



Meeting Notice

1111 Broadway, Suite 800, Oakland, CA 94607

• 510.208.7400

• www.AlamedaCTC.org

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Councilmember At-Large
Rebecca Kaplan, City of Oakland

Commission Vice Chair
Mayor Bill Harrison, City of Fremont

AC Transit
Director Elsa Ortiz

Alameda County
Supervisor Scott Haggerty, District 1
Supervisor Richard Valle, District 2
Supervisor Wilma Chan, District 3
Supervisor Nate Miley, District 4
Supervisor Keith Carson, District 5

BART
Director Rebecca Saltzman

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Mayor Trish Spencer

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Mayor Peter Maass

City of Berkeley
Councilmember Laurie Capitelli

City of Dublin
Mayor David Haubert

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Councilmember Ruth Atkin

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Mayor Barbara Halliday

City of Livermore
Mayor John Marchand

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Councilmember Dan Kalb

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Acting Mayor Jeff Wieler

City of Pleasanton
Mayor Jerry Thorne

City of San Leandro
Mayor Pauline Cutter

City of Union City
Mayor Carol Dutra-Vernaci

Executive Director
Arthur L. Dao

Independent Watchdog Committee

Monday, November 14, 2016, 5:30 p.m.

**1111 Broadway, Suite 800
Oakland, CA 94607**

Mission Statement

The mission of the Alameda County Transportation Commission (Alameda CTC) is to plan, fund, and deliver transportation programs and projects that expand access and improve mobility to foster a vibrant and livable Alameda County.

Public Comments

Public comments are limited to 3 minutes. Items not on the agenda are covered during the Public Comment section of the meeting, and items specific to an agenda item are covered during that agenda item discussion. If you wish to make a comment, fill out a speaker card, hand it to the clerk of the Commission, and wait until the chair calls your name. When you are summoned, come to the microphone and give your name and comment.

Recording of Public Meetings

The executive director or designee may designate one or more locations from which members of the public may broadcast, photograph, video record, or tape record open and public meetings without causing a distraction. If the Commission or any committee reasonably finds that noise, illumination, or obstruction of view related to these activities would persistently disrupt the proceedings, these activities must be discontinued or restricted as determined by the Commission or such committee (CA Government Code Sections 54953.5-54953.6).

Reminder

Please turn off your cell phones during the meeting. Please do not wear scented products so individuals with environmental sensitivities may attend the meeting.

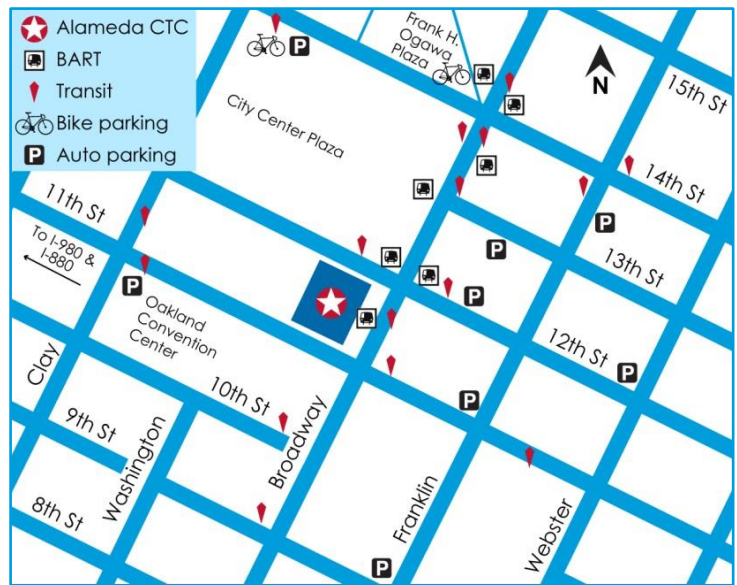
Glossary of Acronyms

A glossary that includes frequently used acronyms is available on the Alameda CTC website at www.AlamedaCTC.org/app_pages/view/8081.

Location Map

★ Alameda CTC
1111 Broadway, Suite 800
Oakland, CA 94607

Alameda CTC is accessible by multiple transportation modes. The office is conveniently located near the 12th Street/City Center BART station and many AC Transit bus lines. Bicycle parking is available on the street and in the BART station as well as in electronic lockers at 14th Street and Broadway near Frank Ogawa Plaza (requires purchase of key card from bikelink.org).



Garage parking is located beneath City Center, accessible via entrances on 14th Street between 1300 Clay Street and 505 14th Street buildings, or via 11th Street just past Clay Street. To plan your trip to Alameda CTC visit www.511.org.

Accessibility

Public meetings at Alameda CTC are wheelchair accessible under the Americans with Disabilities Act. Guide and assistance dogs are welcome. Call 510-893-3347 (Voice) or 510-834-6754 (TTD) five days in advance to request a sign-language interpreter.



Meeting Schedule

The Alameda CTC meeting calendar lists all public meetings and is available at www.AlamedaCTC.org/events/upcoming/now.

Paperless Policy

On March 28, 2013, the Alameda CTC Commission approved the implementation of paperless meeting packet distribution. Hard copies are available by request only. Agendas and all accompanying staff reports are available electronically on the Alameda CTC website at www.AlamedaCTC.org/events/month/now.

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Independent Watchdog Committee Meeting Agenda Monday, November 14, 2016, 5:30 p.m.

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Chair: Murphy McCalley
Vice Chair: Herb Hastings
Staff Liaison: Patricia Reavey
Public Meeting Coordinator: Angie Ayers

5:30 – 5:35 p.m.
Murphy McCalley

1. Call to Order, Welcome and Introductions

5:35 – 5:40 p.m.
Public

2. Public Comment

Page A/I*

5:40 – 5:45 p.m.
Murphy McCalley

3. Approval of July 11, 2016 IWC Meeting Minutes

1 A

5:45 – 6:15 p.m.
Independent
Auditor

4. [Presentation of Draft Comprehensive Annual Financial Report \(CAFR\) for the Year Ended June 30, 2016](#) (hyperlinked to the website)

A

6:15 – 6:30 p.m.
Patricia Reavey

5. IWC Annual Report Outreach Summary and Publication Cost Update

11 I

6:30 – 7:00 p.m.
IWC Members

6. Review of IWC Bylaws

29 A/I

7:00 – 7:15 p.m.
IWC Members

7. IWC Member Reports/Issues Identification

7.1. Chair Report: Executive Summary Investigation
Regarding Measure BB

39 I

7.2. IWC Issues Identification Process and Form

55 I

7.3. Issues Discussion: City of Fremont, City of
Newark, and City of Oakland Direct Local
Distribution Reserves

59 A/I

7:15 – 7:30 p.m.
Staff

8. Staff Reports

8.1. IWC Calendar

61 I

8.2. IWC Roster

63 I

7:30 p.m.
Murphy McCalley

9. Adjournment

Next meeting: January 9, 2017

All items on the agenda are subject to action and/or change by the committee.

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Independent Watchdog Committee Meeting Minutes Monday, July 11, 2016, 5:30 p.m.

3.0

1111 Broadway, Suite 800, Oakland, CA 94607

• 510.208.7400

• www.AlamedaCTC.org

1. Welcome and Call to Order

IWC Chair Murphy McCalley called the meeting to order at 5:30 p.m. The meeting began with introductions, and the chair confirmed a quorum. All IWC members were present, except the following: Cynthia Dorsey, Cheryl Brown, Brian Lester, Barbara Price, and Robert Tucknott.

Cynthia Dorsey arrived during agenda item 4.

2. Public Comment

There were no public comments.

3. IWC Photo for Annual Report

This agenda item occurred after item 7.

4. Presentation of IWC Annual Report

Murphy McCalley presented the draft IWC 14th Annual Report to the Public for review. Committee members discussed the final draft of the IWC Annual Report and requested the following changes:

- On page 2, under "Financials At-a-Glance" at the top of column 2, change "debt service" to "annual debt repayment."
- On page 3, under the "Programs" column heading verify the programs for transit agencies and the Alameda County Public Works Agency and modify the programs as needed.
- On page 8, replace text under "How to Get Involved" with "Independent Watchdog Committee meetings are open to the public. If you are interested in vacancies on Alameda CTC's Bicycle and Pedestrian Advisory Committee (BPAC) and Paratransit Advisory and Planning Committee (PAPCO), inquire at the address or phone number at the bottom of the page."
- On page 8, under "Further Information" in the first paragraph remove "you can reach Alameda CTC at 510.208.7400" and include text about Chinese and Spanish interpreters and sign language interpretation services being available on request.

The committee discussed the merits of only reporting IWC activities for fiscal year 2014-2015 (FY2014-15). In prior years, the report included activities through the current fiscal year. The committee also discussed whether or not Jason Bezis's comments on the Measure BB campaign should have been included in the annual report. In addition, the committee discussed whether or not the word "specific" should be removed from the first bullet on page 4.

Pat Piras moved that the sentence in the first bullet on page 4 remain as is. Hale Zukas seconded the motion. The motion passed with the following votes:

Yes: Dominguez, Dorsey, Hastings, Jones, McCalley, Piras, Zukas
No: Lew, Naté, Saunders
Abstain: None
Absent: Brown, Lester, Price, Tucknott

Harriette Saunders moved to include the outcome of the letter submitted by Jason Bezis in FY2014-15 under the IWC activities on page 4. JoAnn Lew seconded the motion. The motion failed with the following votes:

Yes: Hastings, Lew, Naté, Saunders
No: Dominguez, Jones, McCalley, Piras, Zukas
Abstain: Dorsey
Absent: Brown, Lester, Price, Tucknott

5. Open Public Hearing

Murphy McCalley opened the public hearing for review of the annual report.

6. Public Comment on Hearing of IWC Annual Report

Charlie Cameron, resident of Union City, expressed concern over phases one and two of the Union City Intermodal BART Station project. He stated that improvements are needed after phase one of the project. Charlie mentioned that the station no longer has areas for the public to sit.

Charlie also mentioned that AC Transit's new schedule went into effect June 26, 2016. He noted that eight to 10 bus schedules were done incorrectly, which is a waste of Measure B funds.

7. Close Public Hearing on IWC Annual Report

Murphy McCalley closed the public hearing.

8. Approval of IWC Annual Report

Pat Piras moved to approve the draft IWC Annual Report as amended and corrected. Steve Jones seconded the motion. The motion passed with the following votes:

Yes: Dominguez, Dorsey, Hastings, Jones, McCalley, Naté, Piras, Saunders, Zukas
No: Lew
Abstain: None
Absent: Brown, Lester, Price, Tucknott

9. IWC Meeting Minutes

9.1. Approval of November 9, 2015 IWC Meeting Minutes

Pat Piras moved to approve the November 9, 2015 minutes. JoAnn seconded the motion. The motion passed with the following votes.

Yes: Dorsey, Hastings, Jones, Lew, McCalley, Naté, Piras, Saunders, Zukas
No: None
Abstain: Dominguez, Saunders
Absent: Brown, Lester, Price, Tucknott

9.2. Approval of March 14, 2016 IWC Meeting Minutes

Herb Hastings moved to approve the March 14, 2016 minutes. JoAnn Lew seconded the motion. The motion passed with the following votes:

Yes: Dominguez, Dorsey, Hastings, Jones, Lew, McCalley, Naté, Piras, Saunders, Zukas
No: None
Abstain: None
Absent: Brown, Lester, Price, Tucknott

10. Organizational Meeting

10.1. Election of Officers for FY2016-17

Harriette Saunders moved to nominate Murphy McCalley for chair, and he accepted the nomination. Steve Jones seconded the motion. The motion passed with the following votes:

Yes: Dominguez, Dorsey, Hastings, Jones, Lew, McCalley, Naté, Piras, Saunders, Zukas
No: None
Abstain: None
Absent: Brown, Lester, Price, Tucknott

Pat Piras made a motion to continue the election of vice chair at the November 14, 2016 meeting. Hale Zukas seconded the motion. The motion failed with the following votes:

Yes: Dorsey, Jones, Piras, Zukas
No: Hastings, Lew, Naté, Saunders
Abstain: Dominguez, Murphy
Absent: Brown, Lester, Price, Tucknott

Herb Hastings moved to nominate himself as vice chair. JoAnn Lew seconded the motion. The motion passed with the following votes:

Yes: Dominguez, Dorsey, Hastings, Jones, Lew, McCalley, Naté, Saunders
No: None
Abstain: Piras, Zukas
Absent: Brown, Lester, Price, Tucknott

10.2. Approval of Calendar/Work Plan for FY2016-17/Meeting Time Discussion

The committee discussed adding items to the calendar as follows:

- Contract Equity Utilization Report – Staff informed the committee that this report goes to the Commission annually in October. The IWC can view the report on the website.
- Review of the IWC budget – Staff agreed to add this item to the calendar/work plan.
- Review of performance measures – Staff informed the committee that performance measures are included in the Direct Local Distribution (DLD) Master Programs Funding Agreements approved by the Commission earlier in the year. Alameda CTC will look at performance measures during the FY2016-17 compliance reporting review process.

The IWC requested a copy of the performance measures sent to the jurisdictions. John Nguyen stated that he will email the committee a copy on July 12, 2016. The staff report that went to the Commission in February 25, 2016 can be viewed via this link:
http://www.alamedactc.org/files/managed/Document/18228/6.6_Combo.pdf.

Harriette Saunders moved to approve the calendar/work plan for FY2016-17 with the applicable changes stated above and the 5:30 p.m. start time for the IWC meetings. Steve Jones seconded the motion. The motion passed with the following votes:

Yes: Dominguez, Dorsey, Hastings, Jones, Lew, McCalley, Naté, Piras, Saunders, Zukas
No: None
Abstain: None
Absent: Brown, Lester, Price, Tucknott

10.3. Review of IWC Bylaws

The committee questioned the definitions of "monitor" and "oversee" in the IWC bylaws. Murphy McCally suggested including the bylaws on the November 14, 2016 agenda as an action item. He requested the committee to review the bylaws prior to the November meeting and come prepared to discuss and make recommendations on revisions if applicable.

The committee discussed staff making the IWC budget available to the IWC before the Commission adopts the budget for the year. Staff noted that the draft budget goes before the Commission for approval in May, and the final proposed budget goes for approval in June.

11. Independent Auditor Work Plan

Ahmad Gharaibeh with Vavrinek, Trine, Day & Co., LLP (VTD) explained his plan for the Alameda CTC audit. He described how VTD is performing the audit in two major phases: 1) an interim phase that allows VTD to understand Alameda CTC's internal controls and to perform a small amount of compliance testing; 2) a final phase that will allow VTD to provide the final numbers within the trial balance and financial statements and will allow VTD to perform the bulk of the compliance testing. Ahmad noted that the interim audit was complete on June 10, 2016. The final audit will begin on September 6, 2016.

Ahmad noted that VTD ensures that the general ledger system continues to segregate expenditures by funds which represent the former two agencies, Measure B, and Measure BB, and continues to track the administration-related expenses in a separate general fund and track the capital projects, pass-through monies, and special revenue in different funds within the general ledger system.

Questions/feedback from the members:

Ahmad informed the members that they can submit any questions and concerns in writing to Patricia Reavey any time before the end of the audit.

- Does VTD review salaries and benefits? Yes, VTD looks at the expenses with respect to salaries and benefits and how they are distributed and the review/approval process for timecards at Alameda CTC.
- Is CalPERS fully funded? VTD said regarding pensions, CalPERS has established different settings for local governments in the state of California. CalPERS has a rule that if an agency has 200 employees or fewer (Alameda CTC fits this rule), agencies are placed in a plan that pool all other employers together called a Cost

Sharing Plan. VTD has information about the overall pool instead of Alameda CTC's unfunded liabilities. The pool is approximately 85 percent funded. CalPERS calculates a proportionate share by the agency contributions divided by the entire pool contributions. Patricia Reavey noted that last year the unfunded liability of about \$3 million was reported on the financial statements as required by Governmental Accounting Standards Board (GASB) Statement No. 68.

- Are there any other GASB announcements of significance? Ahmad said there is one that is not very significant related to investments. Patricia said GASB 75 has the largest amount of change coming this year related to other postemployment benefits.
- Does VTD look at the bond proceeds? Yes, we opine on all ins/outs of bond funds, and the agency has arbitrage calculations done almost annually on the current outstanding bonds
- The committee discussed the VTD's contract. Staff mentioned that their contract expires at the end of FY2016-17.
- Will IWC have an audit subcommittee? Staff stated that legal counsel advised the agency against holding a subcommittee that may not result in diverse opinions on one of the IWC's key functions; therefore, audit information will come to the entire committee.

12. Approval of IWC Annual Report Publication Methods and Costs, and Press Release

12.1. Proposed Publication Costs and Distribution

Angie Ayers, Alameda CTC consultant, informed the committee that proposed publications costs were presented to the Annual Report Subcommittee. The costs included \$15,693 to display ads on BART trains. The subcommittee suggested that Alameda CTC consider different display ads at BART that are less costly and target stations within Alameda County. The committee reviewed version two of the proposed publication costs with 10 BART in-station ads totaling \$5,420. The committee suggested placing BART in-station ads in the following stations if space is available:

- | | |
|--------------------------|--------------------------|
| • 12th St. Oakland | • Lake Merritt (Oakland) |
| • 19th St. Oakland | • MacArthur (Oakland) |
| • Ashby | • Union City |
| • Bay Fair (San Leandro) | • West Dublin/Pleasanton |
| • Coliseum | • West Oakland |

Cynthia Dorsey moved to approve the proposed publication costs listed in version two of the handout and the placement of ads at the BART stations that IWC members identified, assuming availability. Harriette Saunders seconded the motion. The motion passed with the following votes:

Yes: Dominguez, Dorsey, Hastings, Jones, Lew, McCalley, Naté, Piras, Saunders, Zukas
No: None
Abstain: None
Absent: Brown, Lester, Price, Tucknott

12.2. Draft IWC Annual Report Press Release

The committee discussed adding "However, opportunities for improvement remain" to the press release to keep the language consistent with the annual report. Some of the members and the chair suggested not adding the statement. A suggestion was made to remove "and performance measures" on page two of the press release.

13. IWC Member Reports/Issues Identification

13.1. Chair Report

Murphy McCalley stated that in January the Commission proposed hiring an independent legal counsel outside of Wendel Rosen to review the issues/concerns raised by Jason Bezis. He noted that the independent counsel has developed a report; however, the Commission has not released the report or a report summary.

13.2. IWC Issues Identification Process and Form

Murphy McCalley informed the committee that this is a standing item to keep members informed of the process of submitting issues/concerns of the public.

13.3. Issues Discussion: Affordable Student Transit Pass Program – Crossing Guards

Pat Piras said she submitted this issue to the IWC as information only. She wants the committee to be informed on how funds are being spent according to the measure for this program. She mentioned that the issues form is only in pdf, and she converted it to Microsoft Word if any member is interested in using this version.

14. Staff Reports/Board Actions

14.1. Measure B and Measure BB Program Compliance Report Summary

John Nguyen provided an update to this agenda item. He informed the group that the Commission approved the Measure B and Measure BB DLD Program Compliance Reports on June 30, 2016. John noted that all DLD recipients were found to be in compliance with the voter-approved transportation expenditure plans and Alameda CTC's requirements.

The committee discussed the City of Oakland's high administrative expenditures for the DLD program. This agency is in compliance, however, the administrative expenditures appear to be high. John noted that Oakland reported \$2.2 million on staffing-related expenditures, which appear as a large amount due to the way the city reported their expenditures in the compliance reports. He directed Oakland staff to break out the staffing-related expenses into specific project expenditures in future compliance reports. Tess Lengyel invited the IWC to attend a public works meeting at the City of Oakland on Tuesday, July 12, 2016 where they will discuss Measure B, Measure BB, and Vehicle Registration Fee expenditures. Discussion also took place on the high balances the cities of Fremont and Newark are carrying forward.

14.2. FY2016-17 IWC Budget

Patricia Reavey reviewed the IWC budget for FY2016-17 with the committee.

14.3. IWC Projects and Programs Watchlist Next Steps

Angie Ayers discussed this agenda item with the committee. She noted that in March members had an opportunity to sign up to watch or monitor project/programs in which they are interested. The next steps are: Alameda CTC staff prepares a letter on behalf of the chair and sends it to each city/agency sponsor to request notification of all public meetings for Measure B and Measure BB-funded projects and programs, and requests that the sponsor contact Alameda CTC staff and IWC members regarding these meetings.

14.4. IWC Roster

The committee roster is in the agenda packet for review purposes.

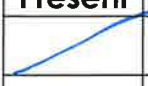













15. Adjournment

The meeting adjourned at 8:00 p.m. The next meeting is scheduled for November 14, 2016 at the Alameda CTC offices.







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INDEPENDENT WATCHDOG COMMITTEE July 7, 2016 ROSTER OF MEETING ATTENDANCE

Present	IWC Member	Appointed By
	Brown, Cheryl (waive)	Alameda Labor Council AFL-CIO
	Dominguez, Oscar	East Bay Economic Development Alliance
	Dorsey, Cynthia	Alameda County Mayors' Conference, District 5
	Hastings, Herb	Paratransit Advisory and Planning Committee
	Jones, Steven	Alameda County Mayors' Conference, District 1
	Lester, Brian	Alameda County, District 1 Supervisor Scott Haggerty
	Lew, Jo Ann	Alameda County Mayors' Conference, District 2
	McCalley, Murphy, Chair	Alameda County, District 4 Supervisor Nate Miley
	Nate, Glenn	Alameda County, District 2 Supervisor Richard Valle
	Piras, Pat (waive)	Sierra Club
	Price, Barbara	Alameda County Taxpayers Association
	Saunders, Harriette	Paratransit Advisory and Planning Committee
	Tucknott, Robert	Alameda County Mayors' Conference, District 4
	Zukas, Hale	Alameda County, District 5 Supervisor Keith Carson

STAFF

Present	Staff/Consultants	Title
	Tess Lengyel	Deputy Executive Director of Planning and Policy
	Patricia Reavey	Deputy Executive Director of Finance
	John Nguyen	Senior Transportation Planner
	Trinity Nguyen	Senior Transportation Engineer
	Tamara Halbritter	Senior Project Manager, Consultant
	Angie Ayers	Public Meeting Coordinator, Consultant

NAME	JURISDICTION/ ORGANIZATION	PHONE #	E-MAIL
1. <i>Charlie Cameron - Resident</i>			
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Memorandum

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1111 Broadway, Suite 800, Oakland, CA 94607

• 510.208.7400

• www.AlamedaCTC.org

DATE: November 7, 2016

SUBJECT: Annual Report Outreach Update and Costs

RECOMMENDATION: Receive an update on outreach activities and costs for the IWC 14th Annual Report to the Public.

Summary

The Independent Watchdog Committee (IWC) released its 14th Annual Report to the Public in August 2016. Multiple activities including publication distribution, advertisement placement, and targeted outreach were done to make the public aware of the report. The costs to prepare and distribute the report were slightly higher in 2016 as compared to 2015, primarily due to the design and placement of additional print and online advertisements.

Background

A key responsibility of Alameda CTC's IWC is to keep the public informed about the progress of transportation programs and projects funded by Measure B and Measure BB sales taxes for transportation, and the appropriateness of the use of these funds in regards to the voter-approved Transportation Expenditure Plans.

Annually, the committee generates a report for the public to report its findings on sales tax activities. At the March 2016 IWC meeting, seven committee members volunteered and five actually participated in the IWC Annual Report Subcommittee. The subcommittee met three times to develop the IWC 14th Annual Report to the Public and discuss outreach strategies. The development and outreach approach of the annual report included:

- Meet together to discuss report content, agree on fiscal year 2014-15-only reporting period, and work with staff to write, design, print, and distribute the report.
- Get input from the full committee on the report before finalizing the report.
- Hold a public hearing to get input from the public before finalizing the report.
- Email a message about the annual report to Alameda CTC's full Constant Contact mailing list once the report was published.
- Notify the media of the report through a press release and place print and online advertisements in the media (see "Media Placement" as follows).
- Design and place a bus interior card advertisement on AC Transit buses.

- Design and place bus exterior cards on Livermore Amador Valley Transit Authority (LAVTA) and Union City buses.
- Design and place advertisement in San Francisco Bay Area Rapid Transit District (BART) stations in Alameda County.
- Design and place additional online advertisements in Sing Tao Daily and Vision Hispana.
- Set up Google Alerts to track when the annual report and the IWC were in the news.
- Create a two-page executive summary of the annual report in English, hyperlink it to additional information about Measure B and Measure BB projects and programs, and translate it into Chinese and Spanish.
 - Print 500 eight-page reports and 500 two-page executive summaries in English, and print the translated executive summaries in-house.
- Translate two advertisements from English to Spanish and place them in two publications.
- Support additional outreach by IWC members, on request, to distribute the report in their local communities.

Media Placement

The IWC approved the media placement plan and budget (see Attachment 5.0A). Staff placed online ads in media with links to direct traffic to the IWC Annual Report page of the Alameda CTC website (http://www.alamedactc.org/app_pages/view/4440) and placed print advertisements that summarize the full report in 18 Bay Area publications (see Attachment 5.0A for a complete list). In addition, staff placed online banner advertisements that ran on 18 different sites, which included a link to the 2016 report (http://www.alamedactc.org/app_pages/view/4440#shortcut3).

AC Transit Bus Interior Cards

Staff worked with Intersection Media to place 225 posters on AC Transit buses that operate in Alameda County. The posters were evenly distributed between three garages (approximately 75 posters per garage): San Pablo garage, Seminary garage, and Hayward garage.

LAVTA and Union City Transit Bus Exterior Cards

Staff worked with Lamar Advertising to place seven posters on the tail of LAVTA buses and three posters on the tail of Union City buses.

BART In-Station Posters

Staff worked with Intersection Media to place two-sheet posters in the following 10 BART stations in Alameda County:

12th St. Oakland	Coliseum	West Dublin/Pleasanton
19th St. Oakland	Lake Merritt	West Oakland
Ashby	MacArthur	
Bay Fair	Union City	

Print Publications

A printer certified with Alameda CTC printed the full eight-page annual report in a quantity of 500 and printed 500 of the English-version executive summary. Alameda CTC printed in-house the Chinese and Spanish versions of the executive summary. (Refer to Attachment 5.0A for design and print costs.)

Constant Contact E-Blasts

- **Press release** on August 23, 2016 was sent to 4,647 subscribers (including e-newsletter and media lists) via Constant Contact of which 252 were media contacts for newspapers, blogs, ethnic media, radio, and television. The email was opened by 1,036 recipients. The open rate was 25.5 percent with 17 click-throughs. The press release was linked to the full report and executive summaries.
- **E-newsletter** on October 11, 2016 was sent to 4,680 addresses and opened by 857 recipients. The open rate was 20.2 percent with two click-throughs: one to the IWC executive summary in Chinese and one to the news article about the report.

Social Media

Alameda CTC used social media including Twitter and Facebook to inform the public about the IWC Annual Report.

- **Twitter:** Staff tweeted information about and links to the IWC Annual Report on the dates listed below and reached 670 followers. Note that the number of followers does not capture anyone who may have seen the tweets via a search or by looking at Alameda CTC's twitter feed, which is public.
 - August 23, 2016 – 436 impressions, 2 retweets, 2 link clicks
 - August 25, 2016 – 186 impressions, 1 like and 2 link clicks
 - August 26, 2016 – 161 impressions
 - August 29, 2016 – 180 impressions
 - September 1, 2016 – 190 impressions
 - September 6, 2016 – 203 impressions and 1 link click
 - October 4, 2016 – 98 impressions and 1 link click

Twitter definitions:

- **Impression** means that a tweet has been delivered to the Twitter stream of a particular account.
 - **Retweet** is a re-posting of a Tweet to share with account owner followers.
 - **Link Click** is the number of clicks on a URL.
- **Facebook:** Staff posted the IWC Annual Report to all three of Alameda CTC's Facebook pages on the following dates. The number of people reached reflects the people who saw the post in their own Facebook newsfeed and does not capture anyone who may have viewed it directly on the Alameda CTC Facebook homepage, which is accessible to the public.

Alameda CTC Main Facebook Page:

- August 23, 2016 – 17 people reached
- August 25, 2016 – 262 people reached
- September 8, 2016 – 160 people reached
- October 4, 2016 – 13 people reached

Alameda CTC Guaranteed Ride Home Facebook Page:

- August 29, 2016 – 49 people reached

Alameda CTC Bay Area Express Lanes Facebook Page:

- August 29, 2016 – 37 people reached

Advertisement Page Views and Website Click-throughs

The estimated number of times readers viewed an online page with an Alameda CTC advertisement about the IWC report was more than 794,565, and the number of times a user clicked through from the advertisement banner to the report on the Alameda CTC website is 7,034.

Alameda CTC Google Analytics

Alameda CTC uses Google Analytics to track website hits related to the IWC and its annual report. Attached are analytical reports that show the number of hits the Alameda CTC website received when a user accessed the “What’s New” page and the number of hits received on the annual report page of Alameda CTC website. Refer to Attachment 5.0B for the analytical reports.

Google Alerts

Staff received Google Alerts to track the annual report and the IWC in the news. The service generated an email to Alameda CTC when news occurred via the Pleasanton Weekly newspaper.

Targeted Outreach

To further spread the word about the latest IWC annual report, staff performed outreach as follows:

- Handed out the full report and executive summaries to the following at their scheduled September, October, and November meetings:
 - Alameda CTC Commission – 43 Commission members including alternates
 - Alameda County Technical Advisory Committee – 45 committee members
 - Bicycle and Pedestrian Advisory Committee – 11 committee members
 - Paratransit Advisory and Planning Committee – 23 committee members
 - Paratransit Technical Advisory Committee – 27 committee members

- Included an update in the September 2016 Executive Director's Report submitted directly to 43 Commission members including alternates and posted on the Alameda CTC website.
- Included an update in the October 2016 issue of the e-newsletter with a link back to the full report and the additional language versions, and emailed the e-newsletter to Alameda CTC's outreach database that includes 4,680 e-mail addresses.
- Placed "What's New" information on the Alameda CTC website that links directly to the report.
- Mailed the full report and the Spanish and Chinese language executive summaries to:
 - 41 libraries in Alameda County
 - 16 chambers of commerce – for the cities of Alameda, Albany, Berkeley, Castro Valley, Dublin, Fremont, Hayward, Livermore, Newark, Oakland, Pleasanton, San Leandro, and Union City; and three ethnic chambers including the Hispanic Chamber of Alameda County, the Oakland African American Chamber of Commerce, and Oakland Chinatown Chamber of Commerce
 - IWC members and organizations – 14 IWC members, Alameda County Mayors' Conference, Alameda Labor Council AFL-CIO, Bike East Bay, Board of Supervisors (Districts 1,2,3,4, and 5), East Bay Economic Development Alliance, League of Women Voters, and Sierra Club

Fiscal Impact: The fiscal impact of design and placement of the online and print advertisements, and the printing and mailing of the hard copy report totals \$47,600 to date.

In 2015, the total costs were \$33,842. The budget in 2016 for the IWC 14th Annual Report to the Public was \$50,000. The actual 2016 costs are \$13,758 more than the prior year and \$2,400 under budget.

Attachments

- A. 2016 IWC Annual Report Publication Cost Summary
- B. Google Analytics Results

Staff Contact

[Patricia Reavey](#), Deputy Executive Director of Finance and Administration

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2016 IWC Annual Report Final Publications Costs

Affiliation	Newspaper, Website, or Other Advertisement	2015 Media/Size	2015 Alameda CTC Page Views*	2015 Click-throughs** from Online Media Banners	2015 Cost (Print)	2015 Cost (Web)	Actual 2015 Costs	2016 Media/Size	2016 Newspaper Circulation	2016 Alameda CTC Page Views	2016 Click-throughs** from Online Media Banners	Proposed 2016 Cost (Print)	Proposed 2016 Cost (Web)	Estimated 2016 Costs	Actual 2016 Costs
***Alameda CTC	www.AlamedaCTC.org		5,164	49			\$0.00			1,268	1,033				\$0.00
Asianweek (Out of Business)	www.asianweek.com - web banner only (linked to the English version)	Online: 468x60 jpg	22,910			\$336.00	\$336.00						\$0.00	\$0.00	\$0.00
Castro Valley Forum	Delivered to: Castro Valley residents and businesses in Alameda, Hayward, San Leandro	Print: 10.25" x 8"			\$792.00		\$792.00	Print: 10.25" x 8"	22,500			\$864.00		\$864.00	\$864.00
East Bay Express	East Bay Express (delivered to Alameda, Albany, Berkeley, Emeryville, Oakland, Piedmont, San Leandro) Online: eastbayexpress.com	Print: 10.125" x 7.16" Online: 728 x 90 Leaderboard	35,000	40	\$1,984.50	\$500.00	\$2,484.50	Print: 10.125" x 7.16" Online: 728 x 90 Leaderboard	40,000	66,362	22	\$2,182.95	\$500.00	\$2,682.95	\$2,682.95
East Bay Times formerly Bay Area NewsGroup	Oakland, Alameda, Berkeley, Fremont, Hayward, Union City, Dublin, Livermore, Pleasanton, and San Leandro Online: insidebayarea.com and Mobile Banner	Print: 10.5" x 10.5" 10.5" x 14" 10.5" x 10" Online: 300x250 jpeg Med. Rectangle	465,432	1,056	\$4,095.00	\$4,984.10	\$9,079.10	Print: 10" x 10" 10" x 9.75" Online/Mobile: 300x250 jpeg Med. Rectangle	856,328	447,667	367	\$4,883.00	\$4,000.00	\$8,883.00	\$8,883.00
East Bay Times formerly Bay Area NewsGroup Hills Newspapers	Oakland, Piedmont, Berkeley, Alameda	Print: 10" x 10"			\$1,134.00		\$1,134.00	Print: 10" x 10"	60,268			\$1,634.00		\$1,634.00	\$1,634.00
Intersection formerly Titan	AC Transit Bus Interior Cards	Print: 11" x 28" 225 Cards			\$4,669.37		\$4,669.37	Print: 11" x 28" 225 Cards	2,025,000			\$4,996.00		\$4,996.00	\$4,989.66
Intersection formerly Titan	BART in-station Ads (2-sheet media)							Print: 46" x 60" 10 Ads	1,380,000			\$5,420.00		\$5,420.00	\$5,429.78
Lamar Advertising	LAVTA Bus Exterior Cards							Print: 21" x 70" 10 Cards	611,800			\$2,750.00		\$2,750.00	\$1,925.00
Lamar Advertising	Union City Bus Exterior Cards							Print: 21" x 70" 3 Cards	270,000			\$825.00		\$825.00	\$825.00

2016 IWC Annual Report Final Publications Costs

Affiliation	Newspaper, Website, or Other Advertisement	2015 Media/Size	2015 Alameda CTC Page Views*	2015 Click-throughs** from Online Media Banners	2015 Cost (Print)	2015 Cost (Web)	Actual 2015 Costs	2016 Media/Size	2016 Newspaper Circulation	2016 Alameda CTC Page Views	2016 Click-throughs** from Online Media Banners	Proposed 2016 Cost (Print)	Proposed 2016 Cost (Web)	Estimated 2016 Costs	Actual 2016 Costs
Patch News/AOL Publications in Alameda County	Alameda	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90	5,061	4		\$125.00	\$125.00	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90		4,807	9		\$125.00	\$125.00	\$125.00
	Albany	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90	5,061	4		\$125.00	\$125.00	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90		4,807	7		\$125.00	\$125.00	\$125.00
	Berkeley	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90	5,061	4		\$125.00	\$125.00	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90		4,807	7		\$125.00	\$125.00	\$125.00
	Castro Valley	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90	5,061	4		\$125.00	\$125.00	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90		4,807	1		\$125.00	\$125.00	\$125.00
	Dublin	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90	5,061	4		\$125.00	\$125.00	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90		4,807	5		\$125.00	\$125.00	\$125.00
	Fremont	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90	5,061	4		\$125.00	\$125.00	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90		4,807	6		\$125.00	\$125.00	\$125.00
	Livermore	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90	5,061	4		\$125.00	\$125.00	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90		4,807	21		\$125.00	\$125.00	\$125.00

2016 IWC Annual Report Final Publications Costs

Affiliation	Newspaper, Website, or Other Advertisement	2015 Media/Size	2015 Alameda CTC Page Views*	2015 Click-throughs** from Online Media Banners	2015 Cost (Print)	2015 Cost (Web)	Actual 2015 Costs	2016 Media/Size	2016 Newspaper Circulation	2016 Alameda CTC Page Views	2016 Click-throughs** from Online Media Banners	Proposed 2016 Cost (Print)	Proposed 2016 Cost (Web)	Estimated 2016 Costs	Actual 2016 Costs
Patch News/AOL Publications in Alameda County	Newark	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90	5,061	4		\$125.00	\$125.00	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90		4,807	6		\$125.00	\$125.00	\$125.00
	Piedmont	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90	5,061	4		\$125.00	\$125.00	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90		4,807	0		\$125.00	\$125.00	\$125.00
	Pleasanton	Online: 300x250 pixels Mobile: 230x50 Leaderboard: 728x90	5,061	4		\$125.00	\$125.00	Online: 300x250 pixels Mobile: 230x50 Leaderboard: 728x90		4,807	13		\$125.00	\$125.00	\$125.00
	San Leandro	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90	5,061	4		\$125.00	\$125.00	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90		4,807	4		\$125.00	\$125.00	\$125.00
	Union City	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90	5,061	4		\$125.00	\$125.00	Online: 300x250 pixels Mobile: 320x50 Leaderboard: 728x90		4,807	5		\$125.00	\$125.00	\$125.00
Pleasanton Weekly	Pleasanton Weekly	Print: 10" x 9.75" Online: 300x250 jpeg Med. Rectangle	24,367	10	\$998.00	\$200.00	\$1,198.00	Print: 10" x 9.75" Online: 300x250 jpeg Med. Rectangle	14,000	55,834	28	\$1,020.00	\$200.00	\$1,220.00	\$1,220.00
Post Newsgroup	Oakland Post/El Mundo (San Francisco Post, Berkeley Post, Richmond Post, South County Post and Marin)	Print: 10" x 8"			\$2,600.00		\$2,600.00	Print: 10" x 8"	35,500			\$2,600.00		\$2,600.00	\$2,600.00
San Leandro Times	Delivered to: San Leandro residents and businesses in Alameda, Castro Valley, Hayward, Oakland	Print: 10.25" x 8"			\$792.00		\$792.00	Print: 10.25" x 8"	38,500			\$864.00		\$864.00	\$864.00

2016 IWC Annual Report Final Publications Costs

Affiliation	Newspaper, Website, or Other Advertisement	2015 Media/Size	2015 Alameda CTC Page Views*	2015 Click-throughs** from Online Media Banners	2015 Cost (Print)	2015 Cost (Web)	Actual 2015 Costs	2016 Media/Size	2016 Newspaper Circulation	2016 Alameda CTC Page Views	2016 Click-throughs** from Online Media Banners	Proposed 2016 Cost (Print)	Proposed 2016 Cost (Web)	Estimated 2016 Costs	Actual 2016 Costs
Sing Tao	Sing Tao Daily					\$0.00	\$0.00	Online: 728 x 90		0	0		\$330.00	\$330.00	\$380.00
The Independent	The Independent - Livermore, Pleasanton, Dublin, and Sunol	Print: 10" x 8"			\$761.00		\$761.00	Print: 10" x 10"	25,022			\$761.00		\$761.00	\$761.00
Vision Hispana	Vision Hispana	Print: 11.5" x 9.5"			\$773.00		\$773.00	Print: 11.5" x 9.5" Online: 11.5 x 3	15,000	165,750	5,500	\$653.00	\$320.00	\$973.00	\$973.00
Whats Happening Now/Tri-City Voice	Tri-City Voice - Fremont, Newark, Union City, Hayward, and Sunol	Print: 9.75" x 8" Logo Tile 130 x 60 pixels			\$420.00		\$420.00	Print: 9.75" x 8" Logo Title 130 x 60 pixels	25,000			\$735.00		\$735.00	\$420.00
Other Costs															
	Legal Notice of Public Hearing				\$1,289.10		\$1,289.10					\$1,355.05		\$1,355.05	\$1,355.59
	Publications Design				\$2,554.40		\$2,554.40					\$2,600.00		\$2,600.00	\$7,576.08
	Language 411 (translation from English to Chinese and Spanish); added translation for Post Newsgroup and Vision Hispana ads				\$1,388.52		\$1,388.52					\$1,500.00		\$1,500.00	\$1,515.48
	Dakota Press printing for 500 8-page report in color				\$1,877.93		\$1,877.93					\$666.00		\$666.00	\$729.28
	Dakota Press printing 500 flyers in color											\$377.00		\$377.00	\$362.44
	Outreach mailing (based on 2015 mailing)				\$192.72		\$192.72					\$192.72		\$192.72	\$110.16
****TOTALS:			613,605	1,203	\$26,322	\$7,520	\$33,842		5,418,918	794,565	7,034	\$36,879	\$6,850	\$43,729	\$47,600
Rates are not valid after 30 days													Difference between 2015 and 2016 Costs=		
*Page Views: The estimated number of times users visit a newspaper webpage.													\$13,759		
**Click-throughs: The ability to click on the Alameda CTC report from the media banner advertisement.															
***The total publication costs does not include Alameda CTC labor costs.															

Alameda CTC Analytics Summary

URL: http://www.alamedactc.org/news_items/view/19401

Title: Independent Watchdog Committee Releases Annual Report (News Item)

Time period: August 25, 2016-Sept 30, 2016

Audience

Between August 25, 2016 and September 30, 2016, the Independent Watchdog Committee Releases Annual Report, a news item on the Alameda CTC website, saw 21 unique pageviews and 25 total pageviews¹ (0.02% of total traffic to www.alamedactc.org). Visitors entered the site via this news item 4 times and the average time spent on the page was 1:30 seconds.

The biggest month was September with 14 Unique pageviews. The webpage saw an average of 10.5 Unique pageviews per month between Aug 2015 and Sept 2016.

Traffic Sources

For the most part, users entered the site via organic search on Google. Many users accessed the site by typing in the address for the site in their browser search bar (this would be “(direct) / (none)”). Users also entered the site via t.co (twitter) and the Townsquare website.

Source / Medium	Pageviews	Unique Pageviews	Entrances
google / organic	16	12	2
(direct) / (none)	7	7	2
t.co	1	1	0
townsquare	1	1	0

¹ Google Analytics documentation notes the difference between pageviews and unique pageviews:

A *pageview* is defined as a view of a page on your site that is being tracked by the Analytics tracking code. If a user clicks reload after reaching the page, this is counted as an additional pageview. If a user navigates to a different page and then returns to the original page, a second pageview is recorded as well.

A *unique pageview*, as seen in the *Content Overview* report, aggregates pageviews that are generated by the same user during the same session. A *unique pageview* represents the number of sessions during which that page was viewed one or more times.

Geography

Bay area cities were the most likely to view the news item during this time period. Of the top 10 cities that visited the news item, the cities that aren't in California are Springfield, Richardson, New York, and San Antonio.

City	Pageviews	Unique Pageviews	Avg. Time on Page	Entrances
Oakland	10	10	6:04	2
Novato	3	1	0:14	0
San Francisco	2	0	0:37	2
Springfield	2	1	1:41	0
Richardson	2	1	0:26	0
Alameda	1	1	0:04	0
El Cerrito	1	1	0:00	0
Saratoga	1	1	0:00	0
New York	1	1	0:12	0
San Antonio	1	1	0:00	0

Comparative Page Ranking

Compared to all other pages on www.alamedactc.org, the IWC Releases Annual Report news item ranked 820th from Aug 25, 2016 to Sept 30, 2016 with 25 pageviews. During the same period, the most-visited page, aside from the homepage, was the [I-580 Express page](#) with 3,780 pageviews.

Devices

By and large, most people are accessing the Opportunities page via desktop, some are accessing the page via mobile phones, and none are accessing the page via tablets:

Device Category	Pageviews	Unique Pageviews	Avg. Time on Page	Entrances
desktop	21	17	1:35	2
mobile	4	4	0:37	2
tablet	0	0	0:00	0

Page Clicks

On this page, there are 5 links that have the following amount of clicks:

Page	Pageviews	Unique Pageviews	Avg. Time on Page	Entrances
14 th Annual Report to the Public	97	72	2:01	71
Executive Summary in English	44	40	0:48	35
Executive Summary in Chinese	44	43	0:03	41
Executive Summary in Spanish	32	30	0:07	29
Audits of each agency receiving measure B and measure BB funds	102	41	1:17	9

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Alameda CTC Analytics Summary

URL: http://www.alamedactc.org/app_pages/view/4440

Title: Reports (Publications/Media > Reports)

Time period: August 25, 2016-Sept 30, 2016

Audience

Between August 25, 2016 and September 30, 2016, the Reports page on the Alameda CTC website, saw 1,086 unique pageviews and 1,243 total pageviews¹ (1.18% of total traffic to www.alamedactc.org). Visitors entered the site via this page 1,029 times and the average time spent on the page was 2:26 seconds.

Traffic Sources

For the most part, users accessed the Reports page by typing in the address in their browser search bar (this would be “(direct) / (none)”). The second traffic source was via referral, and lastly users reached this page via organic search on Google. The referral sources were singtaousa.com, eastbaytimes.com, and patch.com for the top 3.

Source / Medium	Pageviews	Unique Pageviews	Entrances
(direct) / (none)	868	785	775
Referral	299	253	251
Organic	76	48	3

Referral Source	Sessions	% New Sessions	New Users
singtaousa.com	113	85.84%	97
eastbaytimes.com	40	82.50%	33
Patch.com	31	83.87%	26
Mercurynews.com	21	85.71%	18
Eastbayexpress.com	11	100%	11
Pleasantonweekly.com	6	83.33%	5
Danvillesanramon.com	2	100%	2

¹ Google Analytics documentation notes the difference between pageviews and unique pageviews:

A *pageview* is defined as a view of a page on your site that is being tracked by the Analytics tracking code. If a user clicks reload after reaching the page, this is counted as an additional pageview. If a user navigates

A *pageview* is defined as a view of a page on your site that is being tracked by the Analytics tracking code. If a user clicks reload after reaching the page, this is counted as an additional pageview. If a user navigates to a different page and then returns to the original page, a second pageview is recorded as well.

A *unique pageview*, as seen in the *Content Overview* report, aggregates pageviews that are generated by the same user during the same session. A *unique pageview* represents the number of sessions during which that page was viewed one or more times.

Geography

Bay area cities were the most likely to view the page during this time period.

City	Pageviews	Unique Pageviews	Avg. Time on Page	Entrances
San Francisco	241	195	2:09	189
Oakland	157	125	3:04	100
New York	68	58	0:26	56
Fremont	46	45	0:28	45
San Jose	44	34	5:18	31
Pleasanton	33	32	0:00	31
Hayward	30	29	9:20	29
Frankfurt	28	28	0:00	28
Alameda	26	22	2:54	20
San Leandro	24	22	0:39	22

Comparative Page Ranking

Compared to all other pages on www.alamedactc.org, the Reports page item ranked 5th from Aug 25, 2016 to Sept 30, 2016 with 1,243 pageviews. During the same period, the most-visited page, aside from the homepage, was the [I-580 Express page](#) with 3,780 pageviews.

Devices

By and large, most people are accessing this page via desktop, some are accessing the page via mobile phones, and none are accessing the page via tablets:

Device Category	Pageviews	Unique Pageviews	Avg. Time on Page	Entrances
mobile	574	509	2:43	504
desktop	390	328	1:45	277
tablet	279	249	3:52	248

Page Clicks

On this page there are 4 links of special significance to this report that are related to the Independent Watchdog Committee Report to the Public. How many times each link has been clicked is posted in the table below.

Page	Pageviews	Unique Pageviews	Avg. Time on Page	Entrances
14 th Annual Report to the Public	97	72	2:01	71
Executive Summary in English	44	40	0:48	35
Executive Summary in Chinese	44	43	0:03	41
Executive Summary in Spanish	32	30	0:07	29

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Independent Watchdog Committee Bylaws

Article 1: Definitions

1.1 2000 Transportation Expenditure Plan. The plan for expending transportation sales tax (Measure B) funds, presented to the voters in 2000, and implemented in 2002.

1.2 2014 Transportation Expenditure Plan. The plan for expending transportation sales tax (Measure BB) funds, presented to the voters in 2014, and implemented in 2015.

1.3 Agency. A business or government organization established to provide a particular service.

1.4 Alameda County Transportation Commission (Alameda CTC). Alameda CTC is a joint powers authority resulting from the merger of the Alameda County Congestion Management Agency ("ACCMA") and the Alameda County Transportation Improvement Authority ("ACTIA"). The 22-member Alameda CTC Commission ("Commission") is comprised of the following representatives:

1.4.1 All five Alameda County Supervisors.

1.4.2 Two City of Oakland representatives.

1.4.3 One representative from each of the other 13 incorporated cities in Alameda County.

1.4.4 A representative from Alameda-Contra Costa Transit District ("AC Transit").

1.4.5 A representative from San Francisco Bay Area Rapid Transit District ("BART").

1.5 Alameda County Transportation Improvement Authority (ACTIA). The governmental agency previously responsible for the implementation of the Measure B half-cent transportation sales tax in Alameda County, as approved by voters in 2000 and implemented in 2002. Alameda CTC has now assumed responsibility for administration of the sales tax.

1.6 Appointing Party. A person or group designated to appoint committee members.

1.7 At-Large Member. One of the 10 Independent Watchdog Committee (IWC) members representing supervisorial districts as described in Section 3.1.1 below.

1.8 Bicycle and Pedestrian Advisory Committee (BPAC). The Alameda CTC Committee that involves interested community members in the Alameda CTC's policy, planning, and implementation efforts related to bicycling and walking.

1.9 Brown Act. California's open meeting law, the Ralph M. Brown Act, California Government Code, Sections 54950 *et seq.*

1.10 Expenditures. Costs incurred and paid for with funds generated from the Measure B and Measure BB sales taxes.

1.11 Fiscal Year. July 1 through June 30.

1.12 Independent Watchdog Committee (IWC or "Committee"). The Alameda CTC Committee of individuals created by the Commission as required by Measure BB. This Committee was originally created by the ACTIA Board and called the Citizens Watchdog Committee as required by Measure B, and was continued by the Commission subsequent to the passage of Measure BB as the Independent Watchdog Committee. The Committee has the same composition as the Citizens Watchdog Committee required by Measure B. The Committee reports directly to the public and has the responsibility of reviewing all Measure B expenditures and reviewing and overseeing all Measure BB expenditures and performance measures of the agency, as appropriate. IWC members are Alameda County residents who are not elected officials at any level of government, nor individuals in a position to benefit personally in any way from the sales tax.

1.13 Local Newspapers. Periodical publications typically published weekly or daily that serves a city, cities or unincorporated communities within Alameda County, whereby the contents are reasonably accessible to the public. On-line publications of these periodicals are included in this definition.

1.14 Measure B. The measure approved by the voters authorizing the half-cent sales tax for transportation services now collected and administered by the Alameda CTC and governed by the 2000 Transportation Expenditure Plan. Collections for the sales tax authorized by Measure B began on April 1, 2002 and extends through March 31, 2022.

1.15 Measure BB. The measure approved by the voters authorizing the sales tax for transportation services collected and administered by the Alameda CTC and governed by the 2014 Transportation Expenditure Plan. Measure BB augments the half-cent Measure B sales tax by a half cent, beginning April 1, 2015 through March 31, 2022. The full one-cent sales tax authorized by Measure BB will begin April 1, 2022 and will extend through March 31, 2045.

1.16 Measure B Program. Transportation or transportation-related program specified in the 2000 Transportation Expenditure Plan for funding transportation programs and projects on a percentage-of-revenues or grant allocation basis.

1.17 Measure BB Program. Transportation or transportation-related program specified in the 2014 Transportation Expenditure Plan for funding transportation programs and projects on a percentage-of-revenues or grant allocation basis.

1.18 Measure B Project. Transportation and transportation-related capital projects specified in the 2000 Transportation Expenditure Plan for funding in the amounts allocated in the 2000 Transportation Expenditure Plan.

1.19 Measure BB Project. Transportation and transportation-related capital projects specified in the 2014 Transportation Expenditure Plan for funding in the amounts allocated in the 2014 Transportation Expenditure Plan.

1.20 Monitor. To observe, track, or keep a continuous record of a process to support committee activities.

1.21 Organizational Meeting. An organizational meeting of the IWC will be held in July to elect officers and adopt the annual calendar/work plan and review the Alameda CTC budget related to IWC.

1.22 Organizational Member. One of the seven IWC members representing organizations as described in Section 3.1.2 below.

1.23 Oversee. To watch over Measure BB expenditures and performance measures to support committee activities.

1.24 Paratransit Advisory and Planning Committee (PAPCO). The Alameda CTC Committee that meets to address funding, planning, and coordination issues regarding paratransit services in Alameda County. Members must be Alameda County residents and eligible users of any transportation service available to seniors and people with disabilities in Alameda County. PAPCO is supported by a Paratransit Technical Advisory Committee comprised of Measure B and Measure BB-funded paratransit providers in Alameda County.

1.25 Performance Measures. Quantifiable methods used to assess how well the Alameda CTC is achieving its adopted objectives for Measure BB projects and programs.

1.26 Planning Area. Geographic groupings of cities and Alameda County for planning and funding purposes. North County: Alameda, Albany, Berkeley, Emeryville, Oakland, Piedmont; Central County: Hayward, San Leandro, unincorporated county (near Hayward); South County: Fremont, Newark, Union City; East County: Dublin, Livermore, Pleasanton, the unincorporated area of Sunol.

1.27 Subcommittee. A subset of the IWC, less than a quorum, usually organized for a certain purpose.

Article 2: Purpose and Responsibilities

2.1 Committee Purpose. The Committee is appointed pursuant to Measure B and Measure BB: 1) To review all expenditures of the Measure B transportation sales tax; and 2) to review and oversee all expenditures and performance measures, as appropriate, of the Measure BB transportation sales tax, to monitor projects and programs and to report directly to the public.

2.2 Committee Roles and Responsibilities from Expenditure Plan. As defined by the Measure B and Measure BB Transportation Expenditure Plans, the roles and responsibilities of the Committee include:

2.2.1 Hold public hearings and issue reports, on at least an annual basis, to inform Alameda County residents about how the sales tax funds are being spent. The hearings will be open to the public and must be held in compliance with the Brown Act, California's open meeting law, with information announcing the hearings well-publicized and posted in advance.

2.2.2 Have full access to Alameda CTC's independent auditor and have the authority to request and review specific information regarding use of the sales tax funds and to comment on the auditor's reports.

2.2.3 Publish an independent annual report, including any concerns the committee has about audits it reviews. The report will be published in local newspapers and will be made available to the public in a variety of forums to ensure access to this information.

2.2.4 Provide a balance of viewpoints, geography, age, gender, ethnicity and income status, to represent the different perspectives of the residents of the county.

2.3 Additional Responsibilities. Additional IWC member responsibilities are to:

2.3.1 Communicate from time to time to the Alameda CTC by resolution suggestions and concerns pertinent to the administration and expenditure of Measure B and Measure BB funds.

2.3.2 Communicate as necessary to recommend that an appointing party appoint a new member when there is a vacancy or upcoming end of term.

Article 3: Members

3.1 Number of Members. The IWC will consist of 17 members.

3.1.1 Ten members shall be at-large, two each representing the five supervisorial districts in Alameda County, one of the two nominated by a member of the Board of Supervisors and one of the two selected by the Alameda County Mayors' Conference.

3.1.2 Seven of the members shall be nominated by the seven organizations specified in the 2014 Transportation Expenditure Plan: East Bay Economic Development Alliance; Alameda County Labor Council; Alameda County Taxpayers' Association; Alameda County Paratransit Advisory and Planning Committee; Bike East Bay, formerly known as East Bay Bicycle Coalition; League of Women Voters; and Sierra Club.

3.2 Appointment. The Commission will make appointments in the following manner:

3.2.1 Each member of the Alameda County Board of Supervisors shall select one At-Large Member to represent his or her supervisorial district.

3.2.2 The Alameda County Mayors' Conference shall select one At-Large Member to represent each of the five supervisorial districts.

3.2.3 Each organization listed in Section 3.1.2 above shall, subject to approval by the Commission, select one organizational member.

3.3 Membership Qualification. Each IWC member shall be an Alameda County resident. An IWC member shall not be an elected official at any level of government; or be a public employee of any agency that oversees or benefits from the proceeds of Measure B and Measure BB transportation sales taxes; or have any economic interest in any project or program.

3.4 Membership Term. Appointments shall be for two-year terms. There is no maximum number of terms a member may serve. Members shall serve until the Commission appoints their successor.

3.5 Attendance. Members will regularly attend meetings. Accordingly, more than three consecutive absences is cause for removal from the Committee.

3.6 Termination. A member's term shall terminate on the occurrence of any of the following:

3.6.1 The member voluntarily resigns by written notice to the chair or Alameda CTC staff.

3.6.2 The member fails to continue to meet the qualifications for membership, including attendance requirements.

3.6.3 The member becomes incapable of continuing to serve.

3.6.4 The appointing party or the Commission removes the member from the Committee.

3.7 Vacancies. An appointing party shall have the right to appoint (subject to approval by the Commission) a person to fill the vacant member position. Alameda CTC shall be responsible for notifying an appointing party of such vacancy and for urging expeditious appointment of a new member, as appropriate.

Article 4: Officers

4.1 Officers. The IWC shall annually elect a chair and vice chair. Each officer must be a duly appointed member of the IWC.

4.1.1 Duties. The chair shall preside at all meetings and will represent the IWC before the Commission to report on IWC activities. The chair shall serve as a voting ex-officio

member of all subcommittees except a nominating subcommittee (when the IWC discusses the chair position). The vice chair shall assume all duties of the chair in the absence of, or on the request of the chair.

4.2 Office Elections. Officers shall be elected by the members annually at the Organizational Meeting or as necessary to fill a vacancy. An individual receiving a majority of votes by a quorum shall be deemed to have been elected and will assume office at the meeting following the election. In the event of multiple nominations, the vote shall be by ballot. Officers shall be eligible for re-election indefinitely.

Article 5: Meetings

5.1 Open and Public Meetings. All IWC meetings shall be open and public and governed by the Brown Act. Public comment shall be allowed at all IWC meetings. The time allotted for comments by a member of the public in the general public comment period or on any agenda item shall be up to 3 minutes per speaker at the discretion of the chair. Written comments may be submitted prior to the meeting. The number of IWC meetings, including regular meetings, sub-committee meetings, special meetings and public hearings, will be limited to the number of meetings approved in Alameda CTC's annual overall work program and budget, as approved by the Commission.

5.2 Regular Meetings. The IWC shall have a regular meeting at least once per quarter. Prior to each Organizational Meeting, the outgoing chair shall cause all members to be canvassed as to their available meeting times and shall recommend the day and time that best accommodates the schedules of all members, giving due regard to accommodating the schedule of any continuing member who has missed meetings due to a conflict in the prior year. Annually, at the Organizational Meeting, IWC shall establish the schedule of regular meetings for the ensuing year. Meeting dates and times may be changed and additional regular meetings scheduled during the year by action of the IWC.

5.3 Quorum. For purposes of decision making, a quorum shall consist of at least half (50 percent) plus one of the total number of members appointed at the time a decision is made. Members will not take actions at meetings with less than 50 percent plus one members present. Items may be discussed and information may be distributed on any item even if a quorum is not present; however, no action can be taken, until the Committee achieves a quorum.

5.4 Special Meetings. Special meetings may be called by the chair or by a majority of the members requesting the same in writing given to the chair, with copies to the vice chair and the Executive Director, specifying the matters to be considered at the special meeting. The chair or vice chair shall cause notice of a special meeting stating the matters to be considered to be given to all IWC members and posted and published in accordance with the Brown Act.

5.5 Public Hearing. At least annually, prior to publication of IWC's annual report, IWC shall conduct a public hearing on a draft of the IWC annual report. Each public hearing shall be conducted as part of a regular meeting.

5.6 Agenda. All meetings shall have a published agenda. Items for a regular meeting agenda may be submitted by any member to the chair and Alameda CTC staff. The Commission and/or Alameda CTC staff may also submit items for the agenda. Agenda planning meetings are held approximately three weeks prior to each IWC meeting. Alameda CTC staff will notify all IWC members when this meeting is established and remind members to submit any agenda item requests to the chair at least one day prior to the agenda planning meeting date. At the agenda planning meeting, the chair and Alameda CTC staff will discuss any agenda items submitted to the chair. Every agenda shall include a provision for members of the public to address the Committee. The chair and the vice chair shall review the agenda in advance of distribution. Copies of the agenda, with supporting material and the past meeting minutes, shall be mailed to members and any other interested parties who request it. The agenda shall be posted on the Alameda CTC website and in the Alameda CTC office and provided at the meeting, all in accordance with the Brown Act.

5.7 Roberts Rules of Order. The rules contained in the latest edition of "Roberts Rules of Order Newly Revised" shall govern the proceedings of the IWC and any subcommittees thereof to the extent that the person presiding over the proceeding determines that such formality is required to maintain order and make process, and to the extent that these actions are consistent with these bylaws.

5.8 Place of Meetings. IWC meetings shall be held at the Alameda CTC offices, unless otherwise designated by the Committee. Meeting locations shall be within Alameda County, accessible in compliance with the Americans with Disabilities Act of 1990 (41 U.S.C., Section 12132) or regulations promulgated thereunder, shall be accessible by public transportation, and shall not be in any facility that prohibits the admittance of any person, or persons, on the base of race, religious creed, color, national origin, ancestry, or sex, or where members of the public may not be present without making a payment or purchase.

5.9 Meeting Conduct. IWC members shall conduct themselves during meetings in a manner that encourages respectful behavior and provides a welcoming and safe environment for each member and staff member characterized by an atmosphere of mutual trust and respect. Members shall work with each other and staff to respectfully, fairly, and courteously deal with conflicts if they arise.

Article 6: Subcommittees

6.1 Establishment. The IWC may establish subcommittees when advisable and as necessary subject to the approved Alameda CTC overall work program and budget as approved by the Commission to conduct an investigation or to draft a report or other document within the authority of the IWC or for other purposes within the IWC's authority.

6.2 Membership. IWC members will be appointed to subcommittees by the IWC or by the chair. No subcommittee shall have fewer than three members, nor will a subcommittee have sufficient members to constitute a quorum of the IWC.

Article 7: Records and Notices

7.1 Minutes. Minutes of all meetings, including actions and the time and place of holding each meeting, shall be kept on file at the Alameda CTC office. Alameda CTC staff will prepare and include full minutes in meeting packets prior to each regular IWC meeting.

7.2 Attendance Roster. A member roster and a record of member attendance shall be kept on file at the Alameda CTC office.

7.3 Brown Act. All meetings of the IWC will comply with the requirements of the Brown Act. Notice of meetings and agendas will be given to all members and any member of the public requesting such notice in writing and shall be posted at the Alameda CTC office at least 72 hours prior to each meeting. Members of the public may address the IWC on any matter not on the agenda and on each matter listed on the agenda, in compliance with the Brown Act and time limits, up to three minutes per speaker, set at the discretion of the chair.

7.4 Meeting Notices. Meeting notices shall be in writing and shall be issued via U.S. Postal Service, Alameda CTC website, personal delivery, and/or email. Any other notice required or permitted to be given under these bylaws may be given by any of these means.

Article 8: General Matters

8.1 Per Diems. Committee members shall be entitled to a per diem stipend for meetings attended in amounts and in accordance with policies established by the Alameda CTC.

8.2 Conflicts of Interest. A conflict of interest exists when any Committee member has, or represents, a financial interest in the matter before the Committee. Such direct interest must be significant or personal. In the event of a conflict of interest, the Committee member shall declare the conflict, recuse himself or herself from the discussion, and shall not vote on that item. Failure to comply with these provisions shall be grounds for removal from the Committee.

8.3 Amendments to Bylaws. These bylaws will be reviewed annually, and may be amended, repealed, or altered, in whole or in part, by a vote taken at a duly constituted Committee meeting at which a quorum is present, as a recommendation to the Commission for approval.

8.4 Public Statements. No member of the Committee may make public statements on behalf of the Committee without authorization by affirmative vote of the Committee, except the chair, or in his or her place the vice chair, when making a regular report of the Committee activities and concerns to the Alameda CTC. This does not include presentations about the Committee to city councils, which all Committee members have a responsibility to make.

8.5 Conflict with Governing Documents. In the event of any conflict between these bylaws and the July 2000 Transportation Expenditure Plan, the January 2014 Transportation Expenditure Plan, California state law, or any action lawfully taken by ACTIA or the Alameda CTC, the Transportation Expenditure Plans, state law or the lawful action of ACTIA or the Alameda CTC shall prevail.

8.6 Staffing. Alameda CTC will provide staffing to the Committee including preparation and distribution of meeting agendas, packets, and minutes; tracking of attendance; and stipend administration.

8.7 Economic Interest. Each Committee member shall, no later than March 15 of every year, prepare and file with Alameda CTC a statement of economic interest in the form required by law, currently Form 700 which can be found on the California Fair Political Practices Commission website, <http://www.fppc.ca.gov/index.php?id=500>.

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I. INTRODUCTION

As requested at the last Alameda County Transportation Commission (ACTC) meeting, we have written an Executive Summary of my Investigative Report prepared in response to complaints made by an individual, Jason Bezis (the “Complainant”). The Complainant alleged that ACTC misused public funds to promote the passage of Measure BB, and that the law firm of Wendel, Rosen, Black & Dean LLP (“Wendel Rosen”) simultaneously represented both ACTC and the Yes on BB Campaign in violation of attorney conflict of interest rules.

The Investigator interviewed eight (8) individuals, including the Complainant, the ACTC Executive Director, the ACTC Deputy Director of Planning and Policy, the partner at Wendel Rosen who serves as ACTC General Counsel, a partner of Wendel Rosen, a consultant at Clifford Moss, the Chair of the ACTC Independent Watchdog Committee, and a Member of the ACTC Independent Watchdog Committee.

The Investigator also reviewed documents and videos, including emails and communications from the Complainant and ACTC officials and employees, written materials provided by the Complainant, materials produced and distributed by ACTC in connection with Measure BB, educational materials about other ACTC projects and programs, and videos of meetings and events.

II. INVESTIGATIVE FINDINGS

A. Investigative Findings on Claims Alleging Misuse of Public Funds

i. The Agency’s Materials Related to Measure BB

Claim: Complainant claims that materials developed and distributed using Agency funds constituted illegal advocacy in support of Measure BB.

Finding: The Investigator finds that the materials produced and distributed by the Agency do not violate California case law or statutes governing the use of public resources in connection with ballot measure elections. An agency is permitted to evaluate the merits of a proposed ballot measure and make its views known to the public. The challenged materials constitute ACTC’s evaluation of the merits of Measure BB that ACTC chose to make known to the public.

ii. The Clifford Moss Contract and Its Performance

Claim: Complainant claims that the Clifford Moss contract with the Agency violated California law because it was an illegal effort to gain voter support for Measure BB in 2014 after Measure B1 failed in 2012.

Finding: The Investigator finds that the Clifford Moss contract and the Clifford Moss firm’s performance of that contract does not violate California case law or statutes governing the use of public resources in connection with ballot measure elections. The scope of the Clifford Moss contract was limited to public education and outreach associated with the development of a TEP and placement of the measure on the ballot, and these activities were not improper.

iii. Activities by Agency Officials and Employees

Claim: Complainant claims that certain actions by ACTC officials and employees constituted unlawful advocacy in support of Measure BB.

Finding: The Investigator finds that the challenged actions of ACTC officials and employees do not violate California case law or statutes governing the use of public resources in connection with ballot measure elections. Several of the challenged actions cannot be attributed to ACTC employees or officials and certain personal political activities of individuals are protected by law.

iv. The Bike East Bay Bicycle Light Giveaway

Claim: Complainant claims that during a “Yes on BB” campaign event, the organization “Bike East Bay” gave away bicycle lights imprinted with the words “Alameda County Transportation Commission” and this giveaway resulted in a commingling of Bike East Bay campaign funds and ACTC public funds.

Finding: The Investigator finds that ACTC did not violate California law as a result of the bicycle light giveaway because ACTC provides these bicycle lights to many organizations and the organizations have discretion to determine how they will use them. There was no commingling of funds between ACTC and Bike East Bay.

v. The Connection Between the Activities of ACTC and the Yes on BB Campaign

Claim: Complainant claims that the organizations and individuals working for ACTC are the same as those working for the campaign in support of Measure BB.

Finding: The Investigator finds that the fact that many of the same organizations and individuals worked for ACTC and the campaign in support of Measure BB does not violate California law. ACTC chose the Clifford Moss firm after a competitive process and the Yes on BB campaign later chose the Clifford Moss firm after its own competitive process.

B. Investigative Findings on Claims Alleging Violation of Conflict of Interest Rules

i. The Wendel Rosen Firm’s Simultaneous Representation of ACTC and the Yes on BB Campaign

Claim: Complainant claims that the Wendel Rosen firm’s simultaneous representation of ACTC and the Yes on BB Campaign constitutes a conflict of interest in violation of the California Rules of Professional Conduct.

Finding: The Investigator finds that the Wendel Rosen firm’s simultaneous representation of ACTC and the Yes on BB campaign does not violate the conflict of interest rules set forth in the California Rules of Professional Conduct. There is no actual conflict because the Agency and the Campaign do not have interests adverse to each other and the Wendel Rosen firm’s representation of clients with aligned interests does not implicate concerns about the disclosure of client confidences.

ii. The Wendel Rosen Firm's Relationship with Clifford Moss

Claim: Complainant claims that one Wendel Rosen partner's marital relationship with a Clifford Moss consultant creates a conflict of interest that requires disqualification of the Wendel Rosen firm as ACTC's general counsel.

Finding: The Investigator finds that the Wendel Rosen firm's relationship with Clifford Moss does not create an actual or potential conflict because the Wendel Rosen firm was not providing legal services to Clifford Moss during the time that Clifford Moss performed work for ACTC.

C. BACKGROUND

The ACTC is a joint powers authority that plans, funds and delivers transportation programs and projects aimed at expanding access to, and improving, the various modes of transportation in Alameda County. The ACTC also manages the expenditures from the County's transportation sales tax.

The process for ACTC to have a sales tax measure placed on the ballot differs significantly from that for a city, county or special district to place a measure on the ballot. In order for ACTC to place a sales tax measure on the ballot, it must engage in a complex and involved governmental process involving other public agencies.

First, the ACTC must prepare a transportation expenditure plan ("TEP") that sets forth "the expenditure of the revenues expected to be derived from the tax imposed pursuant to this chapter, together with other federal, state, and local funds expected to be available for transportation improvements, for the period during which the tax is to be imposed." (Pub. Util. Code section 180206.)

Second, the TEP must be approved by "the board of supervisors and the city councils representing both a majority of the cities in the county and a majority of the population residing in the incorporated areas of the county." (*Id.*)

Third, the governing board of the transportation agency must vote by a two-thirds majority to place the measure on the ballot. Only after all of these steps have been completed may the county board of supervisors place the sales tax measure on the ballot on behalf of the transportation agency. (*Id.*; Pub. Util. Code section 180201.) Because the proceeds of transportation sales taxes are earmarked for specific purposes, measures imposing such sales taxes require approval of two-thirds of county voters.

The "first" Measure B, a ½ cent sales tax measure to provide transportation funding, was approved by county voters in 1986. In 2000, county voters approved an extension of that sales tax until 2022. ACTC sought approval of Measure B1 at the November 2012 election and Measure B1 was narrowly defeated.

After the defeat of Measure B1, ACTC decided to revise the TEP, and seek voter approval of a sales tax increase in 2014.

On November 21, 2013, ACTC executed a contract with Clifford Moss LLC, a political strategy and public affairs firm, to provide “expertise in public education and outreach associated with the development of a transportation expenditure plan and placement of a measure on the ballot.” The selection of Clifford Moss was based on an RFP process, which resulted in three proposals being submitted.

From November 2013 until June 2014, the Clifford Moss firm was involved in providing simpler language for the TEP, to make it more easily understood. After that, the firm was involved in the governmental process of obtaining approval of the 2014 TEP by city councils and the Board of Supervisors, which was necessary for the measure to qualify for the ballot. Finally, the firm provided input into the communication materials developed by the Agency related to the ballot measure itself. The Clifford Moss contract expired on June 30, 2014.

On July 8, 2014, following the required city council approvals, the Board of Supervisors voted to place Measure BB on the November 2014 ballot. Measure BB called for an increase to the transportation sales tax by ½ percent and for extending the duration of the sales tax from 2022 to 2045.

That same month, Clifford Moss began providing services to the campaign committee supporting measure BB (“Campaign”) to support the passage of Measure BB. Clifford Moss was selected through a competitive request for proposal process.

On November 4, 2014, Alameda County voters approved Measure BB, with over 70 percent of voters approving the measure.

D. LAW, ANALYSIS, AND INVESTIGATIVE FINDINGS

A. Claims Alleging Misuse of Public Funds to Promote Passage of Measure BB

This part of the investigation report focuses on whether the ACTC, or any of its officials, employees, agents or contractors, violated California law prohibiting the use of public funds to support or oppose ballot measures.

1. Applicable Law

As made clear below, the law governing the appropriate use of public funds with respect to ballot measures is complex, nuanced, and fact-intensive. This law is found in cases, attorney general opinions, and statutes.

a. Case law

i. Stanson

The California Supreme Court in *Stanson v. Mott* (1976) 17 Cal.3d 206, 209-10, established the standard for expenditure of public funds when it held that, “in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign.”

ii. League of Women Voters

In *League of Women Voters of Cal. v. Countywide Crim. Justice Coordination Com.* (1988) 203 Cal.App.3d 529, 550, the court of appeals held that the “the development and drafting of a proposed initiative was not akin to partisan campaign activity, but was more closely akin to the proper exercise of legislative authority.”

The court explained that “[p]rior to and through the drafting stage of a proposed initiative, the action is not taken to attempt to influence voters either to qualify or to pass an initiative measure ... It follows those activities cannot reasonably be construed as partisan campaigning.” (*Id.* at pp. 555-56.)

The court concluded that materials prepared by public employees regarding the proposed initiative were “relatively balanced and neutral in tone” and provided “a considerable body of useful information,” thus providing “‘a fair presentation’ of relevant information ...” (*Id.* at 559, quoting *Stanson* at p. 221.) Finally, the court held that the board of supervisors did not unlawfully expend public funds by holding a hearing at which it officially recorded its support for the qualification of the proposed initiative. (*Id.* at p. 560.)

iii. *Santa Barbara County Coalition*

In *Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara County Association of Governments* (2008) 167 Cal. App. 4th 1229, 1235, a nonprofit organization alleged that a county transportation agency had unlawfully advocated and spent public funds for passage of a ballot measure to extend a one-half percent sales tax to fund transportation projects. The challenged activities occurred before the sales tax measure qualified for the ballot.

The court of appeal ruled in favor of the transportation agency, focusing on the timing of challenged actions, noting that they occurred before the measure was placed on the ballot and contrasting the expenditure of funds to comply with the process for placing the measure on the ballot from later campaign activities in support of the qualified measure. (*Id.* at p. 1240.) Accordingly, the Court concluded, “[n]othing in *Stanson* suggests that the formulation and drafting of a proposed ballot measure before its qualification for the ballot constitutes partisan campaigning for the ballot measure.” (*Id.*)

iv. *Vargas*

More recently, the California Supreme Court in *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, reaffirmed and clarified the *Stanson* rule that government entities generally may not use public funds to pay for campaign activities, but may use such funds to make available informational materials relating to a ballot measure election. (*Id.* at pp. 24–25, 33–34.)

The court explained that under the *Stanson* standard, certain government actions constitute improper campaign activity, including “the use of public funds to purchase such items as bumper stickers, posters, advertising ‘floats,’ or television and radio ‘spots,’” and “the dissemination, at public expense, of campaign literature prepared by private proponents or opponents of a ballot measure.” (*Id.* at p. 24.) On the other hand, a public agency acts in a proper informational role when it provides a “fair presentation of the facts” in response to a “citizen’s request for information,” or authorizes an agency employee to present the department’s view of a ballot proposal at a meeting of a public or private organization upon that organization’s request. (*Id.* at pp. 24–25.)

The court then explained that when an activity does not fall clearly into either category, the court must consider “such factors as the style, tenor and timing of the publication; no hard and fast rule governs every case.” (*Id.* at p. 25, fn. omitted.)

The *Vargas* court focused on several factors in deciding the challenged actions were properly characterized as providing information instead of campaigning, such as: “(1) the information conveyed generally involved past and present facts, such as how the original [utility tax] was enacted, what proportion of the budget was produced by the tax, and how the city council had voted to modify the budget in the event Measure O were to pass; (2) the communications avoided argumentative or inflammatory rhetoric and did not urge voters to vote in a particular manner or to take other actions in support of or in opposition to the measure; and (3) the information provided and the manner in which it was disseminated were consistent with established practice regarding use of the Web site and regular circulation of the city’s official newsletter.” (*Id.* at p. 40.)

v. *Peninsula Gardens*

In *Peninsula Guardians, Inc. v. Peninsula Health Care Dist.* (2011) 200 Cal.App.4th 1108, 1133, the court of appeal applied *Vargas* to hold that the Peninsula Health Care District’s mailing of a newsletter and three postcards about a ballot measure to construct a new hospital was not improper.

First, the court examined the content of the materials. (*Id.* at pp. 1127-28.) The court determined that the communications were “primarily factual and informative,” and they generally involved “past and present facts,” including details on the proposed construction timeline, services the new hospital would provide and information on what would happen if the measure were approved. (*Id.* at pp. 1126-28.)

Second, the court looked at the “visual style” of the communications. (*Id.* at p. 1128.) The appellant contended that the communications were “political” because they included “sophisticated graphics, punchy headlines and colored quotes over bullet-pointed text.” (*Id.* at pp. 1127-28.) The court rejected this argument, noting that making a publication attractive is consistent with the legitimate dissemination of informational materials by the District. (*Id.*)

Third, the court turned to the “verbal style and tenor” of the communications. (*Id.* at pp. 1128-31.) The appellant argued that the content of the communications were “those of positive political ads.” (*Id.* at p. 1129.) The appellant focused on the publications’ use of the pronouns “we” and “you” which it said were part of an effort to “enlist [voters] in the District’s cause.” (*Id.*) The Court rejected those arguments, noting that the approach was consistent with District’s normal style of communicating with the public. (*Id.*)

Similarly, the Court did not accept the argument that the pieces were improper because they “include express value judgments and opinions,” such as the statement that the District had “negotiated the best possible agreement for the District,” that it is a “fair deal” that contains the “best possible terms to build the new community hospital on District land with no new taxes,” and that the Board was “proud of the final terms of the agreement.” (*Id.*) The Court characterized these statements as “limited” and “moderate,” and intended to “simply reflect District’s views about the merits of the proposed agreement...” (*Id.* at pp. 1129-30.)

b. Attorney General Opinions

i. Attorney General Opinion No. 04-211

In Attorney General Opinion No. 04-211, cited by the Complainant in support of his allegation, the Attorney General determined that it was permissible that “a community college district use district funds to hire a consultant to conduct surveys and establish focus groups to assess the potential support and opposition to the measure, the public’s awareness of the district’s financial needs, and the overall feasibility of developing a bond measure that could win voter approval.” (88 Ops.Cal.Atty.Gen. 46 (2005).) The Attorney General concluded that “the activities proposed here — evaluating the public’s awareness of the district’s financial needs, measuring potential support for a bond measure, and assessing the overall feasibility of passing a bond measure — cannot fairly be characterized as partisan campaigning.” (*Id.*)

ii. Attorney General Opinion No. 13-304

More recently, in Attorney General Opinion No. 13-304, also cited by the Complainant, the Attorney General reaffirmed the idea that “a school district violates prohibitions against using public funds to advocate passage of a bond measure by contracting for services related to a bond election campaign if those services may be fairly characterized as campaign activity.” (99 Ops. Cal. Atty. Gen. 18 (2016).)

c. Statutes

i. Government Code section 54964

Government Code section 54964 expressly prohibits the expenditure of local agency funds “to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate, by the voters.” (Gov. Code § 54964(a).) Under this statute, “expenditure” means a payment of local agency funds that is used for communications that expressly advocate the approval or rejection of a clearly identified ballot measure.

This section does not prohibit the expenditure of local agency funds to provide information to the public about the possible effects of a ballot measure on the activities, operations, or policies of the local agency, if both of the following conditions are met: (1) the informational activities are not otherwise prohibited by the Constitution or laws of this state and (2) the information provided constitutes an accurate, fair, and impartial presentation of relevant facts to aid the voters in reaching an informed judgment regarding the ballot measure.

ii. Government Code section 8314

Government Code section 8314 prohibits the use of public resources for “a campaign activity, or personal or other purposes which are not authorized by law.”

iii. The Political Reform Act

The Political Reform Act (“PRA”) requires timely disclosure of contributions and expenditures for ballot measures.

iv. Government Code section 3203

Finally, subject to certain prohibited activities not at issue here, Government Code section 3203 provides broad protection for public officials and employees to engage in political activity, provided they do so on their own time, and without using the public funds or resources.

2. Analysis and Findings of Claims Involving Misuse of Public Resources in Connection with Measure BB

a. ACTC's Materials Related to Measure BB

Claim: Complainant alleges that materials developed and distributed using ACTC funds constituted illegal advocacy in support of Measure BB.

Complainant asserts that the “Measure BB Fact Sheet” did not acknowledge that the adoption of Measure BB would result in a half-cent sales tax increase and spoke of “widespread support,” “support” and “unanimous support” of Measure BB, without mention of opposition to the measure. Complainant also asserts that the Fact Sheet “grossly exaggerates” the environmental benefits associated with the passage of Measure BB and therefore is not a “fair and impartial presentation of facts.”

Complainant also claims that the “Consider the Future” series of materials were all printed in color, all mention the measure, and therefore were “like slick campaign literature,” and that some of the pieces were distributed at BART stations during 2014, after the TEP was approved by the Agency.

Finding: The Investigator finds that the materials produced and distributed by the Agency do not violate California case law or statutes governing the use of public resources in connection with ballot measure elections.

As the Supreme Court explained in *Vargas*, certain government actions constitute *per se* improper campaign activity, including “the use of public funds to purchase such items as bumper stickers, posters, advertising ‘floats,’ or television and radio ‘spots,’ and ‘the dissemination, at public expense, of campaign literature prepared by private proponents or opponents of a ballot measure.’” (46 Cal.4th at p. 24.) The ACTC Executive Director and ACTC Deputy Director of Planning and Policy both confirmed that the Agency did not expend Agency funds for any of these purposes in connection with Measure BB.

In contrast, a public agency acts in a proper informational role when it provides a “fair presentation of the facts” in response to a citizen’s “request for information,” or authorizes an agency employee to present the department’s view of a ballot proposal at a meeting of a public or private organization upon that organization’s request. (*Id.* at pp. 24–25.) The Investigator concurs with the Complainant that the challenged publications do not clearly involve a “fair presentation of the facts” regarding Measure BB. In particular, these materials make no mention of the fact that Measure BB would result in a tax increase, but rather focus solely on how the transportation expenditures from Measure BB revenues would benefit Alameda County residents, and the environmental claims made in the Fact Sheet appear exaggerated.

Since these publications do not fall clearly into either of these two categories, no “hard and fast” rules govern the analysis here. Rather, factors such as the style, tenor and timing of the publication must be examined to determine whether the “communication constitutes traditional campaign activity.” (*Id.* at p. 27.)

The Measure BB Fact Sheet expresses the ACTC’s views about the merits of Measure BB by discussing the benefits that would flow from its adoption, much in the same way that the communications challenged in *Vargas* focused narrowly on the dire consequences that would result if the Salinas UUT were repealed. (46 Cal.4th at pp. 37-38.) Nor is this conclusion altered by the fact that the ACTC made materials available at BART stations and public locations “to members of the public who sought out the document.” (*Id.*)

And unlike the situation in *Vargas*, the ACTC chose not to mail information to individual residents. Additionally, the Fact Sheet did not, in the view of the Investigator, use “argumentative or inflammatory rhetoric,” or exhort the public to vote in favor of Measure BB.

In the view of the Investigator, it is also relevant that the ACTC regularly distributes information to the public about the transportation programs and activities funded by the Agency, at many types of events and locations. (See *Vargas*, 46 Cal.4th at p. 40.) These efforts to provide information to the public take place on an ongoing basis.

There is, however, one aspect of the Fact Sheet that the Investigator viewed as subject to particularly careful scrutiny: the informational value of the terms “support,” “widespread support,” and “unanimous support,” and listing public agencies and organizations that supported the TEP and Measure BB. This type of information was not at issue in any of the *Stanson* cases, and would appear to be more akin to the type of information that might appear in campaign literature. On the other hand, this information may be viewed as a shorthand means of communicating an agency’s views about the merits of a ballot measure. Public agencies are not prohibited from discussing its view about the merits of a proposed measure.

Moreover, as *Vargas* and other cases make clear, in applying the *Stanson* factors, the challenged communication must be viewed in its entirety. For the reasons discussed above, the Investigator concludes that, taken as a whole, the Measure BB Fact Sheet and Consider the Future materials do not amount to campaign material, but rather constitutes an evaluation by the Agency of the merits of Measure BB that it chose to make known to the public.

b. The Clifford Moss Contract and Its Performance

Claim: Complainant alleges that the Clifford Moss contract with the Agency violated California law because it was an illegal effort to gain voter support for Measure BB in 2014 after Measure B1 failed in 2012.

Complainant points to some of the content of the proposal submitted by the Clifford Moss firm to the Agency, and alleges that they demonstrate that the firm would be engaged in campaign activity, rather than education efforts. According to the Complainant, the proposal suggests that Clifford Moss seems to be auditioning for the role of Yes on BB campaign manager, as though the public entity and the political campaign are supposed to be coordinated.

Complainant also points to provisions of the Clifford Moss contract, which call on the firm to, among other things, “oversee and coordinate all aspects of a countywide outreach effort, including communications/media, stakeholder engagement, coalition building and maintenance.” Complainant contends that once the Agency had approved the 2014 TEP in January 2014, the Agency could not engage in advocacy in support of the measure, and that under the Attorney General opinions, the consultant could not engage in “coalition building.”

Complainant points to numerous communications between the Agency and the firm regarding its performance of the contract. Relying on the *League of Women Voters* case and the two Attorney General opinions, Complainant asserts that this use of public funds for “coalition building” by Clifford Moss served to improperly develop a campaign to promote approval of Measure BB.

Finding: The Investigator finds that the Clifford Moss contract and the Clifford Moss firm’s performance of that contract does not violate California case law or statutes governing the use of public resources in connection with ballot measure elections.

The Investigator concurs with Complainant that much of the rhetoric in the Clifford Moss proposal to the Agency could be viewed as an “audition” to become a consultant to a political campaign rather than to a government agency. Much of the curious language highlighted by Complainant appears to the Investigator to be campaign, rather than governmental, in focus.

If the “campaign” activities to which the proposal alludes were incorporated into the contract, there would be significant cause for concern. In the view of the Investigator, however, that is not the case. Rather, by its express terms, the scope of work for Clifford Moss was more narrowly defined as providing “expertise in public education and outreach associated with the development of a transportation expenditure plan and placement of a measure on the ballot.”

Additionally, in the view of the Investigator, the numerous concerns expressed by Complainant regarding Clifford Moss ignore a critically important difference between the process most public agencies must follow to place a measure on the ballot, and the special and cumbersome governmental process with which the ACTC must comply in order to place on the ballot a sales tax measure such as Measure BB.

In the view of the Investigator – given this unique governmental process that the ACTC was required to follow to have Measure BB placed on the ballot – the claims of Complainant should be analyzed primarily under the court of appeal decision in *Santa Barbara County Coalition Against Automobile Subsidies*. In that case, the transportation agency had hired a private consultant to survey voter support for an extension of a sales tax.

The court of appeal determined that “even if the use of public funds for ‘election contests’ or ‘election campaigns’ is deemed unconstitutional as suggested by the *Stanson* court, the SBCAG activity challenged by appellant did not occur in an election contest or campaign In this case, the activity by SBCAG occurred before approval of its transportation expenditure plan or finalization of the ordinance placing Measure A on the ballot, and before the County Board of Supervisors had adopted the ordinance and certified Measure A for the 2008 ballot. SBCAG was performing its legislative duty to obtain financing for County transportation needs.” (*Santa Barbara County Coalition Against Automobile Subsidies*, 167 Cal. App. 4th at p. 1240.)

Analyzed under this governing decision, and based on the facts here, the Investigator concludes that the allegations made by Complainant regarding the contract with, and activities of, Clifford Moss do not have merit. The services provided by Clifford Moss occurred between November 2013 and June 30, 2014, before Measure BB was placed on the ballot.

Indeed, consistent with the scope of the contract, during this timeframe the Agency was performing its “legislative duty” to seek the approval of the 2014 TEP from cities and the Board of Supervisors, an essential part of the governmental process the Agency had to follow to have the measure placed on the ballot to garner additional revenues for the County’s transportation needs. Both the ACTC Executive Director and ACTC Deputy Director of Planning and Policy discussed the role of Clifford Moss in the “legislative process” of obtaining approvals necessary for Measure BB to be placed on the ballot. Accordingly, the Investigator concludes that these activities by Clifford Moss did not violate California law.

c. Activities by Agency Officials and Employees

Claim: Complainant alleges that certain actions by ACTC officials and employees constituted unlawful advocacy in support of Measure BB.

Complainant asserts that the ACTC Deputy Director of Planning and Policy spoke at a ribbon cutting ceremony for the Iron Horse Trail extension where a large Yes on BB campaign banner was located immediately behind the area where the ceremony was conducted. Although the ACTC Executive Director requested that the banner be removed, that request was denied.

Complainant also asserts that the ACTC Deputy Director of Planning and Policy stood with event sponsors and addressed the audience at a Yes on BB campaign fundraiser event in Emeryville on September 18, 2014. Complainant also questions whether the ACTC Deputy Director of Planning and Policy was absent from the ACTC office on October 31, 2014 to work on the Campaign.

Complainant also points to a photo of the ACTC Executive Director volunteering at a phone bank in support of Measure BB.

Complainant asserts that individual members of construction unions held Yes on BB campaign signs at the dedication ceremony for the State Route 84/Isabel Ave Widening Project in Livermore, an event sponsored by ACTC and CalTrans.

Complainant also asserts that when the ACTC governing board approved the TEP at its January 23, 2014 meeting, the Commission Chairman stated “[e]ach one of you will become fundraisers for this also” and made a reference to “\$10,000.”

Finding: The Investigator finds that the challenged actions of ACTC officials and employees do not violate California case law or statutes governing the use of public resources in connection with ballot measure elections. Several of the challenged actions cannot be attributed to ACTC employees or officials and certain personal political activities of individuals are protected by law.

The display of the Yes on BB banner behind the Iron Horse trail dedication ceremony by private individuals in a public place was unfortunate in terms of appearance, because, at a minimum, it

would tend to confuse and mislead the public about the nature of the event. It was not, however, an action coordinated or approved by the ACTC or its officials, and cannot fairly be attributed to them.

The Investigator reaches the same conclusion as to the events that occurred at the State Route 84/Isabel Ave. widening ceremony. The fact that the ACTC cosponsored event provided it more authority to address concerns than was the case in the Iron Horse Trail event. On the other hand, the actions of the individuals holding individual signs in the audience at a public event were much less likely to be misunderstood as being an official part of the event than in the case of the large banner displayed at the Iron Horse Trail event.

The investigator finds that the ACTC Deputy Director's participation in the Emeryville fundraising event – and other volunteer, after-hours activities in connection with the Campaign – did not violate California law. The ACTC Deputy Director of Planning and Policy confirmed that she did attend the Emeryville fundraiser for Measure BB, as well as other campaign events, and did work on behalf of the campaign. She made clear that she always did so on her own time, after work. She explained that she was aware of the prohibitions against attending such events in her official capacity in the performance of her Agency functions, and adhered to those rules. She stated that her attendance was a voluntary choice on her part, because she believed the measure would help people. Government Code section 3203 provides significant protections for public officials and employees to voluntarily engage in political activities.

Additionally, the ACTC Deputy Director of Planning and Policy stated that on October 31, 2014, the Friday before the November 2014 election, she was at work, but out of the office at meetings.

Similarly, the Investigator concludes that the ACTC Executive Director's activities in support of Measure BB were lawful. He emphasized that those activities were done after hours and on weekends, voluntarily, and without the use of Agency resources. Those personal political activities do not violate California law, and indeed are protected by it.

Lastly, the Investigator agrees that while it may not have been appropriate for the Chairman of the Commission to discuss the issue of fundraising at a public ACTC meeting, it appears that this was a very brief comment made before he realized that it would not be appropriate to discuss that matter. The Investigator concludes that this de minimis use of public resources does not constitute unlawful campaign activity.

d. The Bike East Bay Bicycle Light Giveaway

Claim: Complainant alleges that during a Yes on BB campaign event, the organization “Bike East Bay” gave away bicycle lights imprinted with the words “Alameda County Transportation Commission” and this giveaway resulted in a commingling of Bike East Bay campaign funds and ACTC public funds.

Finding: The Investigator finds that ACTC did not violate California law as a result of the bicycle light giveaway because ACTC provides these bicycle lights to many organizations and the organizations have discretion to determine how they will use them. There was no commingling of funds between ACTC and Bike East Bay.

e. The Connection Between the Activities of ACTC and the Yes on BB Campaign

Claim: Complainant alleges that the organizations and individuals working for ACTC are the same as those working for the campaign in support of Measure BB. Complainant notes that ACTC's general counsel also served as counsel to the Yes on BB campaign, Clifford Moss received \$50,000 in public funds from ACTC for "outreach" and subsequently ended up running the Yes on BB campaign, and the Campaign used the same "Better BART Better Buses" slogan used on some of the Agency materials regarding Measure BB.

Finding: The Investigator finds that the fact that many of the same organizations and individuals worked for ACTC and the campaign in support of Measure BB does not violate California law.

The ACTC Executive Director and the Clifford Moss consultant both confirmed that ACTC's retention of the Clifford Moss firm was through a competitive process not based on, or done with the knowledge of, the possibility that the firm would later work on the Yes on BB campaign. Indeed, contrary to the concerns expressed by Complainant that it was "predetermined" that Clifford Moss would become the consultant to the Yes on BB campaign, the Yes on BB campaign committee also conducted a separate competitive process to select its campaign consultant.

Accordingly, while the Clifford Moss firm's work for ACTC may have significantly assisted it in being selected by the Campaign, it does not appear to have been a fait accompli, as suggested by the Complainant. Moreover, the fact that the campaign may have benefited from Clifford Moss's background gained from performing its services for the Agency does not render those services to the Agency retroactively improper.

The same is true of the campaign's ultimate use of the phrase "Better BART Better Buses." The Agency first employed that language, and the campaign later picked it up, stating that it was a "natural message" to convey what Measure BB would do. Again, the fact that the agency message was later picked up by, and may have benefited, the Campaign, does not render the Agency's actions unlawful.

Additionally, the Agency's general counsel did not seek consent prior to becoming pro bono counsel to the Campaign. The concerns Complainant has articulated regarding the propriety of the attorney's representation of both the ACTC and the Yes on BB campaign are addressed later in this executive summary.

Appearances aside, the Investigator has not discovered any facts suggesting that these circumstances result in any violation by the ACTC of the laws governing the proper use of public resources.

B. Claims Alleging Violation of Conflict of Interest Rules

This part of the Report focuses on Complainant's claims that the Wendel Rosen law firm should be disqualified from continuing to act as the Agency's general counsel because the firm's simultaneous representation of the Agency and the Campaign violates Rule 3-310 of California's Rules of Professional Conduct.

1. Applicable Law

Every attorney “bears two distinct ethical duties” to their clients. (*Havasu Lakeshore Investments, LLC v. Fleming* (2013) 217 Cal. App. 4th 770, 777.) First, the duty of loyalty requires that “an attorney devotes his or her entire energies to his client’s interests.” (*Ibid.* [citations omitted].) Second, the duty of confidentiality “fosters full and open communication between client and counsel.” (*Ibid.* [citations omitted].) A court may disqualify an attorney who fails to comply with these duties “upon a showing that disqualification is required under professional standards governing avoidance of conflicts of interest or potential adverse use of confidential information.” (*Ibid.* quoting *Oaks Management Corporation v. Superior Court* (2006) 145 Cal.App.4th 453, 462.)

Rule 3-310 (C) of California’s Rules of Professional Conduct limits an attorney’s ability to represent two clients simultaneously. Rule 3-310 (C) provides, in pertinent part, that an attorney “shall not, without the informed written consent of each client”:

- (1) Accept representation of more than one client in a matter in which the interests of the clients *potentially* conflict; or
- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients *actually* conflict; or
- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

In its seminal decision in *Flatt v. Superior Court* (1994) 9 Cal.4th 275, the California Supreme Court examined the application of Rule 3-310.

In the case of simultaneous representation of two clients, the Court explained that “[t]he primary value at stake in cases of simultaneous or dual representations is the attorney’s duty – and the client’s legitimate expectation – of *loyalty* rather than confidentiality.” (*Id.* at p. 284 [emphasis in original].) Accordingly, “with few exceptions, an attorney may not simultaneously represent clients (even as to unrelated matters) whose interests are adverse to one another...because an attorney has a ‘duty to protect his client in every possible way, and it is a violation of that duty for him to assume a position adverse or antagonistic to his client without the latter’s free and intelligent consent given after full knowledge of the facts and circumstances.’” (*Havasu*, supra, 217 Cal. App. 4th at 777-78 quoting *Flatt*, supra, 9 Cal. 4th at p. 285, n. 4.)

In applying Rule 3-310 (C), courts conclude that an *actual* conflict of interest exists within the meaning of the rule “when a lawyer’s duty of loyalty on behalf of one client obligates the lawyer to take action prejudicial to the interests of the other client, *i.e.* ‘when, in the behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.’” (*Havasu*, supra, at p. 778 citing Cal Practice Guide: Professional Responsibility para. 4:1, p. 4-1[emphasis in original].)

A *potential* conflict exists within the meaning of Rule 3-310 (C) where there is “a *reasonably foreseeable* set of circumstances which could impair the attorney’s ability to fulfill his or her

professional obligations to each client in the proposed representation.” (*Havas*, supra, at p. 789 [internal citations omitted] [emphasis in original].) But “a mere *hypothetical* conflict is insufficient” to justify disqualification of counsel. (*Ibid.* [emphasis in original].) “Rather, there must be some *identifiable* potential conflict” and “a reasonable likelihood an actual conflict will arise.” (*Havas*, at p. 789; see also *Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 302 [requiring potential conflict to be a “real possibility”].)

Lastly, Rule 3-310 (B) of the Rules of Professional Conduct prohibits a lawyer from representing a client in a matter where the attorney has a legal, business, professional or personal relationship with another party or in the subject matter of the representation without providing the client with a full written disclosure. (Rules Prof. Conduct rule 3-310 (B) (1) and (4).)

2. Analysis and Findings of Claims Involving Violation of Conflict of Interest Rules

a. The Wendel Rosen Firm’s Simultaneous Representation of ACTC and the Yes on BB Campaign

Claim: Complainant alleges that the Wendel Rosen firm’s simultaneous representation of ACTC and the Yes on BB Campaign constitutes an actual or potential conflict of interest in violation of Rule 3-310 of the California Rules of Professional Conduct.

Complainant alleges that the Wendel Rosen attorney’s duty of loyalty, as the Campaign’s attorney, “to ensure that the best interests of the campaign are advanced (to win)” created an actual or potential conflict within the meaning of Rule 3-310 with the attorney’s ongoing duty as the Council’s general counsel to “ensure that public funds are not expended for promotional/campaign purposes.”

Complainant also asserts that the joint representation creates a potential conflict with the attorney’s duty of confidentiality to the Agency. Finally, Complainant claims that questions he has raised over the use of public resources in connection with the Agency’s contract with Clifford Moss creates a potential, if not actual, conflict with the Wendel Rosen firm representing both the Agency and the Campaign.

Finding: The Investigator finds that the Wendel Rosen firm’s simultaneous representation of ACTC and the Yes on BB campaign does not violate the conflict of interest rules set forth in the California Rules of Professional Conduct.

The type of conflict in client interests that Rule 3-310 (C) addresses is the situation where the clients’ interests are actually or potentially *adverse* to one another, not where these interests are allied. There is no question that the Agency publicly declared its support of Measure BB as it was lawfully entitled to do. The fact that state law precludes the Agency from permitting the expenditure of public funds to support the passage of Measure BB does not transform the Agency and Campaign’s allied interests into adverse interests. Additionally, the Wendel Rosen firm’s dual representation of clients with aligned interests does not raise a concern about a lawyer using a client’s confidences for an adverse purpose.

Furthermore, the Investigator found no evidence that any Wendel Rosen lawyer advised the Agency to violate state law restrictions on public expenditures to achieve the Agency and Campaign's shared interest in seeing that Measure BB would be adopted.

The Investigator concludes that the finding above that the Clifford Moss contract did not violate state laws governing use of public resources also disposes of any aspect of Complainant's conflicts of interest claims that is premised on Complainant's view that the Clifford Moss contract involved the improper use of public resources.

b. The Wendel Rosen Firm's Relationship with Clifford Moss

Claim: Complainant alleges that a Wendel Rosen partner's marital relationship with a Clifford Moss consultant creates a conflict of interest that requires disqualification of the Wendel Rosen firm as ACTC's general counsel. Complainant also asserts that this Wendel Rosen partner is listed as Clifford Moss's agent for service of process at her Wendel Rosen address.

Finding: The Investigator finds that the Wendel Rosen firm's relationship with Clifford Moss does not create an actual or potential conflict because the Wendel Rosen firm was not providing legal services to Clifford Moss during the time that Clifford Moss performed work for ACTC.

The Investigator finds that the business formation work Wendel Rosen rendered previously for Clifford Moss has no relationship to Clifford Moss's contract with the Agency, much less the substantial relationship required under *Flatt* to create a conflict under Rule 3-310(C) based on an attorney's successive representation of clients.

Furthermore, because serving as an entity's registered agent for service of process does not involve the practice of law, the Investigator finds that Clifford Moss was not a client of the firm within the meaning of Rule 3-310(C) during the time Clifford Moss entered into a contract with, and performed work for, the Agency.

Finally, Rule 3-310 (B) of the Rules of Professional Conduct prohibits a lawyer from representing a client in a matter where the attorney has a legal, business, professional or personal relationship with another party or in the subject matter of the representation without providing the client with a full written disclosure. (Rules Prof. Conduct rule 3-310 (B) (1) and (4).) Because the Investigator found no evidence that the Wendel Rosen attorney who was married to the Clifford Moss consultant was involved in providing representation to the Agency related to Clifford Moss's contract, or the subject matter of that contract, the Investigator concludes that Wendel Rosen had no obligation under Rule 3-310 (B) to provide the Agency with a full written disclosure of that attorney's relationship with Clifford Moss.

E. CONCLUSION

After carefully considering all of the evidence, and applying governing law to that evidence, the Investigator concludes that none of the challenged actions here violated California law. The Agency did not misuse public funds to promote the passage of Measure BB, and the Wendel Rosen law firm's simultaneous representation of both ACTC and the Yes on BB Campaign did not violate attorney conflict of interest rules.

Independent Watchdog Committee Issues Identification Process

Summary

This issues identification process outlines the responsibilities of the Independent Watchdog Committee (IWC) and identifies the process for IWC members and members of the public to bring issues of concern to the IWC and for IWC to address issues identified on "IWC Issues Forms" (attached).

IWC Responsibilities

The Independent Watchdog Committee is charged with the following as written in the 2000 and 2014 Transportation Expenditure Plans approved by voters.

The Independent Watchdog Committee is appointed pursuant to Measure B and Measure BB to review all expenditures of the Measure B transportation sales tax, to review and oversee all expenditures and performance measures, as appropriate, of the Measure BB transportation sales tax and to monitor Measure B and Measure BB projects and programs. This committee reports directly to the public and has the following responsibilities:

- Hold public hearings and issue reports, on at least an annual basis, to inform Alameda County residents about how the sales tax funds are being spent. The hearings are open to the public and must be held in compliance with the Brown Act, California's open meeting law, with information announcing the hearings well-publicized and posted in advance.
- Have full access to Alameda CTC's independent auditor and have the authority to request and review specific information regarding use of the sales tax funds and to comment on the auditor's reports.
- Publish an independent annual report, including any concerns the committee has about audits it reviews. The report will be published in local newspapers and will be made available to the public in a variety of forums to ensure access to this information.
- Provide a balance of viewpoints, geography, age, gender, ethnicity and income status, to represent the different perspectives of the residents of the county.

Review Process

The purpose for the review of projects and programs by the IWC is to report to the public on findings. To this end, the tasks for the IWC to focus on during review include: 1) proper expenditure of Measure B and Measure BB funds; 2) the timely delivery of projects per contract agreements; and 3) compliance with the projects

IWC Issues Identification Process

or programs as defined in the voter-approved 2000 and 2014 Transportation Expenditure Plans.

During the review process, IWC members will adhere to the following procedures:

1. Issues raised on an IWC Issues Form regarding Measure B or Measure BB expenditures and/or contract compliance on a project or program may be eligible to be pursued through a request for the project or program sponsor to appear before the IWC. Issues raised by members of the public regarding Measure B and/or Measure BB expenditures must be submitted in writing either to the IWC chair, vice-chair or to the committee at an IWC meeting.
2. Before requesting that staff respond to an issue or calling on a project or program sponsor to appear before the IWC, an IWC member must submit an IWC Issues Form to the IWC chair or vice-chair for placement on the agenda at the next IWC meeting. Issues submitted by a member of the public must be handled in the same manner.
3. The IWC must approve by an affirmative vote the method taken to address an issue identified on an IWC Issues Form, whether originally presented by an IWC member or a member of the public.
4. The IWC may establish a subcommittee, when necessary, to address the issue, question, or concern raised on an IWC Issues Form.
5. The IWC or subcommittee should consider the resources listed below, when addressing an issue raised on an IWC Issues Form.

The reviews are expected to be organized, thorough and efficient, and may result in a clear recommendation for further action, if needed.

Resources for IWC (not all inclusive)

- Adopted 2000 and 2014 Transportation Expenditure Plans
- Up-to-date list of project/program sponsors contacts
- Alameda CTC staff responsible for oversight of the project/program or other expenditures
- Information about public hearings, recent discussions, or news clippings provided by Alameda CTC staff to the IWC by mail or at meetings
- Other Alameda CTC advisory committees (for example, Paratransit Advisory and Planning Committee or Bicycle and Pedestrian Advisory Committee chairpersons may be called on to address an issue)
- Alameda CTC independent auditor and Comprehensive Annual Financial Reports
- Alameda CTC General Counsel

INDEPENDENT WATCHDOG COMMITTEE ISSUES FORM**Alameda County Transportation Commission (Alameda CTC)****1111 Broadway, Suite 800****Oakland, California 94607****Phone: 510-208-7400; Fax: 510-893-6489**

The Independent Watchdog Committee (IWC) is tasked with the review of Measure B expenditures and Measure BB expenditures and performance measures. This form allows for formal documentation of potential issues of concern regarding the expenditure of Measure B and/or Measure BB funds and Measure BB performance measures. A concern should be submitted to the IWC if an issue directly relates to the potential misuse of Measure B or Measure BB funds, non-compliance with the 2000 and/or 2014 Transportation Expenditure Plans approved by voters, or an issue with Measure BB performance measures. Only current IWC members may use this form (an issue brought forward by the public would have to be championed by an IWC member and brought forward to the IWC on an IWC Issues Form by the IWC member).

Date: _____**Name:** _____**Email Address:** _____

Governmental Agency of Concern (include name of agency and all individual contacts from list of project/program sponsor contacts):

Agency/Contact's Phone Number: _____**Agency's Address:** _____**City** _____ **Zip Code:** _____

Indicate applicable measure: ☐ Measure B ☐ Measure BB

Indicate the type of Measure B and/or Measure BB expenditure to which this concern relates (please check one):

☐ Capital Project ☐ Program ☐ Program Grant ☐ Administration

On the next page, please explain in detail the nature of your concern and how it came to your attention. Include the name of the project or program, dates, times, and places where the issues of which you have concerns took place (use additional sheets when necessary).

Date: _____

Time: _____

Location: _____

Project: _____

Program: _____

Action Taken: Please list other parties or agencies you have contacted in an attempt to more fully understand this issue and any actions you have taken.

INDEPENDENT WATCHDOG COMMITTEE ISSUES FORM

Alameda County Transportation Commission (Alameda CTC)

1111 Broadway, Suite 800

Oakland, California 94607

Phone: 510-208-7400; Fax: 510-893-6489

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Date: 7/28/16Name: ANNALETTIEEmail Address: ANNALETTIE@GMAIL.COM

Governmental Agency of Concern (include name of agency and all individual contacts from list of project/program sponsor contacts):

NEWARK - LARGE RESERVES - CITY OF OAKLAND
ALSO - FREEMONT MANAGING FUNDS
NEED TO KNOW WHAT THEY ARE DOING
TO MANAGE FUNDS COMING TO THEM.

Agency/Contact's Phone Number: _____

Agency's Address: _____

City _____ Zip Code: _____

Indicate applicable measure: ☐ Measure B ☐ Measure BB

Indicate the type of Measure B and/or Measure BB expenditure to which this concern relates (please check one):

☒ Capital Project ☒ Program ☒ Program Grant ☐ Administration

On the next page, please explain in detail the nature of your concern and how it came to your attention. Include the name of the project or program, dates, times, and places where the issues of which you have concerns took place (use additional sheets when necessary).

INDEPENDENT WATCHDOG COMMITTEE ISSUES FORM

Alameda County Transportation Commission (Alameda CTC)

1111 Broadway, Suite 800

Oakland, California 94607

Phone: 510-208-7400; Fax: 510-893-6489

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Date: 7/28/16
Name: HARRIET SAUNDERS
Email Address: HARRIETWS1@GMAIL.COM

Governmental Agency of Concern (include name of agency and all individual contacts from list of project/program sponsor contacts):

FREEMONT - Large Reserves.
? PARA TRANSIT P&M Wheel chair
LIFT TRANSPORTATION DO THEY HAVE THEM.

Agency/Contact's Phone Number: _____

Agency's Address: _____

City _____ **Zip Code:** _____

Indicate applicable measure: ☐ Measure B ☐ Measure BB

Indicate the type of Measure B and/or Measure BB expenditure to which this concern relates (please check one):

☒ Capital Project ☒ Program ☐ Program Grant ☐ Administration

On the next page, please explain in detail the nature of your concern and how it came to your attention. Include the name of the project or program, dates, times, and places where the issues of which you have concerns took place (use additional sheets when necessary).

IWC FY2016-17 Calendar of Meetings Activities
IWC FY2016-17 Calendar of Meetings Activities
on the second Monday of the month from 5:30 to 7:30 p.m.
at Alameda CTC Offices

Categories	Monday, July 11, 2016	Monday, November 14, 2016	Monday, January 09, 2017	Monday, March 13, 2017	Monday, July 10, 2017
IWC Annual Report	<ul style="list-style-type: none"> • IWC photo for Annual Report • Public Hearing on IWC Annual Report (substantially final) • Finalize IWC Annual Report and Publication Costs • IWC Annual Report Press Release 	<ul style="list-style-type: none"> • IWC Annual Report Outreach Summary and Publication Cost Update 		<ul style="list-style-type: none"> • Establish IWC Annual Report Subcommittee to create and finalize IWC Annual Report (Subcommittee meets April through June) 	<ul style="list-style-type: none"> • IWC photo for Annual Report • Public Hearing on IWC Annual Report (substantially final) • Finalize IWC Annual Report and Publication Costs • IWC Annual Report Press Release
Measure B and Measure BB Projects and Programs	<ul style="list-style-type: none"> • Issues Identification Process • IWC Projects and Programs Watchlist Next Steps 	<ul style="list-style-type: none"> • Issues Identification Process 	<ul style="list-style-type: none"> • Overview/Update on Measure B and Measure BB Projects and Programs • Issues Identification Process 	<ul style="list-style-type: none"> • Projects and Programs Watchlist (members sign up for projects and programs)(staff to send letters to jurisdictions in July to keep IWC informed) • Issues Identification Process 	<ul style="list-style-type: none"> • Issues Identification Process • IWC Projects and Programs Watchlist Next Steps
Measure B and Measure BB Compliance and Audited Financial Reports	<ul style="list-style-type: none"> • Measure B and Measure BB Program Compliance Report Summary • Independent Auditor Work Plan 	<ul style="list-style-type: none"> • Presentation of FY2015-16 Comprehensive Annual Financial Report by Independent Auditor 	<ul style="list-style-type: none"> • Measure B and Measure BB FY2015-16 Compliance and Audit Reports available on Alameda CTC Website (raw data, not yet reviewed by staff) 	<ul style="list-style-type: none"> • Measure B and Measure BB Audit Report and Program Compliance Report Review Orientation/Workshop • Measure B and Measure BB FY2015-16 Compliance and Audit Reports Forwarded to IWC for Review 	<ul style="list-style-type: none"> • Measure B and Measure BB Program Compliance Report Summary • Independent Auditor Work Plan
Organizational/Standing Reports	<ul style="list-style-type: none"> • Election of IWC Officers for FY2016-17 • Approve IWC FY2016-17 Annual Calendar/Work Plan • Discussion of IWC Bylaws • IWC Member Reports • Staff Responses to IWC Members Requests for Information • IWC Budget 	<ul style="list-style-type: none"> • IWC Member Reports • Staff Responses to IWC Members Requests for Information 	<ul style="list-style-type: none"> • IWC Member Reports • Staff Responses to IWC Members Requests for Information 	<ul style="list-style-type: none"> • IWC Member Reports • Staff Responses to IWC Members Requests for Information 	<ul style="list-style-type: none"> • Election of IWC Officers for FY2017-18 • Approve IWC FY2017-18 Annual Calendar/Work Plan • IWC Member Reports • Staff Responses to IWC Members Requests for Information • IWC Budget

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Alameda County Transportation Commission
Independent Watchdog Committee
Roster - Fiscal Year 2016-2017

8.2

	Title	Last	First	City	Appointed By	Term Began	Re-apptmt.	Term Expires	Mtgs Missed Since July '16
1	Mr.	McCalley, Chair	Murphy	Castro Valley	Alameda County Supervisor Nate Miley, D-4	Feb-15		Feb-17	0
2	Mr.	Hastings, Vice Chair	Herb	Dublin	Paratransit Advisory and Planning Committee	Jul-14		N/A	0
3	Ms.	Brown	Cheryl	Oakland	Alameda Labor Council (AFL-CIO)	Apr-15		N/A	1
4	Mr.	Buckley	Curtis	Berkeley	Bike East Bay	Oct-16		N/A	0
5	Mr.	Dominguez	Oscar	Oakland	East Bay Economic Development Alliance	Dec-15		N/A	0
6	Ms.	Dorsey	Cynthia	Oakland	Alameda County Mayors' Conference, D-5	Jan-14	Jan-16	Jan-18	0
7	Mr.	Jones	Steven	Dublin	Alameda County Mayors' Conference, D-1	Dec-12	Jan-15	Jan-17	0
8	Mr.	Lester	Brian	Pleasanton	Alameda County Supervisor Scott Haggerty, D-1	Sep-13	Jan-16	Jan-18	1
9	Ms.	Lew	Jo Ann	Union City	Alameda County Mayors' Conference, D-2	Oct-07	Dec-15	Dec-17	0
10	Mr.	Naté	Glenn	Union City	Alameda County Supervisor Richard Valle, D-2	Jan-15		Jan-17	0
11	Ms.	Piras	Pat	San Lorenzo	Sierra Club	Jan-15		N/A	0
12	Ms.	Price	Barbara	Alameda	Alameda County Taxpayers Association	Oct-15		N/A	1
13	Ms.	Saunders	Harriette	Alameda	Alameda County Mayors' Conference, D-3	Jul-09	Jul-16	Jul-18	0
14	Mr.	Tucknott	Robert A.	Livermore	Alameda County Mayors' Conference, D-4	Jun-14	Jul-16	Jul-18	1
15	Mr.	Zukas	Hale	Berkeley	Alameda County Supervisor Keith Carson, D-5	Jun-09	Jun-16	Jun-18	0

Alameda County Transportation Commission
Independent Watchdog Committee
Roster - Fiscal Year 2016-2017

16		Vacancy			Alameda County Supervisor Wilma Chan, D-3				
17		Vacancy			League of Women Voters				