

NOTE: On 9/12/16, the SBCCOG Steering Committee decided not to place the item on the 9/22/16 SBCCOG Board of Directors agenda and to continue to oppose Measure M.

## South Bay Cities Council of Governments

September 12, 2016

TO: SBCCOG Steering Committee

FROM: Jacki Bacharach, Executive Director  
Steve Lantz, Transportation Director

SUBJECT: SBCCOG Measure M Oppose Position Reconsideration

### Background

The Los Angeles County Los Angeles County Metropolitan Transportation Authority (LACMTA) Board of Directors voted on June 23, 2016 to place the following Measure M ballot proposition on the November 8, 2016 L. A. County general election ballot:

“Los Angeles County Traffic Improvement Plan. To improve freeway traffic flow/safety; repair potholes/sidewalks; repave local streets; earthquake retrofit bridges; synchronize signals; keep senior/disabled/student fares affordable; expand rail/subway/bus systems; improve job/school/airport connections; and create jobs; shall voters authorize a Los Angeles County Traffic Improvement Plan through a ½-cent sales tax and continue the existing ½-cent traffic relief tax until voters decide to end it, with independent audits/oversight and funds controlled locally? YES \_\_ NO \_\_”

The SBCCOG Board of Directors voted on June 30, 2016 to oppose Measure M.

Board members engaged in a lengthy discussion on the SBCCOG position with L. A. City Mayor Eric Garcetti and LACMTA Chair John Fasana during the August 25, 2016 SBCCOG Board of Directors meeting. At the end of the meeting, there was a request from several Board members to consider the matter further at the September 22, 2016 Board of Directors meeting.

This memo is written to update and summarize the pro and con arguments and concerns that have been expressed during the past two years of the development of Measure M. Ballot arguments in favor of and in opposition to Measure M have been finalized. However, the rebuttal arguments have yet to be submitted. The key ballot arguments in favor of and in opposition to Measure M are summarized as follows:

### Ballot Arguments in favor of LACMTA Measure M

- In 2015, the average driver on LA freeways spent 81 hours stuck in traffic. We can stop wasting time away from our families and jobs by making smart investments in both transit and roads.

- All Measure M money is for local use only and cannot be taken by state government in Sacramento.
- Measure M:
  - creates a comprehensive Los Angeles County Traffic Improvement Plan to ease congestion and build a 21st Century Transportation Network;
  - will modernize Los Angeles County's aging transportation system;
  - will build more light rail, Rapid Bus, Metrolink, and better freeways and highways all across Los Angeles County and we can finally do earthquake retrofitting on our overpasses and bridges;
  - will keep seniors, disabled and student fares affordable and invests in van services and public transit so more seniors, veterans and people with disabilities can live independently;
  - gives Los Angeles County a guaranteed source of funding that can be used to get hundreds of millions of dollars in state and federal matching dollars. Without Measure M, these matching dollars will go to other places;
  - will help each of LA County's 88 cities fix their streets and repair their potholes and sidewalks;
  - includes strict accountability, an Oversight Committee, and an Annual Financial and Performance Audit, which will be available online;

#### Ballot arguments in opposition to LACMTA Measure M

- We all want less traffic and smog – and better, clean and safe public transit. But Measure M doesn't accomplish these things;
- Measure M is a flawed, unfair plan written in part by special interests representing the builders and contractors who'll make billions;
- Blue collar communities pay the tax but won't get traffic congestion relief for decades. Yet mega-projects in wealthy communities are the first in line to receive even more funding;
- The streets, roads and freeways we use are falling apart, but Measure M doesn't make fixing them a priority;
- Improvements to the I-5, 605, 710 and the 405 won't be completed for decades;
- Measure M is a “forever” tax on working families with no end date, oversight or accountability. Loopholes make Measure M a blank check because there are no guarantees the projects you've been promised will ever be started or completed.
- Measure M taxes people who can't afford it, spreads social and racial injustice and makes discrimination worse.

#### SBCCOG Ballot Measure Concerns

SBCCOG has been compiling and communicating concerns about the LACMTA ballot measure and the related expenditure plan over the past two months. The current concerns are organized in three principle categories: 1. Clarity / Fiscal Reliability; 2. Expenditure Plan Equity and Fairness; and 3. The Measure M Decision Making structure.

### *Clarity and Fiscal Reliability Concerns:*

The Measure M ballot language does not specify how much revenue will be generated annually or what it will cost taxpayers each year forever.

- LACMTA estimates that Measure M will generate \$860 million a year (in 2017 dollars) forever (or until voters end the measure). Neither the ballot language nor LACMTA's ballot argument in support of the measure specifies how much the new tax will generate annually or what it will cost each taxpayer every year. (One basis for the lawsuit filed by Carson and other agencies)
- The Expenditure Plan only allocates the estimated \$120 billion in Measure M revenues that are projected to be collected during the first 40-years of the permanent tax. There is no accountability for how the funds will be spent thereafter. The Measure M ballot language is not transparent in explaining that the associated Expenditure Plan is primarily a transit plan; that emphasis is not reflected within the Ballot language.
- 65 percent (\$559 million per year) in Measure M Expenditure Plan revenue would be dedicated to transit capital projects, rehabilitation of transit equipment and facilities, and public subsidy of transit operations and maintenance
- 17 percent (\$146 million per year) is dedicated for Highway Construction projects
- 17 percent (\$146 million per year) is returned to local jurisdictions from 2018 through 2039 for streets and roads repair, local transit capital and operations, storm water and any other eligible transportation projects. In 2039, an additional 3% annually is transferred from the Measure M transit capital sub-fund and/or the highway capital sub-funds meant for Sub-regional projects to the Local Return sub-fund to raise the Local Return share to 20%. It's not new money, it's a reallocation of funds we are already eligible to receive under other funding categories.
- 1 percent (\$8.6 million per year) is dedicated to LACMTA administration The Measure M Tax at 1 cent is essentially permanent. In all practicality, Measure M can never be repealed. To qualify a measure for the L. A. County ballot to end the tax would require a petition to be signed by 10% of L. A. County voters, or more than 430,000 registered voters (as of today's numbers). With more than 500 political districts and 4.3 million registered voters, the County is the largest and most complex election jurisdiction in the nation. Since less than half of registered voters typically vote, the petition would need to be signed by more than a majority of likely voters.

The ballot language is vague, unaccountable, misleading and problematic.

- The ballot language that the voters will see does not conform to the intent of the ordinance that would be adopted should the measure pass. LACMTA wants to replace the current

Measure R rules with the Measure M rules in 2039 when Measure R expires. However, the Ballot Language extends Measure R until voters end it. The last clause in the ballot measure language could be interpreted to say that ONLY the current Measure R tax continues until voters decide to end it.

- There is no sunset provision in the ballot language summary. The way that it is written, Measure R is extended and there is no mention of a sunset for Measure M. With this language, Measure R does not sunset but is extended and therefore, Measure R rules would not be replaced with new Measure M rules after 2039.

The Measure M expenditure plan assumption of a 33% farebox recovery ratio is inconsistent with the Measure M promise to “keep senior/disabled/student fares affordable”

- LACMTA faces a bus and rail operating deficit of \$165M in FY 2020 and \$237M in FY 2021.
- The Measure M Expenditure Plan is predicated on a 33% farebox recovery ratio that was supposed to be achieved in 2015, meaning 33% of transit operating and maintenance costs will be paid from fares. Today, the farebox recovery ratio on the LACMTA system is no higher than 26%. It is unclear how LACMTA will achieve a 33% farebox recovery ratio at the same time it will “keep senior/disabled/student fares affordable”.
- Because the new measure is promising to “keep fares affordable” for some categories of riders, it will be very hard politically for the Board to raise the rest of fares. But, if LACMTA doesn’t significantly raise all other fares or reduce operation and maintenance costs to reach the 33% farebox recovery ratio, LACMTA will not be able to fulfill the promises of the expenditure plan from this one factor alone.

It is unclear how LACMTA will prevent delay of future South Bay projects.

- LACMTA claims that Measure R project commitments will be kept without delays and that projects can be accelerated using Measure M to be completed earlier than promised in Measure R. However, the current Measure M project list assumes more than \$1 billion in uncommitted funding from other sources and current Measure R projects have experienced nearly \$1 billion in cost over runs. SBCCOG concerns were increased further when the LACMTA Board added more than \$2 billion in new, undefined projects at its June 23, 2016 meeting. The SBCCOG is concerned about the integrity of the Expenditure Plan due to the last minute additions and LACMTA’s history of scope creep, cost overruns and unfunded Board commitments.
- LACMTA has budgeted \$10.5 billion for 10 projects ahead of the South Bay Green Line Extension. SBCCOG is concerned with LACMTA’s ability to contain costs on this ambitious program of simultaneous projects and is concerned that the 5-year acceleration of the Green Line South being promised in Measure M will evaporate. Even a 10% cumulative cost over-run would fully consume the funding available for the Green Line South project.
- To just complete the major South Bay projects requires \$1.079 billion (in 2015\$) of other federal, state or local funds beyond Measure M:

Projects	Measure M	Other funds	Total
Green Line South to Torrance	\$891 mil.	\$0	\$891 mil.

I-110 ExpressLane Extension to I-405	\$52 mil.	\$228 mil.	\$280 mil.
I-105 ExpressLane I-405 to I-605	\$175 mil.	\$0	\$175 mil.
I-405 South Bay Curve Improvements	\$150 mil.	\$251 mil.	\$401 mil.
I-405/ I-110 Interchange Improvements	\$250 mil.	\$0	\$250 mil.
SB Highway Operational Improvements	\$500 mil.	\$600 mil.	\$1,100 mil.
SB Trans. Sys. & Mob. Improvements	\$644 mil.	\$0	\$ 644 mil.
Total	\$2.662 bil.	\$1.079 bil.	\$3.741 bil.

- Even with revenue from four L. A. County transportation sales taxes (Propositions A and C, Measures R and M), there is a shortfall in the Measure M Expenditure Plan of approximately 16% of the estimated \$120 billion program over the first 40 years of collecting Measure M revenues. LACMTA assures voters that it is seeking "Federal, local, state, and other Funding" to "enable all Major Projects to be delivered expeditiously." LACMTA notes that the non-Measure M matching funding assumed in the plan is "advisory and non-binding"; but LACMTA assures voters that this "flexible" approach to securing these other funds "has been strategically successful for Los Angeles County in the past, and "we expect that success will continue in the future." In effect, LACMTA is saying, "Trust us. Be flexible. We can work it out after the election."
- Nearly all South Bay projects are scheduled in the second or third decades of the Expenditure Plan. And the bonding capacity of Measure M is fully committed. SBCCOG is concerned that unbudgeted cost increases in first decade projects will postpone funding available for all later projects.

### *Expenditure Plan Equity and Fairness Concerns:*

Local Return Allocation Formulas are inequitable.

- The definition of "Local Return" in The Measure M Ordinance is "funds returned to the cities within Los Angeles and Los Angeles County, based on population, for eligible transportation-related uses as defined by the Local Return Guidelines to be developed in coordination with such cities and Los Angeles County and adopted by the LACMTA Board of Directors."
- "Donor" cities, especially in the South Bay, are significantly burdened by the inequity of contributing far greater sales tax revenues than they receive and by the addition of storm water projects as a new eligible use for up to 33 1/3% of Measure M Local revenues.
- SBCCOG, along with other cities and sub-regions unsuccessfully recommended that the local return allocation in Measure M be calculated based on population, lane miles within the jurisdiction, and sales tax revenues generated within the jurisdiction as a fairer way to divide the local return. LACMTA didn't even engage in a discussion of this proposed revision. To keep Measure M consistent with Proposition A, C, and Measure R, LACMTA chose to allocate Measure M Local Return in the Measure M ordinance using resident population only.
- It was suggested that the LACMTA Board could creatively interpret "population" to allow for different allocation methodologies to be used for cities with larger daytime employment

populations or cities that have relatively little employment. Mayor Garcetti has stated that he has legal assurances that this can be done. In any event, any allowable change would not be addressed until after the November election and the current Metro Board majority hasn't indicated how they might interpret a change.

- The LACMTA Board added storm water projects as a new eligible use for up to 33 1/3 of annual Measure M Local Return revenues. Although the SBCCOG supports broadening the eligible uses of Local Return funds, additional funding should have been provided by LACMTA when it expanded the eligible categories of uses. To address storm water needs, cities will be forced to decide whether they want to defer potential street repairs and active transportation projects, increase local transit fares or reduce local and senior transit services. The sequencing of the Green Line South Extension is unfair.

The Green Line South Extension will have taken 50 years to be completed if it opens in 2030.

- South Bay voters will have paid transportation sales taxes for 50 years waiting for less than 5 miles of new rail service while more than 160 miles of transit was completed in other parts of L. A. County.
- LACMTA and its predecessor, the L. A. County Transportation Commission, have been promising voters the South Bay Green Line extension for more than 30 years:
- It was identified in the Proposition A rail map in 1980.
- It was supposed to be funded using Proposition C in 1990 but only got built through the El Segundo Employment Center with 3 new stations.
  - It was supposed to be extended in Measure R in 2008 2 miles with 2 new stations to the Galleria in Redondo Beach by 2035.
- LACMTA is now promising to use Measure M to extend it another 2.5 miles from Redondo Beach into Torrance (a total of 2.5 miles and 1 new station) by 2030 rather than 2035.

### *Measure M decision-making structure concerns:*

The Measure M Expenditure Plan development process violated LACMTA's own bottoms-up, transparent process and the promised application of performance metrics in developing Measure M project priorities and schedules.

- LACMTA claims to have used performance metrics, revenue and cost assumptions and other actual calculations to come up with the project and program funding that are in the Expenditure Plan but policies and projects were added unilaterally at LACMTA board meetings:
  - removing the Measure R and Measure M sunset clauses
  - adding a 3% local contribution for rail projects to the Measure M ordinance
  - adding storm water projects as eligible uses of up to 33 1/3% of Measure M Local Return
  - adding at the June 23 meeting with no advance notice \$180 million for a new "North San Fernando Valley Bus Rapid Transit Improvements" System Connectivity ("sc") sub-regional project; with funding available July 2018 and an "Expected Opening Date" of Fiscal Year 2023.
  - adding at the June 23 meeting with no advance notice \$1.204 billion dollars to retain countywide equity in the sub-regional program, for unspecified and unscheduled future

sub-regional projects. As a result, the cumulative cost for a \$180 million project was \$1.384 billion in new commitments. The South Bay share of the new funding would be \$130 million.

- What does this change do to the integrity of the Expenditure Plan?
- Where does that money come from? What projects get delayed?
- The “system connectivity” category was supposed to be used for regionally significant projects such as the ports, airports and LA Union Station so that the funding of the regionally significant improvements would not count against a sub-region’s share. Will the other sub-regional projects enabled by this motion also be allocated from the “system connectivity” category?

LACMTA can unilaterally change the Measure M Expenditure Plan every 10 years.

- LACMTA can change any commitments funded with the new measure every ten years without consulting the voters or its regional partners. It merely has to consult with its "independent citizens’ advisory committee" composed of members exclusively appointed by LACMTA. Mayor Garcetti’s response to SBCCOG’s request for a legal opinion stated that the Board needs a 2/3 vote to change the measure. He also included other statements and personal intentions which are not currently in the ordinance nor approved by the Metro Board.
- LACMTA unilaterally increased the cost and prevented acceleration of existing Measure R commitments.
  - The LACMTA Board unilaterally eliminated the Measure M sunset provision which allowed the LACMTA Board to add numerous new projects in the first two decades of the plan, effectively accelerating their delivery ahead of current Measure R commitments.
  - Eliminating the Measure M sunset clause also allowed LACMTA to dramatically increase Measure M debt. LACMTA, has assumed that 100% of Measure M bond capacity is used to deliver commitments in the Expenditure Plan.
  - Without a sunset clause, bonding to accelerate projects funded by Measure R or Measure M would also allow repayment of debt to be deferred into later decades of the plan which would add significantly to the cost of Measure R projects and consume a significant share of future sales tax revenues thus endangering Plan revenues for projects scheduled after 2040.
  - Adding new projects by issuing bond debt precludes the significant opportunity for prioritizing acceleration of current Measure R projects using Measure R and Measure M. The Measure M ordinance 3% “Local Contribution” requirement for rail projects is onesided and unfair to local partners.
  - The Metro Board unilaterally inserted the requirement in the Measure M ordinance with the additional threat that it could withhold a city’s Local Return revenue for up to 15 years to satisfy the 3% requirement. It has not been in any previous ordinance.
  - The 3% requirement should not have been snuck into the Measure M ordinance by the LACMTA Board. Like all other matching funds, investments from funding

partners should be negotiated between LACTC and each funding partner whether the partner is federal, state or local.

- To compound the significance of the matter, Metro is the lead agency under CEQA and NEPA for its major rail projects. As responsible agencies, local jurisdictions have no control over the scope or cost of a project.

- 3% Local Contribution language in the Measure M ordinance:

"Three percent (3%) of the total project cost of any Expenditure Plan Major Project coded "T" in Attachment A shall be paid by each incorporated city within Los Angeles County, and Los Angeles County for those projects in unincorporated areas, based upon the percent of project total centerline track miles to be constructed within that jurisdiction's borders if one (1) or more stations are to be constructed within the borders of said jurisdiction. An agreement approved by both Metro and the governing board of the jurisdiction shall specify the total project cost determined at the conclusion of thirty percent (30%) completion of final design (which shall not be subject to future cost increases), the amount to be paid, and a schedule of payments. If the total project cost estimate is reduced after the conclusion of thirty percent (30%) completion of final design, the proportionate cost to the jurisdiction shall be reduced accordingly. The jurisdiction may request a betterment for a project. The jurisdiction, however, shall incur the full cost of any such betterment. Such agreements shall be in accordance with guidelines adopted by the Metro Board of Directors. If no agreement is entered into and approved prior to the award of any contract authorizing the construction of the project within the borders of the jurisdiction, or if at any time the local jurisdiction is in default of any sums due pursuant to the approved agreement, all funds contained in the Local Return/Regional Rail Sub-fund allocated to that jurisdiction may, at Metro's sole discretion, be withheld for not longer than fifteen (15) years and used to pay for the project until the three percent (3%) threshold is met."

- In discussions at the August 25, 2016 meeting, and in the letters following the LACMTA June 23, 2016 Board meeting from Metro Board Chair John Fasana and Mayor Garcetti, assurances were given that Metro is committed to working with jurisdictions to flexibly address how the 3% contribution can be met. Guidelines addressing the 3% contribution will be developed in consultation with the impacted jurisdictions and sub regions, after the election but prior to July 1, 2017. The guidelines also will consider what constitutes an acceptable financial contribution to the project cost; and allowance for a mutually agreed upon distribution formula among and by all jurisdictions within a transit project corridor, in lieu of a calculation based on centerline miles within each jurisdiction. However, the Chair's flexibility may have been constrained at the June 23, 2016 LACMTA Board meeting, when the LACMTA Board approved a motion by Directors Butts, DuBois, Knabe and Solis that commits LACMTA to negotiate in a standardized MOU with the respective

contributing jurisdictions that up to 100% of a local jurisdiction's 3% local contribution can go towards underwriting Active Transportation Program (ATP), First/Last Mile, bike and pedestrian and street safety projects that contribute to the accessibility and success of the stations in the respective jurisdictions.

Supporters claim Measure M must pass in 2016 -- "It is now or never."

- At the SBCCOG Board meeting in August, it was stated that this tax is "now or never". • For the South Bay, since we do not get our projects until future decades, we can wait for a more equitable measure that won't use up all available funding in other areas of L. A. County for the foreseeable future.
- However, The Green Line South is fully funded by Measure R from El Segundo to Galleria Shopping Center in Redondo Beach by 2035. The South Bay Highway Program will continue to be funded through 2039.
- Measure R will not sunset until 2039. There is time to propose another ballot measure that provides better balance between local and regional priorities.