

COUNTY COUNSEL
LOUIS B. GREEN

CHIEF ASS'T. COUNTY COUNSEL
EDWARD L. KNAPP

PRINCIPAL ASS'T COUNTY COUNSEL
PATRICIA E. BECK

DEPUTY COUNTY COUNSEL
JUDITH M. KERR
REBECCA C. SUDTELL
PAULA F. FRANTZ
MICHAEL J. CICCOTZI

**EL DORADO COUNTY
OFFICE OF
THE COUNTY COUNSEL**



COUNTY GOVERNMENT
CENTER
330 FAIR LANE
PLACERVILLE, CA
95667
(530) 621-5770
FAX# (530) 621-2937

DEPUTY COUNTY COUNSEL
BETH A. MCCOURT
DAVID A. LIVINGSTON
SCOTT C. STARR
TERI M. MONTEROSSO
LESLEY B. GOMES

February 23, 2009

Board of Supervisors
County of El Dorado
330 Fair Lane
Placerville, CA 95667

Re: STATA Contract Amendment and Issues with TDA Funding

Honorable Chairman and Members of the Board of Supervisors:

As the Board will recall, prior to December 31, 2008, the County operated the BlueGo OnCall transit services through a contract with Area Transit Management ("ATM"). The funding source for that contract was the County's allocated share of Transportation Development Act ("TDA") funds.

The County is a member agency in the Participation Agreement to Implement a Coordinated Transit System at South Lake Tahoe that was executed in May of 1998. The long term goal of that agreement was to coordinate the transit services provided in the Tahoe Basin. Members included the County, City of South Lake Tahoe and Douglas County, as well as private entities including the South Lake Tahoe casinos and Heavenly Valley Ski Resort. TRPA proposed that a consolidated transit system be provided through a non-profit benefit corporation, South Tahoe Area Transit Authority ("STATA"), a Nevada non-profit corporation. To assist in the implementation of the long-term goal of consolidation, the County terminated its contract with ATM simultaneously with entering into an agreement with STATA to provide the transit services. STATA provides those services through a subcontract with MV Transportation, Inc. The County-STATA contract provided that STATA would claim TDA funds directly, pursuant to TRPA and STATA's representations that STATA was an eligible entity under TDA rules and regulations, so that the administrative costs could be consolidated.

Separate and apart from the County's contractual role as an operator of transit services, El Dorado County Auditor/Controller Joe Harn is the auditor charged as fund trustee for the local transportation fund monies that are eligible to be apportioned and allocated to claimants within the region. The Tahoe Regional Planning Agency, acting as the Regional Transportation Planning Agency, is statutorily created pursuant to Government Code section 29532.1 and is the transportation planning agency under Public Utilities Code section 99214 that annually determines the amount of funds allocated under the TDA program each eligible claimant may be allocated.

On March 21, 2008, TRPA issued its fiscal year 2008-2009 Local Transportation Fund and State Transit Assistance Fund estimated availability and requested the County, and the City of South Lake Tahoe who is also an eligible claimant, submit their claims in accordance with the Act. El Dorado County had sufficient monies from the fiscal year 2007/2008 allocation to operate the transit system through October 31, 2008, under the ATM contract.

After the effective date of the County-STATA contract, STATA filed a claim for TDA funds with TRPA. On November 19, 2008, TRPA's Governing Board, acting as the Regional Transportation Planning Agency, approved a resolution allocating \$834,368 of Article 4 Transportation Development Act – Local Transportation Funds for transit operations to the South Tahoe Area Transit Authority (STATA) for operating BlueGo in the Tahoe Basin. This resolution allocated 100% of the allocated funds previously apportioned to the City of South Lake Tahoe and the County to be allocated to the benefit of STATA. TRPA and STATA both represented that STATA was an eligible claimant and would thereafter claim the County's allocation in order to fund the transit operations with MV Transportation, Inc. through the County-STATA agreement.

Upon receipt of the allocation instruction, the Auditor became aware that STATA is not an eligible claimant of TDA funds since it is not wholly owned or wholly controlled by public entities, but rather is wholly controlled by a majority of private entities.¹ As a result, the Auditor may not legally disburse the funds in accordance with the allocation/disbursement instructions from TRPA because they are invalid on their face. *City of El Cajon v. Loneragan* (1978) 83 Cal.App.3d 672, 676-678.

TRPA and STATA also proposed that the services may be consolidated into a joint powers authority and that the joint powers authority may be an eligible claimant for the entire fiscal year 2008/2009 allocation of TDA funds. While it is clear that a joint powers authority between public entities may be an eligible claimant of funds under the Act, the entity proposed, the Tahoe Basin Transportation Authority was formed in 1980 by the County, City of South Lake Tahoe and Douglas County but in fact never operated

¹ STATA counsel has likewise concluded/acknowledged that STATA is not an eligible claimant of TDA funds.

as a joint powers authority and had recently been removed from the Secretary of State listing of current joint powers authorities.²

In order to resolve these issues, County staff proposed that the STATA contract be amended to have the County and City each claim their separate allocation, and then pass those funds through to STATA for the actual transit operations. This will resolve the current fiscal year funding issues, keep the transit system operational, and allow the parties sufficient time to consider how best to provide the consolidated transit services for the fiscal year 2009/2010. TRPA has issued a new apportionment letter dated February 9, 2009, and is awaiting County's claim and resolution in order to issue a new allocation direction to the Auditor.

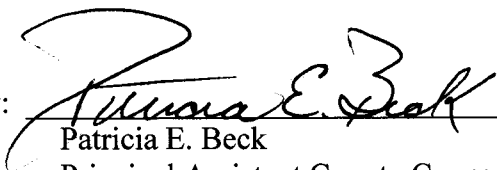
RECOMMENDED ACTION:

In order to resolve the funding issues and claim the County allocation for the fiscal year 2008/2009 and pass those funds through to STATA for transit operations, staff recommends that the Board:

1. Adopt the claims and accompanying resolution prepared by Department of Transportation staff for the Board's approval.
2. Approve the proposed amendment to the STATA agreement prepared by County Counsel, subject to modifications as necessary and approved by County Counsel.

Staff will be present at the hearing to address any issues that the Board may have.

LOUIS B. GREEN
County Counsel

By: 
Patricia E. Beck
Principal Assistant County Counsel

² Since that joint powers authority was not a viable operating authority, did not have an adopted budget, a duly appointed treasurer, auditor, did not operate or contract for the operations of the transit system, and did not otherwise meet the requirements of the TDA, staff is concerned that such an authority would not be eligible to claim the funds for the period preceding the date that the authority was properly re-formed, made operational, and met the requirements of the TDA.