

Measure B Citizens Watchdog Committee  
Tuesday, February 27, 2017  
Minutes

**1. Call to Order/Roll Call**

Chair Dolores Morales called the meeting to order at 10:06 a.m. Roll Call was conducted by Clerk Crump.

**Members Present:** David Cameron Andrew Nussbaum  
Isaac Contreras Howard Okayama  
Melissa Erickson Esther Peralez-Dieckmann  
Marty Michaels

**Members Present Via Conference Call:** None

**Members Absent:** Hope Cahan, Betty Duong, Sarah Flamm, Mary Gloner, Dolores Morales, Matt Quevedo

**Measure B and County Staff:** Fran Palacio, Office of the County Executive; Aggie Goltiao, Office of the County Executive; Andrea Contreras, Office of the County Executive; Dennis Christian, Vavrinek, Trine, Day, and Company (VTD); Wendy Jhong, Office of the County Executive; Elizabeth Pianca, Office of the County Counsel.

**2. Public Comment:** None

**3. Introduction of New Members and Staff:** Each member and staff introduced themselves and provided a brief background.

**4. Draft Minutes from February 5, 2016 Meeting:** not approved due to the absence of a quorum. The minutes from February 5, 2016 will be added to the agenda for the 2018 meeting for approval.

**5. Report Back on Sales Tax Residual Overpayment by State Board of Equalization:**

- Ms. Jhong gave an overview of the item saying they were concerned if the State Board of Equalization, after sending the overpayment of residual sales tax, would ask for it to be paid back. Ms. Jhong contacted VTA and was told the Measure B administration is conducting an investigation and there is correspondence with the State Board of Equalization to investigate the overpayment, the reason, and all the background information. According to Amendment 20 of the contract service with VTA, Measure B is supposed to pass along the residual sales tax within 15 days of receipt to VTA, however, they have received a notice from VTA Fiscal Resources Management that all the residual sales tax, including overpayment, has been either spent or committed to Measure B approved transportation improvement projects. As of today's date there is about \$730,000.00 in the overpayment account. They have been working with County Counsel to do further research and will be providing updates at the next meeting.

Member Cameron asked if the credit balance and fund balance deficit are one in the same and if an agreement was drafted indicating VTA would be responsible for the fund. Ms. Jhong said they are trying to get confirmation from them. County Counsel Pianca said County Counsel is reviewing the documents including the original master agreement and all amendments, together with a separate agreement the County has with the State Board of Equalization regarding sales tax distribution to the County. They are trying to determine the exact amount and what, if any, recourse the State has

in calling back the money from VTA or the County adding they have not yet entered into any agreement or, VTA has not recognized any potential responsibility they may have to pay back the overpayment, if any. An update will be provided at the next meeting.

Member Nussbaum asked if Senate Bill 54, which is the State trying to become a “Sanctuary State”, passes, and the Feds hold back money, is the State going to be more likely to push for that overage to be paid back.

Ms. Pianca said overpayments have been made by the State Board of Equalization in other jurisdictions and so the questions are about procedure for collecting that money back. Ms. Pianca said she has not looked at the legislation, adding they are treating this as the responsibility of the County, VTA and the State.

Member Contreras asked if the statute of limitations applies.

Ms. Pianca said they are looking into terms of how far back the State can call the money back. Generally, it can be three years but it really depends on the nature of the payment adding they have yet to look into the statutes.

Member Cameron said basically the County has received too much money. We cannot really close out until this issue has been resolved. Is it reflected in the financials as an overpayment?

Mr. Christian said it is reflected in the Notes to the Financial Statements as a discloser. It does not meet accounting standard for booking as a liability in the financial statement.

Member Cameron asked Ms. Pianca if she is looking at it from a legal prospective saying in his opinion that in reality he thinks the Committee would want to send the money back to the State adding from a policy prospective it is clearly overpayments.

Ms. Pianca said it is overpayments and they are evaluating who is paying the State back.

Chair Erickson asked whether it is VTA or the County that has to pay the money back.

Ms. Pianca said yes, that is something they are looking into.

Ms. Jhong said per the State Board of Equalization, the account is still active, that it fluctuates in the balance every quarter and, is still not quite ready to bill the County or to say no. They are still adjusting between districts from various audits and transfers. For example, a year ago it was approximately \$900,000 and now it is \$730,000.

Chair Erickson asked if there is a time frame for the winding down of this program where the County might want to close it out.

Ms. Jhong said it is reflected in the report.

**6. Measure B Financial Audits for FY 2016 and Public Hearing Regarding how Measure B Funds are Being Spent:**

Mr. Christian gave an overview saying it is the opinion of VTD that the financial statements are fairly presented.

- a. **Open Public Hearing** – None
- b. **Close Public Hearing** - Closed
- c. **Approve Audit Reports (Dennis Christian, Vavrinek, Trine, Day & Co., LLP)**

- Member Michaels, even though he did not attend the 2016 meeting, expressed concerns about the Coyote Ridge Butterfly Habitat, asking if the Committee could recommend no additional funds could be spent on the butterfly habitat.

Member Peralez-Dieckmann commented that the Committee, at one time, had materials on the habitat.

Member Cameron recalled the discussion regarding the habitat, saying that former County Administrative Services Manager George Doorley forwarded a packet via email to all but, does not recall the content of the study.

Member Michaels asked if keeping the Habitat Conservation Plan and the Coyote Ridge Butterfly Habitat in perpetuity makes sense.

Chair Erickson said she remembers seeing a couple of environmental studies they wanted to conduct once the work was done because it is an environmental thing and it is the impact the construction has on these habitats that are being affected and she believes it does apply directly to Measure B and the funding and the projects. Ms. Erickson said she too was not at the 2016 meeting but she did see in the minutes the item was discussed and the Committee did approve the remaining funds to go to Habitat Conservation Plan and Coyote Ridge Butterfly Habitat.

Member Michaels asked if they could ask the person who proposed this to explain why.

Chair Erickson asked Ms. Palacio if she could research to find the materials supporting this decision.

#### **d. Authorize Administration to Publish Report**

Moved by Member Michaels and seconded by Member Peralez-Dieckmann to approve the audit report for FY 2016 and to authorize administration to publishing the report. The motion passed unanimously.

### **7. Informational Report on Financial Closeout of Projects:**

Ms. Jhong said the County Roads Department has approximately \$315,000 in budget for the last project called Capital Expressway Pavement and as of today there is \$107,000 left. According the County Roads Department, there are not enough funds to complete the project adding they are planning on asking for additional funds and to close out FY 2018.

VTA has \$1,700,000 left with eight (8) projects still going on. Compared to the last note they added one (1) project called Santa Clara Pedestrian Underpass Extension. Five (5) projects will be closed by December 2017 and one will close by July 2018. Conservation Plan and the Coyote Ridge Butterfly Habitat will go on in perpetuity.

### **8. Set Next Meeting Date for the Following Year 2018.**

After a brief discussion the next meeting date was set for February of 2018 TBD.

### **Adjourn:**

Moved by Member Cameron and seconded by Member Michaels to adjourn the meeting. The motion passed unanimously. Chair Erickson adjourned the meeting at 10:37 a.m.

Minutes recorded and prepared by Barbara Crump.