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Agenda Date: 7/10/2012  
Agenda Placement: 7S  
Continued From: June 26, 2012

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors

**FROM:** Janice Killion for Westmeyer, Robert - County Counsel  
County Counsel

**REPORT BY:** Janice Killion, Attorney III - 259-8246

**SUBJECT:** Second Reading Ordinance to Call Election for NVTA Streets and Roads Transactions and Use Tax

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### RECOMMENDATION

Second reading and adoption of an ordinance ordering a special election and consolidating it with the November 6, 2012 statewide presidential general election for the purpose of enabling the voters of Napa County to approve or reject Napa Valley Transportation Authority (NVTA) Ordinance No. 2012-01 (more commonly known as the Napa Countywide Road Maintenance Act) which would, if approved by the voters, establish a one-half percent countywide sales tax, replacing the one-half percent flood control sales tax, that will take effect in 2018 and be used solely for road maintenance purposes.

**ENVIRONMENTAL DETERMINATION:** The adoption of this Ordinance ordering a sales tax election at the request of the Napa Valley Transportation Authority, a local transportation authority, is a ministerial action which is exempt from CEQA (Public Resources Code 21080(b)(1); 14 CCR 15268; *San Bernardino Associated Governments v. Superior Court* (2006) 135 Cal.App.4th 1106).

### EXECUTIVE SUMMARY

The Napa County Transportation & Planning Agency (NCTPA), acting as the Napa Valley Transportation Authority (NVTA), has adopted Ordinance 2012-01 (more commonly known as the Napa Countywide Road Maintenance Act). If approved by the voters by a 2/3rds vote, NVTA Ordinance 2012-01 will continue in existence the 1/2% portion of the countywide sales tax ("Measure A") that presently is due to expire July 1, 2018 and is being utilized to fund flood control projects. Thus, if the vote is favorable, commencing on July 1, 2018, this portion of the countywide sales tax will no longer be used to fund flood control projects but instead will be used for road maintenance purposes (the current flood control tax measure is due to automatically expire June 30, 2018, but may be repealed earlier if the purpose for which the tax is needed no longer exists, in which case this portion of the countywide sales tax will be used for road maintenance purposes earlier than July 1, 2018).

NVTA has adopted a Resolution requesting that the Board of Supervisors call a special election on November 6, 2012, to enable the voters to approve or reject NVTA Ordinance 2012-01 and consolidate that special election with the November 6, 2012, statewide presidential general election. Calling this special election is mandatory. The Board of Supervisors has no discretion in the matter based on case law decided in 2006.

The ordinance calling the election was introduced at this Board's meeting on June 26, 2012. Adoption of the attached county ordinance ordering the special election will place NVTA Ordinance 2012-01 on the November 6, 2012, ballot so that the voters will have the opportunity to approve or reject it.

Elections Code Section 9140 authorizes the Board to submit to the voters without a petition an ordinance on any subject within the jurisdiction of the Board. While most elections are called by the adoption of a resolution, whether Elections Code Section 9140 permits the Board to call this type of election by resolution is unclear. However, it is clear that such a special election may be called by the introduction and subsequent adoption of an ordinance. Thus due to the importance of this measure, and in an abundance of caution, an ordinance is being utilized to call and order this special election rather than utilizing a resolution.

This is a two reading Ordinance but will take effect immediately following adoption since it relates to an election.

Elections Code Section 9162 specifies that the Board of Supervisors, or any member or members of the Board authorized by the Board, may file a written argument for or against any county measure but that the argument cannot exceed 300 words in length. Elections Code Section 9166 provides that any such argument has priority over any other arguments that may be submitted. At its June 26, 2012, meeting the Board voted to appoint Chair Caldwell and Supervisor Dodd to prepare an argument in favor of the measure, and to work with the NVTA Board to include other signatories to the argument as authorized by law.

### **FISCAL IMPACT**

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	General Fund - adding this measure to the November 6, 2012 ballot will result in the Election Division of the County Clerk's Office incurring approximately \$2,500 in costs due to including this question on the ballot as well as being required to mail related official election materials to the voters (i.e. NVTA Ordinance No. 2012-01, the Impartial Analysis and any arguments for/against that might be filed, and rebuttals if permitted).
	Additional minimal costs will be incurred by the County Counsel due to the requirement that County Counsel must prepare an Impartial Analysis of the Measure; and the County Executive Office will incur additional minimal costs preparing an argument for or against (and rebuttal if permitted) for the Board's review should the Board decide to file an argument for or against (and a rebuttal if permitted).
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	The projected pavement preservation needs of the County-maintained road system are approximately \$412 million over 25 years, an average of \$16.5 million/year. The proposed measure is expected to generate approximately

\$112 million for the County over the 25-year life of the tax increment, an average of \$4.5 million per year. The proposed measure includes a "Maintenance of Effort" provision which will require all local agencies to continue to contribute local funds at the same rate as in the last several years. Taking this Maintenance of Effort requirement into account, it is estimated that an annual average of \$6.25 million will be available for pavement preservation work if the measure is approved by the voters commencing in 2018.

Consequences if not approved: The voters will not have an opportunity to decide whether to extend the current flood control sales tax for transportation purposes. Additionally, the County will have violated its mandatory duty to conduct an election on the sales tax question.

Additional Information:

## **ENVIRONMENTAL IMPACT**

### **NVTA ORDINANCE NO. 2012-01**

The following environmental determination was made by the Napa Valley Transportation Authority (NVTA), prior to adopting NVTA Ordinance No. 2012-01.

#### **ENVIRONMENTAL DETERMINATIONS:**

**General Rule.** It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

**Categorical Exemption Class 1:** It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. [See Class 1 ("Existing Facilities") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15301; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.]

A Notice of Determination was filed with the County Clerk on June 27, 2012 and copy of which is attached for the Board's reference.

### **COUNTY ORDINANCE NO. 1373**

#### **ENVIRONMENTAL DETERMINATION:**

A California Court of Appeals in 2006 held that ordering a sales tax election at the request of a local transportation authority is a ministerial action which is exempt from CEQA (Public Resources Code 21080(b)(1); 14 CCR 15268; *San Bernardino Associated Governments v. Superior Court* (2006) 135 Cal.App.4th 1106). Therefore, there is no requirement that CEQA review precede the introduction or adoption of this ordinance.

A Notice of Exemption from CEQA [Ministerial Action] will be filed with the County Clerk following the adoption of County Ordinance No. 1373 on July 10, 2012.

**BACKGROUND AND DISCUSSION**

During the summer of 2011, the Napa County Transportation & Planning Agency (NCTPA), acting as the Napa Valley Transportation Authority (NVTA), began conducting numerous public meetings for the purpose of developing what eventually became NVTA Ordinance 2012-01 (the Napa Countywide Road Maintenance Act). NVTA Ordinance 2012-01 has attached to it and incorporated by reference the Expenditure Plan which is specifically required by state law. The ordinance proposes a tax measure that, if implemented, would replace the 1/2% sales tax for flood control ("Measure A") that is due to expire automatically in 2018 (but which may expire by earlier repeal if the purposes for which it was enacted no longer exist), with a 1/2% sales tax for the purposes of local street and road maintenance.

On February 15, 2012, the Napa County Transportation & Planning Agency (NCTPA), acting as the Napa Valley Transportation Authority (NVTA), requested that all member jurisdictions provide it with comments on a proposed 1/2% sales tax measure. The Board of Supervisors considered the matter on March 20, 2012, and provided comments. Comments were also received from all other local agencies, as well as various other stakeholders. Those comments were incorporated into various revisions to the proposed measure.

On April 4, 2012, the NVTA gave direction to its staff to refer NVTA Ordinance 2012-01, the Napa Countywide Road Maintenance Act, including the required Expenditure Plan, to the County, as well as all other local municipalities, for approval. Approval of the Expenditure Plan by adoption of appropriate resolutions by the County, a majority of the municipalities, and a majority of the population residing in the municipalities is required by Public Utilities Code section 180206 before the NVTA can formally adopt the measure; nor can the Board of Supervisors consider calling an election on this tax measure until it has been approved in this same manner. The Board of Supervisors adopted a Resolution approving the the Expenditure Plan on May 1, 2012. All other local agencies approved the Expenditure Plan, as requested by NVTA, prior to May 16, 2012.

On June 20, 2012, the Napa County Transportation & Planning Agency (NCTPA), acting as the Napa Valley Transportation Authority (NVTA), adopted Ordinance 2012-01. If approved by the voters by a 2/3rds vote, NVTA Ordinance 2012-01 will, commencing in 2018 or earlier termination of the flood control tax, continue in existence the 1/2% portion of the countywide sales tax that presently is being utilized to fund the flood control projects. Commencing in 2018 this portion of the countywide sales tax will no longer be used to fund flood control projects but instead will be used for road maintenance purposes.

Also on June 20, 2012, the NVTA Board adopted a resolution requesting that the Board of Supervisors call a special election on November 6, 2012, to enable the voters to approve or reject NVTA Ordinance 2012-01, and consolidate that special election with the November 6, 2012, statewide presidential general election.

Staff has prepared the necessary ordinance that will place this Measure on the November 6, 2012, ballot. The Ballot Question as set forth in the attached Ordinance shall be phrased as follows:

“Shall Ordinance No. 2012-01 be adopted? (If adopted, revenues will be used exclusively to fix potholes, repair, maintain and improve local streets, roads and sidewalks in Napa, American Canyon, St. Helena, Calistoga, Yountville, and unincorporated areas within Napa County, by extending an expiring one-half percent sales tax for 25 years, resulting in no new increase in existing local sales tax rates. All revenues subject to strict, local citizen oversight and annual independent audits.)”

Elections Code Section 9140 authorizes the Board to submit to the voters without a petition an ordinance on any

subject within the jurisdiction of the Board. Any such ordinance shall be voted upon at any succeeding regular or special election and, if it receives a majority of the votes cast, the ordinance shall be enacted accordingly. While most elections are called by the adoption of a resolution, whether Elections Code Section 9140 permits the Board to call this type of election by resolution is unclear. Cities are expressly authorized to call such elections by ordinance or resolution. See Elections Code section 9222. The failure of the parallel section that is applicable to counties to expressly provide that these types of elections may be called by resolution, as well as by ordinance, is a cause for concern considering the magnitude of the Measure. Since it is clear that this type of special election may be called by the introduction and subsequent adoption of an ordinance, in an abundance of caution, an ordinance is being utilized to call and order this special election rather than utilizing a resolution.

Adoption of the attached ordinance will place this measure on the November 6, 2012 ballot.

### **Filing Written Arguments**

Elections Code Section 9162 provides that the Board of Supervisors, or any member or members of the Board authorized by the Board, or any individual voter who is eligible to vote on the measure, or any bona fide association of citizens, or any combination of these voters and associations may file a written argument for or against any county measure. However, only one Argument in favor may be included in the official ballot materials. Section 9166 provides that the Board's argument, or an argument prepared by any member or members of the Board who are authorized by the Board to file an argument, have priority should the Board or such members of the Board choose to file an argument.

Similarly, the Board would have priority to file a rebuttal if a rebuttal is permitted since only those persons or entities who filed the argument in favor or against are permitted to file (or authorize someone else to file) a rebuttal.

At its June 26, 2012, meeting the Board voted to appoint Chair Caldwell and Supervisor Dodd to prepare an argument in favor of the measure, and to work with the NVTB Board to include other signatories to the argument as authorized by law.

The deadline for submitting arguments for or against the measure is 4:30 p.m. on August 17, 2012 and is driven by the printing schedule of the official ballot materials and therefore cannot be extended.

### **ELECTIONS CODE:**

#### **§ 9162. Filing of arguments for or against measure; Printing of arguments**

(a) The board of supervisors or any member or members of the board, or any individual voter who is eligible to vote on the measure, or bona fide association of citizens, or any combination of these voters and associations may file a written argument for or against any county measure. No argument shall exceed 300 words in length. The county elections official shall cause an argument for and an argument against the measure, and the analysis of the measure, to be printed, and shall enclose a copy of both arguments preceded by the analysis with each sample ballot. The printed arguments and the analysis are "official matter" within the meaning of Section 13303.

(b) The following statement shall be printed on the front cover, or if none, on the heading of the first page, of the printed arguments: "Arguments in support of or in opposition to the proposed laws are the opinions of the authors."

(c) Printed arguments submitted to voters in accordance with this section shall be titled either "Argument In Favor Of Measure S" or "Argument Against Measure S," accordingly, the blank spaces being filled in only with the letter or number, if any, which designates the measure. At the discretion of the county elections official, the word "Proposition" may be substituted for the word "Measure" in the titles. Words used in the title shall not be counted when determining the length of any argument.

**9166. Selection of arguments.**

If more than one argument for or more than one argument against any county measure is submitted to the county elections official within the time prescribed, the county elections official shall select one of the arguments in favor and one of the arguments against the measure for printing and distribution to the voters. In selecting the argument the county elections official shall give preference and priority in the order named to the arguments of the following:

- (a) The board of supervisors or a member or members of the board.
- (b) The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
- (c) Bona fide associations of citizens.
- (d) Individual voters who are eligible to vote on the measure.

**§ 9167. Rebuttal arguments**

(a) When an argument in favor and an argument against a measure have been selected for publication in the voter information pamphlet the official responsible for conducting the election shall send copies of the argument in favor of the measure to the authors of the argument against the measure and copies of the arguments against the measure to the authors of the argument in favor. The authors may prepare and submit rebuttal arguments not exceeding 250 words, or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument. The rebuttal arguments shall be submitted to the elections official conducting the election no later than a date designated by the elections official.

(b) Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument that it seeks to rebut and shall be titled "Rebuttal to Argument in Favor of Measure (or Proposition) \_\_\_\_\_," or "Rebuttal to Argument Against Measure (or Proposition) \_\_\_\_\_," the blank spaces being filled in only with the letter or number, if any, designating the measure. Words used in the title may not be counted when determining the length of any rebuttal argument.

**§ 9140. Repeal, amendment or enactment of ordinance submitted to voters**

The board of supervisors may submit to the voters, without a petition, an ordinance for the repeal, amendment, or enactment of any ordinance. The ordinance shall be voted upon at any succeeding regular or special election and, if it receives a majority of the votes cast, the ordinance shall be repealed, amended, or enacted accordingly.

**SUPPORTING DOCUMENTS**

- A . Ordinance Calling Election
- B . NVT A Resolution and Ordinance

CEO Recommendation: Approve

Reviewed By: Helene Franchi