

Napa Valley Transportation Authority (NVTA)

Board of Directors

AGENDA

Wednesday, June 20, 2012

1:30 p.m.

**NCTPA/NVTA Conference Room
707 Randolph Street Suite 100
Napa CA 94559**

All materials relating to an agenda item for an open session of a regular meeting of the NVTA Board of Directors are posted on our website at www.nctpa.net/m_a.cfm at least 72 hours prior to the meeting and will be available for public inspection, on and after at the time of such distribution, in the office of the Secretary of the NVTA Board of Directors, 707 Randolph Street, Suite 100, Napa, California 94559, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., except for NVTA holidays. Materials distributed to the present members of the Board at the meeting will be available for public inspection at the public meeting if prepared by the members of the NVTA Board or staff and after the public meeting if prepared by some other person. Availability of materials related to agenda items for public inspection does not include materials which are exempt from public disclosure under Government Code sections 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.22.

Members of the public may speak to the Board on any item at the time the Board is considering the item. Please complete a Speaker's Slip, which is located on the table near the entryway, and then present the slip to the Board Secretary. Also, members of the public are invited to address the Board on any issue not on today's agenda under Public Comment. Speakers are limited to three minutes.

This Agenda shall be made available upon request in alternate formats to persons with a disability. Persons requesting a disability-related modification or accommodation should contact Karrie Sanderlin, NVTA Board Secretary, at (707) 259-8631 during regular business hours, at least 48 hours prior to the time of the meeting.

This Agenda may also be viewed online by visiting the NCTPA website at www.nctpa.net, click on Minutes and Agendas – NVTA Board or go to www.nctpa.net/m_a.cfm

ITEMS

- 1. Call to Order – Chair Keith Caldwell
- 2. Pledge of Allegiance
- 3. Roll Call

Members:

Joan Bennett	City of American Canyon
Leon Garcia, Mayor	City of American Canyon
Michael Dunsford	City of Calistoga
Jack Gingles, Mayor	City of Calistoga
Jim Krider	City of Napa
Jill Techel, Mayor	City of Napa
Keith Caldwell, BOS Chair	County of Napa
Bill Dodd	County of Napa
Del Britton, Mayor	City of St. Helena
Peter White	City of St. Helena
Lewis Chilton	Town of Yountville
John F. Dunbar, Mayor	Town of Yountville

- 4. Public Comment

5. **CONSENT ITEM (5.1)**

RECOMMENDATION

- | | |
|---|---------|
| 5.1 Approval of Meeting Minutes of July 20, 2011 and May 16, 2012 (Karrie Sanderlin) (<i>Pages 4-8</i>) | APPROVE |
| 5.2 Annual Election of Chair and Vice Chair (Karrie Sanderlin) (<i>Pages 9-10</i>) | APPROVE |

Authority action will approve the second one year term for Chair Keith Caldwell and Vice Chair Jack Gingles.

6. **REGULAR AGENDA ITEMS - TRANSPORTATION**

RECOMMENDATION

- | | |
|---|---------|
| 6.1 Second Reading and Adoption NVTA Ordinance 2012-01 Enacting the Napa Countywide Road Maintenance Act and Expenditure Plan, which, Proscribes, Pending Voter Approval, the Imposition, Division, Distribution, and Management of a Retail Transaction and Use Tax under Section 180000 et seq. of the California Public Utilities Code (Janice Killion) (<i>Pages 11-29</i>) | APPROVE |
|---|---------|

Authority action will approve the second reading and adoption of NVTA Ordinance 2012-01, the Napa Countywide Road Maintenance Act and Expenditure Plan.

- 6.2 Resolution No. 12-02 Requesting that the Napa County Board of Supervisors Place the Napa Countywide Road Maintenance Act and Expenditure Plan (Authority Ordinance No. 2012-01) on the November 2012 Ballot (Janice Killion) *(Pages 30-52)*

APPROVE

Authority action will approve Resolution No. 12-02 requesting that the Napa County Board of Supervisors place NVTA Ordinance 2012-01, the Napa Countywide Road Maintenance Act and Expenditure Plan, on the November 6, 2012 ballot for consideration by the electorate under the requirements of California Public Utilities Code Section 180201.

7. **ADJOURNMENT**

RECOMMENDATION

- 7.1 Approval of Meeting Date of July 18, 2012 and Adjournment

APPROVE

I hereby certify that the agenda for the above stated meeting was posted at a location freely accessible to members of the public at the NCTPA offices, 707 Randolph Street Suite 100 Napa CA, by 5:00 p.m. Friday June 15, 2012.



Karalyn E. Sanderlin, NVTA Board Secretary

Napa Valley Transportation Authority (NVTA)

Board of Directors

MINUTES

Wednesday, July 20, 2011

ITEMS

1. Call to Order

Chair Keith Caldwell called the meeting to order at 1:30 p.m.

2. Pledge of Allegiance

Sharon Maklin led the pledge of allegiance.

3. Roll Call

Members Present:

Leon Garcia	City of American Canyon
Jack Gingles	City of Calistoga
Jill Techel	City of Napa
Bill Dodd	County of Napa
Keith Caldwell	County of Napa
Peter White	City of St. Helena
Lewis Chilton	Town of Yountville
John Dunbar	Town of Yountville

Members Absent:

Jean Bennett	City of American Canyon
Michael Dunsford	City of Calistoga
Jim Kriger	City of Napa
Del Britton	City of St. Helena

4. Public Comment - None

5. CONSENT ITEMS (5.1)

MSC* DODD/ TEHEL to APPROVE Consent Item 5.1

5.1 Approval of Meeting Minutes of July 21, 2010

Board action approved the meeting minutes of July 21, 2010.

MSC - Motioned, Seconded, and Unanimously Carried

6. REGULAR AGENDA ITEMS - TRANSPORTATION

6.1 Selection of Chair and Vice Chair for FY 11/12

The nominating committee composed of Board members Bill Dodd, Leon Garcia, and Jill Techel recommended electing Vice Chair Keith Caldwell as Chair and City of Calistoga Mayor, Jack Gingles as Vice Chair for the NCTPA for FY 11/12.

MSC* DODD / GARCIA to APPROVE the nominating committee's recommendation and elected County Board of Supervisors Keith Caldwell as Chair and City of Calistoga Mayor, Jack Gingles as Vice Chair for the NVTA for FY 11/12.

7. ADJOURNMENT

7.1 Approval to Adjourn

The next regular meeting of the NVTA is to be determined at such a time when needed if prior to the annual meeting of July 2012.

The meeting was adjourned by Chair Caldwell at 1:33 p.m.

Karalyn E. Sanderlin, NCTPA Board Secretary

Napa Valley Transportation Authority (NVTA)

Board of Directors

Minutes

Wednesday, May 16, 2012

ITEMS

1. Call to Order

Chair Caldwell called the meeting to order at 1:30 p.m.

2. Pledge of Allegiance

Chair Caldwell let the salute to the flag.

3. Roll Call

Members Present:

Leon Garcia	City of American Canyon
Michael Dunsford	City of Calistoga
Jack Gingles	City of Calistoga
Jim Kriden	City of Napa
Jill Techel	City of Napa
Keri Caldwell	County of Napa
Bill Dodd	County of Napa
Del Britton	City of St. Helena
Peter White	City of St. Helena
John Dunbar	Town of Yountville
Margie Mohler	Town of Yountville

Members Absent:

Joan Bennett	City of American Canyon
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4. Public Comment - None

5. CONSENT ITEM (5.1)

MSC* GINGLES / BRITTON to APPROVE Consent Item 5.1

5.1 Approval of Meeting Minutes of April 4, 2012

MSC - Motioned, Seconded, and Unanimously Carried

NVTA Board action approved the meeting minutes of April 4, 2012.

6. REGULAR AGENDA ITEMS - TRANSPORTATION

6.1 Approval of Resolution No. 12-01 Adopting a Napa Countywide Road Maintenance Act and Making Related CEQA Findings

Authority action adopted the Napa Countywide Road Maintenance Act and Expenditure Plan which received unanimous member jurisdiction approval. The action also comports with Public Utilities Code section 180206 requiring Authority adoption of the Expenditure Plan.

Authority action also made the necessary CEQA findings associated with adoption and implementation of the Expenditure Plan, finding that the Napa Countywide Road Maintenance Act is Categorically Exempt.

MSC* GINGLES / GARCIA to APPROVE Resolution No. 12-01 whereby the Authority adopts the Napa Countywide Road Maintenance Act Expenditure Plan and related CEQA findings.

7. PUBLIC HEARING – ORDINANCE No. 12-01

7.1 First Reading and Intention to Adopt Ordinance 2012-01 of the Napa Valley Transportation Authority which enacts the Napa Countywide Road Maintenance Act, Pending Voter Approval, which Proscribes the Imposition, Division, Distribution, and Management of a Retail Transactions and Use Tax Under Section 180000 et. seq of the California Public Utilities Code

Chair Caldwell Opened the Public Hearing at 1:35 p.m.

Adoption of the Ordinance requires two readings; the action at today's meeting being the introduction of the Ordinance and a motion of intent to adopt.

A second NVTA meeting has been scheduled for Wednesday June 16, 2012 at 1:30 p.m. for the final reading and adoption.

Being no Public Comment, Chair Caldwell closed the Public Hearing at 1:38 p.m.

Karrie Sanderlin, NVTA Board Secretary, read by title only, the Napa County Road Maintenance Act and Expenditure Plan, NVTA Ordinance 2012-01.

Staff recommended that the Authority entertain a motion to waive further reading of NVTA Ordinance 2012-01.

Board Member Gingles made the motion to waive the complete reading of NVTA Ordinance No. 2012-01.

MSC* GINGLES / DODD for **APPROVAL** to waive the complete reading of NVTA Ordinance No. 2012-01

Board Member Gingles made the motion to approve the motion of intent to adopt Ordinance 2012-01, the Napa County Road Maintenance Act and Expenditure Plan.

MSC* GINGLES / GARCIA to **APPROVE** motion of intent to adopt Ordinance 2012-01, the Napa County Road Maintenance Act and Expenditure Plan.

8. ADJOURNMENT

8.1 Approval of Meeting Date of June 20, 2012 and Adjournment

The next regular meeting will be held Wednesday June 20, 2012 at 1:30 p.m.

The meeting was adjourned by Chair Caldwell at 1:40 p.m.

Karalyn E. Sanderlin, NVTA Board Secretary



June 20, 2012
NVTA Agenda Item 5.2
Continued From: New
Action Requested: APPROVE

NAPA VALLEY TRANSPORTATION AUTHORITY Board Agenda Letter

TO: Board of Directors
FROM: Karrie Sanderlin, Program Manager-Human Resources, Civil Rights,
and Board Secretary
REPORT BY: Karrie Sanderlin, Program Manager-Human Resources, Civil Rights
Compliance Officer, and Board Secretary
(707) 259-8633/ Email: ksanderlin@nctpa.net
SUBJECT: Annual Election of Chair and Vice Chair

RECOMMENDATION

That the NVTA Board approve the second one year term for Chair Keith Caldwell and Vice Chair Jack Gingles.

EXECUTIVE SUMMARY

The second term for Chair and Vice Chair would begin July of this year and be completed in June 2013. Under Board bylaws a nominating subcommittee for the next Chair and Vice Chair would be appointed in May 2013.

PROCEDURAL REQUIREMENTS

1. Staff reports
2. Public comments
3. Motion, Second, Discussion and Vote

FISCAL IMPACT

Is there a Fiscal Impact? No.

CEQA REQUIREMENTS

The proposed action is not a project as defined in Section 15378 of the CEQA Guidelines, which define a project as an action which has the potential for resulting in

either a direct physical change in the environment or a reasonably foreseeable indirect physical change. Accordingly, no additional CEQA review is required at this time.

BACKGROUND AND DISCUSSION

NVTA bylaws, which were adopted in November 2005, require an annual election of Chair and Vice Chair at the annual meeting. The annual meeting is held in July of each year. The Chair and Vice Chair hold office for one year or until their successor's have been appointed.

In June of 2000 a subcommittee of the NCTPA Board recommended, and the NCTPA Board adopted, a policy that allows a two-year term for the Chair and Vice Chair with an annual vote of approval by the NCTPA Board. To be consistent with the NCTPA Board Chair and Vice Chair, the recommendation is to approve a second year term for NVTA Chair Keith Caldwell and Vice Chair Jack Gingles.

SUPPORTING DOCUMENTS

None.



June 20, 2012
NVTA Agenda Item 6.1
Continued From: May 16, 2012
Action Requested: APPROVE

NAPA VALLEY TRANSPORTATION AUTHORITY Board Agenda Letter

TO: Board of Directors
FROM: Janice Killion, NCTPA Legal Counsel
REPORT BY: Karrie Sanderlin, Program Manager-Human Resources, Civil Rights Compliance Officer, and Board Secretary
(707) 259-8633 / Email: ksanderlin@nctpa.net
SUBJECT: Second Reading and Adoption of NVTA Ordinance 2012-01 Enacting the Napa Countywide Road Maintenance Act and Expenditure Plan, which, Authorizes, Pending Voter Approval, the Imposition, Distribution, and Management of a Retail Transaction and Use Tax under Section 180000 et seq. of the California Public Utilities Code

RECOMMENDATION

That the NVTA Board approve the second reading and adoption of NVTA Ordinance 2012-01, the Napa Countywide Road Maintenance Act and Expenditure Plan (Attachment 1).

EXECUTIVE SUMMARY

The Napa Valley Transportation Authority (NVTA) is proposing the adoption of an ordinance that would impose, pending voter approval, a one-half of one percent retail transactions and use tax to fund streets and road repair and maintenance projects identified in the Napa Countywide Road Maintenance Act and Expenditure Plan. At the May 16, 2012, meeting, the NVTA Board approved the first reading and intent to adopt the ordinance.

Upon adoption by the NVTA Board, the ordinance will not become effective until it has been placed on the ballot and approved by two-thirds of the electorate.

PROCEDURAL REQUIREMENTS

1. Staff reports
2. Public comments
3. Motion, Second, Discussion and Vote

FINANCIAL IMPACT

As required by Public Utilities Code Section 180203, the Authority will reimburse Napa County for the costs associated with conducting the special election to obtain voter approval if the measure is approved. The costs of the election will be determined by the Napa County Registrar of voters once all ballot measures have been determined.

CEQA REQUIREMENTS

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.

BACKGROUND AND DISCUSSION

The Napa Valley Transportation Authority (NVTA) is proposing the adoption of an ordinance that would impose, pending voter approval, a one-half of one percent retail transactions and use tax to fund transportation projects identified in the Napa Countywide Road Maintenance Act and Expenditure Plan. If approved, the sales tax will replace the current Measure A flood tax, which automatically expire in 2018, unless repealed earlier if the purpose for which the tax was enacted cease to exist. At the May 16, 2012 meeting, the NVTA Board approved the first reading and intent to adopt this ordinance.

Upon adoption by the NVTA Board, the ordinance will not become effective until it has been placed on the ballot and approved by two-thirds of the electorate.

SUPPORTING DOCUMENTS

Attachment: (1) NVTA Ordinance 2012-01 Napa Countywide Road Maintenance Act and Expenditure Plan

**NAPA VALLEY TRANSPORTATION AUTHORITY (NVTA)
ORDINANCE NO. 2012-01**

**NAPA COUNTYWIDE ROAD MAINTENANCE ACT
IMPOSING A TRANSACTION AND USE TAX
TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION**

The Napa Valley Transportation Authority (the "Authority") ordains as follows:

SECTION 1. TITLE: This Ordinance shall be known and may be cited as the Napa Countywide Road Maintenance Act, hereinafter referred to as the Ordinance. This Ordinance establishes a retail transactions and use tax for a twenty-five year period commencing July 1, 2018, or upon early termination of the Measure A Flood Protection tax provided however that should the Flood Protection tax be extended by a vote of the electorate then this measure will not take effect until the expiration of such extension.

SECTION 2. EXPENDITURE PLAN PURPOSES: This Ordinance provides for the implementation of the Napa Valley Transportation Authority Transportation Improvement Expenditure Plan (the "Expenditure Plan") which will provide funding resulting in countywide local street and road improvements. This funding program will ensure improved maintenance of currently under-funded local community streets and supporting infrastructure (e.g., sidewalks, gutters, curbs) within the public right-of-way. These improvements shall be funded by a one-half of one percent transactions and use tax established for a twenty-five year period commencing July 1, 2018, or upon expiration of the Measure A Flood Protection tax as expressed in Section 1 above. The revenues shall be deposited in a special fund, used solely for the identified improvements as provided herein, and made available to the agencies responsible for the improvements for all purposes necessary for the approval and implementation of the tasks. Notwithstanding any other provision of this Ordinance, identified improvements (the "projects" or "programs") that are eligible to receive revenues from the tax are described in the Expenditure Plan, which Expenditure Plan is hereby incorporated by reference as if fully set forth herein.

SECTION 3. EXPENDITURE PLAN SUMMARY: The revenues received by the Authority from this Ordinance, after deduction of required Board of Equalization costs for performing the functions specified in Section 180204(b) of the Public Utilities Code, reimbursing the County of Napa for its cost in conducting the election if the measure is approved per Section 180203(a) of the Public Utilities Code, administration (Section 12 A), and the costs of the annual financial and biennial performance audits (Section 11), shall be used to fund the improvements set forth herein. In the event the measure does not pass, the costs for conducting the election shall be borne by the Authority. A summary of the projects and programs that are eligible to receive this funding is provided in the following sections. All funding and revenues are expressed in 2011 dollars. The annual revenues shall be allocated as follows:

A. Local Streets and Roads Maintenance Program: Subject to Paragraph B, of the annual revenues available, ninety-nine percent (99%) shall be allocated on a fair and equitable basis (pursuant to the distribution formula set forth below) to each city, town, and the county (hereinafter referred to individually as Agency and collectively as Agencies) to provide revenue for such projects and to supplement, but not supplant, other revenues available for the Local Streets and Road Maintenance Program. The revenues allocated to each Agency under this Section 3(A) must be used for maintenance, reconstruction or rehabilitation of local streets, roads, and infrastructure within the public right-of-way. Total estimated funding = \$282.15 million (2011 dollars).

1) The revenue allocated to the Local Streets and Roads Maintenance Program shall be allocated to, and expended by, each Agency pursuant to the following distribution formula:

- a. To the City of American Canyon 7.7% of the annual revenues available.
- b. To the City of Calistoga 2.7% of the annual revenues available.
- c. To the City of Napa 40.35% of the annual revenues available.
- d. To the County of Napa 39.65% of the annual revenues available.
- e. To the City of St. Helena 5.9% of the annual revenues available.
- f. To the Town of Yountville 2.7% of the annual revenues available.

Net revenues, plus interest earned, shall be apportioned to the Agencies' transportation improvement account on a quarterly basis.

B. Once this measure becomes operative, in order to receive annual allocations under this measure, the Agencies (collectively) must demonstrate that at least six and sixty-seven one-hundredths percent (6.67%) of the value of the allocations each year under Section 3(A) has been committed to Class I Bike lane project(s) identified in the adopted Countywide Bicycle Plan, as that Plan may be amended from time to time, through funding not derived from this Ordinance. This obligation may be fulfilled by the NCTPA and NVT A in programming Congestion Mitigation and Air Quality Improvement (CMAQ) funding (or its successor), plus other local or formula specific funds, in an amount that equals 6.67% over the term of this ordinance. Funding for Class I Bike lane projects that are funded by philanthropy, state discretionary funding or federal discretionary funding shall not count toward the six and sixty-seven one-hundredths percent (6.67%). As used in this Section, discretionary funding means any funding that is not tied to a specific state or federal program or formula.

- C. **Administration:** Actual costs, not to exceed one percent (1%) of the annual revenue, may be used for administration of this Ordinance by the Authority. Total estimated funding = \$2.82 million (2011 dollars).

SECTION 4. IMPOSITION OF RETAIL TRANSACTIONS AND USE TAX: In addition to any other taxes authorized by law, there is hereby imposed in the incorporated and unincorporated territory of the County of Napa, in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, and Sections 7261 and 7262 of the Revenue and Taxation Code except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, and Division 19 of the Public Utilities Code commencing with Section 180000, which provisions are adopted by reference, a retail transactions and use tax at the rate of one-half of one percent (1/2%) for a twenty-five year period commencing July 1, 2018, or upon expiration of the Measure A Flood Protection tax, which tax shall be in addition to any existing or future authorized state or local transactions and use tax.

SECTION 5. CONTRACT WITH STATE: The Authority shall notify the State Board of Equalization at least 110 days prior to the operative date and shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax Ordinance, provided that if the Authority shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

SECTION 6. EXPENDITURE PLAN PROCEDURES:

- A. Each Agency shall biennially develop and submit to the Authority a five-year list of projects to be funded with revenues made available for the Local Streets and Roads Maintenance Program (Section 3(A)). Each Agency shall conduct a local public hearing and adopt a Resolution in support of the proposed list of projects prior to submitting the project list to the Authority pursuant to Section 7.
- B. In the allocation of all revenues made available under Section 3, the Authority shall make every effort to maximize state, federal, and local transportation funding to the Agencies. The Authority may amend the Expenditure Plan in accordance with Section 21 as needed to maximize the transportation funding available throughout the county. It is also the intent of the Authority to encourage the purchase of goods and services for the projects described in Section 3 from suppliers based in Napa County.
- C. The Agencies and the Authority shall fully consider the needs of non-motorized travelers, including pedestrians, bicyclists and persons with disabilities, in all planning, maintenance, construction, operations and project development activities and products. Projects funded in full or in part with Authority revenues shall not remove or reduce existing facilities for bicycling or pedestrians.

SECTION 7. PROJECT PROGRAMMING APPROVAL: Prior to the operative date of the tax, and biennially thereafter, the Authority shall approve a five-year list of projects eligible to be funded with the revenues made available under Section 3 herein, provided that the submittal meets all of the requirements of this Ordinance and funding is, or is estimated to be, available. Prior to Authority approval, the Independent Taxpayer Oversight Committee shall consider each Agency's biennial five-year list of projects and make a finding that such projects are consistent with the intent of the measure, and make a recommendation on which of the items on those project lists should be approved to the Authority.

SECTION 8. COOPERATIVE FUNDING AGREEMENTS: To maximize the effectiveness of the retail transactions and use tax revenues, the Authority and/or Agency(ies) may loan revenues actually received, allocated or granted to any public agency within the area of jurisdiction of the Authority provided that the percentage of revenues allocated as provided in Section 3 is maintained over the duration of the Ordinance. Any exchange or loan agreement must include detailed repayment provisions, including appropriate interest earnings based upon the current treasury rate of interest. All loans and/or exchanges must be approved by the Authority's Auditor and by the Authority by a majority vote, and shall be consistent with any and all rules approved by the Authority relating thereto.

SECTION 9. MAINTENANCE OF EFFORT: It is the intent of the State Legislature and the Authority that revenues provided from this Ordinance be used to supplement, not supplant, existing local general fund revenues being used for the transportation improvements described in the Expenditure Plan (see Attachment 1). Each Agency receiving revenues pursuant to Section 3 shall annually maintain, as a minimum, the "maintenance of effort" as defined in this Section 9. The maintenance of effort shall be maintained at the same level that local general fund revenues were expended on average for fiscal years 2007/08, 2008/09 and 2009/10 for Local Streets and Roads Maintenance and supporting infrastructure within the public right-of-way for pavement sealing, overlays, reconstruction, associated infrastructure, as required, excluding any local revenues expended for the purpose of storm damage repair as verified by an independent auditor. One-time allocations that have been expended for Local Streets and Roads Maintenance, but which may not be available on an ongoing basis shall not be considered when calculating an Agency's annual maintenance of effort. Prior to the operative date, Agencies shall determine and certify to the Authority the Agency's average maintenance of effort for the 2007/08, 2008/09 and 2009/10 fiscal years. Prior to the beginning of each fiscal year thereafter, Agencies shall certify to the Authority that the maintenance of effort requirement required by this Section will be met that fiscal year, copies of which shall be provided to the Authority Auditor. Any Agency that does not meet its local maintenance of effort requirement for a three year average period shall have its funding under Section 3 the following year reduced by the amount the Agency did not meet its required average maintenance of effort level for the three prior years. Any funds not allocated due to failure to meet the maintenance of effort requirement shall be reserved for the Agency until any and all maintenance of effort expenditures are fulfilled.

SECTION 10. PRIVATE SECTOR FUNDING: Revenues provided from this measure shall not be used to replace private developer funding that has been or will be committed for any project to help alleviate the direct traffic impacts of any new or redeveloped residential, commercial or industrial development in Napa County or its cities.

SECTION 11. INDEPENDENT TAXPAYER OVERSIGHT COMMITTEE:

A. **ITOC Goal and Functions:** Voter adoption of this transportation retail transactions and use tax Ordinance shall result in creation of the Independent Taxpayer Oversight Committee ("ITOC") upon the operative date of this tax. The ITOC shall remain in existence for so long as the tax herein exists. The ITOC shall review the fiscal and program performance of the retail transactions and use tax transportation program through a biennial performance audit to ensure that all transportation retail transactions and use tax revenues are spent by the Authority in accordance with all provisions of the voter-approved Expenditure Plan and Ordinance. The ITOC's secondary mission is to provide positive, constructive advice to the Authority on how to improve implementation over the twenty-five year course of the program; this role shall include consideration by the ITOC of the biennial project lists submitted by the Agencies under Section 6. Up to \$70,000 per year, with adjustments for inflation based on the Consumer Price Index, may be used for activities necessary to the ITOC as described in this Section 11, including financial and performance audits of the Authority and the Agencies receiving revenue from the Authority.

B. **Audit Requirement:** The ITOC shall oversee the independent financial audit of the Authority and the financial and performance audits of the Agencies, which shall be performed in accordance with generally accepted auditing standards and Government Auditing Standards issued by the Comptroller General of the United States and performance goals adopted by the Authority consistent with Public Utilities Code Section 180000 et seq. The audits shall include the basic financial statements of the Authority as defined by the Governmental Accounting Standard Board pronouncement No. 34 and the performance of all aspects of the program based on the specific performance goals adopted by the Authority. The ITOC audit shall not relieve the Authority from performing its auditing obligations as imposed by law.

1) **Role of Fiscal and Performance Audit and the ITOC:**

a. The ITOC shall, under the procurement rules of the Authority, jointly recommend with the active involvement of the Executive Director and the Authority Auditor, an independent California Certified Public Accountant to conduct an annual financial audit of the Authority pursuant to the provisions of this Ordinance, report findings based on the audit to the Authority, and to recommend any additional considerations which the ITOC believes may improve the financial operation while meeting all voter mandates.

- b. The ITOC shall, under the procurement rules of the Authority jointly recommend with the active involvement of the Executive Director and the Authority Auditor, retention of an independent California Certified Public Accountant to conduct a biennial performance audit of the Agencies, pursuant to the provisions of this Ordinance, report findings based on the audits to the Authority, and recommend any additional considerations which the ITOC believes may improve the integrity of program implementation while meeting all voter mandates.
- c. The ITOC shall review each Agency's annual independent financial audit, report relevant findings based on the audits to the Authority, and recommend any changes which the ITOC believes may improve the financial operations while meeting all voter mandates.
- d. The Authority shall hold a publicly noticed meeting annually, which may be a regular or special Authority Board meeting, with the direct participation of the ITOC, to consider the findings and recommendations of the audits. A report of the findings and recommendations of each audit by the ITOC shall be made readily available to the public in print and on the Authority's electronic website.
- e. The Authority shall publish a biennial report to the community to be published at the expense of tax revenues in all local Napa County newspapers of general circulation.

C. Membership and Selection Process

- 1) The Authority shall develop an open selection process, actively recruit, and appoint seven (7) Committee members who shall be residents of the County of Napa possessing the following credentials:
 - a. 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.
 - b. 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.
 - c. One member who is a Certified Public Accountant (CPA) and experienced in financial audits.
 - d. One member shall be a representative of a Napa region Chamber of Commerce.
 - e. One member from a bona fide taxpayers association.

- f. Two members from the public at-large.
- 2) The Chair and the Executive Director of NCTPA, the Chair of the Napa County Transportation and Planning Agency Technical Advisory Committee, and the County Auditor-Controller shall serve as non-voting ex-officio members of the ITOC.

D. Terms and Conditions for Committees

- 1) The voting Committee members shall serve a two, three, and four year term, determined by the drawing of lots. Thereafter, Committee members shall serve four-year terms.
- 2) The Authority shall develop by-laws for the operation of the ITOC. The ITOC members shall receive a stipend of \$250 per quarterly meeting and no other payment shall be made for any purpose. This stipend will increase by \$50 per quarterly meeting every five years. A position on the Committee shall become vacant as a result of a member failing to attend two consecutive meetings.
- 3) The voting Committee members cannot be current local elected officials in Napa County or a full time staff member of any city, town, or county government, a local transit operator, or state transportation agency.
- 4) Non-voting ex-officio Committee members shall serve only as long as they remain incumbents in their respective positions and shall be automatically replaced by their successors in those positions.
- 5) If and when vacancies on the ITOC occur on the part of voting Committee members, either due to expiration of term or a vacancy occurring during a term, the Authority shall appoint an appropriate replacement within 90 days of the vacancy to fill the remainder of the term pursuant to the provisions of Government Code Sections 54970, *et. seq* (the Maddy Act).

E. ITOC Operation Protocols

- 1) The ITOC shall be appointed within 180 days prior to the operative date of the retail transactions and use tax and continue as long as retail transactions and use tax revenues from the current voter authorization are available for expenditure.
- 2) The Authority Board and staff shall fully cooperate with and provide necessary financial and staff support to ensure the ITOC successfully carries out its duties and obligations.

F. Conflict of Interest

- 1) ITOC voting members shall have no legal action pending against the Authority and are prohibited from participating in any commercial activity directly or indirectly involving the Authority or Napa County Transportation and Planning Agency (NCTPA), such as being a consultant or vendor to the Authority or NCTPA during their tenure on the ITOC.
- 2) ITOC voting members shall not have direct and/or indirect commercial interest or employment with any public or private entity which receives transportation retail transactions and use tax revenues authorized by this Ordinance.

SECTION 12. ADMINISTRATIVE FUNCTIONS AND EXPENSES:

- A. Revenues may be expended by the Authority for the actual expense of salaries, wages, benefits, and those services, including contractual services, necessary to administer the Ordinance; however, in no case shall such administrative expenditures exceed one percent (1%) of the annual revenues provided by the Ordinance.
- B. Administrative functions include providing overall program direction and management necessary to implement Authority policy, formulating organizational goals and objectives, coordinating activities with other agencies and organizations, performing finance, accounting, purchasing, personnel, government and community relations, and legal matters.

SECTION 13. RECEIPT AND ALLOCATION OF TAX REVENUES: The Authority Auditor shall receive the tax revenue and shall allocate funds to the Agencies on a calendar quarter basis, together with any accrued interest, by the 20th day of the month following the end of the quarter.

SECTION 14. ESTABLISHMENT OF SEPARATE ACCOUNTING: Each Agency receiving the revenues identified in Section 3 shall have its revenues deposited in a separate interest bearing Transportation Improvement Fund. Interest earned on revenues allocated pursuant to this Ordinance shall be expended only for those purposes permitted by this Ordinance.

SECTION 15. IMPLEMENTING ORDINANCES: Upon approval of this Ordinance by the voters the Authority shall, in addition to the rules required to be provided pursuant to this Ordinance, adopt implementing ordinances, rules, and policies that are not inconsistent with the purpose and intent of this Ordinance and take such other actions as may be necessary and appropriate to carry out its responsibilities.

SECTION 16. EFFECTIVE AND OPERATIVE DATES: This Ordinance shall be effective on November 6, 2012, if two-thirds of the electors voting on the ballot proposition approving the Ordinance vote to approve the ballot proposition on November 6, 2012. The imposition of the tax authorized by this Ordinance shall be

operative on July 1, 2018, or upon termination of the Flood Protection tax, and after at least 110 days notice to the State Board of Equalization.

SECTION 17. PLACE OF SALE: For the purposes of this Ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

SECTION 18. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES: In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

- A. Wherever the State of California is named or referred to as the taxing agency, the name of this county shall be substituted therefor. However, the substitution shall not be made:
 - 1) The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;
 - 2) The result of that substitution would require action to be taken by or against this Authority or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.
 - 3) In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
 - a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the state under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;
 - b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.
 - 4) In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

- B. The word "County" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

SECTION 19. PERMIT NOT REQUIRED: If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this Ordinance.

SECTION 20. EXEMPTIONS AND EXCLUSIONS:

- A. There shall be excluded from the computation of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.
- B. There are exempted from the computation of the amount of the transactions tax the gross receipts from:
 - 1) Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
 - 2) Sales of property to be used outside the county which is shipped to a point outside the county, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the county shall be satisfied:
 - a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-county address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and
 - b. With respect to commercial vehicles, by registration to a place of business out-of-county and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
 - 3) The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance.

- 4) A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this Ordinance.
 - 5) For the purposes of subparagraphs (3) and (4) of this Section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
- C. There are exempted from the use tax imposed by this Ordinance, the storage, use or other consumption in this county of tangible personal property:
- 1) The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
 - 2) Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.
 - 3) If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance.
 - 4) If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this Ordinance.
 - 5) For the purposes of subparagraphs (3) and (4) of this Section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
 - 6) Except as provided in subparagraph (7), a retailer engaged in business in the county shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the county or participates within the county in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or

indirectly, at a place of business of the retailer in the county or through any representative, agent, canvasser, solicitor, subsidiary, or person in the county under the authority of the retailer.

- 7) "A retailer engaged in business in the County" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the county.

- D. Any person subject to use tax under this Ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

SECTION 21. AMENDMENTS: This Ordinance and Expenditure Plan may be amended to provide for the use of additional federal, state, and local revenues or to account for unexpected revenues by approval of a two-thirds vote of the members of the Authority; the two-thirds must include the City of Napa, the County of Napa, and at least three other jurisdictions. No amendment may, in the aggregate, reduce the percentage of tax revenue allocated to the Local Streets and Roads Maintenance Program as apportioned in Section 3. No amendment shall operate so as to affect the rate or duration of tax imposed by this Ordinance.

Amendments 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.

All amendments subsequent to the effective date of this Ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this Ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Ordinance.

SECTION 22. TEN-YEAR PROGRAM REVIEW: After the tax has been in effect for ten years after the operative date, the Authority shall conduct a comprehensive review of all revenues, projects and programs under the Expenditure Plan to evaluate the performance of the overall program over the previous ten-year period and to make revisions to the Expenditure Plan to improve its performance and allow for changed demographic conditions, transportation needs, revenues, and technology over the subsequent ten years. Revisions to the Ordinance and Expenditure Plan required as a result of the ten-year review shall be subject to the amendment process in Section 21.

However, the 99% local street and road allocation provided in Section 3 shall not be altered.

SECTION 23. DESIGNATION OF FACILITIES: Each project or program receiving in excess of \$250,000 funded in whole or in part by revenues from the Ordinance shall be clearly designated with project signage at the project site during its construction or implementation as being provided by revenues from the Ordinance.

SECTION 24. SEVERABILITY: If any section, part, clause, or phrase of this Ordinance is for any reason held invalid or unconstitutional, the remaining portions shall not be affected but shall remain in full force and effect.

SECTION 25. ANNUAL APPROPRIATIONS LIMIT: Article XIII (B) of the California Constitution requires the establishment of an annual appropriations limit for governmental entities. The maximum annual appropriations limit for the Authority is hereby established as \$40 million. The appropriations limit shall be subject to adjustment as provided by law. All expenditures of the retail transactions and use tax revenues imposed by Section 4 are subject to the appropriations limit of the Authority.

SECTION 26. ENJOINING COLLECTION FORBIDDEN: No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the state or the Authority, or against any officer of the state or the Authority, to prevent or enjoin the collection under this Ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

SECTION 27. DEFINITIONS:

- A. *Agency* means those cities, town, and county that lie within the geographic boundaries of the County of Napa.
- B. *Authority* means the Napa Valley Transportation Authority created by the Napa County Board of Supervisors with the concurrence of a majority of cities having a majority of the incorporated population of the county.
- C. *Expenditure Plan* means the expenditure plan required by Section 180206 of the Public Utilities Code to be adopted prior to the call of an election on this Ordinance. The expenditure plan includes the allocation of revenues for each authorized purpose. To the extent the summarized provisions of the expenditures contemplated by this Ordinance cannot be reconciled with the Expenditure Plan set forth in Attachment 1, the provisions of Attachment 1 shall prevail.
- D. *Effective Date* means the date the measure was passed by the electorate.
- E. *Highways* means all purposes necessary and convenient to the design, right-of-way acquisition, and construction of highway facilities, including all state highway routes and any other facilities so designated in the Expenditure Plan.

- F. *Infrastructure* means all components within the right-of-way necessary to support the roadway which includes road pavement, sub-grade, curb, gutter, sidewalks, curb ramps, surface and subsurface drainage, replacement traffic control devices, replacement roadway lighting, striping, pavement marking, intelligent transportation systems, and signage.
- G. *Maintenance* means repair, reconstruction or rehabilitation, and/or replacement of streets, roadways, and other infrastructure within the public right-of-way.
- H. *Operative Date* means the date the tax begins to collect revenue for this measure.
- I. *Project* is a single effort with a beginning and an end that would cause the construction or maintenance or reconstruction of some tangible portion of a transportation asset owned or operated by public agency that has independent utility. A *project* is not repeated on an annual basis, it does not appear without a detailed description as to cost and location in a local agency budget, and it must appear in a capital budget.
- J. *Reconstruction or Rehabilitation* includes any overlay, including the placement or replacement of base materials and any sub-grade work or widening of the roadway, if the widening is necessary to bring the roadway width to the desirable minimum width consistent with the geometric design criteria of the state for 3R (reconstruction, resurfacing, and rehabilitation). This does not include widening for the purpose of increasing the traffic capacity of a street or highway. This does include additions, changes or reconstruction of Infrastructure directly associated with the function of a street or roadway. It also includes additions necessary to incorporate and/or maintain bicycle facilities called for in the Napa County Transportation and Planning Agency's Countywide Bicycle Plan or adopted bicycle plans of the Agencies and any improvements or alterations necessary to the roadway and or pedestrian or bicycle travel ways to improve overall circulation and to meet American's with Disabilities Act requirements.
- K. *Regional Transportation Improvement Program Submission* means any program of projects sent or otherwise caused to be delivered to the Regional Transportation Planning Agency for Napa County by the entity designated by the Regional Transportation Planning Agency with the submission of that program for the local agencies for consideration by the Regional Transportation Planning Agency for inclusion in the Regional Transportation Improvement Program or its related documents.
- L. *Local Streets and Roads* means the pavement facilities and supporting Infrastructure within the street, road, or highway right-of-way.
- M. *Storm damage repair* means repair or reconstruction of local streets and highways and related drainage improvements that have been damaged due to

storms and flooding, in those jurisdictions that have been declared disaster areas by the President of the United States and/or by the Governor of California.

SECTION 28. PUBLICATION OF ORDINANCE: A summary of this Ordinance shall be published at least five days before its passage in the local newspapers of general circulation published in the County of Napa, and at least once before the expiration of 15 days after its passage together with the names of the Directors voting for and against the same.

The foregoing Ordinance was introduced and read at a regular meeting of the Napa Valley Transportation Authority, held on May 16, 2012, and passed at a regular meeting of the Napa Valley Transportation Authority held on June 20, 2012, by the following vote:

KEITH CALDWELL, NVTA Chair

Ayes: _____

Noes: _____

Absent: _____

ATTEST:

Karalyn E. Sanderlin, NVTA Board Secretary

APPROVED:

Janice D. Killion, NVTA Legal Counsel

Attachment (1) Napa Countywide Road Maintenance Act Expenditure Plan

NAPA COUNTWIDE ROAD MAINTENANCE ACT EXPENDITURE PLAN

The net revenues received by the Authority from the proposed transactions and use tax shall be used to fund the projects described below after paying for the costs of this election, the costs of the Independent Taxpayer Oversight Committee, and administering the program. Only one percent (1%) of the net revenues may be expended on the costs of administration. The revenues received by the Authority will be less than the gross revenues actually collected because the fees the State Board of Equalization charges to collect the sales tax will be deducted before the revenues are transferred to the Authority. All funding and revenues are expressed in 2011 dollars over the twenty-five year life of the program.

The revenue allocated to each Agency under this Expenditure Plan may be used for any direct costs of design, materials testing, all project required environmental reviews, construction management, inspection, and construction of the projects.

Local Streets and Roads Maintenance Program

Description:

Of the annual revenues available, ninety-nine percent (99%) shall be allocated to the Local Streets and Roads Maintenance Program. Under the Ordinance, the funds for the Local Streets and Roads Maintenance Program must be used for maintenance, reconstruction or rehabilitation of local streets, roads, and infrastructure within the public right-of-way as defined.

The estimated funding for the Local Streets and Maintenance Program is (millions of dollars):

Project	Percentage Distribution	Transaction and Use Tax
American Canyon	7.7%	\$21.945
Calistoga	2.7%	\$7.695
City of Napa	40.35%	\$114.997
Napa County	39.65%	\$113.003
St. Helena	5.9%	\$16.815
Yountville	2.7%	\$7.695
Total	99%	282.15

Amendments

This Ordinance and Expenditure Plan may be amended to provide for the use of additional federal, state, and local revenues or to account for unexpected revenues by

approval of a two-thirds vote of the members of the Authority; the two-thirds must include the City of Napa, the County of Napa, and at least three other jurisdictions. No amendment shall operate so as to affect the rate of tax imposed by this Ordinance.

Amendments 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.



June 20, 2012
NVTA Agenda Item 6.2
Continued From: New
Action Requested: **APPROVE**

NAPA VALLEY TRANSPORTATION AUTHORITY Board Agenda Letter

TO: Board of Directors
FROM: Janice Killion, NCTPA Legal Counsel
REPORT BY: Karrie Sanderlin, Program Manager-Human Resources, Civil Rights Compliance Officer, and Board Secretary
(707) 259-8633 / Email: ksanderlin@nctpa.net
SUBJECT: Resolution No. 12-02 Requesting that the Napa County Board of Supervisors Place Napa Countywide Road Maintenance Act and Expenditure Plan (Authority Ordinance No. 2012-01) on the November 2012 Ballot

RECOMMENDATION

That the NVTA Board adopt Resolution No. 12-02 requesting that the Napa County Board of Supervisors place NVTA Ordinance 2012-01, the Napa Countywide Road Maintenance Act and Expenditure Plan, on the November 6, 2012, ballot for consideration by the electorate pursuant to Public Utilities Code Sections 180201 and 180203.

COMMITTEE RECOMMENDATION

None.

EXECUTIVE SUMMARY

With the approval of the expenditure plan by the Cities, Town and County, and the adoption of the transportation sales tax ordinance by the Authority, the remaining step to place the Countywide Road Maintenance Act on the ballot is accomplished by approving a resolution requesting the Napa County Board of Supervisors to call a special election and consolidate the special election with the general presidential election November 6, 2012.

PROCEDURAL REQUIREMENTS

1. Staff reports
2. Public comments
3. Motion, Second, Discussion and Vote

FINANCIAL IMPACT

As required by Public Utilities Code Section 180203, the Authority will reimburse Napa County for the costs associated with conducting the special election to obtain voter approval if the measure is approved. The costs of the election will be determined by the Napa County Registrar of voters once all ballot measures have been determined.

CEQA REQUIREMENTS

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

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.

BACKGROUND AND DISCUSSION

On April 4, 2012, the NVTA Board tentatively approved a Countywide Road Maintenance Act and Expenditure Plan for Road Repair as required by Public Utilities Code section 180206. Subsequent to April 4, 2012, NCTPA referred the Countywide Road Maintenance Act Expenditure Plan for Road Repair to the County, as well as, the Town of Yountville and the cities of American Canyon, Napa, St. Helena, and Calistoga for approval. Approval of the Countywide Road Maintenance Act Expenditure Plan for Road Repair 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. Once the County and all municipalities adopted resolutions approving the Expenditure Plan, the NVTA Board formally adopted the Countywide Road Maintenance Act Expenditure Plan for Road Repair on May 16, 2012. At that meeting, the NVTA Board held a public hearing and first reading of Ordinance 2012-01.

Today, the NVTA Board adopted Ordinance 2012-01, which, if approved by 2/3rds of the voters, will, commencing in 2018 or earlier termination of the current countywide flood control tax, continue in existence the 1/2% portion of the countywide sales tax. Upon expiration of the flood tax, Ordinance 2012-01 will allow for the tax to be used for road repair and maintenance purposes (the current flood control tax measure commonly referred to as "Measure A" is due to automatically expire in 2018, but may be repealed earlier if the purposes for which the tax was approved no longer exist).

In order to place the ordinance before the voters, the NVTA Board must adopt a resolution requesting that the Napa County Board of Supervisors call a special election and consolidate that special election with the November 6, 2012, presidential statewide general election.

Staff recommends that the Ballot Question 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.)"

Adoption of Resolution No. 12-02 (Attachment 1) is necessary to seek placement of this measure on the November 6, 2012 ballot.

SUPPORTING DOCUMENTS

Attachment: (1) NVTA Resolution No. 12-02

RESOLUTION No. 12-02

**A RESOLUTION OF THE
BOARD OF DIRECTORS OF THE
NAPA VALLEY TRANSPORTATION AUTHORITY (NVTA)
REQUESTING THAT THE BOARD OF SUPERVISORS CALL A
SPECIAL ELECTION ON NOVEMBER 6, 2012 FOR THE PURPOSE OF OBTAINING
VOTER APPROVAL OF THE
NAPA COUNTYWIDE ROAD MAINTENANCE ACT AND EXPENDITURE PLAN
(AUTHORITY ORDINANCE NO. 2012-01)**

WHEREAS, the Napa Valley Transportation Authority ("Authority"), a local transportation authority operating pursuant to the provisions of Division 19 of the California Public Utilities Code, has adopted Authority Ordinance No. 2012-01 and the Authority Transportation Improvement Expenditure Plan ("the Expenditure Plan"); and

WHEREAS, Ordinance No. 2012-01 would impose a one-half of one percent sales tax commencing July 1, 2018, or upon the earlier termination of the Measure A Flood Tax, to provide supplemental funding for road maintenance as detailed in the Expenditure Plan; and

WHEREAS, Ordinance No. 2012-01 and the Expenditure Plan require voter approval to be operative, and a special election must be called by the Board of Supervisors upon receipt of a request from the Authority to obtain such voter approval under the provisions of Public Utilities Code Sections 180201 and 180203; and

WHEREAS, if the voters approve the Ordinance and Expenditure Plan, the Authority is required to reimburse the county for its cost in conducting the special election if the measure is approved, pursuant to Public Utilities Code Section 180203; and

WHEREAS, the Authority has found the project exempt in accordance with the California Environmental Quality Act.

NOW, THEREFORE, BE IT RESOLVED by the Napa Valley Transportation Authority Board of Directors as follows:

1. The Authority hereby requests that the Napa County Board of Supervisors call a special election for November 6, 2012, for the purpose of obtaining voter approval of Authority Ordinance No. 2012-01 and the related Expenditure Plan.

2. The Authority further requests pursuant to part 3 (commencing with Section 10400) of Division 10 of the Elections Code, that the Board of Supervisors of Napa County order consolidation of this special election with such other elections as may be held in conjunction with the statewide general election that will be conducted on November 6, 2012, in the same territory or in territory that is in part the same.
3. The Registrar of Voters is requested to take all steps to call and hold the election in accordance with law and the specifications herein.
4. The Registrar of Voters is requested to cause the exact wording of the Abbreviation of the Measure the full text of which is contained in Exhibit A to appear on the ballot in the following form:

 "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.)"
5. The Registrar of Voters is requested to print the full text of the Measure contained in Exhibit A in the voter information pamphlet to be distributed to voters pursuant to Chapter 4 of Division 13 (commencing with section 13300) of the California Elections Code. The full text of the measure is all that text in Appendix A which is attached hereto and by this reference incorporated herein as set forth in full between the indicators:

 "BEGINNING OF FULL TEXT OF MEASURE----->>>>" and

 "<<<<-----END OF FULL TEXT OF MEASURE."
6. As required by Public Utilities Code Section 180203, the Authority agrees to reimburse Napa County for the costs associated with conducting the special election to obtain voter approval if the measure is approved.
7. The Clerk of the Authority is directed to file this resolution as well as Ordinance No. 2012-01, with the Board of Supervisors, and a copy with the county elections official not later than the close of business on the date Ordinance No. 2012-01 is adopted by the Authority.

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EXHIBIT "A"

**NAPA VALLEY TRANSPORTATION AUTHORITY (NVTA)
ORDINANCE NO. 2012-01**

**NAPA COUNTYWIDE ROAD MAINTENANCE ACT
IMPOSING A TRANSACTION AND USE TAX
TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION**

The Napa Valley Transportation Authority (the "Authority") ordains as follows:

SECTION 1. TITLE: This Ordinance shall be known and may be cited as the Napa Countywide Road Maintenance Act, hereinafter referred to as the Ordinance. This Ordinance establishes a retail transactions and use tax for a twenty-five year period commencing July 1, 2018, or upon early termination of the Measure A Flood Protection tax provided however that should the Flood Protection tax be extended by a vote of the electorate then this measure will not take effect until the expiration of such extension.

SECTION 2. EXPENDITURE PLAN PURPOSES: This Ordinance provides for the implementation of the Napa Valley Transportation Authority Transportation Improvement Expenditure Plan (the "Expenditure Plan") which will provide funding resulting in countywide local street and road improvements. This funding program will ensure improved maintenance of currently under-funded local community streets and supporting infrastructure (e.g., sidewalks, gutters, curbs) within the public right-of-way. These improvements shall be funded by a one-half of one percent transactions and use tax established for a twenty-five year period commencing July 1, 2018, or upon expiration of the Measure A Flood Protection tax as expressed in Section 1 above. The revenues shall be deposited in a special fund, used solely for the identified improvements as provided herein, and made available to the agencies responsible for the improvements for all purposes necessary for the approval and implementation of the tasks. Notwithstanding any other provision of this Ordinance, identified improvements (the "projects" or "programs") that are eligible to receive revenues from the tax are described in the Expenditure Plan, which Expenditure Plan is hereby incorporated by reference as if fully set forth herein.

SECTION 3. EXPENDITURE PLAN SUMMARY: The revenues received by the Authority from this Ordinance, after deduction of required Board of Equalization costs for performing the functions specified in Section 180204(b) of the Public Utilities Code, reimbursing the County of Napa for its cost in conducting the election if the measure is approved per Section 180203(a) of the Public Utilities Code, administration (Section 12 A), and the costs of the annual financial and biennial performance audits (Section 11), shall be used to fund the improvements set forth herein. In the event the measure does not pass, the costs for conducting the election shall be borne by the Authority. A summary of the projects and programs that are eligible to receive this funding is provided in the following sections. All funding and revenues are expressed in 2011 dollars. The annual revenues shall be allocated as follows:

- A. Local Streets and Roads Maintenance Program:** Subject to Paragraph B, of the annual revenues available, ninety-nine percent (99%) shall be allocated on a

fair and equitable basis (pursuant to the distribution formula set forth below) to each city, town, and the county (hereinafter referred to individually as Agency and collectively as Agencies) to provide revenue for such projects and to supplement, but not supplant, other revenues available for the Local Streets and Road Maintenance Program. The revenues allocated to each Agency under this Section 3(A) must be used for maintenance, reconstruction or rehabilitation of local streets, roads, and infrastructure within the public right-of-way. Total estimated funding = \$282.15 million (2011 dollars).

- 1) The revenue allocated to the Local Streets and Roads Maintenance Program shall be allocated to, and expended by, each Agency pursuant to the following distribution formula:
 - a. To the City of American Canyon 7.7% of the annual revenues available.
 - b. To the City of Calistoga 2.7% of the annual revenues available.
 - c. To the City of Napa 40.35% of the annual revenues available.
 - d. To the County of Napa 39.65% of the annual revenues available.
 - e. To the City of St. Helena 5.9% of the annual revenues available.
 - f. To the Town of Yountville 2.7% of the annual revenues available.

Net revenues, plus interest earned, shall be apportioned to the Agencies' transportation improvement account on a quarterly basis.

- B. Once this measure becomes operative, in order to receive annual allocations under this measure, the Agencies (collectively) must demonstrate that at least six and sixty-seven one-hundredths percent (6.67%) of the value of the allocations each year under Section 3(A) has been committed to Class I Bike lane project(s) identified in the adopted Countywide Bicycle Plan, as that Plan may be amended from time to time, through funding not derived from this Ordinance. This obligation may be fulfilled by the NCTPA and NVTA in programming Congestion Mitigation and Air Quality Improvement (CMAQ) funding (or its successor), plus other local or formula specific funds, in an amount that equals 6.67% over the term of this ordinance. Funding for Class I Bike lane projects that are funded by philanthropy, state discretionary funding or federal discretionary funding shall not count toward the six and sixty-seven one-hundredths percent (6.67%). As used in this Section, discretionary funding means any funding that is not tied to a specific state or federal program or formula.
- C. **Administration:** Actual costs, not to exceed one percent (1%) of the annual revenue, may be used for administration of this Ordinance by the Authority. Total estimated funding = \$2.82 million (2011 dollars).

SECTION 4. IMPOSITION OF RETAIL TRANSACTIONS AND USE TAX: In addition to any other taxes authorized by law, there is hereby imposed in the incorporated and unincorporated territory of the County of Napa, in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, and Sections 7261 and 7262 of the Revenue and Taxation Code except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, and Division 19 of the Public Utilities Code commencing with Section 180000, which provisions are adopted by reference, a retail transactions and use tax at the rate of one-half of one percent (1/2%) for a twenty-five year period commencing July 1, 2018, or upon expiration of the Measure A Flood Protection tax, which tax shall be in addition to any existing or future authorized state or local transactions and use tax.

SECTION 5. CONTRACT WITH STATE: The Authority shall notify the State Board of Equalization at least 110 days prior to the operative date and shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax Ordinance, provided that if the Authority shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

SECTION 6. EXPENDITURE PLAN PROCEDURES:

- A. Each Agency shall biennially develop and submit to the Authority a five-year list of projects to be funded with revenues made available for the Local Streets and Roads Maintenance Program (Section 3(A)). Each Agency shall conduct a local public hearing and adopt a Resolution in support of the proposed list of projects prior to submitting the project list to the Authority pursuant to Section 7.
- B. In the allocation of all revenues made available under Section 3, the Authority shall make every effort to maximize state, federal, and local transportation funding to the Agencies. The Authority may amend the Expenditure Plan in accordance with Section 21 as needed to maximize the transportation funding available throughout the county. It is also the intent of the Authority to encourage the purchase of goods and services for the projects described in Section 3 from suppliers based in Napa County.
- C. The Agencies and the Authority shall fully consider the needs of non-motorized travelers, including pedestrians, bicyclists and persons with disabilities, in all planning, maintenance, construction, operations and project development activities and products. Projects funded in full or in part with Authority revenues shall not remove or reduce existing facilities for bicycling or pedestrians.

SECTION 7. PROJECT PROGRAMMING APPROVAL: Prior to the operative date of the tax, and biennially thereafter, the Authority shall approve a five-year list of projects eligible to be funded with the revenues made available under Section 3 herein, provided that the submittal meets all of the requirements of this Ordinance and funding is, or is

estimated to be, available. Prior to Authority approval, the Independent Taxpayer Oversight Committee shall consider each Agency's biennial five-year list of projects and make a finding that such projects are consistent with the intent of the measure, and make a recommendation on which of the items on those project lists should be approved to the Authority.

SECTION 8. COOPERATIVE FUNDING AGREEMENTS: To maximize the effectiveness of the retail transactions and use tax revenues, the Authority and/or Agency(ies) may loan revenues actually received, allocated or granted to any public agency within the area of jurisdiction of the Authority provided that the percentage of revenues allocated as provided in Section 3 is maintained over the duration of the Ordinance. Any exchange or loan agreement must include detailed repayment provisions, including appropriate interest earnings based upon the current treasury rate of interest. All loans and/or exchanges must be approved by the Authority's Auditor and by the Authority by a majority vote, and shall be consistent with any and all rules approved by the Authority relating thereto.

SECTION 9. MAINTENANCE OF EFFORT: It is the intent of the State Legislature and the Authority that revenues provided from this Ordinance be used to supplement, not supplant, existing local general fund revenues being used for the transportation improvements described in the Expenditure Plan (see Attachment 1). Each Agency receiving revenues pursuant to Section 3 shall annually maintain, as a minimum, the "maintenance of effort" as defined in this Section 9. The maintenance of effort shall be maintained at the same level that local general fund revenues were expended on average for fiscal years 2007/08, 2008/09 and 2009/10 for Local Streets and Roads Maintenance and supporting infrastructure within the public right-of-way for pavement sealing, overlays, reconstruction, associated infrastructure, as required, excluding any local revenues expended for the purpose of storm damage repair as verified by an independent auditor. One-time allocations that have been expended for Local Streets and Roads Maintenance, but which may not be available on an ongoing basis shall not be considered when calculating an Agency's annual maintenance of effort. Prior to the operative date, Agencies shall determine and certify to the Authority the Agency's average maintenance of effort for the 2007/08, 2008/09 and 2009/10 fiscal years. Prior to the beginning of each fiscal year thereafter, Agencies shall certify to the Authority that the maintenance of effort requirement required by this Section will be met that fiscal year, copies of which shall be provided to the Authority Auditor. Any Agency that does not meet its local maintenance of effort requirement for a three year average period shall have its funding under Section 3 the following year reduced by the amount the Agency did not meet its required average maintenance of effort level for the three prior years. Any funds not allocated due to failure to meet the maintenance of effort requirement shall be reserved for the Agency until any and all maintenance of effort expenditures are fulfilled.

SECTION 10. PRIVATE SECTOR FUNDING: Revenues provided from this measure shall not be used to replace private developer funding that has been or will be committed for any project to help alleviate the direct traffic impacts of any new or redeveloped residential, commercial or industrial development in Napa County or its cities.

SECTION 11. INDEPENDENT TAXPAYER OVERSIGHT COMMITTEE:

- A. ITOC Goal and Functions:** Voter adoption of this transportation retail transactions and use tax Ordinance shall result in creation of the Independent Taxpayer Oversight Committee (“ITOC”) upon the operative date of this tax. The ITOC shall remain in existence for so long as the tax herein exists. The ITOC shall review the fiscal and program performance of the retail transactions and use tax transportation program through a biennial performance audit to ensure that all transportation retail transactions and use tax revenues are spent by the Authority in accordance with all provisions of the voter-approved Expenditure Plan and Ordinance. The ITOC’s secondary mission is to provide positive, constructive advice to the Authority on how to improve implementation over the twenty-five year course of the program; this role shall include consideration by the ITOC of the biennial project lists submitted by the Agencies under Section 6. Up to \$70,000 per year, with adjustments for inflation based on the Consumer Price Index, may be used for activities necessary to the ITOC as described in this Section 11, including financial and performance audits of the Authority and the Agencies receiving revenue from the Authority.
- B. Audit Requirement:** The ITOC shall oversee the independent financial audit of the Authority and the financial and performance audits of the Agencies, which shall be performed in accordance with generally accepted auditing standards and Government Auditing Standards issued by the Comptroller General of the United States and performance goals adopted by the Authority consistent with Public Utilities Code Section 180000 et seq. The audits shall include the basic financial statements of the Authority as defined by the Governmental Accounting Standard Board pronouncement No. 34 and the performance of all aspects of the program based on the specific performance goals adopted by the Authority. The ITOC audit shall not relieve the Authority from performing its auditing obligations as imposed by law.
- 1) Role of Fiscal and Performance Audit and the ITOC:
- a. The ITOC shall, under the procurement rules of the Authority, jointly recommend with the active involvement of the Executive Director and the Authority Auditor, an independent California Certified Public Accountant to conduct an annual financial audit of the Authority pursuant to the provisions of this Ordinance, report findings based on the audit to the Authority, and to recommend any additional considerations which the ITOC believes may improve the financial operation while meeting all voter mandates.
 - b. The ITOC shall, under the procurement rules of the Authority jointly recommend with the active involvement of the Executive Director and the Authority Auditor, retention of an independent California Certified Public Accountant to conduct a biennial performance audit of the Agencies, pursuant to the provisions of this Ordinance, report findings based on the

audits to the Authority, and recommend any additional considerations which the ITOC believes may improve the integrity of program implementation while meeting all voter mandates.

- c. The ITOC shall review each Agency's annual independent financial audit, report relevant findings based on the audits to the Authority, and recommend any changes which the ITOC believes may improve the financial operations while meeting all voter mandates.
- d. The Authority shall hold a publicly noticed meeting annually, which may be a regular or special Authority Board meeting, with the direct participation of the ITOC, to consider the findings and recommendations of the audits. A report of the findings and recommendations of each audit by the ITOC shall be made readily available to the public in print and on the Authority's electronic website.
- e. The Authority shall publish a biennial report to the community to be published at the expense of tax revenues in all local Napa County newspapers of general circulation.

C. Membership and Selection Process

- 1) The Authority shall develop an open selection process, actively recruit, and appoint seven (7) Committee members who shall be residents of the County of Napa possessing the following credentials:
 - a. 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.
 - b. 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.
 - c. One member who is a Certified Public Accountant (CPA) and experienced in financial audits.
 - d. One member shall be a representative of a Napa region Chamber of Commerce.
 - e. One member from a bona fide taxpayers association.
 - f. Two members from the public at-large.
- 2) The Chair and the Executive Director of NCTPA, the Chair of the Napa County Transportation and Planning Agency Technical Advisory Committee,

and the County Auditor-Controller shall serve as non-voting ex-officio members of the ITOC.

D. Terms and Conditions for Committees

- 1) The voting Committee members shall serve a two, three, and four year term, determined by the drawing of lots. Thereafter, Committee members shall serve four-year terms.
- 2) The Authority shall develop by-laws for the operation of the ITOC. The ITOC members shall receive a stipend of \$250 per quarterly meeting and no other payment shall be made for any purpose. This stipend will increase by \$50 per quarterly meeting every five years. A position on the Committee shall become vacant as a result of a member failing to attend two consecutive meetings.
- 3) The voting Committee members cannot be current local elected officials in Napa County or a full time staff member of any city, town, or county government, a local transit operator, or state transportation agency.
- 4) Non-voting ex-officio Committee members shall serve only as long as they remain incumbents in their respective positions and shall be automatically replaced by their successors in those positions.
- 5) If and when vacancies on the ITOC occur on the part of voting Committee members, either due to expiration of term or a vacancy occurring during a term, the Authority shall appoint an appropriate replacement within 90 days of the vacancy to fill the remainder of the term pursuant to the provisions of Government Code Sections 54970, *et. seq* (the Maddy Act).

E. ITOC Operation Protocols

- 1) The ITOC shall be appointed within 180 days prior to the operative date of the retail transactions and use tax and continue as long as retail transactions and use tax revenues from the current voter authorization are available for expenditure.
- 2) The Authority Board and staff shall fully cooperate with and provide necessary financial and staff support to ensure the ITOC successfully carries out its duties and obligations.

F. Conflict of Interest

- 1) ITOC voting members shall have no legal action pending against the Authority and are prohibited from participating in any commercial activity directly or indirectly involving the Authority or Napa County Transportation and Planning Agency (NCTPA), such as being a consultant or vendor to the Authority or NCTPA during their tenure on the ITOC.

- 2) ITOC voting members shall not have direct and/or indirect commercial interest or employment with any public or private entity which receives transportation retail transactions and use tax revenues authorized by this Ordinance.

SECTION 12. ADMINISTRATIVE FUNCTIONS AND EXPENSES:

- A. Revenues may be expended by the Authority for the actual expense of salaries, wages, benefits, and those services, including contractual services, necessary to administer the Ordinance; however, in no case shall such administrative expenditures exceed one percent (1%) of the annual revenues provided by the Ordinance.
- B. Administrative functions include providing overall program direction and management necessary to implement Authority policy, formulating organizational goals and objectives, coordinating activities with other agencies and organizations, performing finance, accounting, purchasing, personnel, government and community relations, and legal matters.

SECTION 13. RECEIPT AND ALLOCATION OF TAX REVENUES: The Authority Auditor shall receive the tax revenue and shall allocate funds to the Agencies on a calendar quarter basis, together with any accrued interest, by the 20th day of the month following the end of the quarter.

SECTION 14. ESTABLISHMENT OF SEPARATE ACCOUNTING: Each Agency receiving the revenues identified in Section 3 shall have its revenues deposited in a separate interest bearing Transportation Improvement Fund. Interest earned on revenues allocated pursuant to this Ordinance shall be expended only for those purposes permitted by this Ordinance.

SECTION 15. IMPLEMENTING ORDINANCES: Upon approval of this Ordinance by the voters the Authority shall, in addition to the rules required to be provided pursuant to this Ordinance, adopt implementing ordinances, rules, and policies that are not inconsistent with the purpose and intent of this Ordinance and take such other actions as may be necessary and appropriate to carry out its responsibilities.

SECTION 16. EFFECTIVE AND OPERATIVE DATES: This Ordinance shall be effective on November 6, 2012, if two-thirds of the electors voting on the ballot proposition approving the Ordinance vote to approve the ballot proposition on November 6, 2012. The imposition of the tax authorized by this Ordinance shall be operative on July 1, 2018, or upon termination of the Flood Protection tax, and after at least 110 days notice to the State Board of Equalization.

SECTION 17. PLACE OF SALE: For the purposes of this Ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from

such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

SECTION 18. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES: In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

- A. Wherever the State of California is named or referred to as the taxing agency, the name of this county shall be substituted therefor. However, the substitution shall not be made:
 - 1) The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;
 - 2) The result of that substitution would require action to be taken by or against this Authority or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.
 - 3) In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
 - a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the state under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;
 - b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.
 - 4) In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.
- B. The word "County" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

SECTION 19. PERMIT NOT REQUIRED: If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this Ordinance.

SECTION 20. EXEMPTIONS AND EXCLUSIONS:

- A. There shall be excluded from the computation of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.
- B. There are exempted from the computation of the amount of the transactions tax the gross receipts from:
 - 1) Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
 - 2) Sales of property to be used outside the county which is shipped to a point outside the county, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the county shall be satisfied:
 - a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-county address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and
 - b. With respect to commercial vehicles, by registration to a place of business out-of-county and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
 - 3) The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance.
 - 4) A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this Ordinance.
 - 5) For the purposes of subparagraphs (3) and (4) of this Section, the sale or lease of tangible personal property shall be deemed not to be obligated

pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

- C. There are exempted from the use tax imposed by this Ordinance, the storage, use or other consumption in this county of tangible personal property:
- 1) The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
 - 2) Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.
 - 3) If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance.
 - 4) If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this Ordinance.
 - 5) For the purposes of subparagraphs (3) and (4) of this Section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
 - 6) Except as provided in subparagraph (7), a retailer engaged in business in the county shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the county or participates within the county in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the county or through any representative, agent, canvasser, solicitor, subsidiary, or person in the county under the authority of the retailer.
 - 7) "A retailer engaged in business in the County" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft

licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the county.

- D. Any person subject to use tax under this Ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

SECTION 21. AMENDMENTS: This Ordinance and Expenditure Plan may be amended to provide for the use of additional federal, state, and local revenues or to account for unexpected revenues by approval of a two-thirds vote of the members of the Authority; the two-thirds must include the City of Napa, the County of Napa, and at least three other jurisdictions. No amendment may, in the aggregate, reduce the percentage of tax revenue allocated to the Local Streets and Roads Maintenance Program as apportioned in Section 3. No amendment shall operate so as to affect the rate or duration of tax imposed by this Ordinance.

Amendments 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.

All amendments subsequent to the effective date of this Ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this Ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Ordinance.

SECTION 22. TEN-YEAR PROGRAM REVIEW: After the tax has been in effect for ten years after the operative date, the Authority shall conduct a comprehensive review of all revenues, projects and programs under the Expenditure Plan to evaluate the performance of the overall program over the previous ten-year period and to make revisions to the Expenditure Plan to improve its performance and allow for changed demographic conditions, transportation needs, revenues, and technology over the subsequent ten years. Revisions to the Ordinance and Expenditure Plan required as a result of the ten-year review shall be subject to the amendment process in Section 21. However, the 99% local street and road allocation provided in Section 3 shall not be altered.

SECTION 23. DESIGNATION OF FACILITIES: Each project or program receiving in excess of \$250,000 funded in whole or in part by revenues from the Ordinance shall be clearly designated with project signage at the project site during its construction or implementation as being provided by revenues from the Ordinance.

SECTION 24. SEVERABILITY: If any section, part, clause, or phrase of this Ordinance is for any reason held invalid or unconstitutional, the remaining portions shall not be affected but shall remain in full force and effect.

SECTION 25. ANNUAL APPROPRIATIONS LIMIT: Article XIII (B) of the California Constitution requires the establishment of an annual appropriations limit for governmental entities. The maximum annual appropriations limit for the Authority is hereby established as \$40 million. The appropriations limit shall be subject to adjustment as provided by law. All expenditures of the retail transactions and use tax revenues imposed by Section 4 are subject to the appropriations limit of the Authority.

SECTION 26. ENJOINING COLLECTION FORBIDDEN: No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the state or the Authority, or against any officer of the state or the Authority, to prevent or enjoin the collection under this Ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

SECTION 27. DEFINITIONS:

- A. *Agency* means those cities, town, and county that lie within the geographic boundaries of the County of Napa.
- B. *Authority* means the Napa Valley Transportation Authority created by the Napa County Board of Supervisors with the concurrence of a majority of cities having a majority of the incorporated population of the county.
- C. *Expenditure Plan* means the expenditure plan required by Section 180206 of the Public Utilities Code to be adopted prior to the call of an election on this Ordinance. The expenditure plan includes the allocation of revenues for each authorized purpose. To the extent the summarized provisions of the expenditures contemplated by this Ordinance cannot be reconciled with the Expenditure Plan set forth in Attachment 1, the provisions of Attachment 1 shall prevail.
- D. *Effective Date* means the date the measure was passed by the electorate.
- E. *Highways* means all purposes necessary and convenient to the design, right-of-way acquisition, and construction of highway facilities, including all state highway routes and any other facilities so designated in the Expenditure Plan.
- F. *Infrastructure* means all components within the right-of-way necessary to support the roadway which includes road pavement, sub-grade, curb, gutter, sidewalks, curb ramps, surface and subsurface drainage, replacement traffic control devices, replacement roadway lighting, striping, pavement marking, intelligent transportation systems, and signage.

- G. *Maintenance* means repair, reconstruction or rehabilitation, and/or replacement of streets, roadways, and other infrastructure within the public right-of-way.
- H. *Operative Date* means the date the tax begins to collect revenue for this measure.
- I. *Project* is a single effort with a beginning and an end that would cause the construction or maintenance or reconstruction of some tangible portion of a transportation asset owned or operated by public agency that has independent utility. A *project* is not repeated on an annual basis, it does not appear without a detailed description as to cost and location in a local agency budget, and it must appear in a capital budget.
- J. *Reconstruction or Rehabilitation* includes any overlay, including the placement or replacement of base materials and any sub-grade work or widening of the roadway, if the widening is necessary to bring the roadway width to the desirable minimum width consistent with the geometric design criteria of the state for 3R (reconstruction, resurfacing, and rehabilitation). This does not include widening for the purpose of increasing the traffic capacity of a street or highway. This does include additions, changes or reconstruction of Infrastructure directly associated with the function of a street or roadway. It also includes additions necessary to incorporate and/or maintain bicycle facilities called for in the Napa County Transportation and Planning Agency's Countywide Bicycle Plan or adopted bicycle plans of the Agencies and any improvements or alterations necessary to the roadway and or pedestrian or bicycle travel ways to improve overall circulation and to meet American's with Disabilities Act requirements.
- K. *Regional Transportation Improvement Program Submission* means any program of projects sent or otherwise caused to be delivered to the Regional Transportation Planning Agency for Napa County by the entity designated by the Regional Transportation Planning Agency with the submission of that program for the local agencies for consideration by the Regional Transportation Planning Agency for inclusion in the Regional Transportation Improvement Program or its related documents.
- L. *Local Streets and Roads* means the pavement facilities and supporting Infrastructure within the street, road, or highway right-of-way.
- M. *Storm damage repair* means repair or reconstruction of local streets and highways and related drainage improvements that have been damaged due to storms and flooding, in those jurisdictions that have been declared disaster areas by the President of the United States and/or by the Governor of California.

SECTION 28. PUBLICATION OF ORDINANCE: A summary of this Ordinance shall be published at least five days before its passage in the local newspapers of general circulation published in the County of Napa, and at least once before the expiration of 15 days after its passage together with the names of the Directors voting for and against the same.

The foregoing Ordinance was introduced and read at a regular meeting of the Napa Valley Transportation Authority, held on May 16, 2012, and passed at a regular meeting of the Napa Valley Transportation Authority held on June 20, 2012, by the following vote:

KEITH CALDWELL, NVTA Chair

Ayes: _____

Noes: _____

Absent: _____

ATTEST:

Karalyn E. Sanderlin, NVTA Board Secretary

APPROVED:

Janice D. Killion, NVTA Legal Counsel

Attachment (1) Napa Countywide Road Maintenance Act Expenditure Plan

NAPA COUNTWIDE ROAD MAINTENANCE ACT EXPENDITURE PLAN

The net revenues received by the Authority from the proposed transactions and use tax shall be used to fund the projects described below after paying for the costs of this election, the costs of the Independent Taxpayer Oversight Committee, and administering the program. Only one percent (1%) of the net revenues may be expended on the costs of administration. The revenues received by the Authority will be less than the gross revenues actually collected because the fees the State Board of Equalization charges to collect the sales tax will be deducted before the revenues are transferred to the Authority. All funding and revenues are expressed in 2011 dollars over the twenty-five year life of the program.

The revenue allocated to each Agency under this Expenditure Plan may be used for any direct costs of design, materials testing, all project required environmental reviews, construction management, inspection, and construction of the projects.

Local Streets and Roads Maintenance Program

Description:

Of the annual revenues available, ninety-nine percent (99%) shall be allocated to the Local Streets and Roads Maintenance Program. Under the Ordinance, the funds for the Local Streets and Roads Maintenance Program must be used for maintenance, reconstruction or rehabilitation of local streets, roads, and infrastructure within the public right-of-way as defined.

The estimated funding for the Local Streets and Maintenance Program is (millions of dollars):

Project	Percentage Distribution	Transaction and Use Tax
American Canyon	7.7%	\$21.945
Calistoga	2.7%	\$7.695
City of Napa	40.35%	\$114.997
Napa County	39.65%	\$113.003
St. Helena	5.9%	\$16.815
Yountville	2.7%	\$7.695
Total	99%	282.15

Amendments

This Ordinance and Expenditure Plan may be amended to provide for the use of additional federal, state, and local revenues or to account for unexpected revenues by

approval of a two-thirds vote of the members of the Authority; the two-thirds must include the City of Napa, the County of Napa, and at least three other jurisdictions. No amendment shall operate so as to affect the rate of tax imposed by this Ordinance.

Amendments 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.