

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

April 2, 2003

Board of Directors
Santa Clara Valley Transportation Authority
3331 No. First Street
San Jose, California 95134-1906

BY HAND DELIVERY

RE: Legal Opinion Concerning Measure A Flexibility and Discretion

Honorable Directors of VTA:

This office submits the letter on behalf of our client TRANSDEF, a transit advocacy organization that is very concerned about VTA's proposed transit service cuts. I have been asked to prepare an analysis of Measure A, adopted by popular vote on November 7, 2000, to determine whether VTA may or must dedicate Measure A funds to meet bus service expansion commitments, notwithstanding current funding shortfalls.

Short Answer

Measure A does not constrain VTA's exercise of discretion and mandate prioritization of certain projects, such as BART, above others. VTA clearly has authority to allocate Measure A funds to any projects that are listed in Measure A.

Measure A authorizes VTA to expand the bus fleet to 750 and authorizes revenue to operate those buses through at least year 2014, and that authority is not eclipsed by revenue shortfalls and other potentially necessary adjustments to transit service.

Detailed Analysis

"[T]he guiding principle [in interpreting an initiative] is consistency with the Legislature's (or, as here, the electorate's) intent." *Kopp v. FPFC* (1995) 11 Cal.4th 607, 615. Thus, any reviewing Court will seek to implement the purpose and intent of the voters.

The first, and typically only source of guidance for this interpretation is the initiative itself. If it is clear and unambiguous on its face, that ends the matter, and Courts are reluctant to explore into legislative history or other external sources of authority concerning intent. When the initiative is ambiguous or vague, legislative history may be an appropriate source of guidance.

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Measure A plainly states its purposes and effect on its face. VTA is authorized to impose the half cent sales tax for 30 years following expiration of the 1996 Measure B and expend those funds generated only on projects and purposes specified in Measure A. The Measure describes those projects and purposes in general terms in most instances, identifying when matching or other funds would be used for projects, and identifying the other entities that would join in certain projects.

Measure A does not specifically mandate that BART or any other particular project be advanced to the detriment of other projects for any reason, including funding deficiencies. It plainly gives VTA the discretion to select from the list of projects, and so long as VTA is directing Measure A funds to projects that are included in the Measure's list of projects and activities, VTA does not need to gain further voter approval. Voter approval will be necessary if VTA seeks to make substantially different uses of Measure A funds for projects that cannot be fairly considered to be within the descriptions included in the Measure itself.

Measure A clearly does authorize VTA to expend its funds to expand the bus fleet to 750 vehicles, and authorizes "revenue to ensure funding" of that expanded bus fleet, irrespective of changed economic conditions affecting current levels of service.

Measure A does describe certain elements more specifically than other elements, such as the number of buses to be added with Measure A funding, creating a heightened voter expectation that bus service would in fact be expanded to 750 buses and that operational funding would be provided to at least 2014. The knowledge that Measure A funds will "supplement federal funds" similarly creates voter expectation that these bus expansions will accompany any VTA acceptance of federal transportation funds that may be used for the maintenance and expansion of bus service. Measure A's discrete treatment of bus service in this way, different from every other aspect of Measure A projects, implies the bus service should be sustained and expanded as a priority matter.

VTA's Measure A website reinforces voter expectations that VTA's bus fleet would grow to 750 vehicles, that the expansion would be comprised of zero emission buses, and that existing diesel buses would be replaced by zero emission buses. See http://www.vta.org/news/meas_a_facts.html#zero. Measure A's description of its enhanced bus fleet is virtually identical to VTA's VTP 2020 description of the bus fleet. See http://www.vta.org/news/vtp2020/transit_misc.html#ops. The August 7, 2000 Board Memorandum for the August 9, 2000 Board action placing Measure A on the ballot expressly referenced the use of this funding to finance the VTP 2020 Transit Expenditure Plan.

There is nothing in Measure A that would expressly or implicitly prohibit the expansion of bus service to make progress towards meeting Measure A targets while VTA is reducing bus service or other programming commitments for other forms of transit. Measure A funds an expansion of buses beyond the level that can be supported by then-existing funding. Even though a drop in

existing funding may require service cuts, Measure A funds can clearly be used to expand the bus fleet beyond that reduced service level. VTA has broad authority and discretion under state law to secure other sources of funding, including bonding, to achieve necessary levels of vital bus service until Measure A revenues start flowing in 2006.

As VTA considers potential adjustments to its service mix, it should examine which services are providing the greatest ridership at the least cost, and providing the greatest benefit to the community. Similarly, as VTA considers these potential changes, it must also consider the potential for such changes to disproportionately affect specific communities or groups of persons that are either transit-dependent or rely extensively upon public transit services to avoid inadvertent discrimination prohibited by state and federal law. VTA's existing bus service is extensively used by lower income people and people of color, creating the substantial likelihood of disproportionate effects from substantial reductions in services and/or funding. Under these circumstances, VTA has a responsibility under both state and federal law to evaluate whether service cuts cause disproportionate harm to specific communities or convey disproportionate benefits to other groups, and ensure no disproportionate effect results from its decisionmaking.

TRANSDEF hopes that this letter will assist VTA in a critical examination of any assumptions it is relying upon in addressing its complex and difficult funding decisions. The combination of local economic downturn, state budget cuts, and possible changes from TEA-3 create uncertainties in future funding streams making it patently impossible for VTA to deliver all of the projects encompassed within Measure A. Given the widespread public use of (and dependence on) VTA's bus services, cuts in core services that are a fundamental aspect of living for many persons does not seem prudent when there are other alternatives that can avoid that result.

Thank you for your consideration of TRANSDEF's views and concerns in this matter.

Sincerely,

Marc Chytilo