

To: VTA Board of Directors  
From: Kurt Evans, Government Affairs Manager  
Date: March 24, 2008  
Subject: General Information: Weekly Legislative Report

For your information, I am attaching the weekly legislative update for the week of March 17, 2008. As you will notice, I have made two changes to this report. First, I have combined the federal and state legislative updates into a single report. Second, I have added a regional element.

## MEMORANDUM

**TO:** Santa Clara Valley Transportation Authority  
Board of Directors

**FROM:** Kurt Evans, Government Affairs Manager  
Santa Clara Valley Transportation Authority

**DATE:** March 24, 2008

**SUBJECT:** Weekly Legislative Update: Week of March 17, 2008

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### **FEDERAL**

**Transportation Infrastructure:** Flooded roads and subways, deformed railroad tracks, and weakened bridges may be the wave of the future with continuing global warming, according to a new study released by the National Research Council. Climate change will affect every type of transportation through rising sea levels, increased rainfall and surges from more intense storms, the report noted. Complicating matters is the fact that people continue to move into coastal areas, creating the need for more roads and services in the most vulnerable regions. The report cites five major areas of growing threat:

1. More heat waves, requiring load limits at hot-weather or high-altitude airports, and causing thermal expansion of bridge joints and rail track deformities.
2. Rising sea levels and storm surges, flooding coastal roadways; forcing evacuations; inundating airports and rail lines; flooding tunnels; and eroding bridge bases.
3. More rainstorms, delaying air and ground traffic; flooding tunnels and railways; and eroding road, bridge and pipeline supports.
4. More frequent strong hurricanes, disrupting air and shipping service, blowing debris onto roads, and damaging buildings.
5. Arctic temperature increases, thawing permafrost; and causing road, railway and airport runway subsidence and potential pipeline failures.

The nation's transportation system was built for local conditions based on historical weather data. But that data may no longer be reliable in the face of new weather extremes, the report warns. Noting that proper preparation will be expensive, the National Research Council called on federal, state and local governments to consider climate change in their transportation planning and construction.

**National Economy:** President George W. Bush said the federal government must guard against going too far in trying to fix the troubled economy, cautioning that "one of the

worst things you can do is overcorrect.” He pointed out that the recently passed program of tax rebates for families and businesses should begin to lift the economy in the second quarter of the year and have an even stronger impact in the third quarter. But he urged caution about doing more, particularly about the crisis in the housing market where prices are tumbling and home foreclosures have soared to an all-time high. Democrats, meanwhile, claimed that the President was relying on inaction to solve the problem.

The economy has surpassed the Iraq war as the number one concern among voters in this presidential election year amid big job losses, soaring fuel costs, a credit crisis, and turmoil on Wall Street. Democrats said they want to strengthen the economy with measures dealing with housing, energy efficiency and renewable energy. “The President continues to convince himself that inaction is the cure-all for the economic problems hurting hardworking Americans,” Senate Majority Leader Harry Reid (D-NV) said in a written statement. “But Democrats know that wait-and-see is not a responsible strategy for an economy that is teetering on the brink of recession.”

President Bush said he opposes several measures pending on Capitol Hill to deal with the housing crisis. They included proposals to: (a) allocate \$400 billion to purchase foreclosed-upon and now-abandoned homes; (b) change the bankruptcy code to allow judges to adjust mortgage rates; and (c) artificially prop up home prices.

**Global Warming:** House Government Reform and Oversight Committee Chairman Henry Waxman (D-CA) issued a subpoena to force the U.S. Environmental Protection Agency (EPA) to turn over 196 internal documents concerning its decision to deny California permission to regulate greenhouse gas emissions from cars and trucks. He announced the subpoena after negotiating unsuccessfully to get the EPA to voluntarily turn over unredacted versions of the documents. Waxman is also still seeking hundreds of communications between the EPA and the White House concerning the waiver decision.

Waxman and other Democrats have accused the EPA of denying California the greenhouse gas waiver for political, not scientific, reasons. EPA Administrator Stephen Johnson has disputed that claim, but has refused under congressional questioning to say whether the White House advised him against the waiver. The Bush Administration has opposed mandatory controls on greenhouse gas emissions like those California wants to pursue. California’s law would have forced automakers to cut greenhouse gas emissions by 30 percent in new cars and light trucks by 2016. In denying California the federal Clean Air Act waiver needed to implement its law, Johnson argued that Congress’ new fuel efficiency standards are a better way to go because they provide a national approach. California is not alone in sustaining the effects of global warming and, therefore, does not need its own solution, Johnson said.

**Gun Control:** Advocates of gun rights and opponents of gun violence demonstrated outside the U.S. Supreme Court as justices began hearing arguments over the meaning of the Second Amendment’s “right to keep and bear arms.” The court is taking its first definitive look at the law as it hears arguments about the constitutionality of a

Washington, D.C., handgun ban. The ban, one of the nation's strictest gun control laws, was imposed in 1976 in response to what D.C. officials said were alarming levels of gun violence. A ruling is likely by the end of June.

However the nine Supreme Court justices rule in the case, their decision will reshape the national debate over guns, a conflict that pits images of America's frontier history against concerns about public safety. If the court decides there is an individual right to bear arms, it would be a huge victory for gun rights advocates. It would reverse years of legal precedent, and embolden politicians and groups such as the National Rifle Association (NRA) that have touted gun rights. It also could discourage new gun regulations and inspire challenges to other gun restrictions.

The last time the Supreme Court took up a major gun rights case was in 1939. That dispute, *United States v. Miller*, involved two men who were caught transporting an illegal sawed-off shotgun across state lines. In that case, the court did not directly address the scope of the Second Amendment. Yet its decision rested on the notion that the Second Amendment protects a collective right to firearms, not an individual right. In the years since, most lower federal courts interpreted the *Miller* decision to mean that there was no individual right to firearms. Last year, however, the U.S. Court of Appeals for the District of Columbia set the stage for the high court to weigh in when it invalidated D.C.'s ban on handguns by ruling that the Second Amendment "protects an individual right to keep and bear arms...for such activities as hunting and self-defense."

**Homeland Security:** The House narrowly approved a Democratic bill that would set rules for the federal government's eavesdropping on phone calls and e-mails inside the United States. The legislation, which was approved largely along party lines, faces a veto threat from President Bush. His main objection is that the bill does not protect from lawsuits telecommunications companies that allowed the federal government to eavesdrop on their customers without a court's permission after the 9/11 terrorist attacks. About 40 lawsuits have been filed against telecommunications companies by people and organizations alleging that the companies violated wiretapping and privacy laws. The lawsuits have been combined and are pending before a single federal judge in California.

The surveillance law is intended to help the federal government pursue suspected terrorists by making it easier to eavesdrop on international phone calls and e-mails between foreigners abroad and Americans in the United States, and remove barriers to collecting purely foreign communications that pass through the United States. A temporary law expired on February 16, 2008, before Congress was able to produce a replacement bill. President Bush opposed an extension of the temporary law as a means to pressure Congress into accepting the Senate version of the surveillance legislation, which does include the immunity provision for telecom companies. The President and most Capitol Hill Republicans say the lawsuits are damaging national security and unfairly punish telecommunications companies for helping the federal government in a time of war. Democrats counter that the bill protects the privacy rights of Americans by making sure that telecommunications companies—and the federal wiretapping program—do not violate any laws.

**War in Iraq:** Five years after launching the U.S. invasion of Iraq, President Bush said he would not accept troop withdrawals if they jeopardize gains already made in the country. He stated that the “gains we’ve made are fragile and reversible,” and that increasing drawdowns of troops could undo the progress that has been made. President Bush commented that the “surge of 30,000 troops in Iraq over the past year is working and as a return on our success in Iraq we’ve begun bringing some of our troops home.” He argued that when “Iraqi and American forces finish the job, the effects will reverberate far beyond Iraq’s borders,” referring to stopping terrorism in the Middle East and preventing Iran from developing nuclear weapons.

Meanwhile, Vice President Dick Cheney played the part of backroom power broker for two days and came away with pledges from Shiites, Sunnis and Kurds in the Iraqi government to firm up a new blueprint for U.S.-Iraq relations that would stretch beyond the Bush presidency. During a recent trip to the Middle East, Cheney met with Iraqi officials to discuss topics ranging from security in Iraq to Iran’s rising influence in the region. But the key item on the agenda was crafting a long-term agreement between the United States and Iraq, plus a narrower deal to define the legal basis for a continued American troop presence. The deal would take the place of a U.N. Security Council resolution that expires in December 2008, the same time President Bush will be packing up to leave office. The White House says the deal would not seek permanent U.S. bases in Iraq, nor would it codify troop levels or tie the hands of a future commander in chief as some Democrats fear. Administration officials also say they probably will not seek Senate approval of the plan because the agreement will not be a treaty that provides Iraq with specific security guarantees. This position has prompted a backlash in Congress, where Democrats have proposed legislation that would render the agreement null and void without the Senate’s blessing.

## **STATE**

**Local Government Financing:** The Assembly tried to send some relief to local governments reeling from higher interest costs with the approval of SB 344 (Machado), a bill that allows cities, counties and other bond issuers to buy back their own bonds. The legislation now goes to the Senate.

Markets for two types of municipal bonds have been hit with turmoil in recent weeks as a side effect of the meltdown in sub-prime mortgages. The bonds are sold at short intervals, from weekly to monthly, to investors looking for short-term returns. But when the companies that insure the bonds were shaken by losses in mortgage-based securities, the municipal market was also rattled, leading to higher interest rates.

SB 344 makes it clear that local entities can shelter themselves from the interest-rate volatility by buying back their own bonds without “extinguishing” the debt. The agencies can then resell the bonds if the market settles down, or switch to more traditional forms of debt. Without that clarification, bond issuers would lose their bond insurance or be forced to go back to the voters to reauthorize the debt. The bonds also could be stripped of their tax-exempt status.

**November Elections:** California conservatives, stifled by the Democratic majority in the Legislature, are turning to the people in hopes of advancing their stalled agenda. Four conservative-backed ballot campaigns have amassed \$8.9 million to try to put measures before the voters in November 2008. These proposed ballot measures would etch a ban on gay marriage into the state Constitution, require minors to notify a guardian before obtaining an abortion, stiffen anti-gang statutes, and expand crime victims' rights. None of the four measures has qualified for the ballot, though proponents of each say they are confident of collecting enough valid signatures.

Many Republican activists have resigned themselves to minority status in the Legislature, where Democrats control at least 60 percent of the seats in both the Senate and Assembly. But they see hope at the ballot box. As Assembly Member Todd Spitzer (D-Orange) put it, "We weren't going to waste our time in the Legislature." Spitzer is working on the campaign to enhance the rights of crime victims during criminal and parole proceedings. Billionaire Henry Nicholas has donated \$4.8 million to the measure, named "Marsy's Law" after Nicholas' sister, who was murdered in 1983.

Democrats have controlled the Legislature—except the Assembly briefly in the mid-1990s—for nearly four decades. But, at the same time, the state's voters have shown a penchant to side with Republicans on social and law-and-order issues when given the chance. California voters have largely banned bilingual education, implemented a "three strikes" sentencing law and favored cutting services to illegal immigrants, among other measures. Most recently, voters in 2006 approved Jessica's Law, which bans convicted sex offenders from living near parks and schools, and requires global positioning system locators on sex offender parolees. The measure was the brainchild of the husband-and-wife tandem of Sen. George Runner and Assembly Member Sharon Runner of Lancaster. They are back again this year, now pushing an anti-gang measure that would stiffen penalties for gun-crime accomplices, add prison time for convicted felons who carry guns in public, and spend hundreds of millions more on local law enforcement programs. The initiative includes parts of 16 bills defeated in the Legislature in recent years, according to the campaign.

The most hot-button of the would-be November ballot measures would place in California's Constitution the words "only marriage between a man and a woman is valid." Sen. Dennis Hollingsworth, a Temecula Republican, is a co-author of the measure. Like other conservatives, Hollingsworth said he was dismayed when the Legislature twice approved a law legalizing gay marriage (which Gov. Arnold Schwarzenegger vetoed), despite a 2000 vote in which more than 60 percent of Californians opposed same-sex marriage. He and others have raised \$1 million to gather signatures for the new initiative, a constitutional amendment, which could not be overturned by either the state courts or the Legislature.

Don Sebastiani, a Sonoma winery owner and former GOP Assembly member, is dipping into personal funds for the third time in four years to help fund the abortion-notification measure. The past two attempts failed with 47.2 percent and 45.8 percent of the vote, in 2005 and 2006, respectively.

## **REGIONAL**

**Metropolitan Transportation Commission (MTC):** MTC has released a list of uncommitted regional programs for consideration in the Transportation 2035 Plan. Included on the list are enhancements to three existing programs: (1) Regional Bicycle Program (\$1.3 billion); (2) Lifeline Transportation Program (\$1.6 billion); and (3) Transportation for Livable Communities (\$1.5 billion). New programs being proposed by MTC staff include: (1) Freeway Performance Initiative (\$1.3 billion); (2) Transportation Climate Action Campaign (\$184 million for five years); (3) Regional Rail Right-Of-Way Preservation (\$435 million); and (4) Means-Based Transit Fare Assistance (\$1.2 billion). These programs would be evaluated along with other projects that have been submitted by the Bay Area congestion management agencies, Caltrans, the Bay Area Air Quality Management District (BAAQMD), and other stakeholders as part of MTC's project-level performance evaluation.

MTC also released the preliminary needs and shortfalls for local streets and roads, and for transit operations and capital improvements. The preliminary findings show that the shortfall for maintaining existing local streets/roads and public transit systems in the region amounts to \$44 billion. By comparison, MTC's previous long-range transportation plan identified roughly a \$22 billion shortfall for these same assets. This change is primarily attributable to an increase in the price of paving materials and deferred maintenance expenses for local streets/roads, and an adjustment to the methodology used by MTC to estimate needs for transit capital and non-pavement assets. The new methodology is based on assessing the 25-year replacement needs for the region's transit assets, rather than on projects identified by the transit operators. This was intended to make the data more consistent between the numerous Bay Area operators since they all would be using the same asset classifications. Appropriate funding levels to address the shortfall will be part of the trade-off discussions regarding projects and programs to be included in the financially constrained element of the Transportation 2035 Plan.

**Dumbarton Rail:** At its March 25 meeting, the Dumbarton Rail Policy Advisory Committee will be asked to approve the definition of the bus alternative as part of the Dumbarton Rail Corridor Project draft environmental document. The document will include an evaluation of the bus alternative in addition to the total rail corridor alternative and phased implementation of the rail alternative. The bus alternative includes four routes operating over the Dumbarton auto bridge, serving the major origins and destinations along the Dumbarton rail corridor. The advisory committee will also be receiving updates on the project's budget and schedule, operational simulations, bridge inspections, and railroad embankment breaches.

**NOTE:** Also contributing to this report were Susan Lent with Akin, Gump, Strauss, Hauer & Feld; Mark Watts with California Strategies; and Scott Haywood, VTA's Policy and Community Relations Manager.

From: Board.Secretary  
Sent: Wednesday, March 26, 2008 5:27 PM  
To: Board.Secretary  
Cc: Burns, Michael  
Subject: Response Requested at the March 6, 2008 VTA Board of Directors Meeting

Attachments: Letter to Eugene Bradley.pdf

VTA Board of Directors:

At the March 6, 2008 Board of Directors meeting, Mr. Eugene Bradley, Santa Clara VTA Riders Union, requested a written response on the following: 1) VTA's policy on scooter sizes and how VTA addresses incompatible scooters on buses and trains, and 2) VTA's policy regarding full buses and how this issue is resolved.

Attached is the staff response from Chief Operating Officer Dan Smith.

Tracene Y. Crenshaw  
Acting Assistant Board Secretary  
Office of the Board Secretary  
(408) 321-5544



~~March 20, 2008~~

Mr. Eugene Bradley  
Santa Clara VTA Riders Union  
P.O. Box 390069  
Mountain View, CA 94039-0069

Subject: Response Requested at March 6, 2008 VTA Board of Directors Meeting

Dear Mr. Bradley:

At the March 6, 2008 VTA Board of Directors meeting, you requested a written response on several topics. The letter is in response to the following portions of your inquiry:

- 1) VTA's policy on scooter sizes and how VTA addresses incompatible scooters on buses and trains
- 2) VTA's policy regarding full buses and how this issue is resolved

Under the Americans with Disabilities Act of 1990 (ADA), VTA is required to and does comply with the clearances necessary to accommodate access for a "common wheelchair" on bus and light rail vehicles. According to Section 37.3 of the Department of Transportation's regulation implementing the Americans with Disabilities Act of 1990 (49 CFR Parts 27, 37, and 38):

"...a 'common wheelchair' is a mobility aid belonging to any class of three or four-wheeled devices, usable indoors, designed for and used by individuals with mobility impairments, whether operated manually or powered. A 'common wheelchair' does not exceed 30 inches in width and 48 inches in length measured two inches above the ground and does not weigh more than 600 pounds when occupied."

Since January 1, 2007, VTA has required all mobility devices to be secured on its buses using a four-point securement system. VTA will not deny service if the mobility device cannot be secured due to the design of the device. Operators shall transport users whose mobility devices do not meet the definition of a common wheelchair if it is determined that the mobility device can be secured by use of the four point securement system. If the device cannot be secured and the device poses a direct threat to the safety of others, service shall be denied.

The mandatory securement policy does not apply to light rail vehicles, as they do not have securement systems.

Manufacturers of mobility devices are not required to design devices to fit the dimensions outlined in the ADA to ensure accessibility on transit vehicles. Therefore, VTA recommends that anyone purchasing a mobility device who intends to utilize public transit ensure that the device they purchase adheres to the ADA definition of a "common wheelchair." Some "oversize" devices can be boarded on VTA bus and light rail vehicles, depending on the driving skill of the

device user and the particular model bus being utilized. However, the factors related to the safety of transporting these devices mentioned above apply.

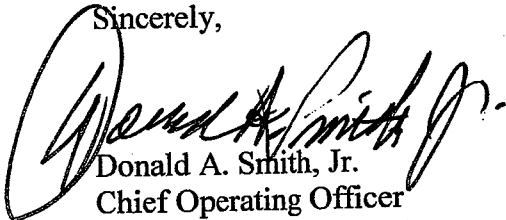
If a bus is full, operators can ask customers who are sitting in the priority seating area if they will move so that an individual using a mobility device can utilize the space, but the operator cannot require the seated customers to move.

If a disabled customer cannot be accommodated because a bus is full, the operator will call the Operations Control Center to report the incident and to ensure the following bus has a working lift and is within 30 minutes of arrival. The customer is informed of the status of the following bus and asked to wait for the following bus. If the following bus is more than 30 minutes away, a Field Supervisor or Outreach Paratransit will be called to transport the customer.

Non-disabled customers are asked to wait for the next schedule due to the bus being full. Operators report blocks, times, and locations that are consistently overloaded so that VTA can assess and, if needed, increase service levels.

I hope this provides the information you needed.

Sincerely,



Donald A. Smith, Jr.  
Chief Operating Officer

c: VTA Board of Directors  
Michael T. Burns, General Manager