenditure plan. As such, the LTAIA affords a local transportation authority wide latitude to be as specific (or as general) as they see fit when formulating an expenditure plan¹.

Thus, under the LTAIA, TAM has the latitude to create an expenditure plan that treats surplus project-specific financing allocations just the same as any other surplus project allocation. This is exactly what the TAM expenditure plan does, as explained below.

Legal Considerations Under The Expenditure Plan

The California Court of Appeal has set forth the analytical framework for interpreting the meaning of an expenditure plan:

When we interpret a statute, we attempt to determine legislative intent so as to effectuate the purpose of the law. [Citation.] The first thing we do is read the statute, and do so in an ordinary way unless special definitions are provided. [Citation.] If the meaning of the words is clear, then the language controls. [Citation.] But if the meaning of the words is not clear courts can use interpretative aids; with respect to voter-approved enactments, these aids include the ballot analysis, the official summary, and the arguments presented to the voters. [Citations.]” [Citations]. (*Hayward Area Planning Assn, Inc. v. Alameda County Transp. Authority* (1999) 72 Cal.App.4th 95, 105).

To borrow the phrase used by the *Hayward* Court, “the meaning of the words is clear” in this matter: the Expenditure Plan requires that the TAM Board reprogram the surplus financing funds into other programs or projects within the same strategies for which they were originally allocated: Strategy#2 101 Gap Closure construction and Strategy#3 infrastructure projects.

This clear requirement can be found in the Expenditure Plan’s Implementing Guideline#6, set forth here:

The actual requirement for funds in a specific program could be higher or lower than expected due to changes in funding outside of this transportation sales tax, or due to changes in project costs or feasibility. **Should the need for funds for any program within a strategy be less than the amount to be allocated by the sales tax, or should any project become infeasible for any reason, funds will first be reprogrammed to other programs or projects in the same strategy area with a two-thirds vote at a noticed public hearing** [emphasis added] ...

¹ Compare to the Bay Area County Traffic and Transportation Funding Act of 1986, requiring that any County Transportation Expenditure Plan address *nine* specific items, including a “list of essential and transportation projects in the order of priority within the county . . . and their respective sponsoring agencies . . .” (Cal.Pub.Util.Code § 131051).

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Conclusion

The Measure A Expenditure Plan actually requires that the TAM Board reprogram the surplus financing funds (the \$2.35 million allocated annually, since 2006) into other programs or projects within the same strategies they were originally allocated to benefit (either Strategy#2 and/or Strategy #3).

Respectfully submitted,



Brian Case
Deputy County Counsel
Attorney(s) for Transportation Authority of Marin

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Measure A Local Roads Distribution		
	50% Pop. / 50% Lane Miles	Available for Allocation
Belvedere	0.98%	\$26,479
Corte Madera	3.57%	\$96,469
Fairfax	2.81%	\$75,908
Larkspur	3.92%	\$105,874
Mill Valley	5.65%	\$152,573
Novato	18.10%	\$488,823
Ross	1.02%	\$27,568
San Anselmo	4.43%	\$119,701
San Rafael	19.53%	\$527,377
Sausalito	2.68%	\$72,283
Tiburon	3.42%	\$92,435
County	33.87%	\$914,507
Total	100.00%	\$2,700,000

Measure A Local Roads Distribution		
	50% Pop. / 50% Lane Miles	Available for Allocation
Belvedere	0.98%	\$73,553
Corte Madera	3.57%	\$267,971
Fairfax	2.81%	\$210,855
Larkspur	3.92%	\$294,095
Mill Valley	5.65%	\$423,813
Novato	18.10%	\$1,357,843
Ross	1.02%	\$76,579
San Anselmo	4.43%	\$332,504
San Rafael	19.53%	\$1,464,937
Sausalito	2.68%	\$200,787
Tiburon	3.42%	\$256,764
County	33.87%	\$2,540,298
Total	100.00%	\$7,500,000

Measure A Major Roads Distribution		
North Planning Area	19.90%	\$537,300
Central Planning Area	25.40%	\$685,800
South Planning Area	20.00%	\$540,000
Ross Valley Planning Area	21.60%	\$583,200
West Planning Area	13.10%	\$353,700
Total	100.00%	\$2,700,000

Measure A Major Roads Distribution		
North Planning Area	19.90%	\$1,492,500
Central Planning Area	25.40%	\$1,905,000
South Planning Area	20.00%	\$1,500,000
Ross Valley Planning Area	21.60%	\$1,620,000
West Planning Area	13.10%	\$982,500
Total	100.00%	\$7,500,000

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Major Roads Projects and Ranking

Planning Area	Lead Agency	Name of Roadway	Endpoints	Ranking
Northern Marin	Novato	Novato Blvd.	Diablo Ave. - San Marin Dr.	1
	Novato	San Marin Dr.	Novato Blvd. - US 101	2
	Marin County	Novato Blvd.	San Marin Dr. - Pt. Reyes/Petaluma	3
	Novato	South Novato Blvd.	US 101 - De Long Ave/Diablo Blvd	3
	Marin County	Atherton Ave.	US 101 - SR 37	5
Central Marin	San Rafael	4th Street	Red Hill Ave. - Grand Ave.	1
	San Rafael	3rd Street	2nd Street - Grand Ave.	2
	Marin County	Las Gallinas/Los Ranchitos/Lincoln	Lucas Valley Rd. - 2nd Street	3
	San Rafael	Pt. San Pedro Rd.	3rd St/ Grand Ave - Biscayne Dr/ City Limit	4
	San Rafael	Andersen Dr.	A Street - Sir Francis Drake Blvd.	4
	San Rafael	2nd Street	4th Street - Grand Ave	6
	Marin County	N San Pedro Rd.	Los Ranchitos -Sunny Oaks Dr.	6
	San Rafael	D Street	5th Ave - City Limit	8
	Marin County	Las Gallinas Ave.	Lucas Valley Rd. - US 101	9
Southern Marin	Mill Valley	Miller Ave.	Camino Alto - Throckmorton Ave.	1
	Mill Valley	E. Blithedale Ave.	Sunnyside Ave. - Tiburon Blvd.	2
	Marin County	Paradise Dr.	Tamalpais Dr. - Trestle Glen Blvd.	3
	Marin County	Almonte Blvd./ Miller Ave.	Shoreline Hwy - Camino Alto	3
	Tiburon	Paradise Dr.	Trestle Glen Blvd. - Tiburon Blvd.	5
	Sausalito	Bridgeway/ 2nd St/ S. Alexander Ave.	US 101 - Ft. Baker Rd.	6
Ross Valley	Marin County	Sir Francis Drake Blvd.	US 101 - Wolfe Grade	1
	Marin County	Sir Francis Drake Blvd.	Wolfe Grade - Ross Limit	1
	San Anselmo	Sir Francis Drake Blvd.	Bolinas Ave. - Butterfield Road	3
	Corte Madera	Tamalpais Dr.	Corte Madera Ave - Madera Blvd.	4
	Marin County	East Sir Francis Drake Blvd.	I-580 - US 101	5
	Corte Madera	Paradise Dr.	San Clemente - Tiburon Town limit	5
	Fairfax	Sir Francis Drake Blvd.	Butterfield Rd. - Co. Limit	7
	Ross	Sir Francis Drake Blvd.	Ross Limit - Bolinas Ave.	8
	Corte Madera	Tamal Vista Blvd. / Madera Blvd.	Fifer Ave. - Tamalpais Dr.	9
	Larkspur	Doherty Dr.	Magnolia Ave. - Riviera Cir.	10
	San Anselmo	Red Hill	SFD Blvd - San Rafael Limit	11
	Corte Madera	Lucky Dr.	Riviera Cir - SF Bay Trail	12
	Corte Madera	Fifer Ave.	Lucky Dr. - Nellen Ave.	12
	Larkspur	Magnolia/Corte Madera Ave/Camino Alto	College Ave - Corte Madera Limit	14
	Marin County	Wolf Grade	SRD Blvd - San Rafael Limit	15
Western Marin	Marin County	Sir Francis Drake Blvd.	Samuel P. Taylor - Platform Bridge	1
	Marin County	Sir Francis Drake Blvd.	Fairfax Limit - Samuel P. Taylor (Shafter Bridge)	2

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