



NAPA VALLEY TRANSPORTATION AUTHORITY TAC Agenda Letter

TO: Technical Advisory Committee (TAC)
FROM Kate Miller, Executive Director
REPORT BY: Alberto Esqueda, Senior Planner
(707) 259-5976 | aesqueda@nvta.ca.gov
SUBJECT: Measure T Update a) Measure T Guidelines b) “Raising Iron” Memo

RECOMMENDATION

Information only

EXECUTIVE SUMMARY

- a) Measure T Guidelines – NVTA staff has created Measure T Guidelines to provide the jurisdictions with a reference document and guide on various Measure T procedures and timelines.
- b) Raising Iron - Several jurisdictions have inquired about whether “raising iron” is an eligible Measure T expense. “Raising iron” involves making modifications to utilities in order to accommodate additional road height resulting from certain street maintenance treatments. NVTA staff’s general approach to this issue is to leave the “raising iron” expenses to the discretion of each jurisdiction. Attachment 2 provides justification to this approach.

FISCAL IMPACT

Is there a fiscal impact? No

BACKGROUND AND DISCUSSION

On November 6, 2012, the voters in Napa County approved Measure T, the Napa Countywide Road Maintenance Act. Measure T is a ½% sales tax expected to generate over \$400 million over a 25-year period beginning July 1, 2018. Measure T is to be used for the rehabilitation of local streets and roads.

a) To assist jurisdictions in delivering Measure T projects, NVTA staff has created the Measure T Guidelines. The Measure T Guidelines lay out the procedure and timeline for various tasks such as Project Implementation, Maintenance of Effort, 6.67% Measure T Equivalent Projects, Project Reporting, Closeout, Accounting, Auditing and Dispute Resolution.

b) The jurisdictions have raised questions about whether “*raising iron*” is an eligible Measure T expense. In order to make improvements to the roadway during maintenance and reconstruction some utility related costs may be necessary. An example of this would be making a manhole flush with the new pavement during a road resurface project. This is an eligible expense under Senate Bill 1 and the State gas tax fund. It has also been deemed as an eligible expense under Measure T by NVTA legal counsel. However, even if raising iron is an eligible expense under Measure T, a local jurisdiction still has the discretion to pass that cost onto the utilities as stated in the Raising Iron Memo prepared by NVTA legal counsel (Attachment 2).

NVTA staff would caution jurisdictions about using Measure T revenues for this purpose as it could greatly diminish revenues and therefore the effectiveness of Measure T for meeting the larger objectives promised to the voters. NVTA staff believes that using enterprise funds or charging the utilities for this work is a more appropriate approach.

SUPPORTING DOCUMENTS

Attachment(s): (1) Draft Measure T Guidelines
(2) NVTA Legal Counsel Raising Iron Memo

Napa Countywide Road Maintenance Act



Process & Procedures

Approval Date:

Amendment Date:

Contents

Description and Introduction.....	2
Maintenance of Effort.....	2
Five-year project list.....	3
Project Implementation & Reporting	3
Project Close Out	4
6.67% Equivalent Funds Requirement.....	4
Dispute Resolution.....	5
a. NVTA staff interpretation	5
b. NVTA legal counsel.....	5
c. Discussion at TAC	5
d. NVTA-TA Board Action.....	5
Accounting Records	6

Description and Introduction

On November 6, 2012, County voters approved Measure T, the Napa Countywide Road Maintenance Act. The ordinance established a 25-year period half-cent retail sales tax beginning on July 1, 2018 to improve the maintenance of under-funded local streets and roads and supporting road infrastructure. While the ordinance created a revenue source for street and road maintenance, it only created a general framework for its implementation which does not provide adequate details on how day-to-day functions would be carried out.

The purpose of this document is to help clarify the Ordinance and Napa Valley Transportation Authority-Tax Agency's (NVTA-TA) policies and guidelines for managing Measure T. The Ordinance identifies a variety of procedures, it does not thoroughly describe the method in which procedures will be executed. The Measure T Process and Procedures are intended to provide a policy interpretation and direction for implementation and adherence to the Measure T ordinance.

Revenues collected by the California Department of Sales Tax and Fee Administration (CDTFA) will be deposited into a Special Revenue Fund administered by the County of Napa. The Office of the Auditor-Controller will make quarterly distributions to the eligible recipients under the Ordinance.

Maintenance of Effort

Jurisdictions eligible to receive Measure T revenues are subject to the Maintenance of Effort (MOE) provision. Measure T establishes a minimum general funds expenditure threshold, for each year of the Ordinance. This threshold is the average amount of general funds a jurisdiction spent in fiscal years 2007-08, 2008-09, 2009-10 on local streets and roads maintenance and supporting infrastructure within the public right of way.

One of the primary objectives of the Ordinance is to supplement funds to maintain and rehabilitate local streets and roads. This is the reason a Maintenance of Effort (MOE) requirement was written into the Ordinance so jurisdictions maintain their efforts in fixing roads and do not use Measure T funds to supplant their ongoing efforts.

Project sponsors submit their MOE amount with supporting documentation to validate their MOE. Supporting documentation describes the approach and methodology used by each jurisdiction to develop the MOE. It should include a summary of how each jurisdiction calculated its MOE, and the typical activities, items and costs as well as a supporting resolution from their governing body as a form of self-certification.

REOCCURRING PROCEDURE Each jurisdiction must certify annually to NVTA-TA that it met its MOE expenditures the previous fiscal year. By January 1st each calendar year, each jurisdiction must submit to NVTA staff an electronic copy of a Resolution approved by the jurisdiction's governing body stating that the jurisdiction met its established MOE. The copy of the Resolution should include supporting documentation showing that the jurisdiction met its MOE target the prior fiscal year.

NVTA staff will compile all jurisdictions' submissions and present it in a report to the NVTA-TA and the relevant committees.

Five-year project list

Each jurisdiction will biennially develop and submit to the Authority a five-year project list of projects to be funded with Measure T revenues. Jurisdiction are required to hold a public hearing and receive public comment at their governing body's meeting before the approval and any update of their five-year project list. Unless otherwise noted, the project list should be submitted no later than January 1 of every even year.

While the Ordinance dictates mandatory submission periods of every two (2) years, the Authority understands that revisions may be warranted prior to the submission date. If jurisdictions need to update their five-year project list before the January 1st date, the same procedure should be followed where the jurisdiction must first have the five-year project list certified by their governing body and hold a public hearing to receive public comment on the five-year project list of projects. Once certified by the jurisdiction's governing body with a signed resolution, the jurisdiction must transmit the updated list to NVTA staff for review. NVTA staff will present the project list to the Independent Taxpayer Oversight Committee (ITOC) for their recommendation to the NVTA-TA Board.

REOCCURRING PROCEDURE NVTA will perform a call for projects every odd calendar year no later than September 30. The project list should be submitted every two (2) years, but no later than January 1st of every even numbered year. Jurisdictions are to submit electronically a copy of their five-year project list, a resolution from their governing board approving the five-year project list and demonstrating that a public hearing was held. NVTA staff will review the project lists and present a compiled package to the ITOC for review. Project lists will be presented before the NVTA-TA Board for approval.

Project Implementation & Reporting

Before beginning a project, jurisdiction staff must request a project number from NVTA staff via email. NVTA-TA cannot validate projects unless a project number has been assigned. The project numbers are essential for 1) Validating expenditures have been spent in accordance with the ordinance; 2) can be tracked for auditing purposes; 3) are consistent with the five-year project list approved by the NVTA-TA board and the jurisdictions' governing board; and 4) is included in the annual report out to members of the public.

Once the number has been assigned, NVTA staff will review and cross-reference the proposed project to confirm that the requested project is programmed on the jurisdiction's adopted five-year project list. After NVTA staff confirms the project is programmed on the five-year project list it will assign a number and coordinate with jurisdiction staff to enter the project into NVTA's Measure T Project webpage.

NVTA recommends that every project, completely or partially, funded with Measure T funds display Measure T signage. If the amount of Measure T funds on the project exceeds \$250,000, the project and project site must display Measure T funding signage. NVTA developed a Measure T logo and funding sign template to create consistency among jurisdictions' signage and develop a recognizable image for Measure T. Signage dimension guidelines were developed to provide jurisdictions guidance. However, if a jurisdiction prefers to have a different size signage, they must preapprove any changes with NVTA staff.

The logo, sign template and dimension guidelines can be requested from NVTA staff and will be made available for electronic download.

REOCCURRING PROCEDURE Jurisdictions must submit a semi-annual update on projects and expenses by September 30th and March 31st of every year. The project report template is included as Exhibit E of the Measure T Master Agreement between the jurisdictions and NVTA, but can also be requested from NVTA staff or downloaded from NVTA's website www.nvta.ca.gov.

Project Close Out

Once a project is complete the jurisdiction must notify NVTA staff with a copy of the Notice of Completion. This will prompt NVTA staff to update the Measure T webpage to indicate the project is complete. If work was performed by jurisdiction staff and a notice of completion was not filed, the jurisdiction must send a letter indicating project completion. The letter must include the project name, project number, start and completion date.

6.67% Equivalent Funds Requirement

In order for jurisdictions to receive Measure T revenues, jurisdictions collectively must demonstrate that at least 6.67% of the amount of Measure T revenues (henceforth referred to as "Equivalent Funds") received each year is being committed to Class I facilities identified in the adopted Countywide Bicycle Plan/Active Transportation Plan, using funds not derived from the Measure T Ordinance. This can be accomplished by jurisdictions showing that they have collectively set aside funds in their budgets to meet the requirement and/or NVTA has programmed eligible funding sources towards Class I facilities or by stipulating specific projects.

Eligible fund sources for Measure T Equivalent projects include but are not limited to: State Transportation Improvement Program (STIP) funds, State Transportation Program and Congestion Mitigation Air Quality funds (known as STP/CMAQ) under the One Bay Area Grant program, as well as other local and/or formula funds where NVTA or the jurisdictions have discretion for how the funds are used. NVTA will compile the initial list and update it with every biennial project list exercise.

REOCCURRING PROCEDURE Because Measure T projects are approved on a five-year rolling basis, Measure T Equivalent projects will also be identified on a five-year basis with an update to the Measure T equivalent list every two years. Simultaneously with the five-year project list, NVTA will perform a call for projects every odd calendar year staff for jurisdictions any Equivalent Funds projects they would like to add to the NVTA list by January 1st. The list of Equivalent Funds projects will be presented before the ITOC for review and recommendation to the NVTA-TA Board. The NVTA-TA Board will review and approve a list of Equivalent Fund projects.

NVTA staff will validate that the 6.67% Equivalent Fund for Class 1 bicycle facilities is being met on a biennial cycle. If jurisdictions, collectively, fail to commit 6.67 % of Equivalent Funds to Class 1 bicycle facilities NVTA holds the right to reject allocation approval. Similarly, if there is a dispute regarding project eligibility, NVTA will withhold Measure T funds allocation until the dispute is resolved.

Dispute Resolution

From time to time, a dispute may arise about the Measure T Ordinance and eligible use of funds. Initial assessment of the issue or project eligibility will be completed by NVTA staff. NVTA staff will be responsible for arguments supported by their assessment of the Measure T ordinance and/or common industry practice, and if necessary, supported by legal interpretation. NVTA staff argument will be presented to the project sponsor. If a dispute persists, then staff will present the issue to the Technical Advisory Committee (TAC) for a recommendation to the NVTA-TA Board of Directors. It should be noted that while a consensus determination between NVTA staff and the TAC is desired, there might be instances where separate opinions may be submitted to the NVTA-TA Board for consideration. The dispute process is provided in greater detail below:

If the dispute remains unresolved, the jurisdictions will follow the process below:

a. NVTA staff interpretation

The first step to a dispute resolution will be NVTA staff's interpretation of the issue in question. Staff will make a finding of determination based on the language and provisions of the Ordinance, Master Agreements, and previous legal memoranda and opinions.

b. NVTA legal counsel

In the event that NVTA staff cannot arrive at a clear decision based on interpretation of documents and common industry practices, the dispute will be deferred to NVTA's legal counsel for a legal opinion regarding the issue.

c. Discussion at TAC

NVTA staff will present reports and supporting documentation discussing any disputes that arise to the TAC. The purpose is to have an open discussion with the objective to resolve disputes through a collaborative working group process.

d. NVTA-TA Board Action

If the parties in the dispute are unable to come to a resolution at the TAC level, the matter will be presented to the NVTA-TA for final consideration. At its discretion, the Board may request additional input from parties involved as well as legal counsel to resolve the dispute.

Accounting Records

AGENCY RECORD KEEPING All revenue sources and expenditures using the revenue sources shall be fully accounted for and subject to review at any time. Each agency must keep the funds segregated in a **Special Revenue Fund** specifically for Local Streets and Roads (LS&R). A Special Revenue Fund is a governmental fund type used to account for the proceeds of specific revenue sources that are restricted or committed to expenditure for specified purposes other than debt service or capital projects. The use of a special revenue fund ensures segregation of restricted funds, the ability to allocate proper interest earnings and ease of tracking the inflows and outflows of the revenues.

Measure T funds should be recorded as “Other Governmental Revenue” on the general ledger. All project expenditures should be budgeted for and disbursed from these funds so that a full accounting is captured, within proper accounting categories.

Each agency will account for and track its capital projects in a Capital Project Fund and each project may include multiple funding sources. Each agency must provide a full accounting of all revenues and expenses attributed to each specific project. As such, expenditures within the LS&R special revenue fund, shall include “transfers out” to other funds for the monies being used within a capital project that was approved by the Master Agreement. Agencies shall keep the records using accrual accounting, setting up both receivables and payables as of June 30 of each year.

To ensure compliance with the 6.67% Class 1 path requirement, each member agency will track all revenues and expenditures related to these projects and include the information on the progress reports. Jurisdictions are further required to budget an amount reflecting their individual proportion of the annual 6.67% equivalent obligation. This amount will be backed out each year should other projects on the five-year project list be substituted.

Refer to the accounting and financial policies included in the Measure T Master Agreement for additional information on maintaining Measure T financial records.

FINANCIAL REPORTING REQUIREMENTS Every expenditure will have supporting documentation, including invoices and authorizations to ensure that all costs charged to the funds are eligible and in full compliance with the Master Funding Agreement. This documentation shall be maintained by each agency and shall be made available for inspection and audits upon request by either the NVTA, Auditor-Controller or the designated CPA firm responsible for the NVTA-TA’s audit(s).

Semi-Annual Progress Reports are due March 1st (for the period of July – December) and September 1st (for the period of January – June). Each progress report shall provide a summary listing consisting of the:

- Project Name,
- Approved Budget,
- Amount spent-to-date,
- Remaining Balance,
- Percentage of Completion, and
- Date Completed or Estimated Completion Date

In addition, each agency will provide an accounting of the Class 1 path requirement, both year-to-date and cumulative since inception of the tax.

Attached to each summary shall be a system generated trial balance report and detailed expenditure listing for the Special Revenue funds. If it is determined that an ineligible expense was made, the jurisdiction will be directed to return the funds to the Special Revenue fund for a future eligible expense.

Once the agency's books are closed for the fiscal year and a comprehensive audit is completed, as stated in Section 4 of the Master Funding Agreement, by January 1st of the following year, each agency will provide a copy of the Comprehensive Annual Financial Report (CAFR) and the State Controller's Street Report to NVTA. Due to the timing of these reports, where numbers vary, the agency shall provide a reconciliation explaining the differences.

AUDITS All audits and record keeping will be performed in accordance with generally accepted accounting principles (GAAP) and Generally Accepted Government Accounting Standards (GAGAS). The Auditor-Controller will oversee the annual accounting and fiscal process through review of quarterly and annual reports submitted by each agency. NVTA will oversee project performance through review of semi-annual reports submitted by each agency.

Each member agency will procure an independent certified public accountant to conduct an annual financial audit that includes all transactions regarding Measure T. This will NOT be an additional audit on top of their Comprehensive Annual Financial Report, as these funds are included in their overall agency operations for specified projects. Any findings will be communicated to the Authority Auditor, who will then present to the ITOC and Authority.

NVTA-TA will conduct an independent financial audit, which will be overseen by the ITOC on biennial or triennial basis, depending on Measure T revenues available for this purpose. The audit will contain supplementary schedules which summarize each agency's financial status regarding Measure T funds.

Each agency may undergo a compliance and/or performance audit as well, which is non-financial in nature. This audit shall be focused on the projects and compliance with the Master Funding Agreement. These audits will satisfy all audit requirements in the Ordinance.

Audits are an ITOC expenditure and will be paid directly from the ITOC's budget. There is a maximum of \$70,000 per year (adjusted for inflation on the CPI) for annual financial and performance audits. NVTA will track these expenditures annually to ensure the maximum is not exceeded.

COMMUNITY REPORT Section 11.B.e of Ordinance specifies that the "Authority shall publish a biennial report to the community." This report may be completed annually and will be compiled in collaborative manner between NVTA, the agencies, ITOC and the Auditor-Controller. The Community Report is an ITOC expenditure and will be paid directly from the ITOC's budget.

MEMORANDUM

To: Kate Miller, Executive Director
Napa Valley Transportation Authority

From: DeeAnne Gillick, General Counsel
Sloan Sakai Yeung & Wong

Date: November 8, 2018

Re: Measure T – Raising Iron Costs

QUESTION PRESENTED AND SHORT ANSWER

We have been asked to evaluate whether or not the costs associated with “raising iron” is a proper Measure T funded improvement. Based on my review of the Measure T Ordinance and Expenditure Plan, and my understanding that the Measure T funded roadway maintenance may result in modifications to the iron located within the roadways, these costs can be proper Measure T expenditures. However, pursuant to California law, cities and counties may require utilities to pay for the costs associated with relocating or adjusting their utilities within the roadway right-of-way due to roadway improvements. Therefore, when implementing Measure T funded projects, each local jurisdiction may determine how it will allocate the costs associated with the utility modifications.

MEASURE T, APPLICABLE LAW AND GUIDANCE

Raising Iron

“Raising iron” refers to the adjustments to the utilities within the roadway due to the changes to the roadway and pavement. Raising iron is an industry term for the act of setting the utilities to the final grade. This includes the placement of the utility access facilities at their final elevation, due to the grade changes from the new pavement. The utility access points may be round iron manholes, or concrete boxes with varied types of lids. The types of utilities within the roadway may include storm drains, sanitary manholes, water main valves, gas valves, and dry utilities, such as electric, phone and cable. All of these require utility access points within the roadway.

During a roadway improvement project, the “iron” for the utility facilities may need to be modified. Before grinding the existing paved surface, the utility facilities may be lowered so that the paver may go over them without touching. As the road elevation is changed due to the new pavement, the utility facilities are modified to match the final road elevation, which is

commonly referred to as “raising iron.” This work involves cutting the pavement around the utility facility, raising the utility facility by adding concrete rings below the casting, and/or adjusting the lid, and then either placing a concrete collar around the outside or patching the asphalt that was disturbed.

Measure T Provisions

The Measure T Ordinance and the Expenditure Plan provide funding for the “Local Streets and Road Maintenance Program.” Measure T revenue allocated to the local jurisdictions “must be used for maintenance, reconstruction or rehabilitation of local streets, roads and infrastructure within the public right-of-way.” (Section 3.A. of Measure T Ordinance No 2012-01, and the Expenditure Plan’s Description of Local Streets and Roads Maintenance Program.)

Measure T defines the terms “maintenance,” “reconstruction or rehabilitation,” “local streets and roads,” and “infrastructure” as follows:

- *Maintenance* means repair, reconstruction or rehabilitation, and/or replacement of streets, roadways, and other infrastructure within the public right-of way. (Measure T Ordinance No. 2012-01, Section 27.G.)
- *Reconstruction or Rehabilitation* includes any overlay, including the placement or replacement of base materials and any sub-grade work or widening of the roadway, if the widening is necessary to bring the roadway width to the desirable minimum width consistent with the geometric design criteria of the state for 3R (Reconstruction, resurfacing, and rehabilitation). This does not include widening for the purpose of increasing the traffic capacity of a street or highway. This does include additions, changes or reconstruction of infrastructure directly associated with the function of a street or roadway. It also includes additions necessary to incorporate and/or maintain bicycle facilities called for in the Napa County Transportation and Planning Agency’s Countywide Bicycle Plan or adopted bicycle plans of the Agencies and any improvements or alterations necessary to the roadway and or pedestrian or bicycle travel ways to improve overall circulation and to meet American’s with Disabilities Act requirements. (Measure T Ordinance No. 2012-01, Section 27.J.)
- *Local Streets and Roads* means the pavement facilities and supporting Infrastructure within the street, road, or highway right-of-way. (Measure T Ordinance No. 2012-01, Section 27.L.)
- *Infrastructure* means all components within the right-of-way necessary to support the roadway which includes road pavement, sub-grade, curb, gutter, sidewalks, curb ramps, surface and subsurface drainage, replacement traffic control devices, replacement roadway lighting, striping, pavement marking, intelligent

transportation systems, and signage. (Measure T Ordinance No. 2012-01, Section 27.F.)

Measure T provides for the “maintenance, reconstruction or rehabilitation of local streets, roads or infrastructure.” Re-paving the roadways is a permissible Measure T expenditure within the definition of “maintenance,” and within the definition of “reconstruction or rehabilitation.” Local streets and roads include the pavement and “supporting Infrastructure within street.” Infrastructure is defined to include “all components within the right of way necessary to support the roadway which includes road pavement, sub-grade, curb, gutter, sidewalks, curb ramps, surface and subsurface drainage, replacement traffic control devices, replacement roadway lighting, striping, pavement marking, intelligent transportation systems, and signage.”

Pavement refurbishing causes modifications to the utility manholes. The manhole elevations need to be adjusted due to the repaving, or alternatively the manholes will not be accessible with the new pavement layer. Typically, the elevation location of the utility manholes and the utilities are adjusted to be consistent with the new pavement grade or level. Although the modification of the utilities located within the roadway is not expressly listed in the Measure T definition of infrastructure, alterations to the utility access points may be required due to the paving work. Including these costs in the roadway repaving costs should be a reasonable expense within the parameters of Measure T’s definition of maintenance, reconstruction or rehabilitation of local streets, roads or infrastructure.

Utilities’ Statutory Obligations

Although raising iron may be an allowed Measure T expense, the local jurisdictions may require the utilities to incur the costs of altering the utilities which are located within the local jurisdictions’ roadway right-of way. In California, the general rule is that a utility must pay the cost of relocating its equipment or facilities caused by the exercise of the municipality’s police power. Cities and counties may demand for the utilities to incur the costs associated with modifications to the utilities’ infrastructure due to roadway improvements. Under this authority, the costs associated with the utility modifications due to the roadway improvements, would be borne by the utility companies, and would not become Measure T costs.

Gas, electric, and water franchisees must remove or relocate without expense to the municipality any facilities installed, used, and maintained under the roadway if and when made necessary by any lawful change of grade, alignment or width of a public street, way, alley, or place. Public Utility Code section 6297 provides in full as follows:

The grantee shall remove or relocate without expense to the municipality any facilities installed, used, and maintained under the franchise if and when made necessary by any

lawful change of grade, alignment, or width of any public street, way, alley, or place, including the construction of any subway or viaduct, by the municipality.

The general common law rule provides: “. . . a public utility accepts franchise rights in public streets subject to an implied obligation to relocate its facilities therein at its own expense when necessary to make way for a proper governmental use of the streets.” City of San Pablo v. E. Bay Mun. Util. Dist., 75 Cal. App. 3d 609, 613–14, 142 Cal. Rptr. 256, 259 (Ct. App. 1977)

Based on this provision, the utilities may be required to pay for the costs associated with modifying the utilities due to the lawful road reconstruction by the cities or county. The jurisdictions have the authority to pass the costs associated with raising iron on to the utilities when utility improvements are required due to road maintenance or improvements. It is typical for utilities to incur ongoing maintenance costs to alter utility infrastructure located within the roadway right-of-way due to the customary roadway improvements by local cities and counties.

Other Funding Programs

It is my understanding that the costs associated with raising iron are allowed costs for other roadway improvement projects funded from other revenue sources such as the State gas tax and SB 1 funding. The inclusion of the raising iron as a cost paid for from these other funding sources is dependent on the local jurisdictions’ practices. The payment from Measure T sources should be consistent with the local jurisdictions’ practices. It is my understanding that some jurisdictions include the raising iron costs in the cost of roadway improvements funded by sources other than Measure T sources, and some jurisdictions do not. It is reasonable to include the costs of raising iron in roadway improvement project costs depending on the local jurisdictions’ practices.