

Agenda Report

TO: LEGISLATIVE POLICY COMMITTEE DATE: November 5, 2002
FROM: CYNTHIA J. KURTZ, CITY MANAGER
SUBJECT: LEGISLATIVE ADVOCACY TO EXPEDITE DELIVERY OF SOUNDWALL
PROJECTS ALONG FREEWAY 210 FROM ARROYO BOULEVARD TO
THE 210/134 INTERCHANGE

RECOMMENDATION

It is recommended that the City Council:

1. Pursue advocacy efforts compelling the MTA Board to reevaluate the prioritization criteria whereby soundwalls on HOV and non-HOV routes could be simultaneously delivered;
2. Pursue advocacy efforts to identify potential funding to provide the mandatory 33 percent non-refundable contribution to expedite this soundwall project;
3. Advocate future legislation dedicating a portion of transportation funds specifically for soundwall projects that mitigate new impacts on residential areas exposed to increased traffic and noise.

BACKGROUND

The City has been working with Metropolitan Transportation Authority (MTA) and the California Department of Transportation (Caltrans) in coordinating the construction of soundwalls along Route 210 from Orange Grove to Wilson Avenue and Route 210 from North Arroyo Boulevard to Orange Grove for an estimated cost of \$19.8 million. In 1989 the Orange Grove to Wilson segment of Route 210 was placed on MTA's Phase I Priority II project list whereas the latter segment was relegated to Phase II.

In 2001 the City had been told by MTA that these two segments had been combined for cost-containment purposes and to expedite construction as a single Phase I Priority II project due for completion by October 2005. This decision was a result of a concerted advocacy effort by city officials and the community.

However, a review conducted in April by MTA and Caltrans staff determined that the concerned soundwall location was not one project, but two. The Route 210 from

Orange Grove to Wilson Avenue is parallel to existing carpool lanes and falls within MTA's Phase I priority. The Route 210 from North Arroyo Boulevard to Orange Grove Boulevard does not have any carpool lanes and, therefore, falls into Phase II listing, currently unfunded. Despite advocacy efforts by the community and city officials, MTA would not remedy this lapse.

FUNDING AND PRIORITY PROCESS

The responsibility for funding and prioritizing soundwall projects was transferred in 1998 from Caltrans to the MTA via SB 45 but left intact the 1989 prioritized California Transportation Commission's (CTC) Soundwall Retrofit List. This list of 42 L.A. County projects remains Caltrans' responsibility and fully fundable with STIP funds. This led to the subsequent adoption by MTA of their Retrofit Soundwall Implementation Policy. The Policy calls for the delivery of retrofit soundwalls in two phases: Phase I (highest priority) consists of projects along freeway segments where Caltrans built carpool lanes without the required soundwalls: anticipated to be constructed by FY 2004/05. Phase II (lower priority) contains freeway segments where there are no existing carpool lanes. Currently MTA has only programmed funds for Phase I projects.

The following ranking criteria is prescribed in section 215.5 of the Streets and Highway Code with the exception of Priorities 1 and 2 which were adopted separately by the MTA Board in 2000 as follows:

1. Highest priority shall be given to freeway segments where High Occupancy Vehicles (HOV) lanes were constructed, but warranted soundwalls were not built as part of the HOV project (Phase I).
2. Within Phase I, the following extenuating circumstances will receive the highest implementation priority in Phase I:
 - a) Priority will be given to those freeway segments where HOV lanes have been constructed and soundwalls were installed on one side of the freeway only. The construction of the soundwall on the opposite side of the freeway shall be given priority for construction provided, for instance, residential areas or a school is located on the unmitigated side of the freeway;
 - b) School sites where noise mitigation was not provided;
3. Consideration shall be given to residential areas which were developed prior to the opening of a freeway;
4. Any capacity enhancing project, such as HOV lanes, or adding mixed flow lanes which result in a significant and measurable increase in ambient noise levels above the 67dBA threshold;
5. Cost effectiveness: Projects costing no more than \$40,000 per residential unit protected by the proposed soundwall are considered to be cost-effective. In calculating cost effectiveness, all living units immediately adjacent to the freeway which will benefit by a 5 decibel or more reduction in noise levels are counted;

6. Significant benefit: The noise barrier must provide a minimum of 5 decibels ambient noise reduction;
7. A majority of the occupants in close proximity to the freeway resided there prior to the time the freeway route was adopted. The city or county requesting the soundwall must provide documentation on the percentage of original occupants still residing along the freeway.

Current state legislation allows local agencies to move soundwall projects to the top of the priority list by contributing a minimum of 33 percent (non-refundable) of the soundwall project's design and construction cost. However, MTA has informed staff it is unable to provide an estimated project cost for the North Arroyo Boulevard to Orange Grove Boulevard until an initial preliminary engineering (PE) study has been completed. Another option to expedite construction would be for the local agency to use its own funds to design and construct a soundwall. MTA would reimburse the local jurisdiction for the full cost of the design and construction once that project came up on the priority list; however, the project's delivery date would be unknown. There is also the option for the City to assume the design and construction costs directly. And finally, local agencies could choose to trade Proposition A Local Return Funds for State or Federal Funds. However the City has already committed virtually all Proposition A funds for the ARTS buses.

LEGAL RECOURSE

If the City chose to contest MTA's error the legal avenues for redress would be few. There is no continuing duty under California environmental law to mitigate new effects of older projects. If the intensity of use of the freeway has increased over time, the need for soundwalls in places where they were not initially required would be a legislative matter, and not something the courts would be likely to address through CEQA.

If a claim were made that improper prioritization of the projects had taken place, it would require a factual analysis of each of the projects given a greater priority than the City's and an exposition indicating a) there is no substantial evidence to support the rank given under the stated criteria, b) the priorities set by state law were not followed in setting the stated criteria or c) there were other improprieties in the ranking procedure. Under such circumstances a court would give deference to the state agency in the event of a challenge so the burden would rest upon the challenger to prove that some wrong had taken place.

A final measure would be for the City to allege a breach of contract. Counsel has reported that it would be highly unlikely that a court would force a governmental agency to honor a mistaken representation of this nature made by one of its officials, which was beyond their authority to make. Under such circumstances, although an unfortunate

mistake had taken place, the official in question did not have the ultimate decision making authority, and the government could not be held responsible.

LEGISLATIVE RECOURSE

Given the obstacles in place to seek a legal redress, the City's only course of action would be to pursue legislative advocacy efforts to accelerate construction. The following possible options were identified:

1. Given that the MTA Board currently oversees the prioritization and funding of all county transportation projects, the City could pursue advocacy efforts to compel MTA's Board to realign prioritization criteria. Although some funds are programmed for Phase II projects, MTA will not pursue these projects until all HOV soundwalls are complete. MTA could realign priorities to address existing residential areas exposed to new environmental impacts as a result of increased traffic. The decibel level on the North 210 segment has been measured at levels exceeding the MTA requirements for soundwalls.
2. A second alternative to expedite the North 210 project is to advocate state officials to earmark funds from all potential sources towards the non-refundable minimum project contribution of 33% to expedite the project. Project cost, however, is be unidentified at this time;
3. A third approach is to advocate that a percentage of any new transportation funds be set aside for soundwall projects where existing residential areas are exposed to new environmental impacts as a result of increased traffic. Potential sources could be the Federal Highway Trust Fund or Proposition 42 which would require, beginning July 1, 2003 that existing revenues resulting from state sales and use taxes on the sale of motor vehicle fuel be used for transportation purposes such as public transit and mass transportation, city and county street and road repairs and improvements and state highway improvements.

FINANCIAL IMPACT

The pursuance of legislative avenues would have no budgetary impact. All work assessed for this purpose is contained within the adopted FY 2002 budget.

Respectfully submitted,




CYNTHIA J. KURTZ
City Manager


Prepared by:


Christian Di Renzo
Graduate Management Intern

Prepared by:


Nicholas G. Rodriguez
Assistant City Attorney

Reviewed by:


Stephanie DeWolfe
Assistant to the City Manager

Concurred by:


Michele B. Bagneris
City Attorney