

REVISED BACK-UP MATERIAL FOR AGENDA ITEM NO. 8

General Policy Committee

April 8, 2015, 9:00 AM

****NOTE LOCATION CHANGE****

Location:
SANBAG
First Floor Lobby
1170 West 3rd St., 2nd Floor, San Bernardino, CA

Discussion Calendar

Transportation Programming and Fund Administration

8. Measure I Local Street Program Policy Amendment – Maintenance of Effort

That the General Policy Committee recommend the Board, acting as the San Bernardino County Transportation Authority:

Amend Measure I 2010-2040 Strategic Plan Policies 40003, 40012, and 40016 regarding the Measure I Local Street Programs to include provisions related to the Maintenance of Effort requirements of Ordinance No. 04-01. **Andrea Zureick**

The draft policy was reviewed by the Transportation Technical Advisory Committee (TTAC) on March 2, 2015, and on March 30, 2015, and by the City/County Manager Technical Advisory Committee (CCMTAC) on March 5, 2015 and on April 2, 2015.

Attachment 1 to this Agenda Item has been revised to be consistent with the language reflected in Attachments 2 and 3. Specifically, the policy is proposed to require actions by local jurisdictions concerning Maintenance of Effort requirements be adopted through resolution of the governing body rather than through certification statements signed by the City Manager/County Administrator.

San Bernardino Associated Governments	Policy	40003
Adopted by the Board of Directors April 1, 2009	Revised	x/x/xx1/8/14
Valley Local Street (VLS) Program Measure I 2010-2040 Strategic Plan	Revision No.	12

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I. PURPOSE

The purpose of this policy is to establish requirements relating to adoption of Five Year Plans by local jurisdictions outlining the projects which will be funded under the Measure I 2010-2040 Valley Subarea Local Streets Program. Twenty percent of the total Measure I 2010-2040 revenue collected in the San Bernardino Valley Subarea shall be assigned to the Local Streets Program. This program will be used by local jurisdictions to fund Local Street Projects.

II. REFERENCES

Ordinance No. 04-01 of the San Bernardino County Transportation Authority, Exhibit A – Transportation Expenditure Plan.

SANBAG Congestion Management Program

III. DEFINITIONS

Local Street Program: Measure I program in all subareas that provides funds through a pass-through mechanism directly to local jurisdictions for expenditure on street and road construction, repair, maintenance and other eligible local transportation priorities. Local Street Program funds can be used flexibly for any eligible transportation purpose determined to be a local priority, including local streets, major highways, state highway improvements, freeway interchanges, transit, and other improvements/programs to maximize use of transportation facilities.

Allocation: An action by the SANBAG Board of Directors to assign a specific amount of Measure I funds from a Measure I program to a project. The allocation decision is made annually by the Board of Directors by March of each year. Allocation of Local Street Program funds occur monthly as a direct pass-through to local jurisdictions.

Five Year Plan: A plan of projected local jurisdiction expenditures for the next five years on Local Street Projects eligible for Local Streets Program funds, updated annually and submitted to SANBAG by local jurisdictions.

Independent Taxpayer Oversight Committee: A “Mandated Taxpayer Safeguard” established by Ordinance 04-01 for Measure I 2010-2040 to provide citizen review and to ensure that all Measure I funds are spent in accordance with provisions of the Measure I Expenditure Plan and Ordinance.

Maintenance of Effort: The requirement that Measure I funding will supplement and not replace the existing local discretionary funding being used for street and highway purposes.

Maintenance of Effort Base Year Level: The amount of General Fund used for street and highway purposes prior to Measure I 2010-2040 as adopted by the SANBAG Board of Directors.

IV. POLICIES FOR THE VALLEY LOCAL STREETS PROGRAM

A. Local Streets Allocation

Policy VLS-1: Each jurisdiction shall receive an allocation from 20% of the Measure I revenue collected in the Valley Subarea on a per capita basis using the population estimate as of January 1 of that year. The population estimate for making the per capita calculation shall be determined by SANBAG each year based on the State Department of Finance population estimate as of January 1 of that year. For the unincorporated areas, the calculation shall be based on the population estimate from the County Planning Department and reconciled with the State Department of Finance population estimate as of January 1 of that year.

Policy VLS-2: Local jurisdictions shall not receive their Local Streets Allocation until they have submitted their annual update of their Five Year Plan.

Policy VLS-3: The Local Streets allocation shall be remitted to local jurisdictions monthly.

Policy VLS-4: Local Streets Allocations remitted from January 1 until such time as the State Department of Finance has issued their population figures and SANBAG has made the per capita calculation, shall be based on the prior year's calculation. Once the per capita calculation has been made, the calculation will be applied retroactively to January 1 and amounts received by local jurisdictions will be adjusted to account for the difference in the amount remitted during the retroactive period and the amount that should have been remitted adjusted for the new per capita calculation.

B. Development Fair Share Contribution

Policy VLS-5: A development mitigation fair share contribution is required by Measure I 2010-2040 for all capacity improvement projects on the Nexus Study Network, contained in the most recent Board-adopted version of the Nexus Study approved for jurisdictions in the San Bernardino Valley.

Policy VLS-6: Annually as part of its audit of each jurisdictions' use of Measure I funds, SANBAG will specifically review development mitigation contribution records for capacity improvements to Nexus Study Network facilities. If a material finding is made in the audit showing that the development share contribution was not made, SANBAG may, as the Congestion Management Agency, withhold Section 2105 Gas Tax funds or Measure I Local Street Allocations until the jurisdiction shows that they are in compliance with the Congestion Management Program.

Policy VLS-7: Jurisdictions may borrow from other internal accounts (i.e. within their own jurisdictions) to fund the required development fair share. The internal accounts shall be reimbursed by development mitigation as development occurs..

C. Five Year Plan

Policy VLS-8: Each local jurisdiction is required to annually adopt a Five Year Capital Improvement Plan which details the specific projects to be funded using Measure I Local Pass-Through Funds. Expenditures of Measure I Local Pass Through Funds must be detailed in the Five Year Capital Improvement Plan and adopted by resolution of the governing body.

Policy VLS-9: Five Year Capital Improvement Plans shall:

- a. Specifically identify improvements to be funded by Measure I by street name, boundaries, and project type, subject to eligibility requirements listed in Section D below.
- b. Constrain the total amount of planned expenditures to 150% of SANBAG's forecasted revenue for Measure I Local Pass-Through Funds, revenue resulting from bonds secured by Measure I revenue, and remaining balances from previous year allocations.
- c. Include no more than 50% of estimated annual new revenue to general program categories for pavement management programs, system improvements, and general maintenance or other miscellaneous categorical expenditures. Carryover fund balance shall not be used for general program categories.

A general program category is a program of work without any identified streets. If a line item in the Five Year Capital Improvement Plan includes a list of the streets to which it will apply, then it does not have to count as a general program category (i.e. a city-wide AC overlay program that lists the streets to be included in the program).

- d. For capacity enhancement projects to Nexus Study Network roadways, include total estimated cost, Measure I share of project cost and development share of project cost. Maintenance projects or projects that do not enhance the capacity of a roadway do not require a development contribution to be included in the Five Year Plan.

Policy VLS-10: Any single project expenditure in excess of \$100,000 shall be listed as an individual project and shall not be included in a general program category. A project is defined as an eligible specific road improvement.

Policy VLS-11: The Five Year Capital Improvement Plan shall be the basis for the annual audit. Jurisdictions will have flexibility in moving projects around in their Five Year Capital Improvement Plan based on the necessities of the jurisdiction. However, in order for a project to be eligible for expenditure of Local Streets funds, the project must be included in the Five Year Capital Improvement plan. A revised Capital Improvement Plan must be provided to SANBAG by the end of each fiscal year if the project list has been changed in order for the projects to be eligible for expenditures of Local Streets funds.

D. Eligible Expenditures

Policy VLS-12: Eligible expenditures include construction, maintenance, and overhead. Included below are definitions and types of eligible expenditures by category.

- a. Construction shall be defined as the building or rebuilding of streets, roads, bridges, and acquisition of rights-of-way or their component parts to a degree that improved traffic service is provided and geometric or structural improvements are effected including allocated administration and engineering necessarily incurred and directly related to the above.
 - 1) Removal of old street and roadbeds and structures, and detour costs when connected with a construction project.
 - 2) Change of alignment, profile, and cross-section.
 - 3) Addition of a frontage street or road.
 - 4) Original surfacing of shoulders.
 - 5) Installation of original traffic signs and markers on routes.
 - 6) Earthwork protective structures within or adjacent to the right-of-way area.
 - 7) Complete reconstruction or addition to a culvert.
 - 8) Reconstruction of an existing bridge or installation of a new bridge.
 - 9) Widening of a bridge.
 - 10) Installations or extensions of curb, gutter, sidewalks or underdrain, (including improvements to handicap ramps to make them ADA compliant).
 - 11) Extensions and new installation of walls.
 - 12) Reconstruction of an intersection and its approximate approaches to a substantially higher type involving a change in its character and layout including changes from a plain intersection to a major channelized intersection or to grade separation and ramps.
 - 13) Placing sufficient new material on soil surface, gravel street or road to substantially improve the quality of the original surface.
 - 14) Improvement of a surface to a higher type.
 - 15) Bituminous material of 1" or more placed on bituminous or concrete material. A lesser thickness may be considered construction provided the engineer shall certify that the resulting pavement is structurally adequate to serve anticipated traffic.
 - 16) Remix existing bituminous surfacing with added materials to provide a total thickness of 1" or more. A lesser thickness may be considered construction provided the engineer shall certify that the resulting pavement is structurally adequate to serve anticipated traffic.
 - 17) Stabilization of street or road base by additive, such as cement, lime or asphaltic material.
 - 18) Widening of existing street, roadbed or pavement, with or without resurfacing.
 - 19) Addition of auxiliary lanes such as speed change, storage, or climbing lanes.
 - 20) Resurfacing, stabilizing or widening of shoulders including necessary connections to side streets or road approaches.

- 21) Installation or addition to landscape treatment such as sod, shrubs, trees, irrigation, etc.
 - 22) Extending old culverts and drains and replacing headwalls.
 - 23) Replacement of bridge rails and floors to a higher standard.
 - 24) Replacement of retaining walls to a higher standard.
 - 25) Replacement of all major signs or traffic control devices on a street or road.
 - 26) The installation of a new sign or the replacement of an old sign with one of superior design such as increased size, illumination, or overhead installations.
 - 27) Installation or improvement of traffic signal controls at intersections and protective devices at railroad grade crossings.
 - 28) Installation or expansion of street or road lighting system.
 - 29) Replacement in kind, when legally required, of structures which are required to be relocated for street and road purposes.
 - 30) Construction of bikeways when they are an integral part of the Public Streets and Highways System.
 - 31) Extension or new installation of guardrails, fences, raised medians or barriers for traffic safety.
 - 32) Painting or rearrangement of pavement striping and markings, or repainting to a higher standard.
 - 33) Construction of pedestrian underpasses or overhead crossing for the general public use.
 - 34) Purchase and installation of traffic signal control equipment including traffic actuated equipment, radio or other remote control devices and related computers, software and that portion of preemption equipment not mounted on motor vehicles.
 - 35) Maintenance or construction on alleys that have been formally accepted into the city or county street system.
- b. Maintenance shall be defined as the preservation and upkeep of a street or road to its constructed condition and the operation of a street or road facility and its integral services to provide safe, convenient and economical highway transportation. Examples of Maintenance include:
- 1) Scarifying, reshaping and restoring material losses.
 - 2) Applying dust palliatives.
 - 3) Patching, repairing, surface treating, and joint filling on bituminous or concrete surfaces.
 - 4) Jacking concrete pavements.
 - 5) Repair of traveled way and shoulders.
 - 6) Bituminous material of less than 1" added to bituminous material including seal coats.
 - 7) Remix existing bituminous surfacing with added materials to provide a total thickness of less than 1". (See exception under Construction, example 16.)
 - 8) Patching operations including base restoration.
 - 9) Resealing street or road shoulders and side street and road approaches.
 - 10) Reseeding and resodding shoulders and approaches.
 - 11) Reshaping of drainage channels and side slopes.
 - 12) Restoration of erosion controls.
 - 13) Cleaning culverts and drains.
 - 14) Removing slides and restoring facilities damaged by slides. (Additional new facilities shall be considered construction.)

- 15) Mowing, tree trimming and watering.
 - 16) Replacing top soil, sod, shrubs, trees, irrigation facilities, etc. on street and roadside.
 - 17) Repairing curb, gutter, rip-rap, underdrain, culverts and drains.
 - 18) Cleaning, painting and repairing bridges and structures.
 - 19) All snow control operations such as the erection of snow fences and the actual removal of snow and ice from the traveled way.
 - 20) Repainting of pavements, striping and marking to the same standards.
 - 21) Repainting and repairing of signs, guardrails, traffic signals, lighting standards, etc.
 - 22) Servicing lighting systems and street or road traffic control devices.
 - 23) Furnishing of power for street and road lighting and traffic control devices.
 - 24) Developing and maintaining programs which enhance management of transportation facilities such as travel demand models and pavement management programs.
 - 25) Purchase of equipment used exclusively for road maintenance.
- c. Overhead shall be defined as those elements of cost necessary in the production of an article or performance of a service which are of such a nature that the amount applicable to the functions are not readily discernible. Usually they relate to those objects of expenditure which do not become an integral part of the finished product or service. Examples of overhead components are shown below and are comprised of costs which cannot be identified or charged to a project, unless an arbitrary allocation basis is used. Overhead will only be allowed via an approved cost allocation plan or an equitable and auditable distribution of overhead among all departments.
- 1) Payroll
 - 2) Facilities
 - 3) Advertising
 - 4) General Government
 - 5) Department Accounts/Finance
 - 6) Procurement
 - 7) Top Management
 - 8) General Accounting/Finance
 - 9) Personnel
 - 10) Data Processing
 - 11) Legal Costs

E. Ineligible Expenditures

Policy VLS-13: Although many types of work may be classified as "construction," this does not make them automatically eligible for expenditures of Measure I funds. To be eligible, the work must be for street and road purposes.

- a. Following is a list of the types of expenditures which are not eligible for financing with Measure funds:
- 1) Costs of rearranging non-highway facilities, including utility relocation, when not a legal road or street obligation.
 - 2) New (first installation of) utilities, including water mains, sanitary sewers and other nonstreet facilities.
 - 3) Costs of leasing property or right-of-way, except when required for construction work purposes on a temporary basis.
 - 4) The costs of constructing or improving a street or area for parking purposes, except for the width normally required for parking adjacent to the traveled way and within the right-of-way, or when off-street parking facilities are constructed in lieu of widening a street to improve the flow of traffic.
 - 5) Decorative lighting.

- 6) Park features such as benches, playground equipment, and rest rooms.
- 7) Work outside the right-of-way which is not a specific right-of-way obligation.
- 8) Equestrian under and overpasses or other similar structures for any other special interest group unless as a part of a right-of-way obligation.
- 9) Construction, installation or maintenance of cattle guards.
- 10) Acquisition of buses or other mass transit vehicles or maintenance and operating costs for mass transit power systems or passenger facilities, other than to specifically serve elderly and handicapped persons.
- 11) Maintenance or construction on alleys that have not been formally accepted into the city or county street system.
- 12) Non-street related salaries and benefits.
- 13) Driveways outside of the street and road right-of-way.
- 14) Electronic speed control devices or other non-highway related safety expenditures.

F. Accounting Requirements

Policy VLS-14: Each local jurisdiction shall establish a Special Measure I 2010-2040 Transportation Sales Tax Fund. This fund is a special revenue fund utilized to account for proceeds of specific revenue sources that are legally restricted to expenditures for street purposes. Jurisdictions should use the modified accrual basis of accounting

Policy VLS-15: The following requirements are to provide guidance on the specific accounting treatment as it relates to the Special Measure I Transportation Sales Tax Fund.

- a. All apportionments shall be deposited directly into the Special Measure I Transportation Sales Tax Fund.
- b. Interest received by a jurisdiction from the investment of money in its Special Measure I Sales Tax Fund shall be deposited in the fund and shall be used for street purposes.
- c. Segregation must be maintained within the Special Measure I Transportation Sales Tax Fund to show separate balances for each subarea (County only).
- d. If other revenues are commingled in the Special Measure I Transportation Sales Tax Fund, it is the responsibility of the jurisdiction to provide accurate and adequate documentation to support revenue and expenditure allocation, as well as segregated balances.
- e. It is allowable to fund prior year expenditures with current year revenues and/or fund balance as long as funded projects are included in the adopted Five-Year Capital Improvement Program and accounting clearly identifies the project and other pertinent data to establish a clear audit trail.
- f. If a project is deemed ineligible in the annual Compliance Audit, the Measure I funds used on that project must be repaid to the Special Measure I Transportation Sales Tax Fund in accordance with Policy VLS-19.

Policy VLS-16: Any interest earned on investment of Measure I Transportation Sales Tax Funds must be deposited in the Special Measure I Transportation Sales Tax Fund. Any jurisdiction not electing to invest its Measure I funds but at the same time investing most of its other available funds should deposit the Measure I funds in a separate account to clearly indicate that no such monies were invested. If Measure I Transportation Sales Tax funds are invested, they must receive their equitable proration of interest earned on the total funds invested. Several methods are available to determine an equitable distribution of interest earned. Whatever method is employed, it will be analyzed during audit to determine reasonableness and confirm distribution to the Special Measure I Transportation Sales Tax Fund. It is recommended that a distribution based on average monthend cash balances be employed. In addition, if the interest distribution methodology allows for negative distributions, they will be disallowed. No interest charges based on negative cash and fund balances will be allowed.

Policy VLS-17: Reimbursements of Measure I Transportation Sales Tax Funds previously expended for street and road construction or right-of-way purposes, from whatever source, must be deposited in the Special Measure I Transportation Sales Tax Fund. This includes but is not limited to:

- Federal Aid Urban projects
- Redevelopment agencies
- Cooperative agreements
- Right-of-way dispositions
- Federal and safety projects

Policy VLS-18: Records:

- a. Source Documentation - On construction or purchase of right-of-way, all expenditures charged to the Measure I Transportation Sales Tax Fund must be supported by a warrant or other source document (invoice, requisition, time sheet, equipment rental charge, engineering plans, specifications and other pertinent data) clearly identifying the project and other pertinent data to establish a clear audit trail.
- b. Retention Period - All source documents, together with the accounting records, are deemed to be the official records of the jurisdiction and must be retained by the jurisdiction for five (5) years.

Policy VLS-19: If Measure I Transportation Sales Tax Funds are determined through the annual audit to have been used for ineligible expenses, the jurisdiction must repay those funds within six months of completion of the audit that discovered the ineligible use. If the jurisdiction is unable to repay those expenses through an internal transfer to the Measure I Transportation Sales Tax Fund from another source, then a Repayment Agreement must be approved by both the Jurisdiction and the SANBAG Board of Directors.

G. Maintenance of Effort Requirements

Policy VLS-xx: The SANBAG Board of Directors shall retain authority over actions related to these Maintenance of Effort (MOE) requirements.

Policy VLS-xx: In accordance with California Public Utilities Code 190300 and Ordinance No. 04-01 of the San Bernardino County Transportation Authority, Local Street Program funds shall not be used to supplant existing local discretionary funds being used for street and highway purposes.

Policy VLS-xx: SANBAG shall monitor local agency use of General Fund for street and highway purposes relative to their use prior to Measure I 2010-2040, which shall be referred to as the MOE base year level.

Policy VLS-xx: The following requirements are to provide guidance on the determination of a MOE base year level.

- a. The MOE base year level shall be equivalent to the discretionary General Fund expenditures for transportation-related construction and maintenance activities consistent with Policy VLS-12 in Fiscal Year 2008/2009.
- b. Jurisdictions may propose deductions to the recorded expenditures for the following:
 - 1) Expenditures for unusual circumstances that increased the MOE base year level arbitrarily outside of the normal on-going General Fund expenditures, e.g. General Fund loans to other transportation-related funds, emergency repairs, special projects.
 - 2) Administrative/overhead costs that were not project-specific, i.e. staff time for transportation staff was charged to a general "program" budget rather than charged directly to specific projects.
- c. The proposed MOE base year level shall be adopted by resolution of the governing body.
- d. The Independent Taxpayer Oversight Committee (ITOC) will review the proposed MOE base year levels, including the proposed deductions, as adopted by resolution of the governing body, and provide a recommendation to the SANBAG Board of Directors for approval.
- e. The MOE base year level as approved by the SANBAG Board of Directors shall remain in effect until the expiration of Measure I 2010-2040.

Policy VLS-xx: Jurisdictions shall annually provide a statement in the resolution of the governing body adopting the Five Year Capital Improvement Plan that acknowledges the jurisdiction will maintain

General Fund expenditures for transportation-related construction and maintenance activities at the required MOE base year level in that fiscal year.

Policy VLS-xx: The MOE requirement shall be tracked and verified as part of the annual Measure I Local Street Program audit. This will be accomplished by comparing the discretionary General Fund expenditures for transportation-related construction and maintenance activities consistent with Policy VLS-12 to the MOE base year level.

Policy VLS-xx: General Fund expenditures in excess of the MOE base year level will carry over to subsequent fiscal years and can be applied in a future year to offset the amount the local agency may need to meet the MOE requirement. Carryover balances will be documented in the annual Measure I Local Street Program audit.

Policy VLS-xx: If the annual Measure I Local Street Program audit indicates that the required MOE base level is not being met, then the jurisdiction has the following four fiscal years to make up the amount. If the audit following those four fiscal years indicates the jurisdiction is still below the MOE base year level, SANBAG will immediately stop disbursing Measure I Local Street Program funds until an amount equivalent to the MOE base year level shortfall has been withheld. The withheld funds will be disbursed to the jurisdiction upon demonstration that the jurisdiction has met the MOE requirements.

Policy VLS-xx: The following provides guidance on resolution of MOE base year level shortfalls at the expiration of Measure I 2010-2040.

- a. If the jurisdiction has not resolved a MOE base year level shortfall within two years after the expiration of Measure I 2010-2040, any withheld funds will be distributed to other compliant jurisdictions within that subarea.
- b. If any Measure I Local Street Program audit after Fiscal Year 2033/2034 indicates that the required MOE base year level was not met, then the jurisdiction has until Fiscal Year 2038/2039 to make up the amount. If the audit of Fiscal Year 2038/2039 indicates the jurisdiction is still below the MOE base level, the jurisdiction must pay the MOE base level shortfall to SANBAG for distribution to other compliant jurisdictions within that subarea.

Policy VLS-xx: Prior to withholding or required repayment of Measure I Local Street Program funds, jurisdictions shall have an opportunity to appeal to the ITOC. The jurisdiction must present evidence to the ITOC demonstrating unusual circumstances or the need for special consideration. The ITOC will be responsible for making a recommendation to the SANBAG Board of Directors to either approve or deny the request for special consideration.

V. REVISION HISTORY

Revision No.	Revisions	Adopted
0	Adopted by the Board of Directors.	04/01/2009
1	Revisions adopted by the Board of Directors on January 8, 2014, Agenda Item 14.	01/08/2014