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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

HAYWARD AREA PLANNING  
ASSOCIATION et al.,

Plaintiffs, Respondents and Cross-  
Appellants,

v.

ALAMEDA COUNTY  
TRANSPORTATION AUTHORITY et al.,

Defendants, Appellants and Cross-  
Respondents.

A098051

(Alameda County  
Super. Ct. No. 786768-6)

**I.**

**INTRODUCTION**

This case centers on the intent of the voters in adopting the 1986 Alameda County Transportation Expenditure Plan (Expenditure Plan) and its accompanying county sales and use tax measure, Measure B. Respondents Hayward Area Planning Association, Inc. (HAPA) and Citizens for Alternative Transportation Solutions (CATS) brought the underlying action contending appellants Alameda County Transportation Authority (ACTA) and the California Department of Transportation (Caltrans) violated provisions of the Bay Area County Traffic and Transportation Funding Act (Pub. Util. Code, § 131000 et seq.) (the Act) by using revenue generated from Measure B to implement a

highway extension project containing a route or alignment significantly different from the one presented to the voters in the Expenditure Plan.

In an earlier appeal, this court reversed a summary judgment entered in favor of ACTA and Caltrans after expressly rejecting their contention that Caltrans's general authority to determine state highway alignments under Streets and Highways Code section 90 preempted any alignment depicted in the Expenditure Plan. (*Hayward Area Planning Assn. v. Alameda County Transportation Authority* (1999) 72 Cal.App.4th 95 (*HAPA I*.) Instead, we concluded that when funds are generated pursuant to the Act for the purpose of implementing a particularly described transportation project, those funds could not be diverted and applied to implement a route significantly different from that described to the voters without opportunity for public comment and participation in the amendment process. (*Id.* at p. 99.) We then remanded the case for trial on the disputed factual issues. (*Id.* at p. 110, fn. 9.)

On remand, the trial court held a court trial over the course of five days and issued a writ of mandate prohibiting the expenditure of Measure B funds on the highway extension project being implemented by Caltrans because it “differs in major respects, including its alignment and characteristics, from the project described” to the voters in the Expenditure Plan. Caltrans appeals<sup>1</sup>, primarily contending that the trial court's determination was not supported by the testimony and documents before it. Caltrans also

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<sup>1</sup> ACTA, the local agency created and empowered to administer and allocate Measure B revenue, was originally a co-appellant with Caltrans but withdrew its appeal on February 13, 2003. Respondents claim ACTA's withdrawal renders this appeal moot. However an issue is not moot if the purported error infects the outcome of later proceedings (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 769), and even a moot issue may merit resolution when it is likely to recur yet evade meaningful review (*In re Raymond G.* (1991) 230 Cal.App.3d 964, 967; *Myers v. Patterson* (1987) 196 Cal.App.3d 130, 134-135). As acknowledged by Caltrans, “the parties to this appeal have been engaged in an ongoing dispute for many years over the interpretation of Measure B and its associated voter intent, as applied to the Route 238 Bypass Project.” The propriety of the injunctive relief obtained against Caltrans remains the subject of Caltrans's appellate challenge. We, therefore, elect to resolve the issues raised by this appeal.

argues that the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA) require that Caltrans be allowed to use Measure B funds to construct whatever congestion relief project is the preferred project alternative upon completion of environmental review. Caltrans also argues that respondents' action must fail because their claims are barred by laches or the applicable statute of limitations. We reject each of these contentions and affirm.

## II.

### FACTS AND PROCEDURAL HISTORY

The factual and procedural history of this case has been exhaustively reviewed in *HAPA I*, our previous decision. (See *HAPA I*, *supra*, 72 Cal.App.4th at pp. 99-102.) We do not repeat them here, except to the limited extent necessary to decide the issues before us.

Basically, Measure B, which was passed by the voters of Alameda County in 1986, authorized ACTA to impose and administer a retail sales/use tax of one-half of one percent for no more than 15 years to rehabilitate the Nimitz Freeway, aid mass transit, and realize other traffic and transportation projects/purposes set forth in the accompanying "Expenditure Plan." The Expenditure Plan proposed funding several projects including improvements along State Route 238 and a new Route 84, which consisted of three segments. The first segment—which is the subject of this controversy—is described on page 4 of the Expenditure Plan as "a six lane freeway/expressway along Foothill and Mission Boulevard to Industrial Parkway" (the Route 238 Project).

Public Utilities Code section 131051, subdivision (a)(1) states that each project in the Expenditure Plan must have a sponsoring agency. Caltrans is the sponsoring agency of the Route 238 Project. As the project sponsor, Caltrans is responsible for the environmental planning and review for this project. This planning and review consists of the environmental and traffic studies required for projects of this type by CEQA and its federal counterpart, the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA).

In July 1997, respondents filed this action as a “Petition for Peremptory Writ of Mandate and Complaint for Injunctive Relief.” The basic argument presented by respondents was that Measure B defined the alignment of the Route 238 Project as being “along Foothill and Mission Boulevards,” that ACTA was using Measure B funds for environmental and engineering studies in support of an alignment of the Route 238 Project to the east of Foothill and Mission Boulevards in the Hayward Hills (Hayward Bypass Project), and that this use of funds was not permitted by Measure B. The petition contained four causes of action. The first alleged that ACTA was improperly expending Measure B tax funds on a project not described or authorized in the Expenditure Plan. The second alleged that ACTA was attempted an improper de facto amendment to the Expenditure Plan by substituting the Hayward Bypass Project for the Route 238 Project described to the voters. The third cause of action, under Code of Civil Procedure section 526a, sought injunctive relief against ACTA and Caltrans for the alleged improper and wasteful expenditures on the Hayward Bypass Project. The fourth cause of action, under Code of Civil Procedure section 526a, as well as Code of Civil Procedure section 1085, asserted that ACTA’s refusal to implement the Measure B Project is a violation of its statutory duties; and its expenditure of Measure B tax funds intended for the Route 238 Project on the Hayward Bypass Project had resulted in the waste of public funds.

In December 1997 ACTA and Caltrans filed a motion for summary judgment. They asserted that, as a matter of law, Caltrans had the authority to unilaterally change the alignment of the Route 238 Project described to the voters in the Expenditure Plan to that of the Hayward Bypass Project because Streets and Highways Code section 90 granted Caltrans exclusive jurisdiction over route or alignment selection for state highways. In addition, they argued that the case was not ripe for adjudication because environmental documentation had not yet been completed and approved. In January 1998, the trial court granted appellants’ motion for summary judgment on both of these grounds and entered judgment for ACTA and Caltrans. Respondents timely appealed, and we reversed.

Preliminarily, we concluded that, at least for purpose of review of the summary judgment, respondents' claims were ripe for adjudication. (*HAPA I, supra*, 72 Cal.App.4th at p. 104.) We held that Caltrans's generalized jurisdiction over the alignment of state highways did not allow ACTA to expend Measure B tax revenues on a project not described in the Expenditure Plan without first amending the Expenditure Plan to include the new project and submitting it once again to the public review and voter approval process. (*Id.* at p. 106.) While respondents had requested we reverse the judgment outright and enter judgment in their favor, we noted there appeared to be disputed issues of fact that could not be resolved at the appellate level, including "the precise alignment approved by the voters for the Route 238 [P]roject in 1986, [and] the level to which the Hayward Bypass alignment represents a substantial deviation from the route depicted to the voters. (*Id.* at p. 110, fn. 9.) We remanded the case to the trial court for further proceedings to decide those issues. (*Ibid.*)

Trial on these disputed factual issues began before Judge Gordon S. Baranco on May 16, 2001. On January 7, 2002, the court issued its judgment and statement of decision. The trial court initially rejected appellants' argument that respondents' lawsuit was filed outside the applicable statute of limitations and that their action was precluded by the equitable doctrine of laches. The trial court then held that the route described to the voters in the Expenditure Plan was "not ambiguous in that the project is intended to run on or in close proximity to Foothill and Mission Boulevards." The court noted that the " 'project location map' for the Route 238/84 Project included in the Expenditure Plan is consistent with and supports the project description contained in the Expenditure Plan." Based thereon, the trial court concluded that the Route 238 Bypass project "differs significantly from that presented to the voters in Measure B . . . ." Alternatively, the trial court found that even if there was some ambiguity in the description provided in the Expenditure Plan, the history of the Expenditure Plan as testified to by the plan's authors, Elizabeth Deakin, Harold Smith and Robert Knox III, supported the trial court's conclusion.

Consequently, the court found “the Caltrans Route 238 ‘Hayward Bypass’ Project on which ACTA is spending Measure B funds is not the project described in the Expenditure Plan. The project is not on or in close proximity to Foothill and Mission Boulevards. Its alignment runs up ½ mile east of those roadways.” The court issued a writ of mandate directing ACTA to “rescind its determination to expend Measure B Funds on the Caltrans 238 Project” and enjoined “ACTA or Caltrans from expending any Measure B funds on the Caltrans Route 238 ‘Hayward Bypass’ Project.” This appeal and protective cross-appeal followed.<sup>2</sup>

### III.

#### DISCUSSION

##### A. Statute of Limitations and Laches

In *HAPA I* we rejected the claim that this lawsuit was filed prematurely and was not yet ripe for resolution because environmental review had not yet been completed. (*HAPA I, supra*, 72 Cal.App.4th at p. 104.) Having had this argument rejected, Caltrans ironically now claims that the action was filed too late and is time-barred by the three-year statute of limitations for an action upon a liability created by statute. (Code Civ. Proc., § 338, subd. (a).)

As already noted, respondents filed the underlying action seeking a peremptory writ of mandate and an injunction to stop all Measure B expenditures associated with the Hayward Bypass Project in July 1997. Caltrans argues that this lawsuit is time-barred because it should have been filed as early as 1986 when respondents became aware that appellants were committed to going forward with the Hayward Bypass Project.

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<sup>2</sup> Respondents make no attempt to explain why their purported “protective” cross-appeal is necessary, nor do they point to any issue requiring appellate review if this court were to reverse. Furthermore, respondents filed two requests for judicial notice while this case was being briefed. Because the requests were complex and could not be evaluated without an extensive review of the record, we deferred ruling on them until the resolution of the appeal. Having reviewed the record fully, the requests are denied.

As our Supreme Court recently pointed out, a cause of action governed by Code of Civil Procedure section 338, subdivision (a), accrues upon the occurrence of the last element essential to the cause of action. (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 815.) In considering Caltrans's argument below, the trial court emphasized that it was not until September 1996 that ACTA authorized the expenditure of Measure B fund towards the Hayward Bypass Project. Under these circumstances, the court found that this lawsuit was filed within the statute of limitations because it was not until September 1996 that ACTA "fully commit[ed] itself" to the Hayward Bypass Project and "abandon[ed] the possibility of pursuing a project consistent with the language in the Expenditure Plan." The trial court further found that appellants had not demonstrated any "significant prejudice from the less than one-year delay between the accrual of the cause of action and the filing of this action" and found that the defense of laches was not proven.

Resolution of a statute of limitations defense is typically a question of fact. (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1112; *City of San Diego v. U.S. Gypsum Co.* (1994) 30 Cal.App.4th 575, 582.) Similarly, in reviewing the trial court's laches ruling, we assume the sufficiency of the evidence to support each of the court's express and implied findings, and make every reasonable factual inference in favor of the judgment. (*Wheelright v. County of Marin* (1970) 2 Cal.3d 448, 454; *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, 1126-1127.) The trial court's conclusion was fully supported under the facts of this case.

### **B. Legally Unauthorized Expenditure of Measure B Tax Funds**

In *HAPA I*, this court remanded for further proceedings, indicating that genuine issue of material fact remained on at least two questions: 1) determining the precise alignment of the highway described to voters in Measure B, and 2) determining whether any of the routes currently under consideration by ACTA and Caltrans constituted a significant deviation from the alignment approved by the voters in Measure B. (*HAPA I, supra*, 72 Cal.App.4th at p. 110, fn. 9.) After holding a five-day trial and considering the documentary and testimonial evidence surrounding these questions, the trial court

concluded that the highway alignment preferred by Caltrans, the Hayward Bypass Project, was a completely different project from the Route 238 Project described to the voters in the Expenditure Plan that was part of the passage of Measure B. Furthermore, the court found that the change in alignment from the Route 238 Project to the Hayward Bypass Project must be considered of major significance, requiring an amendment to the Expenditure Plan and compliance with the procedural requirements set forth in Public Utilities Code section 131304. At the crux of this appeal is Caltrans's contention that "Measure B voter intent was not properly ascertained by the trial court."

"We interpret initiative measures using the ordinary rules and canons of statutory construction. [Citation.] Thus, 'our primary purpose is to ascertain and effectuate the intent of the voters who passed the initiative measure. [Citations.]' [Citation.]" (*Yeroushalmi v. Miramar Sheraton* (2001) 88 Cal.App.4th 738, 747-748.) " 'Absent ambiguity, we presume that the voters intend the meaning apparent on the face of an initiative measure [citation] and the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language.' [Citation.] Of course, in construing the statute, '[t]he words . . . must be read in context, considering the nature and purpose of the statutory enactment.' [Citation.]" (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 301.) But where the language may appear to be unambiguous yet a latent ambiguity exists, the courts must go behind the literal language and analyze the intent of the law utilizing "customary rules of statutory construction or legislative history for guidance. [Citation.]" (*Quarterman v. Kefauver* (1997) 55 Cal.App.4th 1366, 1371.)

Caltrans argues that the Expenditure Plan's language was ambiguous, and that the configuration of the Hayward Bypass Project falls within the allowable ambiguity of that language. Caltrans also argues that the voters of Alameda County did not approve a specific project when they passed Measure B in 1986; rather, the voters approved a general transportation project that would "deal with Hayward's congestion problem." Lastly, Caltrans argues that the Expenditure Plan could not define specific characteristics

or an alignment for the Route 238 Project prior to completion of environmental review under CEQA.

In this case, the intent of the electorate in passing Measure B was easily ascertainable from the terms of the measures and the method by which it was presented to the voters. The language of the Expenditure Plan, its accompanying map, and its legislative history as testified to by its drafters<sup>3</sup> fully support the trial court's conclusion that the state highway approved by the voters when they passed Measure B was specifically described as intending to run along or in close proximity to the existing Foothill and Mission Boulevards. The Hayward Bypass Project, by contrast, would be an elevated roadway, running up to a half-mile east of downtown, through hilly residential neighborhoods, resulting in a demolition of up to approximately 350 homes. There can be no doubt that this alignment is different in material respects from the Foothill and Mission Boulevard alignment described in Measure B, nor can there be any doubt that the change would be an amendment of major significance to the Expenditure Plan.

Caltrans has pointed to a footnote in the Expenditure Plan referring to the Route 238 Project as the "Rte. 238 Hayward Bypass," arguing that the footnote demonstrates an ambiguity in the Expenditure Plan's project description. While the footnote may refer to the Route 238 Project as the "Hayward Bypass" project, the footnote says nothing about the location or characteristics of that project. All it does is confirm that the project is a six-lane freeway/expressway and specify its projected cost. Certainly, nothing in the footnote contradicts the precise description of the Route 238 Project contained in the Expenditure Plan text and the map of the roadway running along Foothill and Mission Boulevards.

As repeatedly pointed out in *HAPA I*, the Route 238 Project was described with sufficient clarity to demonstrate that the voters intended to approve a specific route or

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<sup>3</sup> Barring evidence to the contrary, the intent of the drafters of a ballot measure may be inferred to coincide with the intent of the approving electorate. (*Rossi v. Brown* (1995) 9 Cal.4th 688, 700, fn. 7.)

alignment rather than a roughly defined “local congestion relief project,” as claimed by Caltrans. “The proposition submitted to the voters of Alameda County was, by its very terms, limited to funding certain specific projects described in the Expenditure Plan. The voters did not authorize expenditure of the sales and use tax money to be used in a manner vested to the unbridled discretion of Caltrans.” (*HAPA I, supra*, 72 Cal.App.4th at p. 107.) We observed, “If local officials had desired the discretionary power to select a primary road between the State Route 238/Interstate 580 interchange and Industrial Boulevard termini after the election, it would indeed have been a simple matter to so word the Expenditure Plan before its submission to the electorate. Instead, the Expenditure Plan included a project that was fully described and depicted in an accompanying map as running ‘along Foothill and Mission Boulevard.’ The voters of Alameda County authorized ACTA to collect and distribute sales and use tax money for the funding of this alignment, not some other route to be designated in the future.” (*Id.* at p. 109.) Having placed that language in the ballot and having secured approval by the voters, the trial court was justified in refusing Caltrans’s attempt to redesign the project without returning to the voters, and still claim Measure B funding for the redesigned project.

Caltrans next argues that Measure B could not have identified a specific alignment for the Route 238 Project because to do so would have been in violation of CEQA. In support of this argument, it cites to the recent case of *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, as modified May 2, 2001 (*Sierra Madre*). In that case, our Supreme Court held that the trial court erred in denying a petition for a writ of mandate brought by a preservationist group challenging an election in which the voters approved a city ordinance that removed 29 specific properties from the city’s register of historic landmarks. The ballot measure was invalid because placement of the city-generated historic property delisting measure on the ballot was approval of a project subject to CEQA, but the city had not complied with CEQA before placing the measure on the ballot. (*Id.* at p. 171, fn. 1.) The Supreme Court held that *before* placing any such measure that may lead to voter approval of a project requiring CEQA review on the

ballot, the agency must comply with CEQA. If compliance leads to the preparation and consideration of an EIR, when that process is final, the information contained in the EIR must be made available to the electorate for its consideration *prior* to the election. (*Id.* at p. 191.)

Caltrans points out that the transportation projects described in the Expenditure Plan, including the Route 238 Project, did not undergo any environmental analysis and review pursuant to CEQA prior to the passage of Measure B. Accordingly, to achieve consistency with the holding in *Sierra Madre*, Caltrans argues that the Expenditure Plan must be viewed as a transportation programming document which established only the funding priority of generally-defined projects. Caltrans argues, “If Measure B was intended to select a particular project, CEQA compliance would have been required prior to its passage.”

As pointed out by amicus curiae, the Planning and Conservation League,<sup>4</sup> both the underlying facts and the applicable substantive law are completely different in this case from that before the court in *Sierra Madre*. No party has ever sought to set aside the results of the Measure B election on the grounds that compliance with CEQA was necessary before putting it on the ballot. Notwithstanding other arguments that might be made, it appears that approval of Measure B, as a financing method rather than a physical project, was exempt from CEQA review. (*Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School Dist.* (1992) 9 Cal.App.4th 464, 474.) Most importantly, as the Planning and Conservation League points out, the arguments made by Caltrans based on the Supreme Court’s holding in *Sierra Madre* are “unresponsive to the central task in this appeal, ascertaining the meaning and scope of Measure B.”

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<sup>4</sup> We have granted the Planning and Conservation League permission to file an amicus curiae brief in support of respondents. (Order, June 26, 2003, Haerle, Acting P.J.)

**IV.**  
**DISPOSITION**

The judgment is affirmed.

\_\_\_\_\_  
Ruvolo, J.

We concur:

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Kline, P.J.

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Haerle, J.