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Changing Plans: Flexibility, Accountability, and Oversight of Local Option Sales Tax Measure Implementation in California

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Changing Plans:

Flexibility, Accountability, and Oversight of
Local Option Sales Tax Measure
Implementation in California

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Disclaimer

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Changing Plans: Flexibility, Accountability, & Oversight of Local Option Sales Tax Measure Implementation in California

UCLA Institute of Transportation Studies

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Executive Summary

This report presents the findings of descriptive research into the rules that govern amendments to and public oversight of local option sales tax (LOST) measures in California. While flexibility is needed to allow local transportation authorities to adapt in the face of unforeseen circumstances—like the current revenue downturn caused by the COVID-19 pandemic—too much flexibility may hinder public accountability and allow for changes that fail to conform with the spirit of the project lists approved by county voters.

Across all LOST measures enacted in California since 1976, I explore LOST measure provisions governing public oversight (e.g., Citizens Oversight Committees, annual independent audits, etc.) and expenditure plan amendments, and also explore the extent to which lawsuits affect LOST measure implementation and have bearing on the accountability and flexibility enjoyed by local transportation authorities. I find that many of the measures require the formation of independent Citizens Oversight Committees, whose roles vary from purely advisory (i.e., review, report, and advise authority boards) to more direct authority (e.g., veto power over proposed expenditure plan amendments). I also find that most of the measures allow for project lists and governing rules to undergo amendment during implementation, though the procedures for approving such changes and the circumstances under which such changes may take place vary across measures. In general, these findings suggest that most measures seem to achieve a relative balance between needed flexibility and public accountability, ensuring that amendments take place infrequently and that such changes tend to preserve the measure's initial intention.

Finally, I describe a number of important findings related to lawsuits, and overview several landmark legal cases with precedent for implementation of subsequent measures.

As the COVID-19 pandemic shows, local transportation authorities do require flexibility to respond to unforeseen circumstances, when revenue is lower than initially projected and the authority must make difficult decisions about which investments to prioritize. Even in times like these, maintaining public accountability is important to guide implementation. This research makes important contributions to discussions of transportation finance and local transportation investment in “self-help counties” across both California and the U.S., and illuminates new areas of inquiry for exploration by future transportation researchers.

Introduction

Local option sales tax (LOST) revenue accounts for a large and growing share of local transportation spending in California and throughout the United States, yet how these measures fare in implementation remains relatively unexplored. To enhance their popularity at the voting booth, LOSTs almost always include an expenditure plan, which details exactly how expected revenue will be spent during the life-time of each measure. However, local authorities charged with administering LOST measures are often able to amend expenditure plans — and, therefore, project lists — during implementation. This raises important questions concerning the degree to which local transportation authorities are accountable to the public. Some flexibility is needed to respond to unforeseen circumstances — for instance, when revenue collection is lower than expected and a full project list cannot be funded.¹ Too much flexibility, however, may allow implementation of projects or programs inconsistent with the will of voters. The local transportation authorities charged with administering LOST measures and overseeing their implementation have a responsibility to deliver on the promises they make to voters, but they also need flexibility in order to respond to unforeseen circumstances without going back to the voters. I explore tensions and balance between accountability and flexibility in California's LOSTs.

A growing body of literature has reported on the proliferating use of LOSTs across the United States for funding transportation projects and related programs. Much of the existing literature has focused on the reasons why LOSTS have growth in popularity, as well as on the implications of this shift away from user fees and towards broad-based taxes. Recent research by UCLA's Institute of Transportation Studies (ITS) focuses on equity issues associated with the use of LOSTs for transportation funding in California. This study complements the existing body of research on local transportation finance by examining how LOSTs fare during implementation.

This research fills a significant gap in the literature relating to the flexibility and accountability enjoyed by the local transportation authorities charged with implementing LOSTs. LOSTs are an effective means of funding local-level transportation improvements, but only to the extent that public accountability is maintained throughout each measure's implementation. On one hand, by including a specified list of projects (with timelines and project costs enumerated in each measure's expenditure plan), LOST measures promote public accountability. On the other hand, LOST measures are not always implemented as proposed. Project lists regularly change, project timelines regularly extend, and cost estimates regularly increase. Local transportation authorities need a degree of flexibility to respond when projects become infeasible due to

¹ Recent state laws like [SB 375](#) and [SB 743](#), which aim to reduce transportation-related greenhouse gas emissions and vehicle miles travelled, may bear on the local and regional transportation planning processes and the need for flexibility to meet moving regional performance targets (e.g., SB 743 may necessitate defunding projects that fail to demonstrate 15% reduction of induced vehicular demand under a “build” scenario; see: <http://opr.ca.gov/ceqa/updates/sb-743/>).

unforeseen circumstances. However, too much flexibility allows for significant deviation from what was promised to voters.

This research analyzes similarities and differences in rulemaking regarding expenditure plan amendments and public oversight among LOST measures in California. I also examine the impacts of litigation in shaping LOST outcomes and subsequent rulemaking, with special focus on “landmark” decisions. I also describe the history of formal ordinance and expenditure plan amendments resulting in project-level changes across all LOST measures that have been approved by voters in California since 1976, to address relationships between rulemaking and real-world outcomes. Finally, I make recommendations for future measures and ongoing implementation of currently-active measures, in light of findings related to flexibility, accountability, and oversight, and highlight inquiries related to LOST implementation that future researchers might explore.

Literature Review

This literature review begins with a definition of local option sales taxes, before describing several common characteristics of LOST measures in California. Next, it explains the recent proliferation of LOST measures, and the significance of this trend for transportation finance in the U.S. Then I describe research into the factors affecting public support of LOST measures and summarize benefits and drawbacks commonly associated with such taxes. The review concludes with a section detailing public accountability considerations related to LOSTs, before a conclusion that reiterates the importance of the current research on LOSTs.

What is a Local Option Sales Tax Measure?

Wachs and Hannay (2007) define local option sales tax as “a sales tax passed by voters locally (at a level of government smaller than the state) in which an increase in sales tax revenue is used to fund transportation projects within the jurisdiction.” In California, each county whose voters elect to adopt a LOST measure must create and designate a “local transportation authority” to oversee the collection and use of the resultant tax revenue (Wachs, 2003). Specific projects to be funded using revenue from the LOST measure are generally enumerated in project lists (often contained in so-called “Transportation Expenditure Plans” appended to or included in the text of each measure). Even in cases where LOST revenue is not earmarked for specific projects or programs, funding is often designated for spending among distinct project/program categories.

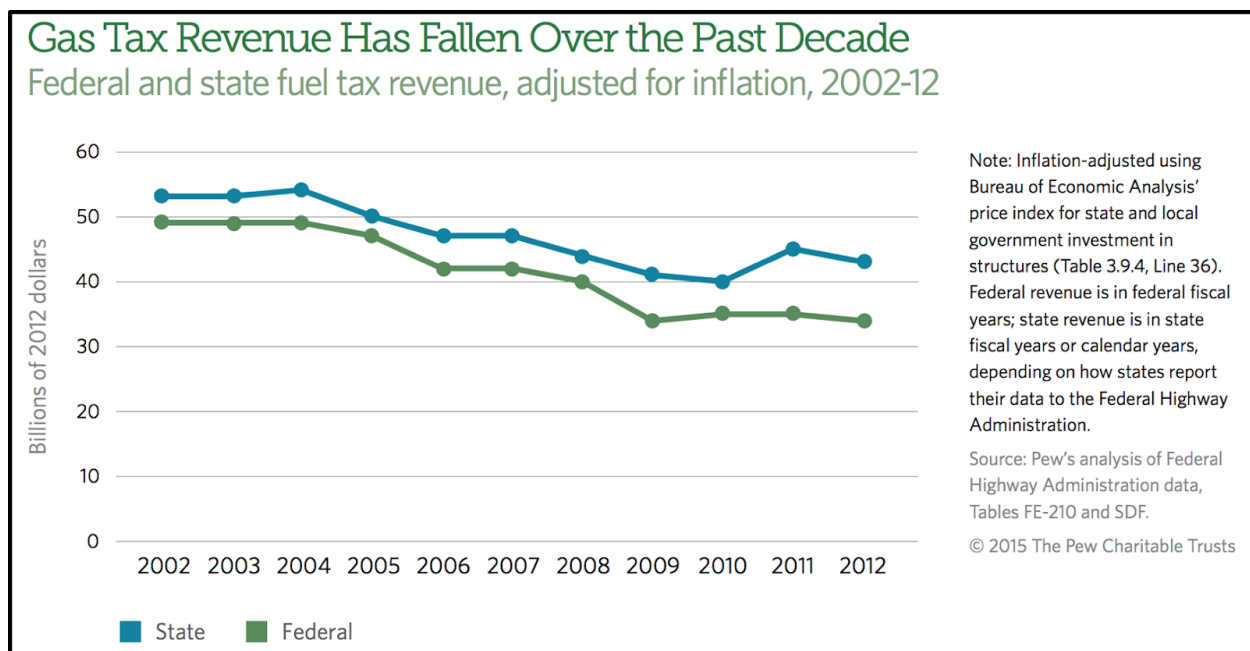
The Growing Popularity of LOST Measures

LOST measures are increasingly being utilized to generate revenue and fund local and county-level transportation infrastructure projects and programs in California. Nationally, LOSTs are also in the ascendancy. Sales taxes were the most common form of transportation funding measure that voters considered during the 2018 U.S. midterm elections. American voters

approved fully 62 percent of such proposed sales tax measures, which are expected to generate as much as \$31.7 billion in dedicated funding for transportation projects (Laska and Puentes, 2019). According to the Federal Transit Administration’s “2017 National Transit Summary and Trends” report, nationally, local funding constituted the largest overall funding source category for national transit capital and operating expenses in 2017. It is safe to assume that much of the growth in the local transit funding share is due to the increasing use of LOSTs at the local level.

The rise in popularity of LOST measures in the U.S. over the last few decades has signaled a shift away from reliance on user fees (e.g., gasoline taxes) to generate funding for transportation projects and programs, and towards the use of general revenue and broader-based taxes (Hannay and Wachs, 2007). Wachs (2003) argues that this shift has been largely necessitated by shrinking fuel tax revenues, which are typically levied as a charge on each gallon of gasoline purchased. Until the recent passage of State Bill 1 (SB1), California’s state fuel tax rate was not subject to periodic inflation adjustments. The federal fuel tax — long the centerpiece of transportation funding in the U.S. — is still not adjusted for inflation, and last increased in 1993. Due in large part to rising vehicle fuel efficiency reducing fuel consumption (and, thus, fuel tax revenue) per unit of travel, state and federal fuel tax revenues offer a dwindling source of funding (see: **Figure 1**). Counties and localities in California are increasingly turning to LOSTs to fill funding gaps.

Figure 1: Federal and State Gas Tax Revenue (2002-2012)



Graphic Source: <https://www.pewtrusts.org/-/media/assets/2015/02/fftransportationreportgraphics.pdf>

Researchers have often described this shift away from the use of federal highway user fee revenue and towards the use of revenue from broad-based local-level taxes as a “devolution” of fiscal responsibility from the federal, state, and regional levels to the county and local levels

(Goldman and Wachs, 2003). Advocates for this shift in fiscal responsibility argue that it may result in cost savings and timetable accelerations, as self-funding localities need not comply with federal regulations, and that “devolution” may give rise to a fairer distribution of transportation funding than the current system, which can allocate outsize federal funding to states relative to their fuel tax collections (Kirk, 2017). Another important outcome of “devolution” involves the more direct role that voters play in determining which transportation projects are to be funded, a phenomenon some call “ballot box planning” (Orman, 1985; Callies and Curtin, 1990; Calavita, 1992; Staley, 2001). Goldman and Wachs (2003) similarly describe LOST measures as effectively “shift[ing] decisions about major transportation projects into the electoral and legislative arena.”

Researchers have also cited growing competition between local governments as a critical driver behind the recent proliferation of LOST measures across the U.S. (Goldman and Wachs, 2003). Cities and counties have clearly demonstrated interest in promoting economic development and “enhancing their relative political or economic positions through the pursuit of pro-development policies” (Peterson, 1981; Goldman and Wachs, 2003). Local governments have also long sought to drive economic development by seeking targeted transportation improvements (Ward, 1998). Politicians have also favored LOSTs because they can “produce highly visible results that address voter concerns in concrete ways” (Goldman and Wachs, 2003).

Factors Affecting Public Support of LOST Measures

Much research has sought to identify factors that influence public support for LOST measures. For instance, several researchers have concluded that the inclusion of a specified list of projects to be funded using sales tax revenue increases the political viability of a LOST measure (Pérez and Snell, 1995; Crabbe et al., 2005; Beale et al., 1996). Hannay and Wachs (2007) found that physical proximity to the projects proposed to be funded using measure revenue, as well as the presence of modal diversity among the projects, were both predictive of voter support for a LOST measure. Beale et al. (1996) listed factors that appear to affect voter support for LOSTs: “an identified critical need for transportation improvements and design of a suitable tax; a thorough planning process that involves and informs the electorate and produces a realistic expenditure plan; detailed earmarking of funds; effective public and private leadership, provision of information, and promotion of the expenditure plan and the tax to finance it; distribution of tax burdens, revenues, and benefits that are perceived as fair; neutralization or co-option of special interests; neutralization of anti-tax sentiment; thoughtful drafting of the ballot language and a suitable strategy for implementing the referendum; and fulfilling promises to build support for future referenda” (Beale et al., 1996).

Crabbe et al. (2005) found that four features seem to explain the popularity of LOST measures: “they require direct voter approval; funds are raised and spent within the counties that enact them, so voters experience benefits directly; most automatically expire; and they usually specify the improvements to be financed.” Green et al. (2013) investigated two LOST measure case studies in adjacent California counties, and found that opposition to a LOST measure renewal was “centered among anti-tax, political conservative residents who do not trust elected officials.”

Other research has found the likelihood of voter support for a LOST measure increases when an “independent citizen oversight group is designated to track expenditures of tax revenues, a transportation sales tax is the only tax measure on the ballot, and there is a fixed expiration date for the tax” (Hamideh et al., 2008). Moreover, the perception among voters that existing road and traffic conditions are poor also appears to predict support for LOSTs (Hamideh et al., 2008). Finally, research has found that LOST measures are more likely to pass when they are designed in collaboration with powerful stakeholders such as local transit advocates and/or locally-influential industry groups (Haas et al., 2000).

What Are the Benefits of LOSTs?

Supporters of LOST measures celebrate that they have tended to shift authority over transportation projects and related development from the state and federal levels to local levels. As Wachs (2003) notes, this shift has allowed local transportation authorities to benefit from “greater sensitivity and flexibility in responding to local needs, less institutional inertia, and flexibility to pursue environmental review and design simultaneously rather than sequentially.” Similarly, Goldman and Wachs (2003) suggest that LOSTs empower counties and localities to “build locally-favored projects that may be difficult to fund with traditional grants-in-aid programs,” as well as to “accelerate approval for projects by avoiding the delays or compromises inherent in the federally-sanctioned planning process.” Generally, LOSTs have allowed local and county governments to fill key funding gaps left by shrinking fuel tax revenues. LOSTs also allow county Transportation Authorities to accelerate project delivery by utilizing innovative contracting practices that wouldn’t otherwise be allowed in federally-funded projects (Razo, Murray, and Sumi 1996). Metropolitan planning organizations (MPOs) cite future LOST revenue in their regional metropolitan transportation plans, as “MPO(s), public transportation operator(s), and State [must] cooperatively develop estimates of funds” — often including LOST-generated funds — “that will be available to support metropolitan transportation plan implementation.”² While MPOs, in some counties, do serve as the local transportation authority for the purposes of LOST measure implementation, this is not always the case. Indeed, some MPOs span multiple counties.

What Are the Drawbacks of LOSTs?

Several notable criticisms have been aimed at the use of LOST measures to fund transportation infrastructure projects and programming, and these also deserve careful consideration. Perhaps the most oft-cited criticism of LOST measures is that their use “could be weakening the regional planning mandate of California’s multi-county metropolitan planning organizations” (Wachs, 2003). A misalignment in accountability arises between local transportation authorities established by ordinance to administer LOST measure revenue collection and spending—and

² CFR §450.324. Development and content of the metropolitan transportation plan. 81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016; 82 FR 56544, Nov. 29, 2017. Accessed at: https://www.ecfr.gov/cgi-bin/text-idx?SID=b8dd8f04b6722d7975094ca16d6709af&mc=true&node=se23.1.450_1324&rgn=div8

whose “governing boards consider themselves accountable solely to county voters” (Wachs, 2003)—and the metropolitan planning organizations (MPOs) “charged under federal law with coordinating the development of regional transportation plans” (Goldman and Wachs, 2003). Local transportation authorities thus are primarily focused on implementing the expenditure plan promised to county voters, while MPOs struggle to represent regional interests; however, LOST measures rarely stipulate oversight or involvement by MPOs in implementation. In practice, this means that goals enumerated in regional transportation plans (RTPs) (e.g., integrating land-use planning and county-level transportation planning) go overlooked. Thus, LOSTs “have enhanced local governments’ decision-making authority, but may have made regional transportation planning in multicounty regions more difficult to achieve” (Crabbe et al., 2005).

While proponents of LOSTs point to their inclusion of expenditure plans (i.e., clearly enumerated lists of projects to be funded using measure revenue) as a clear benefit associated with their use — for example, they are politically popular and give clear direction to transportation agencies as to which infrastructure projects they should prioritize for funding and construction — opponents have countered by suggesting that the inclusion of such expenditure lists also serves to limit the flexibility of local transportation authorities in responding to unforeseen changes (e.g., revenue shortfalls, cost increases, delays from environmental review). At the same time, transportation authorities often face pressure from local elected officials and constituents to deliver projects that were promised in the expenditure plan. Further complicating matters, LOST measures do not always require local “transportation authorities [...] to base their implementation priorities on project cost-effectiveness, nor to spend sales tax revenues on mitigating potentially damaging environmental consequences” (Wachs, 2003). Observers have also noted that LOST measures tend to exhibit structural bias towards funding capital investments over critical operations and maintenance investments (Crabbe et al., 2005).

Lastly, researchers note that LOST measures—like all sales taxes—are regressive in nature (Litman et al., 2014; Albrecht et al., 2017). Because the tax is applied at a consistent rate despite income, low-income constituents end up contributing greater percentages of their annual incomes to LOST revenue than do constituents of relatively higher incomes. Compared with other means of tax revenue generation, therefore, LOST measures are relatively vertically inequitable.

Public Accountability Considerations

A critical element of good governance, accountability has been defined as “being answerable for decisions or actions, often to prevent the misuse of power and other forms of inappropriate behavior” (Cameron, 2004). With respect to LOST measures, accountability might describe the extent to which local transportation authorities are accountable to the constituents they serve, and, specifically, expending LOST revenues in accordance with each measure’s expenditure plan. Cameron (2004) says that “[a]ccess to information is an essential characteristic of accountability,” and other research suggests that public transparency appears only to foster public accountability and engender trust in government under certain pre-existing conditions (Cucciniello et al., 2017).

In addition to transparency, another avenue to public accountability involves the ability of constituents to hold elected officials responsible at the voting booths (i.e., direct democracy). Some research has shown that the fate of incumbent political candidates appears under certain circumstances to be affected by constituent perceptions of the quality of existing infrastructure. For instance, Burnett and Kogan (2016) found that constituent perceptions of local road quality significantly affect the incumbent candidate's chances: "[w]hen constituents submit more road work requests in the six months before the election, incumbent officeholders suffer at the polls." While they are unsure of the mechanism driving the relationship between potholes and an incumbent candidate's vote share, Burnett and Kogan (2016) find "consistent evidence that more potholes in neighborhoods result in fewer votes for incumbent San Diego officials." However, because LOST measures are often administered by unelected transportation authority staff, direct democracy may not be the most direct route to public accountability in this instance.

To the extent that local transportation authorities are accountable to constituents, they are responsible for delivering projects within budgets and timelines defined in LOST measure expenditure plans. Apparent structural inaccuracies in cost and demand (i.e., ridership) projection for transportation infrastructure projects are barriers to the public's trust in their elected officials. Recent research has characterized project cost estimation as being systematically misleading. For instance, Flyvbjerg et al. (2002) examined a sample of more than 250 transportation infrastructure projects and found project cost under-estimation at a global scale and with such consistency that it "cannot be explained by error and is best explained by strategic misrepresentation[.]" Similarly, Flyvbjerg et al. (2005) found that demand estimations for public transit infrastructure projects tend to over-estimate projected transit ridership, and generate "substantial downside financial and economic risks" for implementing jurisdictions.

Conclusion

As LOST revenue provides the funds for a growing share of transportation expenditures in California and across the U.S., it is increasingly important to promote public accountability at the level of the local transportation authorities administering and overseeing LOST implementation. To that end, this research quantifies the extent to which the local transportation authorities oversee implementation to assure consistency with each measure's expenditure plans, and the effects of legislation that addresses public accountability and limits the circumstances under which voter-approved LOST expenditure plans can be amended.

Flexibility and Accountability Provisions in LOST Measures

Data & Methodology

I conducted online searches to document provisions governing the creation of local transportation authorities, as well as the imposition and implementation of local option sales

taxes in California. To obtain relevant guidance contained in the California Public Utilities Code, I conducted an online review of Public Utilities Code Sections 12 through 19, using the California Legislative Information database at leginfo.legislature.ca.gov. Some of the provisions contained in these sections relate generally to all counties in the state of California, while other provisions in these sections apply only to individual counties (or groups of counties) in California.

To access information about the rules governing expenditure plan amendments under specific measures, I conducted an online search to obtain the ordinances and expenditure plans for as many enacted California local option sales taxes as possible. Specifically, I queried Google for the ordinances and expenditure plans of each such LOST measure, using the following keywords: (1) each measure's name in quotes (e.g., "Measure T"), (2) each corresponding county's name in quotes (e.g., "Madera County"), (3) the year each measure was approved by voters (e.g., "2006"), and (4) the words "Ordinance" and "Expenditure Plan." I reviewed all pages of search results generated for each measure, and archived relevant results. I was unable to find both the ordinance and expenditure plan for some passed California local option sales tax measures. Indeed, I found significant variance in the degree to which counties across the state have archived these materials online. Moreover, no central online repository exists that would allow researchers to study all LOST ordinances and expenditure plans. For that reason, in some cases, this analysis relies only on an ordinance, or only on an expenditure plan (and not both).

For practical reasons, the scope of this analysis is limited to the 44 LOST measures that have been approved and enacted, and for which we have been able to access ordinances and/or expenditure plans. Passed California LOST measures for which I was unable to obtain either an ordinance or an expenditure plan are excluded from the present analysis; there are seven such measures, from a total of 51.

Findings

State Law Guidance: The Public Utilities Code

The California Public Utilities Code (PUC) contains general and county-specific provisions that govern the creation of local transportation authorities to oversee and administer transactions and use taxes (i.e., LOSTs levied to fund transportation projects). These provisions, contained in PUC Divisions 12 through 19, grant counties the authority to create local transportation authorities for these purposes, but do not *require* their creation. In most cases, a county must create a local transportation authority before it can levy a LOST. The PUC also contains both general and county-specific rules governing the creation, implementation, and amendment of county transportation expenditure plans.

In this report, the term "general provisions" refers to rules that are widely applicable to all counties in the state, whereas "county-specific provisions" are rules that only apply in individual

counties. General rules are assumed to apply in counties that lack any county-specific provisions, and to govern unless superseded by a county-specific provision. At least one LOST-related PUC provision applies to a group of counties: “The Bay Area County Traffic and Transportation Funding Act,” enacted in 1986, enables any one of the nine counties that comprise the San Francisco Bay Area to “either create a county transportation authority or to authorize the [Metropolitan Transportation Commission (MTC)] to implement a retail transactions and use tax for the purpose of funding a local transportation expenditure plan.”^[i] Thus, any Bay Area county is authorized to levy a LOST measure without creating a local transportation authority, if it instead authorizes the Bay Area Metropolitan Transportation Commission (MTC) to implement the tax.

Adopting and Imposing LOST Transportation Expenditure Plans

PUC Division 19, Chapter 5^[ii] contains general provisions governing the creation of local transportation authorities, the imposition of retail transactions and use taxes, and the creation and amendment of transportation expenditure plans created to govern tax revenue expenditure.

Section 180050 contains general rules governing the creation of a local transportation authority:

“A county board of supervisors may create an authority to operate within the county to carry out this division, or may designate a transportation planning agency designated pursuant to Section 29532 of the Government Code or created pursuant to the Fresno County Transportation Improvement Act pursuant to Division 15 (commencing with Section 142000), or a county transportation commission created pursuant to the County Transportation Act (Division 12 (commencing with Section 130000)) in existence in the county on January 1, 1988, to serve as an authority.”

Section 180201 contains the general rules governing the imposition of a local option sales tax, and specifies the various conditions that must be met before a county’s imposition of such a tax:

“[[I]f the tax ordinance is adopted by a two-thirds vote of the authority and imposition of the tax is subsequently approved by a majority of the electors voting on the measure, or by any otherwise applicable voter approval requirement, at a special election called for that purpose by the board of supervisors, at the request of the authority, and a county transportation expenditure plan is adopted[.]”

Amending LOST Transportation Expenditure Plans

Section 180206 contains the general provisions that serve to govern expenditure plan adoption:

“A county transportation expenditure plan shall not be adopted until it has received the approval of the board of supervisors and of the city councils representing both a majority of the cities in the county and a majority of the population residing in the incorporated areas of the county.”

Sec. 180207 contains the general provisions that govern LOST expenditure plan amendments:

“The authority may annually review and propose amendments to the county transportation expenditure plan adopted pursuant to Section 180206 to provide for the use of additional federal, state, and local funds, to account for unexpected revenues, or to take into consideration unforeseen circumstances. The authority shall notify the board of supervisors and the city council of each city in the county and provide them with a copy of the proposed amendments. The proposed amendments shall become effective 45 days after notice is given.”

Measure-Specific Amendment Provisions

In contrast to the general provisions referenced above, some PUC Divisions only apply to certain counties in California. Division 12.8 (“Imperial County Transportation Commission”)^[iii] concerns Imperial County, Division 15 (“Fresno County Transportation Authority”)^[iv] exclusively addresses Fresno County, and Division 12.5 (“County Traffic and Transportation Funding in the Nine-County San Francisco Bay Area”)^[v] applies specifically to the nine-county San Francisco Bay Area. These PUC Divisions often contain rules that differ from and supersede the generally-applicable expenditure plan amendment rules at PUC Division 19, Section 180207. County-specific provisions of the PUC are typically adopted after the county has passed a LOST ordinance that contains the provision in question. To illustrate, the following is a list of examples of such rules:

- **Sec. 130350.4(e)** specifies that the Los Angeles County Metropolitan Transportation (MTA) Authority must “notify the Legislature prior to the adoption of amendments to the adopted expenditure plan.”^[vi]
- **Sec. 130407(b)(1)**, which applies to the administration of transaction and use taxes in Orange County, specifies that “[i]f the proposed amendment deletes a project which is included in the original adopted expenditure plan and which is located entirely within a city, the proposed amendment shall become effective only if the city council of the affected city, by resolution, concurs with the deletion of the project.” 130407(b)(3) specifies how cities in Orange County that are affected by proposed expenditure plan changes can “adopt a resolution protesting the proposed amendments.”^[vii]
- **Sec. 131203**, which applies to the Metropolitan Planning Organization in the nine-County San Francisco Bay Area (i.e., the Metropolitan Transportation Commission), specifies that “an amendment to the county transportation expenditure plan proposed by the commission is subject to approval by the advisory committee.”^[viii]
- **Sec. 142259**, which applies to the Fresno County Transportation Authority, specifies that “any amendments shall not delay or delete any project in the initial plan

without the transportation planning agency holding a public hearing and documenting within the plan the reason why the amendments are being recommended to the authority and are necessary relative to conditions beyond control of the authority.”^[ix]

If a county *does not* have county-specific provisions spelled out in the PUC that differ materially from the generally-applicable provisions, then proceedings in that county are governed by generally-applicable PUC rules. If a county *does* have county-specific PUC provisions, then those rules govern tax administration. Counties that have county-specific rules in the PUC governing the administration of transactions and use taxes are: Orange, Los Angeles, San Bernardino, Imperial, Fresno, Tuolumne, San Diego, Riverside, Ventura, Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma Counties. All other counties in California are therefore assumed to be governed by the general provisions in the PUC.

While the generally-applicable PUC language at Sec. 180206 indicates that a county transportation expenditure plan “shall not be *adopted* until it has received the approval of the board of supervisors and of the city councils representing both a majority of the cities in the county and a majority of the population residing in the incorporated areas of the county” [emphasis ours], the same requirement does not apply to *amending* an expenditure plan (unless specified in the language of a LOST ordinance or its expenditure plan).

Expenditure Plan Amendment Provisions

A plurality of 24 measures among those I studied includes rules specifying that the ordinance and/or expenditure list can be amended only by receiving two-thirds approval from a specified governing body (which is almost always the local transportation authority’s board of directors). In one notable exception to these two-thirds ($\frac{2}{3}$) voting requirements, Santa Clara County’s 2016 Measure B requires the local transportation authority to approve expenditure plan amendments by a three-fourths ($\frac{3}{4}$) majority vote.^[x] In a number of other cases, local transportation authorities must “recite findings of necessity” — generally requiring two-thirds majority approval — in favor of amending to initiate the LOST amendment process, prior to subsequent processes.

Some ordinances require multiple levels of approval before amendments can go into effect. In addition to requiring that an amendment obtain two-thirds approval from a specified governing body, sixteen of the measures require that amendments also obtain approval through a secondary majority vote of another specified governing body (most often a county’s Board of Supervisors) to pass. Similarly, twelve measures require expenditure plan amendments to obtain approval from “a majority of the incorporated cities representing a majority of the [county’s] population.” For example, the “Bay Area County Traffic and Transportation Funding Act” at PUC Division 12.5, which applies to all nine counties in the Bay Area, specifies: “A majority of the board of supervisors, and a majority of the local governments representing a majority of the population of the county in the incorporated areas by a majority vote of their respective councils, are required for the adoption of the draft county expenditure plan [or to

amend the county expenditure plan].”^[xi] This language derives from PUC Sec. 180206, which contains a similar rule. Some measures (e.g., Santa Barbara County’s 2008 Measure A, Stanislaus County’s 2016 Measure L) contain provisions requiring jurisdictions that wish to appeal proposed expenditure plan amendments to obtain support of “a majority of cities representing a majority of the population residing within the incorporated areas in the county and from the Board of Supervisors.”

Five LOST measures contain provisions that require a local transportation authority to obtain the approval of (or otherwise substantively consult) the “original project sponsor” before effectuating amendments that will affect the sponsor’s project, and four LOST measures contain provisions that require local transportation authorities to give the “highest priority to the projects in the initial [expenditure] plan” when considering amendments during implementation.

Funding reallocation

Some measures include provisions that allow for funding reallocations between projects or among categories of projects. When those provisions are present, reallocation does not necessarily require a formal amendment. In other cases, fund reallocations do require a formal expenditure plan amendment according to the measure’s governing rules for such amendments.

Seventeen measures specify that certain conditions must be fulfilled when funding is re-allocated between projects and/or program categories. Two common examples of such conditions are requirements that revenue must remain in the same geographic area or the same funding or program category when expenditure plans are amended (for example, if a transit project is removed, the funding must be reallocated to a different transit project), or requirements that a local transportation authority must adopt a finding that the purpose and need of the original project will be fulfilled by the new project when funding is transferred by way of an expenditure plan amendment. For example, the expenditure plan for Alameda County’s 2014 Measure BB specifies that “[s]hould a planned project become undeliverable, infeasible or unfundable due to circumstances unforeseen at the time this Plan was created [...], funding for that project will be reallocated to another project or program of the same type[.]”^[xii] Similarly, San Mateo County’s 2004 Measure A2 specifies that “[a]vailable tax proceeds can be re-allocated only to project(s) within the same Program Category as the original listed project.”^[xiii] Relatedly, before a project or program may be eliminated under Orange County’s 2006 Measure M2, the local transportation authority Board must first adopt an official finding that “the transportation purpose of the program or project to be eliminated will be satisfied by a different program or project.”^[xiv]

Other measures provide more flexibility by allowing tax revenues to be reallocated between programs, projects, and/or geographic areas. Santa Clara County’s 2016 Measure B specifies that the local transportation authority “may modify the Program for any prudent purpose, including [...] to shift funding between project categories.”^[xv] Similarly, Riverside County’s 2002 Measure A2 expenditure plan specifies that: “[t]he Commission may make maximum use of

available funds by temporarily shifting allocations between geographic areas and transportation purposes.”^[xvi]

Unforeseen Circumstances Language

Language specifying that counties may amend ordinances and/or expenditure plans in order to respond to “unforeseen circumstances” or “emergencies” occurs frequently in the LOST measures that we reviewed. As referenced above, this language is consistent with Section 180207 of PUC Division 19, Chapter 5, which provides that county transportation commissions “may annually review and propose amendments to the county transportation expenditure plan [...] to take into consideration unforeseen circumstances.” However, certain county-specific provisions also include this “unforeseen circumstances” phrase to describe circumstances in which expenditure plan amendments may be warranted (e.g., PUC § 131203, relating specifically to transactions and use taxes in the San Francisco Bay Area: “Amendments may provide for the use of additional federal, state, and local funds to account for unexpected revenue fluctuations or to take into consideration unforeseen circumstances”). “Unforeseen circumstances” are instances in which transactions and use tax revenues differ substantially from revenue projections, or where environmental review, natural disasters, political or public opposition, and/or legal challenges disrupt project delivery. In such circumstances, jurisdictions are afforded flexibility and can make expenditure plan amendments. 21 of the 44 measures whose ordinances and/or expenditure plans we have been able to obtain cite PUC §180207, directly, or reference it indirectly. A direct reference is defined as one where the ordinance or expenditure plan in question contains language like: “The expenditure plan can be amended pursuant to 180207.” An indirect reference occurs when a measure, ordinance, or expenditure plan incorporates language from § 180207 and inserts the name of the relevant decision-making body in place of “the authority,” in § 180207. All such references are considered to be citations to §180207 (direct being where §180207 is cited by number; indirect being where §180207’s language is employed).

Mandatory Reevaluation

To enable agencies to respond to changing revenue trends and implementation conditions, all measures we reviewed contain provisions requiring regular (e.g., annual) expenditure plan re-evaluation. Such re-evaluation is most frequently “annual” because PUC Sec. 180207 provides that county transportation commissions “may annually review and propose amendments to the county transportation expenditure plan [...] to take into consideration unforeseen circumstances.” For example, the Alameda 2014 Measure BB ordinance includes a requirement that the Alameda County Transportation Commission annually adopt a budget “that projects expected sales tax receipts, other anticipated revenues and planned expenditures for administration, programs and projects.”^[xvii] By comparison, the Fresno 2006 Measure C ordinance requires biennial Expenditure Plan updates^[xviii], and the Marin County 2018 Measure AA Expenditure Plan describes a requirement that “the TAM (Transportation Authority of Marin) Board of Commissioners [...] review the Expenditure Plan every six years to consider amendments.”^[xix] Some measures are more explicit that the local transportation authority may

only consider expenditure plan amendments once per year. For instance, San Joaquin County’s 2006 Measure K2 specifies that “[t]he [Local Transportation] Authority shall act on only one package of amendments per fiscal year.”^[xx] Similarly, Tulare County’s 2006 Measure R states that the measure’s expenditure plan “may be amended once a year,” and presumably no more often. Finally, a few measures, like Los Angeles County’s 2016 Measure M, bar the local transportation authority from amending the measure’s expenditure plan in the first 10 years of implementation.

Public Review and Meeting Requirements

The Ralph M. Brown Act, codified in Title 5 of California’s Government Code, (sections 54950-54963), contains broadly applicable requirements relating to public transparency. The Act dictates that the actions of “public commissions, boards and councils and the other public agencies in this State [...] [must] be taken openly and [...] their deliberations [must] be conducted openly.”^[xxi] The provisions of the Brown Act apply to the bodies that adopt and implement LOSTs. Many measures we reviewed enumerate requirements relating to public comment periods, public notice provision, and public meetings, especially as related to LOST ordinance and expenditure plan amendments. For instance, PUC Division 12, Chapter 4^[xxii] specifies that the Los Angeles County MTA must “notify the Legislature prior to the adoption of amendments to the adopted expenditure plan” as to their nature, reason, and impact. Los Angeles 2016 Measure M^[xxiii] specifies that LA Metro must hold a public meeting on proposed amendments prior to adoption, provide public notice of such meeting to the Los Angeles County Board of Supervisors, the city council of each city in Los Angeles County, and the public, and provide all parties with a copy of the proposed amendment(s) prior to the meeting. Madera County’s 2006 Measure T ordinance specifies that all Investment Plan (i.e., project list) updates “will be subject to public review and public hearings.”^[xxiv] Marin County’s 2004 Measure A expenditure plan specifies that expenditure plan amendments may not be adopted prior to a “noticed public hearing and a 45-day public comment period” taking place.^[xxv] Because of the Brown Act, public notice and open deliberations are required even where language of this manner is not included in LOST ordinances or measures.

Amendment Protest Procedures

Eight measures specify procedures whereby organized entities can formally protest the adoption of proposed amendments to LOST ordinances and/or expenditure plans by local transportation authorities. Santa Barbara County’s 2008 Measure A ordinance allows local jurisdictions in the county and/or the Santa Barbara Metropolitan Transportation District to formally appeal any proposed amendment by “majority vote of its policy body[.]”^[xxvi] If the appellant subsequently obtains “resolutions supporting the appeal of the amendment(s) from a majority of the cities representing a majority of the population” in the incorporated areas of the county, as well as from the county Board of Supervisors, then the amendments in question are rescinded. Fresno County’s 1986 Measure C enables any local jurisdiction, or the county, itself, to “object” to a proposed expenditure plan amendment and trigger a hearing on the proposed amendment.^[xxvii] San Joaquin County’s 2016 Measure K Renewal allows a local jurisdiction to

“override” proposed expenditure plan amendments by a simple majority vote of its “policy decision-making body” and subsequent expressions of support through resolutions from a “majority of the cities representing a majority of the population residing within the incorporated areas of the county and from the Board of Supervisors.”^[xxviii]

Tiering

At least nine measures organize project lists by priority-level, often using the term “tiers.” This allows for expenditure plans to list projects that will only be implemented if there is enough funding; an amendment would not be required to remove or add these projects to an expenditure plan at a later date. For example, Alameda 2000 Measure B divides projects into Tier 1 and Tier 2 priorities.^[xxix] The Fresno 2006 Measure C also prioritizes projects by tier.^[xxx] San Francisco’s 2003 Proposition K^[xxxi] details a process for funding projects of different priority levels:

“Each New Expenditure Plan program or project [...] shall be funded using sales tax revenue up to the total amount for that program or project in Priority 1. If, after funding all Priority 1 projects in a subcategory, the latest Prop K Strategic Plan Update cash flow analysis forecasts available revenues in excess of Priority 1 levels, the Authority Board may allow programming of Priority 2 revenues within the subcategory, subject to the category percentage caps and program or project dollar amount caps for Priority 2 established in the New Expenditure Plan. After funding at least 80% of Priority 2 project dollar amounts, the Authority Board may program Priority 3 requests, if the latest Prop K Strategic Plan forecasts revenues beyond the total Priority 2 level.”

Amendments Requiring Resubmission to Voters

While it is typical for amendments that change the rate or duration of a local option sales tax to require re-submission to the electorate, at least five measures, in addition, require that some other types of amendments obtain majority approval from a county electorate. For example, Merced County’s 2016 Measure B requires county voters to approve of amendments affecting the measure’s funding categories or fund allocation formulas.^[xxxii] Similarly, Napa County’s 2012 Measure T specifies that: “[a]mendments constituting expenditures for new programs or new projects that were not a part of the voter- approved Expenditure Plan or referred to in the Local Streets and Roads Maintenance Program may only be approved with the subsequent consent of the electorate.”^[xxxiii] Orange County’s 1990 Measure M1 dictates that any “proposed changes in expenditures among the four major funding categories of freeway projects, regional street and road projects, local street and road projects, and transit projects [...] shall be ratified by the electors before going into effect.”^[xxxiv] Though such requirements exist, we could not identify a case in which such an amendment was placed before county voters. Thus, we conclude that such amendments are so demanding that local agencies work hard to avoid them.

Provisions Requiring the Automatic Reprogramming of Funds

At least four measures contain provisions that require the automatic reprogramming of measure funds in cases where little or no progress has been achieved toward implementing a measure-funded project after a specified amount of time. These provisions are presumably intended to ensure that funds are allocated to the projects most likely to reach completion, thereby ensuring that each measure meets intended goals. For example, San Francisco City and County's 2003 Measure K specifies that "[i]f a project has not achieved any given project milestone within a period of 5 years, the funds earmarked for the project shall be subject to re-programming by the Transportation Authority Board, by a 2/3 vote."^[xxxv] Similarly, Alameda County's 2014 Measure BB specifies that any measure-funded project "will be given a period of seven years from the first year of revenue collection (up to December 31, 2022) to receive environmental clearance approvals and to have a full funding plan for each project," before its funding can be re-allocated to other eligible projects.^[xxxvi]

Conclusion

Amendments that cause project delivery outcomes to deviate from what was originally promised to voters are generally treated as a last resort by implementing authorities — though delays in delivering on promises can be politically embarrassing. In general, LOST measures in California achieve a balance between affording local transportation authorities the flexibility needed to respond to changing and unforeseen circumstances, while remaining accountable to the project lists, timelines, and budgets promised to county voters in each measure's original expenditure plan. By structuring rules that govern when and how expenditure plan amendments are adopted, policymakers aim to strike a pragmatic balance among competing interests while assuring that all amendments are made in accordance with principles of public accountability.

Public Oversight of LOST Measure Implementation

Data & Methodology

LOSTs are enacted by supermajorities of county voters, and procedures for amending them ensure that subsequent changes to LOST measures are rare and carefully justified. It follows that there is also a strong commitment to assuring that the provisions of the measures are actually carried out in compliance with the will of the public, as expressed in the measures that they approved. Thus, California's LOST measures include provisions designed to ensure public oversight of tax collection and expenditures. All voter-approved LOST measures require regular independent auditing of measure administration and implementation, and many require that county transportation authorities appoint independent public oversight committees. In this chapter, I review the ways in which oversight and accountability are addressed across the state.

As in the previous section, this analysis relies upon LOST measure ordinances and/or expenditure plans as primary resources, and analyzes the governing rules around public oversight of LOSTs. In addition, some particularly relevant sections of the California Public Utilities code that govern public oversight (i.e., auditing requirements for local transportation authorities) are cited. Therefore, some of these data sources pertain specifically to individual LOST measures, and others (e.g., the PUC section described, above) pertain more broadly to all counties in California.

Findings

Independent Financial and Performance Auditing

All California LOST measures are subject to regular independent financial and/or performance auditing as enumerated in the section of the state’s Public Utilities Code (PUC) governing the creation of county “transportation authorities.” Such authorities must “cause a postaudit of the financial transactions and records of the authority to be made at least annually by a certified public accountant.”^[xxxvii] Similar wording appears in many of the ordinances. For instance, Fresno County’s 1986 Measure C ordinance (as well as its enabling legislation, located at PUC section 142105) requires the Fresno County Transportation Authority to “[c]ause a post audit of the financial transactions and records of the authority to be made at least annually by a certified public accountant.”^[xxxviii] Similarly, Los Angeles County’s 2016 Measure M requires that the Los Angeles County Metropolitan Transportation Authority “contract for an annual audit, to be completed within six (6) months after the end of the fiscal year being audited, for the purpose of determining compliance by Metro with the provisions of this Ordinance relating to the receipt and expenditure of Sales Tax Revenues during such fiscal year.”^[xxxix] In another example, Sacramento County’s 2004 Measure A2 ordinance describes “annual fiscal and periodic performance audits [...] performed in accordance with generally accepted auditing standards and Government Auditing Standards issued by the Comptroller General of the United States and based on performance standards adopted by the Authority Board for each program or project funded in whole or in part with sales tax funds.”^[xl] As described below, independent public oversight committees are often charged with contracting with and supervising independent auditors and, in some cases, are even empowered to dictate the scope of auditing.

Public Oversight Committees

In addition to regularly required audits, many LOST measures require the creation of independent bodies to oversee and review each measure’s implementation. In general, these are intended to ensure that measure implementation proceeds in accordance with the project lists, budgets, and timelines promised to voters. The public oversight committees created by LOST measures go by different names as specified in the ordinances — examples include Citizens’ Advisory Committee, Citizens’ Oversight Committee, Independent Taxpayer Oversight Committee, Expenditure Plan Oversight Committee — but the scope of their responsibilities is largely consistent across measures. By and large, these bodies are assigned responsibilities

including the receipt and review of independent audit findings and other financial information related to LOST measure implementation. The oversight groups are importantly charged with making recommendations that are typically included in annual reports published by the county's local transportation authority and made available to the public. In limited cases, the oversight bodies may be empowered to issue formal recommendations regarding LOST measure expenditure plans and proposed amendments (though recipient local transportation authorities are not in every case obligated to implement the recommendations, or even to respond to them). These committees are also typically charged with holding public meetings or hearings to share findings from independent audits. Many are required to author annual reports/letters on measure implementation and progress towards stated goals.

At least 32 of the LOST measures that have been enacted in California have created such committees to oversee LOST measure implementation. The vast majority of the committees have advisory roles, in that they cannot themselves veto proposed expenditure plan amendments. Rather, they are typically responsible for supervising independent auditing, reporting the findings of auditing at public meetings and/or hearings, and authoring reports and/or letters to the local transportation authority on an annual basis. Presumably, the framers of LOST measures, on the one hand, wanted to ensure that reviews occur and that the public is provided with information but, on the other hand, did not wish to dilute decision authority. For example, Merced County's 2016 Measure V created a "Citizens Oversight Committee" that "may receive, review and recommend any action or revision to plans, programs, audits or projects[.]"^[xlii] This committee has "full access to the [...] independent auditor and will have the authority to request and review specific information," but lacks any voting or veto power with respect to proposed Expenditure Plan amendments. Similarly, the "Independent Citizens' Oversight Committee" created by Santa Clara County's 2000 Measure A is tasked with holding public hearings, annually issuing public reports, publishing findings made by an Independent Auditor, and authoring an Annual Report.^[xliii] Though these committees are usually advisory in nature, committee reports are published online and reported in the media, and they often influence the actions taken by the local transportation authorities to whom they formally report.

In a few cases, oversight or advisory committees have more direct power with respect to LOST measure implementation. For instance, Orange County's 1990 Measure M1 created a "Citizens Committee" with the power to approve (and, presumably, deny), by a two-thirds vote, "amendments to the [Expenditure] Plan which change the funding categories, programs, or projects[.]"^[xliii] Similarly, Orange County's 2006 Measure M2 created a "Taxpayer Oversight Committee" that also has the power to approve (and, presumably, deny), by a two-thirds vote, "any amendment to the [Expenditure] Plan proposed by the [Orange County Transportation] Authority which changes the funding categories, programs or projects[.]"^[xliv] Moreover, the Measure M2 ordinance specifies that the Orange County Transportation Authority must respond in writing when the Taxpayer Oversight Committee requests in writing that the local transportation authority explain perceived deviations from the Expenditure Plan. Most measures do not appear to require any formal response from implementing authorities.

Los Angeles County's 2008 Measure R charges its "Measure R Independent Taxpayer Oversight Committee of Metro" with a potentially substantive role related to Expenditure Plan amendments; per the Measure R ordinance, this committee must: "Review any proposed amendments to this Ordinance, including the expenditure plan, and make a finding as to whether the proposed amendments further the purpose of this Ordinance."^[xlv] Los Angeles County's 2016 Measure M grants the "Measure M Independent Taxpayer Oversight Committee of Metro" the same authority: "review any proposed amendments to the Ordinance, including the Expenditure Plan, and make a finding as to whether the proposed amendments further the purpose of the Ordinance."^[xlv] Finally, Monterey County's 2016 Measure X specifies that the local transportation authority may only consider proposed Investment Plan amendments after the "Citizens Oversight Committee" created by the measure makes a recommendation on the proposed change by a two-thirds vote.^[xlvii] While not having formal or binding approval obligations, one can reasonably assume that these committees have influence. A critical report from them would certainly be reported in the press, and would likely provoke at least a discussion by the governing authority.

The review groups are, in some instances, structured in response to idiosyncratic county frictions and traditions, creating conditions and responsibilities that, on the surface, may seem unusual to those unfamiliar with local history. Santa Barbara County's 2008 Measure A creates two "Subregion Committees," in addition to a countywide Citizens Oversight Committee. These represent Santa Barbara County's North County and South Coast subregions, respectively, and mirror an explicit distinction in the expenditure plan between funding programs in these two subregions, reflecting a longstanding divergence of policy priorities between these parts of the county.^[xlviii] Each of these "Subregion Committees" is tasked with issuing recommendations to the county transportation Authority "by majority vote, [regarding] the policies and guidelines required to implement [each Subregion's] Program of the Investment Plan," and also issues "recommendations to the Authority regarding the programs to be funded by [each Subregion's] discretionary programs, excluding the Local Street and Transportation Improvement Program."^[xlix] This exclusion reflects the desire of local governments to retain control over expenditures within their boundaries. Moreover, each Subregion Committee "must approve, by majority vote, any amendment to [its] [...] Subregion Program prior to an Authority vote on the amendment[.]"^[i] Similarly, Napa County's 2012 Measure T created an Independent Taxpayer Oversight Committee that reviews 5-year lists of projects submitted by each city and town in the County, as well as by the County, itself, and then "make[s] a finding that such projects are consistent with the intent of the measure," a potentially substantive role with respect to the measure's expenditure plan.^[ii]

The majority of LOST measures that create independent public oversight committees include specifications as to how each committee's membership should be comprised, though some measures are more specific than others. The variation in specifications of qualifications for membership is illustrated by examples included in **Table 1**. For instance, Alameda County's 1986 Measure B specifies that its "Citizens Advisory Committee" be selected to represent "a cross-section of the community,"^[iii] but fails to specify how compliance with this requirement will

be determined and certified. San Joaquin County's 2016 Measure K Renewal Expenditure Plan specifies that its "Citizens Review Committee" must be comprised to "fairly [represent] the geographical, social, cultural, and economic mix of the region"^[iii], but also fails to specify how compliance will be determined. Other measures are more explicit regarding how independent oversight committee membership is to be comprised. Tulare County's 2006 Measure R specifies that its "Citizens' Oversight Committee" must include "[o]ne representative from an environmental advocacy group," "[o]ne representative from an advocacy group representing bicyclists and pedestrians, and/or transit," "[o]ne member who is a professional in the field of audit, finance and/or budgeting with a minimum of five years in a relevant and senior decision-making position in the public or private sector," and so on.^[iv] Los Angeles County's 2008 Measure R somewhat uniquely specifies that its "Independent Taxpayer Oversight Committee of Metro" must be specifically comprised of "[t]hree persons, each [...] a retired Federal or State Judge."^[v]

Conclusion

LOST measures in California contain a diversity of provisions that aim to promote public accountability throughout the course of measure implementation, ensuring that — where practicable — local transportation authorities implement each LOST measure substantially in accordance with the specific project lists, timelines, and project budgets that have been promised to county voters. While all measures we reviewed are subject to regular independent auditing procedures, many measures also require the creation of independent oversight committees to represent the interests of the general public during implementation. By requiring the creation of such committees, which are occasionally granted explicit or *de facto* veto power over proposed expenditure plan amendments, implementing counties can serve to bolster public accountability. Future research might explore which types of public accountability provisions are most highly correlated with the attainment of voter-desired outcomes during LOST measure implementation.

Table 1: Independent Oversight Committee Membership Specifications

County, Measure Name (Year)	Committee Name	Membership Specifications	Source
Merced, V (2016)	Citizen's Oversight Committee	<p>“One member appointed by each City and the County (Total of 7); One representative from the building industry; One representative from the agricultural industry; One representative from an ethnic community group; One representative from a major private sector Merced County employer; One representative from an advocacy group representing bicyclists and pedestrians, and/or transit; One member who is a professional in the field of audit, finance, and/or budgeting with a minimum of five years in a relevant and senior decision-making position in the public or private sector; One representative from an environmental advocacy group” and four at-large representatives to be filled by Merced County residents through an application process.”</p>	<p>https://app.box.com/s/scwo3t0wxfq5z6ydl99hbkcuttkdepyx</p>
Napa, T (2012)	Independent Taxpayer Oversight Committee	<p>"One member who is a professional, retired or active, in the field of municipal audit, finance and/or budgeting with a minimum of five years in a relevant and senior decision-making position in the public or private sector; One member who is a licensed civil engineer, retired or active, with at least five years of demonstrated experience in the fields of transportation in government and/or the private sector; One member who is a Certified Public Accountant (CPA) and experienced in financial audits; One member shall be a representative of a Napa region Chamber of Commerce; One member from a bona fide taxpayers association; and Two members from the public at-large."</p>	<p>https://app.box.com/s/ptmtzlu4pd1isfzypox8e886618nmtvw</p>
Los Angeles, R (2008)	Independent Taxpayer Oversight Committee of Metro	<p>"[T]hree persons, each [...] a retired Federal or State Judge."</p>	<p>https://app.box.com/s/3c2r6isasoty8k9fv3o9rddairhwu5i9</p>

Table 1: Independent Oversight Committee Membership Specifications (cont.)

County, Measure Name (Year)	Committee Name	Membership Specifications	Source
Los Angeles, R (2008)	Independent Taxpayer Oversight Committee of Metro	"[T]hree persons, each [...] a retired Federal or State Judge."	https://app.box.com/s/3c2r6isasoty8k9fv3o9rddairhwu5i9
Santa Barbara, A (2008)	Citizens Oversight Committee	"[A]n appropriate balance of transportation users representing the geographic, social, cultural, and economic interests of the county."	https://app.box.com/s/qkn0m36ecbnhvwynd3rv3mph1v0i7q5o
San Joaquin, K (2006)	Citizens Review Committee	Must be comprised so that it "fairly represents the geographical, social, cultural, and economic mix of the region."	https://app.box.com/s/6m92kuoafxjxysvbla3ewl2x85n4lo3s
Tulare, R (2006)	Citizens' Oversight Committee	"One member will be appointed by each City and the County. (Total of 9); One representative from a major private sector Tulare County employer, nominated by the Tulare County Economic Development Corporation; One representative from the building industry, nominated by the Tulare County Building Industry Association; One representative from the agriculture industry, nominated by the Tulare County Farm Bureau; One representative from the Hispanic community, nominated by the Tulare Kings Hispanic Chamber of Commerce; One representative from an advocacy group representing bicyclists and pedestrians, and/or transit; One member who is a professional in the field of audit, finance and/or budgeting with a minimum of five years in a relevant and senior decision-making position in the public or private sector; One representative from an environmental advocacy group" and three at-large applicants.	https://app.box.com/s/797wv9a48w06qnm3n09uxa7yqtdqmz

Lawsuits and Local Option Sales Tax Measures in California

This section explores different types of lawsuits filed in connection with LOST measures in California, citing examples that illustrate their impact. Disputes about compliance with measures approved by voters and arguments as to whether or not agencies have implemented the intent of measures, when not resolved amicably, can end up in court. For this reason, lawsuits brought against transportation agencies constitute a very important source of information. Legal decisions, whether verdicts in trials or settlements agreed to by contending parties, reveal strong differences of opinion, resolve challenges, and create precedents followed in the future in other jurisdictions. Lawsuits are a tactic by which opponents of LOST measures (and/or of specific LOST-funded transportation projects) can delay or impede implementation. In this chapter, I summarize the nature and outcome of lawsuits brought against counties over the implementation of LOSTs. Legal challenges can necessitate project list changes. Most often, the lawsuits reviewed targeted specific projects on the basis of perceived failures to comply with the relevant state or federal environmental impact analysis requirements. In other cases, lawsuits charged that LOST measures were not distributing project funding on an equitable basis. Still, other lawsuits called into question whether the inclusion of a project list represents a commitment by local governments to build all of the projects. If a commitment to build a project is understood to have been made, does this require local authorities to perform environmental impact analyses before drafting project lists?

This chapter illustrates some of the ways in which some lawsuits have shaped LOST implementation, including how legal challenges contributed to (and, in some cases, necessitated) project-level changes during measure implementation. I discuss the implications of the findings for implementing authorities interested in maintaining a pragmatic degree of flexibility in implementation, while remaining accountable to the specific project lists, budgets, and construction timelines approved by voters.

Data & Methodology

I identified relevant and publicly discoverable legal challenges, serially (i.e., by measure), through a structured online search. Sequentially, I queried Google for lawsuits relevant to each voter-approved LOST measure in California by using the following targeted keywords: (1) each measure's name in quotes (e.g., "Measure T"), (2) each corresponding county's name in quotes (e.g., "Madera County"), (3) the year each measure was approved by voters (e.g., 2006), and (4) the word "Lawsuit." In addition to searching for the word "lawsuit," Google's algorithm generates results that include any synonyms for the keyword "lawsuit" (e.g., litigation, sue, suing, complaint, etc.), bolstering the comprehensiveness of this search. I then reviewed all pages of the Google results that this search generated for each LOST measure, noting relevant litigation.

These search results included reporting on relevant lawsuits by newspapers and other local media sources, as well as original court filings from official public webpages and litigation repositories. In all instances, I attempted to obtain the original court filings for petitions and judicial findings, though in a few cases I was only able to find one or the other, and have relied on contemporaneous media reporting to ascertain outcomes. To identify further examples of LOST-relevant lawsuits, I also conducted a search of the *Nexis Uni* online database of legal briefs, pleadings, and motions using the same search terms. I have reported on all of the relevant challenges identified using this search process and that I have deemed sufficiently germane. A limited number of identified challenges are excluded because they appeared frivolous. The various legal challenges that have been identified through this search process have been divided up into discrete legal challenge categories, defined for ease and clarity of discussion in the report.

Findings

Environmental Review-Related Legal Challenges

Many legal challenges related to LOSTs and their project lists involve charges of non-compliance with state and federal environmental review requirements—a common vehicle for citizen suits in California. Most such lawsuits target specific projects enumerated in LOST expenditure plans.

A very important suit resulted in a decision making it clear that LOSTs themselves need not be the subject of environmental impact analysis prior to an election although projects funded by the LOSTs are subject to environmental review requirements. A lawsuit related to Santa Barbara County's 2008 Measure A acknowledged and upheld the flexibility of LOST expenditure plans. Plaintiffs in *Sustainable Transportation Advocates of Santa Barbara v. Santa Barbara County Association of Governments* (2009) aimed to block the placement of Santa Barbara County's 2008 Measure A on the ballot because environmental review of the proposed projects had not taken place prior to the submission of the measure's expenditure list to voters.^[vi] The court held that the submission of the Measure A expenditure plan to voters "does not constitute a binding commitment to construct the projects set forth in the investment plan," and that the activity is therefore not required to be preceded by certification of an Environmental Impact Report (EIR).^[vii]

Subsequent proceedings in Los Angeles County affirmed this view of expenditure plan submission. In *City of South Pasadena v. Los Angeles County Metropolitan Transportation Authority* (2011), a court of appeals affirmed an earlier trial court decision that the inclusion of the 710 Tunnel project in the Los Angeles County Measure R expenditure plan did not qualify as a "project" under the California Environmental Quality Act (CEQA), and therefore was not required to be preceded by an EIR certification.^[viii] Both of the aforementioned decisions follow from the so-called "funding mechanism exemption" at CEQA Guidelines section 15378, subdivision (b)(4)^[ix], which provides — for purposes of CEQA — that the following are excluded

from the definition of a project: "[t]he creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant impact on the environment." CEQA environmental review requirements can be time-intensive and quite costly to meet. Had the courts instead determined that local transportation authorities do need to complete environmental review before submitting LOST expenditure plans to voters, this would have severely limited the flexibility of county agencies charged with implementing LOSTs in California.

Other suits addressed the timing of the transportation projects included in LOSTs in relation to the timing of land development in the same geographic areas. In *Town of Danville, et al. v. County of Contra Costa, et al.* (1994), the Town of Danville and the City of San Ramon (and numerous non-governmental co-plaintiffs) sued Contra Costa County to invalidate environmental impact review (EIR) certification of road improvements partially funded by revenues from Contra Costa's 1988 Measure C, because of the County's adoption of both a General Plan Amendment (GPA) and a Specific Plan for the Dougherty Valley project.^[ix] Both parties entered into a settlement delineating "certain principles to govern development in the Dougherty Valley[.]"^[xi] The settlement included assurances sought by plaintiffs that road improvements would precede proposed housing construction — thereby mitigating the traffic impacts expected to result from the housing project prior to its construction.^[xii]

In *Caldecott Fourth Bore Coalition v. California Department of Transportation* (2007), a settlement was agreed to after plaintiffs challenged the California Department of Transportation (Caltrans)'s decision to approve the Environmental Impact Report (EIR) for the Caldecott Fourth Bore project enumerated for funding under Alameda County's 2014 Measure BB.^[xiii] Under the settlement, Caltrans agreed to study additional transportation management issues in the project area, fund surface street improvements in the City of Berkeley, and adopt measures intended to mitigate the project's construction impacts relating to light, noise, and soil.^[xiv] By entering into a settlement agreement, Caltrans ensured that project implementation would continue in earnest, but attachment of mitigation measures may ultimately serve to disrupt project planning efforts.

When projects are funded by LOSTs, they may be challenged on a wide variety of grounds widely used to oppose transportation projects that are funded by other mechanisms. In *San Franciscans for Sustainable Transit, Inc. v. City and County of San Francisco et al.* (2017), opponents of the Geary Bus Rapid Transit (BRT) project to be funded by San Francisco County's 2003 Proposition K alleged that the project's certified EIR contained "fatal substantive flaws" because it failed to analyze a no-build option and utilized "outdated data" and "unsubstantiated models."^[xv] In particular, the plaintiffs alleged that the project's EIR insufficiently analyzed the impacts of transportation network companies (TNCs) on traffic, transit ridership, and the environment.^[xvi] Ultimately, a superior court judge ruled in favor of the City and County of San Francisco by concluding that "substantial evidence" existed to support the final certification of the project's EIR (Pendergast, 2018).^[xvii]

Equity-Related Legal Challenges

Another category of lawsuits charge inequity in LOST measure design and/or implementation, and have implications related to measure implementation and the flexibility of county authorities to amend voter-approved project lists. One such challenge occurred when implementing authorities in Los Angeles County attempted to reallocate discretionary funding collected through the county's 1990 Measure C to cover a budget shortfall affecting the Southern California Rapid Transit District, which operated bus transit service and also funded municipal transit systems in the county. The budget shortfall arose because "the vast majority of [Measure C] funds [were spent] on new rail projects while consistently defunding the bus system and claiming business hardship" (Mann, 2004). Bus ridership far exceeded rail ridership in Los Angeles County, at the time. In *Labor/Community Strategy Center v. Los Angeles County Metropolitan Transportation Authority* (1994), several co-plaintiffs, including the Natural Resources Defense Council, the NAACP Legal Defense and Education Fund, and the Bus Riders' Union, launched a class-action lawsuit against the Los Angeles County Metropolitan Transportation Authority (MTA), challenging a set of proposed changes to transit fares and services meant to ease the budget shortfall and accompany the Measure C discretionary funding reallocation.^[lxviii] The lawsuit, which culminated in a pre-trial settlement by consent decree, arose when plaintiffs alleged that the distribution of Measure C funding was modally inequitable between rail and bus. The consent decree precluded a definitive resolution of the matter, though the MTA agreed to reduce crowding on bus routes and maintain higher funding levels for bus routes for the next ten years. Subsequent attempts by the original plaintiffs to obtain an extension of the settlement agreement beyond the originally specified ten-year period were denied by a Los Angeles District Court and Appellate Court, respectively (*ibid.*).

Los Angeles County's 1990 Measure C has also been challenged on the basis of geographic equity. While not the subject of a lawsuit, an audit of the Los Angeles Department of Transportation (LADOT)'s management of funds and grants obtained under Proposition C found that the City of Los Angeles — despite comprising nearly 40 percent of the county's population — appeared to be the recipient of a disproportionately small amount — 27% — of the annual "Call for Projects" grants made available under Proposition C (Office of the Los Angeles City Comptroller, 2014). Los Angeles County's 2016 Measure M also faced a legal challenge launched by constituent municipalities, which alleged geographic and temporal inequity in the distribution of Measure M funding across the county. In *City of Carson et al. v. Dean C. Logan in his official capacity as County Registrar-Recorder/County Clerk for the County of Los Angeles* (2016), seven Los Angeles County municipalities filed suit in Los Angeles County Superior Court, alleging that the Measure M ballot language "conveys a false impression of equal distribution of projects over time."^[lxix] More specifically, the plaintiffs alleged that, under Measure M, "projects in the western and northern regions of the county will be completed much sooner [...], while south county regions will not see local return until 2039-2040."^[lxx] The Los Angeles Superior Court denied the plaintiffs' petition and ruled in favor of the County of Los Angeles,

finding that the plaintiffs had failed to convince the court that Measure M's ballot language lacked clarity or specificity.^[lxxi]

Ballot Language and Transparency-Related Challenges

Another category of legal challenges to LOST measures involves charges that county authorities have not acted transparently in putting measures before voters, and/or that the ballot language describing a given measure to county voters is not adequately constructed, legible, or decipherable to readers.

For instance, opponents of Los Angeles County's 2016 Measure M alleged in *In City of Carson et al. v. Dean C. Logan in his official capacity as County Registrar-Recorder/County Clerk for the County of Los Angeles* (2016) that the measure's ballot language was "misleading" because it failed to specify details regarding the tax's rate, duration, and expected revenue generation.^[lxxii] Moreover, plaintiffs alleged that the measure's ballot language failed to specify most of the projects it would fund and did not offer enough detail regarding geographical project distribution.^[lxxiii] Instead, plaintiffs alleged that the measure's authors had taken a "kitchen-sink approach" by offering overly broad explanations of the need for the measure (e.g., to reduce congestion, perform needed sidewalk and roads maintenance, expand public transit, etc.).^[lxxiv] As described in the previous section, the Los Angeles Superior Court denied the plaintiffs' petition and ruled in favor of the County of Los Angeles, finding that the plaintiffs failed to convince the court that the measure's ballot language lacked sufficient clarity or specificity.^[lxxv]

In California, the Brown Act requires open and accessible public government meetings, and this law has been used to challenge the transparency of LOST implementation. For instance, a Madera County resident filed a civil suit against the Madera County Board of Supervisors, alleging that the Board violated the Brown Act when it added an off-agenda "emergency item" during a public meeting in order to transfer road funds enumerated under Madera County's 1989 Measure A for use in unincorporated areas of the county to build a bridge in an incorporated area.^[lxxvi] Similarly, an unsuccessful lawsuit launched by a resident of San Bernardino County alleged that county authorities had violated the Brown Act by failing to mention the words "toll" or "express lane" in a public notice about the "Interstate 10 Corridor Project" (a toll lane addition) that was slated to receive funding through San Bernardino County's 2004 Measure I2.^[lxxvii] However, resolution of the vast majority of Brown Act-related suits filed in connection with LOST measures in favor of the local transportation authorities suggests that the courts interpret many of these suits as frivolous. These verdicts strengthen the capacity of local transportation authorities to design and implement ambitious LOST measures.

Conclusion

The legal challenges described in this section lead to several important findings for local transportation authorities charged with administering California's LOST measures. Agencies have a great deal of latitude to determine their expenditure plans and flexibility over the lifetime

of the measure, as long as they ensure transparency during measure implementation and comply with review and amendment procedures as specified in approved measures.

Environmental-review-focused legal challenges will likely continue to serve as a tried-and-true means of delaying — if not preventing — the construction of transportation infrastructure projects in California. The landmark decisions reviewed above establish that local transportation authorities need not complete the environmental review processes required by the CEQA statute before a measure’s project list is submitted to county voters. LOSTs afford local transportation authorities the “flexibility to pursue environmental review and design simultaneously rather than sequentially” (Wachs, 2003), which can enable project funding to be secured more quickly than may be possible using other funding mechanisms. Moreover, LOSTs tend to receive high levels of voter support because of their inclusion of specific project lists (Beale et al., 1996; Crabbe et al., 2005). Dutiful compliance with relevant state and federal environmental review requirements can maximize the likelihood that LOST-funded projects will withstand CEQA and NEPA lawsuits.

The transparency-related legal challenges to LOST measures reviewed in this section underscore the importance of drafting ballot language that is both clear and concise. For instance, the inclusion of a specific list of projects to be funded with measure revenue (as opposed to broadly specified funding categories and overly-general language explaining how funds will be spent) reduces flexibility in the future but increases the chances of successful implementation. By being as clear as possible regarding public meeting schedules, agendas, and notices, local transportation authorities can comply with the transparency requirements of California’s Brown Act. The vast majority of lawsuits reviewed in this section were resolved in favor of the implementing jurisdiction suggesting that, for the most part, LOST measures in California are clear and concise.

Amendments and Project Change History in LOST Measures

In this section, I examine the history of formal LOST measure ordinance and expenditure plan amendments that have taken place across the 51 LOSTs that have passed in California since 1976. I do not represent these findings as exhaustive, as local transportation authorities vary in their transparency with respect to cataloging and archiving original and amended LOST documents. Some counties store all versions of a measure’s expenditure plan or ordinance on a single webpage, and diligently update the page as new amendments are considered and adopted; other counties do not even make available current LOST measure ordinances and expenditure plans. As such, in some instances, these findings may not reflect the full history of formal amendments.

Data & Methodology

I conducted online searches to obtain all publicly available LOST measure ordinances and expenditure plans, and used this documentation to ascertain how many ordinance and/or expenditure amendments had taken place during the life of each measure. I also sought to understand the degree to which such amendments have resulted in “substantive changes,” by which I mean any formal amendment affecting the timeline, budget, or form of a project specifically enumerated for funding in a LOST expenditure plan (or equivalent documentation).

For instance, if the share of measure-allocated funding for an enumerated project is reduced in an expenditure plan amendment, this constitutes one amendment and one substantive change. Similarly, if one enumerated project is cancelled and another project is added via an expenditure plan amendment, this would constitute one measure amendment and two substantive changes.

To obtain relevant, publicly available documentation, I conducted online searches using Google and search functions on the websites of local transportation authorities. I queried for evidence of amendments to measure ordinances and expenditure plans using search terms that included each measure’s name (e.g., Measure A), the corresponding county’s name (e.g., Santa Clara), the year a given measure was approved by county voters (e.g., 2000), the name of the document containing each measure’s project list (i.e., most often called an “expenditure plan,” but occasionally named “investment plan”), and the word “amendment”. I then took care to review all relevant search results for evidence of amendments and/or substantive (i.e., project) changes.

Findings

The findings are summarized in **Table 2**. Of the 51 California LOST measures that have been enacted since 1976, at least 84 ordinance and/or expenditure plan amendments have been made, resulting in at least 68 substantive changes to project lists. At least 21 of these LOST measures have undergone at least one ordinance and/or expenditure plan amendment, and 17 measures have been changed substantively. At least 16 measures have been both amended and “substantively changed”. For 30 measures, there was no evidence of an amendment or substantive change. For 34 measures, there was no evidence of any substantive changes. These figures do not add up to 51 measures because for some I identified expenditure plan amendments and no substantive changes, while for others I identified substantive changes but no expenditure plan amendments. The majority of ordinance/expenditure plan amendments and “substantive changes” appeared in well under half of the LOST measures passed in California, leading me to conclude that a minority of measures account for most amendments and changes.

Table 2: History of Amendments and “Substantive Changes” Across LOST Measures

Total # of Measures	Total # of Amendments	Total # of “Substantive Changes”	# Measures w/ at least 1 Amendment
51	84	68	21
# Measures w/ at least 1 “Substantive Change”	# Measures w/ at least 1 Amendment and at least 1 “Substantive Change”	Measures w/ no evidence of amendments	Measures w/ no evidence of “Substantive changes”
17	15	30	34

See: <https://docs.google.com/spreadsheets/d/1PA62StlcFJXSxABsasVTvAMqQhirtxMA6cuGnxCfl/edit#qid=1932752670>

Some of the “substantive changes” that result from formal LOST amendments involve the alteration of the scope of a previously enumerated project; for instance, an amendment to Contra Costa County’s 2004 Measure J ordinance expanded the scope of a previously enumerated road widening project by moving one of the project’s termini westward, thereby lengthening the extent of “State Route 4 East” to undergo measure-funded widening.^[lxxviii] Other “substantive changes” resulting from formal amendments entail the deprogramming of project funding — though such amendments often transfer deprogrammed funding to projects of similar nature and/or in relative geographic proximity to the defunded project. For instance, an amendment to Alameda County’s 1986 Measure B ordinance removed a previously enumerated project that was “impeded by a series of changes in environmental statutes and regulations” and later challenged in court, replacing it with another highway project in the same geographic area “that could meet the purpose of the original project”.^[lxxix] Conversely, some formal amendments serve to fund projects that were not previously enumerated; for instance, three amendments to Santa Barbara County’s 2008 Measure A Investment Plan added three projects to be funded using Measure A funds: (1) Union Valley Parkway Arterial Phase III; (2) Highway 246 Streetscape and Sidewalk Improvement; and (3) Alamo Pintado Pedestrian and Bike Bridge Project.^[lxxx] Finally, some amendments enact administrative changes, which are not as “substantive”; for example, a June 2019 amendment to Merced County’s 2016 Measure V removed a requirement from the Measure V ordinance that had previously required its Citizens Oversight Committee “to submit an annual statement of financial disclosure consistent with Fair Political Practices Commission rules[.]”^[lxxxii] Such amendments are tracked, but not “substantive.”

Conclusion

Consistency with project lists, timelines, and budgets promised to county voters is a priority. Yet flexibility is often needed during LOST implementation to allow implementing authorities to adequately react in response to “unforeseen circumstances” in which revenue is higher or lower

than expected, or an enumerated project is unable to obtain the necessary environmental clearance or public support. As local planning officials cope with ongoing challenges related to the COVID-19 pandemic and revenue shortfalls that result, for example, LOST measures will undoubtedly need to undergo many amendments. Local transportation authorities balance these competing priorities by structuring measures to allow for formal expenditure plan amendments in limited qualifying circumstances, which often require two-thirds approval by an authority board and secondary majority approvals by a county Board of Supervisors and a majority of incorporated cities representing a majority of the county's population. In limited circumstances, LOSTs include provisions whereby affected jurisdictions may appeal expenditure plan amendments proposed by a county's local transportation authority. Taken together, these kinds of provisions appear to have limited the number of amendments that have occurred, while allowing local transportation authorities with much needed flexibility.

By requiring the creation of independent public oversight committees, which are occasionally granted explicit or *de facto* veto power over proposed expenditure plan amendments, local transportation authorities bolster public accountability. Future research might explore which types of public accountability provisions are most highly correlated with the attainment of voter-desired outcomes during LOST measure implementation.

Finally, my analysis of LOST-related lawsuits suggests that — while environmental-review-related lawsuits will likely continue to be a tried-and-true means of delaying the approval and delivery of LOST measures and the regional and local transportation projects they fund — local transportation authorities retain significant flexibility during LOST measure implementation, so long as they maintain transparency and comply with specified review and amendment provisions.

While differing levels of transparency and data availability across LOST measures will undoubtedly complicate matters, future research might address local transportation authority performance with respect to LOST measure implementation and expenditure plan amendments. Critical questions involve: the extent to which the projects delivered across the lifetime of each LOST measure—including budgets and timelines—match with initial expenditure plans; whether meaningful patterns exist in the frequency and nature of expenditure plan amendments (e.g., How many projects were amended in, and where did those projects fall in priority? What types of projects were moved on or off the lists? How many projects were removed as a result of planning processes that reflected changing conditions?); and the role of informal amendments in measure implementation.

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Tables and Figures (Heading 1 Style)

Tables

Table 1. Example Table

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
Info	Info	Info	Info

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Titles should be Arial 11pt. Bold the Table and corresponding number, and follow with a period. The remainder of the title should not include bold treatment.

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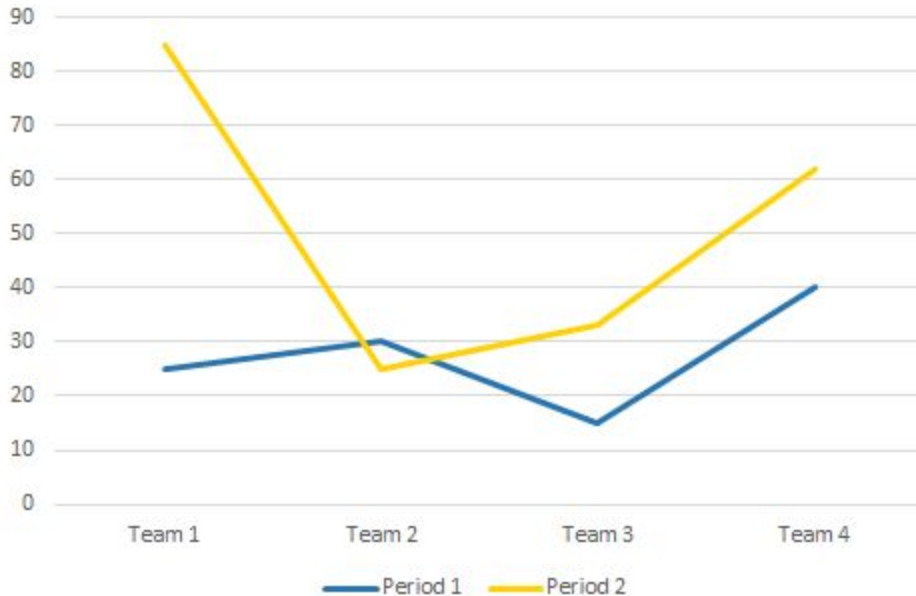
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COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
Info	Info	Info	Info

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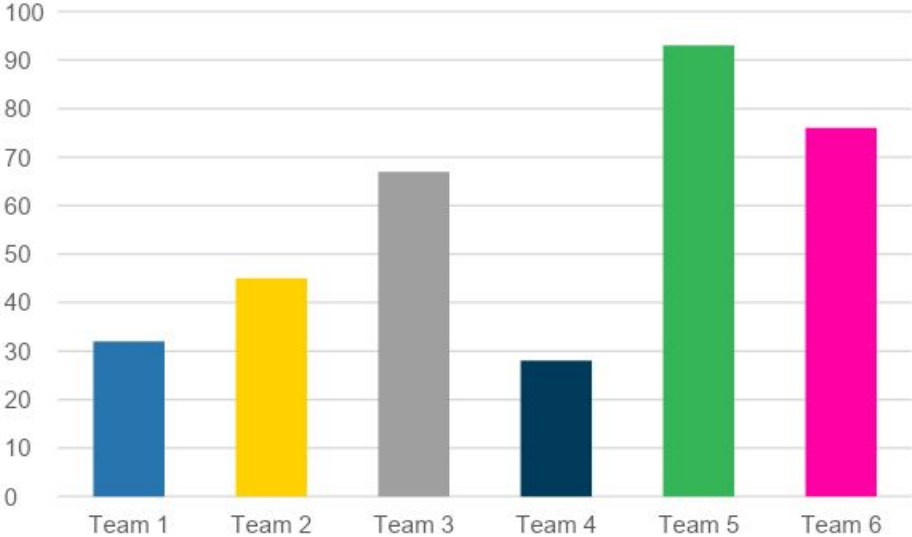
3rd color: Grey (RGB 160 159 160)

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