

Date: _____ January 30, 2008

Committee Meeting Date: _____ February 14, 2008

Board Meeting Date: _____ N/A

BOARD MEMORANDUM

INFORMATION ITEM

TO: 2000 Measure A Citizens Watchdog Committee
Santa Clara Valley Transportation Authority
Board of Directors

THROUGH: Michael T. Burns
General Manager

FROM: Jim Lawson
Senior Policy Advisor

SUBJECT: Review of Citizens Watchdog Committee Duties, Responsibilities
and Limitations

FOR INFORMATION ONLY

BACKGROUND:

In November 2000, the voters in Santa Clara County approved Measure A, a 30-year half cent sales tax devoted to transit projects. The Measure A ballot mandated that an independent citizens watchdog committee, consisting of VTA's Citizens Advisory Committee (CAC), must "review all expenditures" and further, defined specific responsibilities and duties of the Committee (which are discussed in detail later in this memo). On April 1, 2006 the CAC assumed its duties as the Citizens Watchdog Committee (CWC) for the 2000 Measure A Transit Improvement Program.

Staff will conduct an annual review of the CWC's ballot-specified duties, responsibilities and limitations to benefit newer members to the Committee and also to serve as a refresher for veteran members. This review will be given at the start of each calendar year to coincide with the CWC's starting its cycle of reviewing the 2000 Measure A financial statements and reports for the previous fiscal year.

DISCUSSION:

The two primary functions and responsibilities of the Citizens Watchdog Committee can be summarized as follows:

- 1) Review 2000 Measure A expenditures to ensure that the funds are being spent in accordance with the intent of the ballot; and
- 2) Inform the citizens of Santa Clara County on a regular basis on the Committee's conclusion on how 2000 Measure A tax dollars are being spent.

It must be emphasized that policy-related decisions for the 2000 Measure A Program, including the composition, implementation, completion schedule, and funding level of projects, are the responsibility of the VTA Board of Directors.

Duties and Responsibilities

The 2000 Measure A ballot specified certain tasks that the CWC is responsible for accomplishing:

- **Review all 2000 Measure A expenditures**

This is understood to mean the use of funds, not the review of each and every expenditure, which there are hundreds, if not thousands, of annually. Due to the magnitude of the 2000 Measure A Transit Improvement Program (2000 Measure A TIP) and the number and complexity of its projects, it is impractical for the CWC to review every expenditure for all projects. Instead, the Committee reviews groupings of expenditures to determine if they were expended on behalf on 2000 Measure A projects.

There are several tools the Committee utilizes to assess whether 2000 Measure A funds are being spent in accordance with the intent of the ballot:

- Reports provided by staff, which previously included the 2000 Measure A TIP Project Report and the 2000 Measure A TIP Cost Report. These reports are in process of being replaced with the 2000 Measure A Program Semi-Annual Report and the 2000 Measure A Program Annual Report, which will cover the fiscal year that the Committee is reviewing.
- The findings and conclusion reached by the auditor commissioned by the Committee and the research, sampling and testing performed by the auditor to reach their conclusion.

- **Have an audit conducted each fiscal year by an independent auditor to ensure tax dollars are being spent in accordance with the intent of the measure.**

The ballot specifically requires the Committee to have an independent audit of the 2000 Measure A TIP financial statements and records performed annually. The ballot also grants the Committee the ability to contract with an independent auditor of its choice (as long as competitive bidding requirements specified by government code are followed).

An audit is defined as a systematic review or examination of the assertions or actions of a third party to evaluate conformance to some norm or benchmark. The purpose of an independent audit is to provide users of a set of financial statements with independent assurance that the information presented in those statements is reliable. The independent auditor obtains reasonable, not absolute, assurance that the financial statements are fairly presented. To reach their audit opinion, the independent auditor performs observations and conducts sampling, testing and inquiries.

The results of the independent financial audit is one of the most important tools the Committee utilizes and relies on to form its conclusion on whether 2000 Measure A tax dollars are being spent in accordance with the intent of the ballot.

Because fiscal year ends on June 30th and several months are required to process the final transactions and prepare the financial statements, the independent auditor typically does not begin providing reports to the Committee until typically December or January.

For the audit of FY 2006 (July 1, 2005 – June 30, 2006), the Committee chose to utilize the services of the independent auditing firm of Vavrinek Trine Day & Company, LLP (VTD), which was under contract to VTA. For the audit of FY 2007 (July 1, 2006 – June 30, 2007), due to the extensive lead time required to solicit proposals from qualified firms and execute a contract combined with the lead time required for a new firm to become familiar with VTA's computerized accounting and record management systems, the Committee chose to again utilize the services of VTD.

The Committee is scheduled to receive its first status report from VTD on the audit of the FY 2007 financial statements and records at its February meeting. Currently scheduled for the Committee's March 2008 meeting is the FY07 Measure A Financial Report and Independent Auditor's Report.

For FY 2008 (July 1, 2007 – June 30, 2008) forward, the Committee has determined that it will utilize the services of an independent auditing firm not under contract to VTA, in order to remove any potential appearance of conflict of interest. The CWC directed staff to solicit proposals from qualified firms so the Committee could select and enter a contract with a firm that best met its requirements and it felt comfortable with. This process is currently underway.

- **Hold public hearings and issue reports at least annually to inform Santa Clara County residents how the funds are being spent.**

The purpose of the public hearing is to provide the community the opportunity to express to the Committee its views, opinions, and concerns on 2000 Measure A Program expenditures, the results of the annual independent audit, and on 2000 Measure A Program reports.

The difference between the public hearing and a regular CWC meeting is that at the hearing, the Committee receives input from the public but does not debate nor engage in extended discussion with speakers or other Committee members. After the hearing is closed, the Committee then has the opportunity to discuss the input received.

For the FY 2006 process, the CWC held its public hearing on April 11, 2007. Although only required to post the public notice 72 hours in advance of the hearing to comply with the Brown Act, to provide the public maximum opportunity to attend the public notice announcing the hearing was published on March 23rd, almost 21 days in advance of the hearing. It was published in three general circulation newspapers in VTA's service area: The San Jose Mercury News, El Observador (Spanish), and Thoi Bao (Vietnamese). It was also posted on VTA's website.

Staff recommends that to maximum the opportunity for the public to attend, that future public notices announcing the hearing being published preferably 21 days in advance of the hearing date but absolutely no less than 14 days prior. For the period of FY 2007, the public hearing is tentatively scheduled for April 9, 2008, which is the Committee's regular meeting day. Several Members previously recommended that future hearings be held at a more centrally-located site, such as the County of Santa Clara Government Center located at First and Hedding Streets. This will have to be decided on by the Committee with meeting room availability factored in.

- **Publish the results of the independent audit and the annual report in local newspapers.**

The inaugural CWC Annual Report, covering the period of FY 2006, was published during November 2007 in 23 general circulation newspapers in VTA's service area, including Spanish and Vietnamese-language newspapers. This report included the results of the independent audit commissioned by the Committee.

Staff recommends that for future annual reports, a similar publication strategy be used but with more emphasis placed on utilizing VTA's website disseminate the reports and related information in order to reduce the size and corresponding costs of the required newspapers ads. This will make these documents available to the public but at a much reduced cost.

The 2000 Measure A ballot confers on the CWC the ability to contract for specific services and to expend funds to complete certain expenditures. These are:

Commission Contract for Services

- Independent financial auditor to audit the 2000 Measure A financial statements and records (previously discussed).

Expend 2000 Measure A Funds

- Independent financial auditor to audit the 2000 Measure A financial statements and records (previously discussed).
- Publication of the CWC Annual Report in general circulation newspapers in VTA's service area informing county residents of the CWC's conclusion on how funds are being spent (previously discussed).
- Publication in general circulation newspapers in VTA's service area the public notice announcing when and where the CWC's public hearing will be held.
- Publication in general circulation newspapers in VTA's service area of the *results* of the independent audit (previously combined with the CWC Annual Report).

Limitations

The 2000 Measure A ballot also places certain limits or restrictions on the CWC. Most notable of these are:

- The CWC's responsibility is limited to reviewing 2000 Measure A expenditures to ensure funds are being spent in accordance with the intent of the ballot and to inform residents of the county of its findings. All 2000 Measure A TIP policy-related decisions are the purview of the VTA Board of Directors, including the composition, implementation, schedule and funding level of projects.
- The CWC's ability to expend funds is limited to ballot-defined activities, such as having the annual independent audit performed, publishing the CWC's Annual Report, etc. Expending funds on any other purpose or activity is not permitted.

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