

To: VTA Board of Directors
From: Kurt Evans, Government Affairs Manager
Date: April 29, 2008
Subject: General Information: Weekly Legislative Report

For your information, I am attaching the weekly legislative update for the week of April 21, 2008.

MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors

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

DATE: April 28, 2008

SUBJECT: Weekly Legislative Update: Week of April 21, 2008

FEDERAL

Transportation: The Senate approved H.R. 1195, a measure that makes numerous technical corrections to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). While stopping short of issuing a veto threat, the Bush Administration expressed its opposition to the legislation, asserting that it is not a technical corrections bill, but rather makes “substantial and harmful changes to current law.” Among other things, the Administration is objecting to a provision in the measure requiring the Federal Transit Administration (FTA) to give comparable—but not necessarily equal—numerical weight to each project justification criteria in calculating a New Starts project’s overall rating. This provision was pushed by transit agencies with New Starts projects because they were concerned about FTA’s focus on cost effectiveness as the principal determinant of whether a project could proceed through the process. The Bush Administration defended FTA’s reliance on cost effectiveness by stating that it provides a quantifiable measure of a project’s benefits in relation to costs, and that the language in H.R. 1195 would diminish the effectiveness of the New Starts ratings process and cause uncertainty for project sponsors.

Aviation: An outside team of aviation safety experts will review the federal government’s oversight of the airline industry, Transportation Secretary Mary Peters said. In addition, Peters demanded that federal aviation regulators and American Airlines explain why the air carrier had to ground nearly half of its jet fleet and cancel 3,100 flights after botching required safety inspections and maintenance. Peters also said she would create a system to track when airline inspections are overdue and establish a squad of government inspectors to conduct special safety reviews of airlines.

The announcement by Peters was triggered by weeks of airline groundings and congressional testimony alleging that the Federal Aviation Administration (FAA) had become too cozy with the airlines and maintenance facilities that it is supposed to oversee. Southwest Airlines received a \$10.2 million proposed fine last month for flying Boeing 737 jets without performing inspections for cracks that could cause crashes if left unchecked. The FAA acknowledged that

one of its local inspectors gave the airline permission to continue flying, a violation of the agency's rules. The FAA then launched a review of airline compliance with critical safety inspections and maintenance, which led to hundreds of jets being grounded and disruptions for hundreds of thousands of passengers. The groundings have struck American, Delta Air Lines, United Airlines, Alaska Airlines, and several other carriers.

Peters defended the overall safety record in the airline industry, which has had only one major domestic crash since 2001. She said the new measures were "designed to improve upon an already impressive safety system."

Health Care: The House moved to impose a one-year moratorium on new Medicaid rules, with lawmakers arguing that the cost-savings measures backed by the Bush Administration would add to the burdens of the states and health care providers. Strong bipartisan support was expected for the legislation to delay implementation of the new rules through March 2009, challenging a veto threat from the White House. The Bush Administration instituted the rules with the aim of saving the Treasury about \$13 billion over five years and \$33 billion over 10 years by curbing waste and abuse in the state-federal partnership that provides health coverage and nursing home care to the poor. The White House, in a statement warning of a veto, said the bill would "thwart these efforts of the federal government to regain fiscal accountability and integrity in Medicaid."

But the proposed changes have been met with stiff opposition from the states, health care providers and advocates for the poor, who say they would shift costs from the federal government to the states and create new hardships for the needy. The proposed rules would affect programs involving payments to public safety net institutions, rehabilitation services for people with disabilities, coverage for hospital clinical services, graduate medical education payments, and specialized medical transportation to school for children covered by Medicaid.

War in Iraq: Sens. Ben Nelson (D-NE), Evan Bayh (D-IN) and Susan Collins (R-ME) announced that they would push legislation requiring that a portion of Iraq's massive oil revenues be used to help pay its reconstruction and stabilization costs, and limiting further U.S. assistance to loans that would be repaid to American taxpayers. Nelson noted that with Iraq's \$60 billion projected budget surplus, it is time to seek solutions to end that country's cycle of dependence on U.S. funding and for Iraqis to take more responsibility for their own future. He estimated that the United States had paid more than \$45 billion so far for rebuilding activities in Iraq. Other senators are developing proposals to have Iraq bear more of its reconstruction costs that may be attached to the war supplemental appropriations bill or to the FY 2009 Department of Defense spending measure. Senate Armed Services Committee Chairman Carl Levin (D-MI) may offer legislation to restrict the United States from expending funds on specific projects, obligating the Iraqis to cover the costs. Sen. Judd Gregg (R-NH) has proposed a bill to require the Iraqi government to match U.S. commitments in Iraq dollar for dollar.

Presidential Politics: Republican presidential candidate John McCain is proposing a temporary repeal of the federal gas tax as part of an economic relief package. The Arizona senator suggested that Congress should declare a "summer gas-tax holiday," and suspend both the 18.4-cent gas tax and 24.4-cent diesel tax to provide relief across the U.S. economy. He also called for the federal government to suspend deposits to the Strategic Petroleum Reserve to reduce

demand. McCain contended that suspending the gas and diesel excise taxes “would be an immediate economic stimulus—taking a few dollars off the price of a tank of gas every time a family, a farmer or trucker stops to fill up.”

The Federal Highway Administration (FHWA) estimates that roughly \$38 billion is collected annually in gas and diesel tax revenues, with state and local governments adding \$78 billion to fund highway projects. The Highway Trust Fund, already facing a \$3.4 billion deficit, would lose about \$10 billion if these taxes were suspended from Memorial Day to Labor Day. Meanwhile, the American Public Transportation Association (APTA) noted that the McCain plan would eliminate \$1.4 billion in federal funding for public transportation and would severely restrict the industry’s ability to provide transit services in a time of growing demand. The McCain campaign later explained that the lost revenues would be made up from the General Fund.

STATE

Budget: When the Department of Finance reported last week that revenues are running \$1.2 billion below estimates for the current fiscal year, it added fuel to one of the Capitol’s biggest guessing games: How large is the state budget deficit? In January 2008, Gov. Arnold Schwarzenegger said the gap for the remaining six months of FY 2008 and all of FY 2009 was \$14.5 billion. The Legislature’s budget analyst, Elizabeth Hill, citing revenue projections, jumped the number to \$16 billion. Most believe the \$1.2 billion shortfall revealed last week validated her \$16 billion figure.

Because the state also had a potential cash flow problem, the Governor and lawmakers quickly agreed to some mid-year budget corrections, including borrowing the last \$3.3 billion from a 2004 deficit-financing bond issue, reducing some spending and postponing some payments. The effect of those changes, according to the Department of Finance, was to reduce the deficit by \$7 billion. So at the moment, the remaining gap is approximately \$9 billion.

The \$9 billion figure, however, is problematic. As the state’s economy continues to slide into what every major economist says will be a recession and revenues continue to flatten, there is a widespread belief that the deficit will grow even larger. How much is uncertain. Meanwhile, the Capitol is beset with competing deficit-closing proposals, ranging from the across-the-board spending cuts that Gov. Schwarzenegger proposed in January but has somewhat disavowed, to up-front increases in general taxes and closure of tax loopholes, which the Governor has said he is willing to discuss.

Lottery: Gov. Schwarzenegger and some lawmakers are newly interested in a push to privatize the state lottery as one of the least painful possibilities for addressing the state’s financial troubles. But it has become clear that in order to make the business enticing to private investors, voters would have to agree to authorize bigger jackpots and allow games that are currently banned. An analysis prepared by Lehman Bros. for the Schwarzenegger Administration revealed that private investors would want to target middle-class Californians by installing more terminals and vending machines where they frequently shop, such as at Target or Costco. The analysis

also discussed boosting revenues by running aggressive marketing campaigns and selling ads on lottery tickets.

Gov. Schwarzenegger first proposed privatizing the lottery a year ago as a way to pay down the state's debt. The idea intrigued some lawmakers, but failed to gain traction. Late last year, the Governor then offered to use the proceeds from a lottery lease to fund his now-defunct health care proposal. Democrats balked, saying the money would not come for years. Today, as the state faces a budget deficit now estimated at about \$9 billion, lawmakers from both sides of the aisle are openly discussing privatizing the lottery as a way to generate billions of dollars for the budget without having to raise taxes. However, the Governor and lawmakers would have to reach a consensus on what to do with the cash windfall and receive the blessing of the education community, the current beneficiary of lottery revenues. Beyond that, there may be opposing gambling interests to consider. Many Native American casinos have exclusive rights on electronic gambling devices, and a lottery expansion might conflict with newly minted state compacts.

Launched by the state's voters in 1984, the lottery was billed as a windfall for public schools. While it provides \$1.2 billion annually, the Legislature Analyst's Office says the amount actually makes up just 1.5 percent of total K-12 funding. In fact, when adjusted for inflation, lottery revenues have remained stagnant for a decade. Hoping to improve on the lottery's returns, the Schwarzenegger Administration believes the state could generate as much as \$37 billion in one-time money in exchange for letting a private investor run the business for 40 years. The Governor noted that some of the cash could be used to close persisting budget deficits while the rest could be saved for a "rainy day" account. The Legislature Analyst's Office, however, estimates the value of a lease to be between \$10 billion-\$20 billion, citing historically lower lottery sales in California compared to other states.

Energy: An environmental coalition called Californians for Solar and Clean Energy has submitted more than 700,000 signatures to the Secretary of State's Office for an initiative measure that would compel the state's utilities to use renewable energy sources for 40 percent of their electric power supplies by 2020 and 50 percent by 2025, a sharp increase over what the state's current policy requires. But some of the most influential advocates of renewable energy, such as the Union of Concerned Scientists, the Natural Resources Defense Council and Environmental Defense, are lining up in opposition, saying the proposal actually would thwart clean-energy projects and raise electricity bills.

Pitched as a solution to global warming, the proposed Solar and Clean Energy Act aims to accelerate California's shift from coal, natural gas and other fossil fuels as sources of electricity. California law currently requires that 20 percent of electricity sold in the state be renewable by 2010, and Gov. Schwarzenegger has called for a 33 percent target by 2020. California's three largest investor-owned utilities—Pacific Gas & Electric, Southern California Edison and San Diego Gas & Electric—provided 13.2 percent of their 2006 retail electricity sales with renewable power, according to the California Public Utilities Commission (CPUC). Municipal utilities do not fall under the state's renewable requirement.

Proponents of the solar initiative said current targets are too lax, and the Legislature is too beholden to traditional energy interests to accelerate the transition to clean energy. The opposition group called the proposition a “fatally flawed” product financed by “an out-of-state billionaire with no energy expertise.”

Assembly Speakership: It is now apparent that Assembly Member Karen Bass (D-Los Angeles) will take over the speakership on May 13. The news ends uncertainty that began after Bass was named speaker-elect nearly two months ago and said she would work with the incumbent, Fabian Núñez (D-Los Angeles), to transition into the job. Bass will be thrust immediately into what are expected to be bitter budget talks. She said the May 13 date was mutually agreed upon by her and Núñez.

REGIONAL

Metropolitan Transportation Commission (MTC): At its April 23 meeting, MTC approved an allocation of \$11.8 million in FY 2008 State Transit Assistance (STA) funds to VTA for transit purposes. The commission also approved the FY 2009 Overall Work Program for federal planning grants; and adopted support positions for ACA 10 (Feuer), which changes the voting requirement for approving the issuance of general obligation bonds by cities and counties for transportation purposes, and AB 2870 (DeSaulnier), which creates the California Blueprint Implementation Council to assist in the state’s land-use planning process. In the coming months, MTC will be determining which programs and projects will be included in the Regional Transportation Plan (RTP) Investment Plan. The Draft RTP Investment Plan is scheduled to be presented to the MTC Planning Committee on June 13.

Bay Area Toll Authority (BATA): At its April 23 meeting, BATA approved an allocation of \$4.4 million in Regional Measure 1 funds to the I-880/State Route 92 Interchange Reconstruction Project for utility relocation costs. BATA also authorized its Official Statement for Refunding Bonds. Similar to many other public agencies, BATA was hit by the sub-prime mortgage rate crisis and responded with a bond-refinancing package.

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: Tuesday, April 29, 2008 4:45 PM
To: Board.Secretary
Cc: Burns, Michael
Subject: May 1st Board of Directors Meeting

Attachments: May 1, 2008 Board Meeting.pdf

To VTA Board of Directors:

Attached, for your information, is a memo from the General Manager regarding the May 1st Board of Directors Meeting.

Thank you.

Yolanda L. Cruz
Assistant Board Secretary
VTA Office of the Board Secretary
Voice: 408.321.5669 Fax: 408.955.0891

MEMORANDUM

TO: VTA Board of Directors

FROM: Michael T. Burns
General Manager

DATE: April 29, 2008

SUBJECT: May 1 Board of Directors Meeting

Given the fullness of the agenda for Thursday night, I thought I would highlight several items:

- 1) The closed session, scheduled for 5:30 to 6 p.m., has three significant items. Staff will prepare to present the items in a concise manner.
- 2) On item 25, the sale of property at West San Carlos, the following needs to be reinforced:
 - a) The recommended action is to sell the property only.
 - b) The City of San Jose will approve the project and its design, density and heights, not VTA. This includes the amount and location of project-related park land per San Jose requirements for park space.
 - c) The sale will be phased with payments to VTA as phases are approved by San Jose, a common practice for large developments.
 - d) VTA will receive \$18+ million, at minimum for the property plus \$1 million toward transit improvements in the area. A separate financial analysis of net present values will be provided soon.
 - e) The developer will be responsible for obtaining all approvals from the City of San Jose at their expense.

There has been a significant amount of misinformation circulating about this transaction and VTA's role. Please contact John Ristow at (408) 321-5713 if you have any questions.

- 3) Item 27, Availability and Utilization study, will require a presentation and VTA will be the first transit system in the Bay Area to make our findings on this matter public.
- 4) Item 28, 1976 Sales Tax Advisory Ballot Measure is being continued as we have been informed that the ballot measure will cost VTA an estimated \$1.2 million. This item will go back to the A&F committee with the fiscal impact and for a discussion of options.
- 5) Item 29, Governance, the city grouping issue being deferred to August is not limited to the option discussed in the memo. The Board could choose any number of actions, including leaving the structure as is.

From: Board.Secretary
Sent: Tuesday, April 29, 2008 6:24 PM
To: Board.Secretary
Cc: Burns, Michael
Subject: Property Sale Agreement with Green Republic for West San Carlos Site

Attachments: Yeager memo West San Carlos site.pdf

To VTA Board of Directors:

Attached is a memorandum from Ex-Officio Board Member Ken Yeager regarding the May 1st Board of Directors Meeting, Agenda Item #25. Property Sale Agreement with Green Republic for West San Carlos Site.

Thank you.

Yolanda L. Cruz
Assistant Board Secretary
VTA Office of the Board Secretary
Voice: 408.321.5669 Fax: 408.955.0891

TO: Santa Clara Valley Transportation Authority
Board of Directors

FROM: Ken Yeager, Ex-Officio Board Member

DATE: April 29, 2008

SUBJECT: Rejection of Property Sale Agreement with Green Republic for West San Carlos Site

RECOMMENATION

Oppose the property sale agreement with Green Republic, LLC for sale of the property described as the West San Carlos Joint Development Project site as outlined in the staff memorandum and agreement for consideration at the May 1 Board of Directors meeting.

BACKGROUND

At the recent Board of Directors workshop, serious concerns were raised regarding the financial shortfalls currently facing VTA. Before VTA can finalize its expenditure plan, it must first determine its dependable revenues. The proposed sale agreement with Green Republic has so many contingencies attached to it that I would be reluctant to allocate any of the revenues to proposed expenditures. In retrospect, perhaps VTA should have made this a straight sell and not contingent on the approval of the development by the City of San Jose. At least then we would have known how much money we could have counted on to meet VTA's future needs.

The following are some key points:

Although the sale price is stated to be \$18.3 million, it is substantially less. VTA has agreed to pay for all soil remediation, which is estimated to be between \$1.75 million and \$2 million, although the cost could be much higher. The sale price is actually \$16.3 million or less.

VTA does not receive its first installment payment of \$7 million until the City of San Jose issues a non-appealable Foundation Permit, which does not need to be completed until October 2012. This is "Phase 1" of the development. Moreover, all City of San Jose approvals must be completed prior to beginning Phase 1 and are a condition of closing Phase 1. Then and only then does VTA receive the initial payment of \$7 million.

Funds from Phase 2, Phase 3, and Phase 4 are even more problematic. Outside closing dates are mid-2014 for Phase 2, mid-2016 for Phase 3 and the end of 2019 for Phase 4. These dates are subject to Force Majeure extensions, including economic conditions. In addition, the City of San Jose may require different phasing than what is being proposed in this agreement.

I also question why the remaining \$11.3 million owed on the sale price after the close of Phase 1 will be adjusted upward at a rate of only 4% per year. Remember that the clock only starts ticking on the 4% after Phase 1 is approved, which is scheduled for 2012. While real estate values are depressed now, do we really believe they will go up only 4% a year between now and 2019?

The proposed development does not conform to the City of San Jose's General Plan or Midtown Specific Plan, thus calling into question whether the developer will ever get the project approved. There is some uncertainty over whether 90 feet is the tallest allowable height (per General Plan and Midtown Specific Plan) or 120 feet per the General Plan-Transit Area Policy. Andrew Crabtree of the San Jose Planning Department, in a response to an inquiry by Larry Ames and Ed Rast of the Willow Glen Neighborhood Association, clearly stated that the design standards of the Midtown Plan Vasona Area allow for maximum overall height of only 90 feet.

Former Councilwoman Nancy Ianni, who chaired the Midtown Specific Plan Task Force, is adamant that the proposed development is not in conformance with the Midtown Specific Plan. Since the Midtown Specific Plan is the overriding policy for the site, the chances of the project ever being approved are seriously decreased.

Neighborhood organizations are overwhelmingly opposed to the project, thus guaranteeing a long, protracted battle that also puts the development in jeopardy.

As experienced with the Tamien Towers project, the more controversial a development, the greater the odds that a convoluted agreement will be reached to lessen neighborhood concerns. As with Tamien, the terms of the agreement may never be realized. A park was supposed to be built at Tamien, but has not. Moreover, the developer was to pay for a parking structure. According to VTA, there is currently dispute over who is to pay the additional \$3 million needed to construct the parking structure. It may end up that VTA has to pay \$3 million out of its sale of the West San Carlos property to Swenson (the developer of the Tamien Towers project) in order to move the project forward as approved.

The terms and conditions outlined in the staff report dated April 18, 2008, do not appear to be in the interest of VTA at this time. The original financial assumptions for sale of this property to Green Republic are unlikely to be met, and much of the risk remains with VTA. The structure of the current proposal, with payments to VTA contingent on both land use approvals from the City of San Jose and a phasing process over which VTA has no control, call into serious question whether the full amount of projected revenue will ever be realized.

From: Board.Secretary
Sent: Wednesday, April 30, 2008 5:33 PM
To: Board.Secretary
Cc: Burns, Michael
Subject: West San Carlos Financial Analysis

Attachments: San Carlos Analysis

Dear Board Members:

Attached is a detailed financial analysis for the recommend sale of the West San Carlos property to Green Republic. We will be prepared to discuss this in detail at the Board Meeting tomorrow. The analysis includes total dollar value and net present value for scenarios with and without extensions. Please advise if you have any questions.

Michael T. Burns
General Manager



MEMORANDUM

TO: VTA Board of Directors

FROM: Joseph T. Smith, Chief Financial Officer

DATE: April 30, 2008

SUBJECT: Quantitative Analysis – San Carlos Property

The attached analysis represents an estimate of the financial benefit (both in year of receipt and current year dollars) that would be realized by VTA if the Purchase & Sale Agreement (Agenda Item #25) is approved.

We are providing two basic scenarios--the only difference being that the second scenario includes extension payments that would be made to VTA if the developer requests delayed closing dates for each of the phases.

Scenario 1 provides for a financial benefit of up to \$22.2 million (year of receipt dollars), or a net present value benefit of up to \$16.8 million (today's dollars—using a 4% discount rate). This assumes the receipt of bonus payments which VTA receives if the number of entitled and approved residential units is equal to 835 (versus a base of 713). If the number of units is 713, then VTA's financial benefit would be an amount up to \$19.3 million (year of receipt dollars) or \$15 million (today's dollars—using a 4% discount rate).

The proposed agreement includes an option for the developer to extend (up to two times) the closing dates for each phase in exchange for extension payments to VTA. In the attached Scenario 2 we have assumed the developer exercises their right to both extensions for all four phases. In this case, the financial benefit to VTA would be up to \$24 million (year of receipt dollars), or a net present value benefit of up to \$17.1 million (today's dollars—using a 4% discount rate). This scenario also assumes the receipt of bonus payments which VTA receives if the number of entitled and approved residential units is equal to 835 (versus a base of 713). If the number of units is 713, then VTA's financial benefit would be an amount up to \$21.1 million (year of receipt dollars) or \$15.4 million (today's dollars—using a 4% discount rate).

Joseph T. Smith
Chief Financial Officer

Scenario 1 - No Extensions								
Key Date	Description	1st Extension Payment	Principal Payment	2nd Extension Payment	Interest Earning	Additional Exp/Rev	Net Cash Flow	PV of Net Cash Flow
7/1/2008	Present Value valuation date							
7/1/2009	Demolition/Remediation (deducted from VTA)	\$0	\$0	\$0	\$0	-\$1,860,000	-\$1,860,000	-\$1,788,510
12/1/2010	Deposit for Phase I Extension	\$0	\$0	\$0	\$0	\$0	\$0	\$0
12/31/2010	Phase I Starts (Outside Closing Date)	\$0	\$7,000,000	\$0	\$0	\$0	\$7,000,000	\$6,346,299
12/31/2011	Phase I Starts (w/Extension)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
12/31/2011	Non Refundable 2nd Extension Payment	\$0	\$0	\$0	\$0	\$0	\$0	\$0
6/1/2012	4% Appreciation Date Starts	\$0	\$0	\$0	\$0	\$0	\$0	\$0
6/28/2012	Phase I Starts (w/2nd Extension)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5/2/2014	Deposit for Phase II Extension	\$0	\$0	\$0	\$0	\$0	\$0	\$0
6/1/2014	Phase II Starts (Outside Closing Date)	\$0	\$4,260,285	\$0	\$0	\$0	\$4,260,285	\$3,378,010
6/1/2014	Transit Improvement Funding	\$0	\$0	\$0	\$0	\$1,000,000	\$1,000,000	\$792,907
6/1/2015	Phase II Starts (w/Extension)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
6/1/2015	Non Refundable 2nd Extension Payment	\$0	\$0	\$0	\$0	\$0	\$0	\$0
11/28/2015	Phase II Starts (w/2nd Extension)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5/2/2016	Deposit for Phase III Extension	\$0	\$0	\$0	\$0	\$0	\$0	\$0
6/1/2016	Phase III Starts (Outside Closing Date)	\$0	\$6,755,161	\$0	\$0	\$0	\$6,755,161	\$4,951,856
6/1/2017	Phase III Starts (w/Extension)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
6/1/2017	Non Refundable 2nd Extension Payment	\$0	\$0	\$0	\$0	\$0	\$0	\$0
11/28/2017	Phase III Starts (w/2nd Extension)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
12/1/2019	Deposit for Phase IV Extension	\$0	\$0	\$0	\$0	\$0	\$0	\$0
12/31/2019	Phase IV Starts (Outside Closing Date)	\$0	\$2,135,956	\$0	\$0	\$0	\$2,135,956	\$1,360,588
12/31/2020	Phase IV Starts (w/Extension)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
12/31/2020	Non Refundable 2nd Extension Payment	\$0	\$0	\$0	\$0	\$0	\$0	\$0
6/29/2021	Phase IV Starts (w/2nd Extension)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Subtotal							\$19,291,402	\$15,041,151
6/29/2021	Bonus for Additional Units						\$2,860,900	\$1,718,598
Total							\$22,152,302	\$16,759,748

Scenario 2 - With Extensions								
Key Date	Description	1st Extension Payment	Principal Payment	2nd Extension Payment	Interest Earning	Additional Exp/Rev	Net Cash Flow	PV of Net Cash Flow
7/1/2008	Present Value valuation date							
7/1/2009	Demolition/Remediation (deducted from VTA)	\$0	\$0	\$0	\$0	-\$1,860,000	-\$1,860,000	-\$1,788,510
12/1/2010	Deposit for Phase I Extension	\$550,000	\$0	\$0	\$0	\$0	\$550,000	\$500,247
12/31/2010	Phase I Starts (Outside Closing Date)	\$0	\$0	\$0	\$1,775	\$0	\$1,775	\$1,609
12/31/2011	Phase I Starts (w/Extension)	\$0	\$0	\$0	\$22,056	\$0	\$22,056	\$19,227
12/31/2011	Non Refundable 2nd Extension Payment	\$0	\$0	\$100,000	\$0	\$0	\$100,000	\$87,177
6/1/2012	4% Appreciation Date Starts	\$0	\$0	\$0	\$9,505	\$0	\$9,505	\$8,152
6/28/2012	Phase I Starts (w/2nd Extension)	\$0	\$6,450,000	\$0	\$0	\$0	\$6,450,000	\$5,515,263
5/2/2014	Deposit for Phase II Extension	\$339,000	\$0	\$0	\$0	\$0	\$339,000	\$269,663
6/1/2014	Phase II Starts (Outside Closing Date)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
6/1/2015	Phase II Starts (w/Extension)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
6/1/2015	Non Refundable 2nd Extension Payment	\$0	\$0	\$100,000	\$0	\$0	\$100,000	\$76,243
11/28/2015	Phase II Starts (w/2nd Extension)	\$0	\$4,178,047	\$0	\$0	\$0	\$4,178,047	\$3,124,494
11/28/2015	Transit Improvement Funding	\$0	\$0	\$0	\$0	\$1,000,000	\$1,000,000	\$747,836
5/2/2016	Deposit for Phase III Extension	\$230,788	\$0	\$0	\$0	\$0	\$230,788	\$169,725
6/1/2016	Phase III Starts (Outside Closing Date)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
6/1/2017	Phase III Starts (w/Extension)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
6/1/2017	Non Refundable 2nd Extension Payment	\$0	\$0	\$100,000	\$0	\$0	\$100,000	\$70,487
11/28/2017	Phase III Starts (w/2nd Extension)	\$0	\$6,931,497	\$0	\$0	\$0	\$6,931,497	\$4,792,294
12/1/2019	Deposit for Phase IV Extension	\$108,212	\$0	\$0	\$0	\$0	\$108,212	\$69,153
12/31/2019	Phase IV Starts (Outside Closing Date)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
12/31/2020	Phase IV Starts (w/Extension)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
12/31/2020	Non Refundable 2nd Extension Payment	\$0	\$0	\$100,000	\$0	\$0	\$100,000	\$61,244
6/29/2021	Phase IV Starts (w/2nd Extension)	\$0	\$2,752,223	\$0	\$0	\$0	\$2,752,223	\$1,653,313
Subtotal							\$21,113,103	\$15,377,617
6/29/2021	Bonus for Additional Units						\$2,860,900	\$1,718,598
Total							\$23,974,003	\$17,096,215

From: Board.Secretary
Sent: Wednesday, April 30, 2008 6:26 PM
To: Board.Secretary
Cc: Burns, Michael
Subject: Letters Regarding Governance

To VTA Board of Directors:

Attached are the letters we received regarding the May 1, 2008 Board of Directors Agenda Item #29. **VTA Governance**. The letters are from the City of Santa Clara, City of Gilroy, and the City of Morgan Hill.

Thank you

Yolanda L. Cruz
Assistant Board Secretary
VTA Office of the Board Secretary
Voice: 408.321.5669 Fax: 408.955.0891

April 28, 2008

Supervisor Liz Kniss, Chairperson
Santa Clara Valley Transportation Authority
3331 N. First Street
San Jose, CA 95134

Dear Supervisor Kniss:

The Santa Clara City Council discussed the Santa Clara Valley Transportation Authority (VTA) governance issue at their April 1, 2008 Council meeting. The City Council understands the need for change to provide more continuity at the Board level and for better representation of transportation needs of the Cities.

The City Council unanimously endorsed the proposed regrouping of Cities with Santa Clara, Sunnyvale, and Milpitas grouped together. The City of Santa Clara is willing to try a new Board structure which can potentially better represent the transportation needs of the region and provide more stability and continuity. The implementation schedule of the new structure in January 2010 provides the opportunity to discuss the representation criteria among the new city groups.

We look forward to further guidance from the VTA regarding the representative selection criteria and process.

Sincerely,

Patricia M. Mahan
Mayor

Jennifer Sparacino
City Manager

cc: VTA Board of Directors
City Council
Mr. Michael Burns, VTA General Manager
Rajeev Batra, Director of Public Works/City Engineer

April 29, 2008

Director Greg Sellers
Santa Clara Valley Transportation Authority Board of Directors
3331 North First Street
San Jose, CA 95134

Subject: Santa Clara Valley Transportation Authority (VTA) Board Governance
Recommendations

Dear Director Sellers:

I would like to take this opportunity to thank you for serving on the VTA Board as the representative of VTA City Group 4, and for bringing forward the proposal to improve the way the VTA Board representatives are selected and serve regional interests.

The City of Gilroy supports the VTA Board Governance Recommendations. In particular, we wanted to highlight the following areas of particular interest to Gilroy:

1. We believe it is critical that each distinct area of interest in the County have representation. Because South County is clearly a distinct area with transportation concerns that are unique, we feel it is imperative that South County have its own representative. As an example, VTA and south county cities and the County have worked for two years to develop a unique South County Circulation Plan. This Plan has major implications for the future.
2. We support efforts to eliminate city rotation and introduce a "Regional Representative" Concept, because we believe this is the only way to ensure each distinct area of interest is represented.
3. We agree with VTA's Management Audit, which pointed out that Board members are more effective if they have longer service on the Board. Over the past five years, our area has had five different Board representatives, which has diluted our representation and has not been in the best interest of our communities or the VTA. Therefore, we feel strongly that Board tenure should be extended, as much as possible, and that each region develop new leaders that are familiar with VTA issues so that new members have a strong grounding in transportation concerns before they ascend to the VTA Board.

Again, thank you for addressing these concerns, and for taking the lead in this important effort.

Sincerely,

Al Pinheiro
Mayor, City of Gilroy

April 29, 2008

Director Greg Sellers
Santa Clara Valley Transportation Authority Board of Directors
3331 North First Street
San Jose, CA 95134

RE: Santa Clara Valley Transportation Authority (VTA) Board Governance
Recommendations

Dear Directors Sellers,

Thank you for serving our community on the VTA Board, and for bringing forward the proposal to improve the way the VTA Board representatives are selected and serve.

Our City Council voted unanimously to support the VTA Board Governance Recommendations. In particular, we wanted to highlight the following areas of particular interest to Morgan Hill:

- 1) We believe it is critical that each distinct area of interest in the County have representation. Because South County is clearly a distinct area with transportation concerns that are unique, we feel it is imperative that South County have its own representative. We support efforts to eliminate city rotation and introduce a "Regional Representative" Concept, because we believe this is the only way to ensure each distinct area of interest is represented.
- 2) We agree with VTA's Management Audit, which pointed out that Board members are more effective if they have longer service on the Board. Over the past five years, our area has had five different Board representatives, which has diluted our representation and has not been in the best interest of our communities or the VTA. Therefore, we feel strongly that Board tenure should be extended, as much as possible, and that each region develop new leaders that are familiar with VTA issues so that new members have a strong grounding in transportation concerns before they ascend to the VTA Board.

Again, thank you for addressing these concerns, and for taking the lead in this important effort.

Sincerely,

Steve Tate
Mayor

C: Morgan Hill City Council

From: Board.Secretary
Sent: Thursday, May 01, 2008 10:27 AM
To: Board.Secretary
Cc: Burns, Michael
Subject: May 1, 2008 Board of Directors Meeting - Agenda Item #25. Property Sale Agreement with Green Republic for West San Carlos Site

Attachments: TOD Fact Sheet.doc

To VTA Board of Directors:

Attached, for your reference, is a document that contains additional information pertaining to Agenda #25 on the May 1st Board of Directors Meeting.

Thank you.

~~~~~  
Yolanda L. Cruz  
Assistant Board Secretary  
VTA Office of the Board Secretary  
Voice: 408.321.5669 Fax: 408.955.0891

# Transit-Oriented Development Fact Sheet

## TOD Characteristics

- High density
- Mixed-use land development
- Centered around transit
- Pedestrian scale
- ¼ to ½ mile radius

## Environmental Benefits

“The Crossings”, Mountain View (San Francisco Bay Area) – This 18-acre TOD includes 540 housing units, a supermarket, retail shops, and a daycare facility clustered near a CalTrain commuter rail station. Staff of the California Air Resources Board estimated that the design of this development **reduce driving and related emissions by 10-30% per household**, compared to nearby non-TOD neighborhoods. This translates to **annual reductions of three tons of reactive organic gas (ROG) and NOx** (California Department of Transportation, 2002).

The California Environmental Protection Agency’s Air Resources Board (ARB) study found that “significantly increasing walking and transit opportunities,” along with strategically-located moderate to high density development and transit, could achieve an **annual reduction in VMT (vehicle miles traveled) of between 20-30% per TOD household** (as compared to typical sprawl-style development) (California Department of Transportation, 2002).

The average TOD household could emit 2.5 to 3.7 tons less CO<sub>2</sub> yearly than its non-TOD counterpart (California Department of Transportation, 2002).

Since TOD tends to reduce short vehicle trips which have high per-mile energy consumption and emission rates due to cold starts and congested conditions, **each 1% of mileage reduced by rail transit typically reduces air emissions by 2-3%** (Litman, 2006).

## Trip Reduction/Reduced Auto Ownership

In three-quarters of “transit zones” (areas within a half-mile radius around transit stations), households have one car or less (this low auto ownership rate is true for both high and low income households in transit zones) (Belzer et al., 2006).

**A community with double the density will have 25-30% less driving per family** when other impacts of TOD are included (better transit, pedestrian-friendly, mixed-use development, etc) (Holtzclaw, 1994).

Transit reduce vehicle trip lengths: San Francisco’s high density and better transit service shortened trip lengths by **replacing eight miles of driving with one mile of transit** compared to trips in suburban Danville-San Ramon (Holtzclaw, 1994).

The rate of auto travel to a central business district shopping area well served by rail and bus transit was found to be 75% lower than that to a comparable suburban shopping area. Compared to the suburban mall, **auto use at the urban center dropped from 95% to 38% of shoppers, while transit use increased from 4% to 32%**, and walking increased from 1% to 29% (JHK and Associates, 1993).

**TOD residents are generally associated with lower automobile ownership rates:** auto ownership in three New Jersey “Transit Village Areas” averaged 1.8 vehicles per household compared to 2.1 outside the transit villages (Evans and Pratt, 2007).

Households located within ¾-mile of high-quality public transportation service have an average of 11.3 fewer daily VMT (a 26% reduction) regardless of land use density and vehicle ownership rates (Bailey, 2007).

It is estimated that households in TOD’s drive 45% less than residents of automobile-dependent neighborhoods, saving an average of 512 gallons of fuel and \$1,400 in fuel expenses annually (Bailey, 2007).

Where transit creates more efficient land use, **each transit-passenger mile represent a reduction of 3 to 6 auto vehicle-miles** by changing land use and transportation patterns (Holtzclaw, 2000).

Residents of cities with large, well-established rail transit systems spend an average of \$2,808 on personal vehicles and transit (12.0% of their total household expenditures), compared with \$3,332 in cities that lack rail systems (14.9% of total household expenditures), despite higher incomes and longer average commute distances in rail cities (Litman, 2004b).

Households within ½ mile of station areas account for 20 VMT/day compared to the regional average of 36 VMT/day per household (MTC 2002 Bay Area Travel Survey).

MTC STARS report 48% of all households within ½ mile of transit utilized transit at least once during the two day survey period and estimates 33% of new households will be within station area distance by 2035? (MTC STARS report using BATS data).

MTC’s Travel Forecasts estimates 1.14 autos per household located within ½ mile of transit compared to the regional average of 1.77 autos per household (MTC’s Travel Forecasts for the SF Bay Area 2009 RTP Vision 2035 Analysis, November 2007).

### **Increased Transit Ridership**

A regional-scale analysis conducted in Portland, Oregon (one of the leading examples of TOD's) found that the Tri-Met ridership growth of 51% not only exceeded the 21% population increase, but also the VMT increase of 39% over a nine-year period (California Department of Transportation, 2002).

Regional-level analysis indicate that **TOD-style development could decrease regional VMT by more than 5% and also increase transit ridership by 5%** and walk trips by 10% (California Department of Transportation, 2002).

**TOD helps generate cost-effective riders for the transit system:** 45% of workers in "transit zones" walk, bike, or take transit to work compared to 14% of workers who simply live in regions with transit (Belzer et al., 2006).

The Cervero 1993 report shows that residents living near transit stations were five times more likely to commute by rail as the average worker in the same city. Similarly, in Santa Clara County, those living along the LRT corridor were 5 times more likely to use transit than the rest of the county (Gerston and Associates, 1995).

A 2003 California TOD travel characteristics study found TOD office workers within ½ mile of rail transit stations to have transit commute shares averaging 19% as compared to 5% regionwide. For residents, the statewide average transit share for TODs within ½ mile of the station was 27% compared to 7% for residences between ½ mile and 3 miles of the station (Evans and Pratt, 2007).

**The percentage of transit commuting was over three times higher in TODs** compared to averages for *old heavy rail regions* and over twice as much for TODs in *new light rail regions*. (Renne, 2005).

Of residents moving into the city of Portland's new transit-oriented developments, 30% own fewer cars than they did at their previous home; 22-46% commute by public transit (far higher than the 5% regional average), and 69% use public transit more often than they did in their previous community (Podobnik, 2002; Switzer, 2003).

From: Board.Secretary  
Sent: Thursday, May 01, 2008 11:35 AM  
To: Board.Secretary  
Cc: Burns, Michael  
Subject: May 1, 2008 Board of Directors Meeting - Agenda Item #29 VTA Governance

To VTA Board of Directors:

Below, for your information, is an email from Mr. Norman Kline (VTA CAC Member) addressed to the General Manager regarding changes to the VTA Administrative Code. This pertains to Agenda Item # 29 on the May 1st Board of Directors Meeting.

Thank you.

Yolanda L. Cruz  
Assistant Board Secretary  
VTA Office of the Board Secretary  
Voice: 408.321.5669 Fax: 408.955.0891

-----Original Message-----

From: Norman Kline  
Sent: Thursday, May 01, 2008 9:48 AM  
To: Burns, Michael  
Subject: VTA Code Admin Changes

Dear Michael Burns:

Unfortunately I will not be able to attend the VTA meeting tonight but wish to express my view on the proposed changes to the Admin. code to the Board.

There are really two very distinct proposals being presented tonight under the heading of one.

I support the first proposal and have some concerns with the second.

The first proposal is to recommend to smaller city groupings that their representatives serve for repetitive two year cycles. I agree with this in concept, but it can only be a recommendation, sense the founding legislation gives only the cities within the groupings the power to appoint who they want in whatever manner they want.

The second proposal causes concern. Clearly the change to give Morgan Hill and Gilroy its own board member, even though that changed group would have substantially less residents than other groupings, flies in the face of representative government.

It is true that board members are suppose to take off their local 'hat's and represent the entire county when on the Board. But that just is not the case in any practical sense. If it was, then there would be no problem with the current groupings. A board member from Gilroy would be able to represent the residents of Milpitas.

Since there seems a need to change the current setup, then clearly there is concern that board members actually do represent specific geographic areas of the county. If that is true, and most neutral observers would tend to agree, than the groupings have to have a rough balance in the number of residents. This one-person, one vote is a cornerstone of the 14th Amendment which provides equal protection under the law.

If it looks and acts like a representative body, with members from distinct geographic areas, then it probably needs to have proportional representation.

The solution is to approve the first proposal, but assign a new governance task force to recommend longer term changes to how the board is elected or appointed. Yes, this does take time, but if the process had been started years ago, when the issue first appeared, we would have already solved it.

Lets not look back five years from now and still have a problem.

Sincerely,

Norman Kline  
VTA CAC Member

From: Board.Secretary  
Sent: Thursday, May 01, 2008 12:22 PM  
To: Board.Secretary  
Cc: Burns, Michael  
Subject: May 1, 2008 Board of Directors Meeting - Agenda Item #25. Property Sale Agreement with Green Republic for West San Carlos Site

Attachments: Kniss Endorsement Letter FINAL.doc; 080428 Myth vs Fact FINAL.doc

To VTA Board of Directors:

Attached, for your information, are documents pertaining to Agenda Item #25 on the May 1st Board of Directors Meeting. The first document is a letter from the Green Valley Corporation addressed to Supervisor Kniss. The second is a "Myth vs. Fact" document, also from Green Republic.

Thank you.

Yolanda L. Cruz  
Assistant Board Secretary  
VTA Office of the Board Secretary  
Voice: 408.321.5669 Fax: 408.955.0891

Honorable Liz Kniss  
County of Santa Clara  
70 West Hedding Street  
San Jose, CA 95110

April 29, 2008

Dear Supervisor Kniss,

The partnership of Green Valley Corporation and Republic Urban Properties, known as "Green Republic" (GR), respectfully requests your support for the Purchase and Sale Agreement for the 5.25 acre property at West San Carlos and Sunol Streets in the City of San Jose. Over the course of the past year, GR and VTA Staff have successfully negotiated an agreement that adequately addresses the interests of both parties, as well as helps to bring more sustainable Transit Oriented Development to San Jose.

Green Republic will be investing over \$300 million in Midtown San Jose. Given the current national recession, this project will represent one of the larger real estate investments in the Western United States. The project will yield large property and sales tax dollars to Santa Clara County and San Jose respectively. The property's strategic location to Downtown San Jose and the Vasona Light Rail line will allow Silicon Valley workers to walk, bike and take light rail to major employers such as Adobe (Downtown) and Google (Vasona Line). This type of an investment in housing represents public (VTA)-private (GR) commitment our employers that rely on market rate and affordable housing to retain and create new jobs in Santa Clara County.

This project, as currently conceptualized meets the goals set forth by the VTA's Joint Development Program (JDP) because it will create a high density housing and retail development next to transit. It is our feeling that the conceptual land plan, as proposed is consistent with both the Midtown Specific Plan and Chapter 4 & 5 of the San Jose General Plan for Transit Oriented Development and Transit Corridor Development, as well as the VTA's Community Design and Transportation (CDT) Best Practices Manual. It will also allow for the improvement and environmental remediation of a currently toxic, blighted redevelopment area.

In addition, we have exceeded the community outreach mandate set forth by the VTA Board of Directors in February. We convened and/or participated in six (6) meetings (exceeding the three (3) meeting requirement) with neighborhood associations, NACs and business groups. The breadth of the comments, suggestions and feedback were presented to you at the last VTA Board meeting and was summarized in a letter sent to you all following our community meetings. This does not, however, constitute the end of our outreach which will continue throughout the City of San Jose planning process.

Finally, and most importantly, the sale of this VTA Property represents the true practice of sustainable, green development in support of a major taxpayer investment in Light Rail/Vasona Corridor. It is the responsibility of both GR and VTA to implement the current and future land use practices that increase transit rider ship, and decrease car traffic and hydro-carbons that plague our state, our country and our world. The GR VTA Project will be San Jose's shining example of green development which will promote transit rider ship and healthy cities.

For additional information on the agreement, compliance with City of San Jose codes, community outreach and green building practices please see each of the attached appendices.

In conclusion, Green Republic respectfully urges the VTA Board of Directors to approve the Staff's recommendation to adopt the Purchase and Sales Agreement with Green Republic.

We look forward to receiving your support on May 1, 2008.

Sincerely,

Michael R. Van Every  
Republic Urban Properties

Barry Swenson  
Green Valley Corporation

Cc: Pierrelugi Olivario, District 6 Councilmember  
Ms. Denelle Fedor, District 6  
Michael Burns, VTA  
John Ristow, VTA  
Chris Augenstein, VTA  
Joe Horwedal, City of San Jose  
Laurel Prevetti, City of San Jose

## **Key Elements of the VTA/GR Purchase and Sale Agreement**

There are several key elements of the agreement that deserve to be highlighted. As stated in the attached letter, this is a very strong contract that allows both parties to deliver on their goals for this development.

The Purchase and Sale Agreement is a performance guarantee to VTA, and a flexible economic term sheet to GR that allows us to close on the property in four (4) phases of acquisition.

After the first land takedown (Phase I), GR must pay 4% interest on the remaining balance of property which will start adding **\$452,000** per year in additional value to the VTA property.

In total, the VTA can earn an additional \$2.7 million interest carry and non applicable deposits in addition to the purchase price of \$18.3 million.

The agreement provides for specific performance on the project by GR and insures that once we close escrow on Phase I we are committed to performing on all future phases as a covenant provision of the Contract.

The flexibility in the contract allows for a realistically phased land takedown schedule, and guarantees to VTA that the developer will deliver on its \$18.3 million land price and will close on all phases of the property.

GR will pay \$1 million to VTA to be used for design, repair or construction of transit improvements in the vicinity of the project.

## Appendix # 2

### **Community Outreach and Project Compliance with City of San Jose's Planning Code**

During the negotiating period of the land sale contract GR has successfully implemented a large community outreach program with key neighborhood leaders and major stakeholders, which if approved, will continue throughout the San Jose planning process. GR exceeded the VTA Board's direction to conduct three (3) community meetings to explain the VTA process to sell the property by holding a total of six (6) meetings. The VTA community outreach process was a good preview to the extensive amount of work we must conduct with the community and San Jose Planning to address comments and concerns relative to traffic, parking, parkland and the proposed height and density of the project.

There does appear to be concern in the community about height and density associated with the General Plan 2020, and it will be our challenge as the developer to work with the city and community to achieve a high-quality project that exceeds expectations.

GR's entire site is governed in the Midtown Specific Plan as a "matter of right" zoning as well as General Plan Chapter's 4 and 5 regarding TOD and Transit Corridors. Per these governing documents, the zoning allows for up to 100 units to the acre and up to 120 feet in height limit.

In accordance with the Midtown Plan, we believe the current conceptual land plan is consistent with the following goals and objectives:

**Land Use:** *"Intensification of development immediate adjacent to Cahill Station and to the future West San Carlos light rail transit station (LRT) to a mixture of residential and commercial uses that will create an employee and residential population next to transit, that will strengthen these areas as pedestrian activity centers.."*

**Land Use:** *Configure land uses in Midtown (i.e. type and mix) in a manner that reinforces and maximizes transit ridership"*

**Land Use:** *Encourage a wide range of housing types (condos, town homes, SRO's apartments, etc.) that offers future residents viable alternatives to traditional single-family housing, and that can attract people with a diversity of income levels as well as cultural and professional."*

**Transportation and Parking:** *"Ensure the efficient operation of the existing and planned transit improvements within Midtown reduce auto dependency"*

In accordance with General Plan 2020 Chapter's 4 & 5, we believe the conceptual land plan is consistent with the following objectives:

**Chapter 4 - Transit Areas:** *"Within a reasonable walking distance of an existing planned passenger rail station, the maximum building height shall not exceed 120 feet"*

**Chapter 5 - Discretionary Use Polices:** *"In order to encourage the production of housing units and the utilization of existing or proposed mass transit facilities, higher density residential may be allowed on residentially designated lands..."*

## Appendix # 3

### **Project's Conformity with San Jose's Green Vision**

The Green Republic VTA proposed project, as a **conceptual** plan adheres to several principals of San Jose's Green Vision goals that are a significant part of the San Jose's future General Plan 2040:

**"Reducing Per capita electrical power":** The proposed project will incorporate solar and wind energy solutions

**Divert 100% of waste from our landfill and convert to energy":** The proposed project will work with recycled finishes (flooring, counters and cabinets) in addition to latest building materials that are produced through recycled materials.

***“Recycle or re-use 100 percent of wastewater”***: The proposed project will utilize wastewater onsite to irrigate landscaping and other potable uses such as low flush toilets.

***“Plant 100,000 new trees and replaces 100% of streetlights and smart, zero emission lighting”***: The proposed project will plant hundreds of new trees on currently a treeless eight (8) acre site. The proposed project will use potential solar energy to power all outdoor lighting.

***“Create 100 miles of interconnected trails”***: The proposed project will make significant contributions to the Los Gatos Creek Trail that will be part of an overall “green print” plan that will include up to four (4) acres of NEW neighborhood serving parkland.

From: Board.Secretary  
Sent: Thursday, May 01, 2008 2:56 PM  
To: Board.Secretary  
Cc: Burns, Michael  
Subject: May 1, 2008 Board of Directors Meeting - Agenda Item #25. Property Sale Agreement with Green Republic for West San Carlos Site

To VTA Board of Directors:

Attached is a response to Ex-Officio Board Member Ken Yeager's letter dated April 29, 2008 re: Rejection of Property Sale Agreement with Green Republic for West San Carlos Site. This pertains to Agenda Item #25 on the May 1st Board of Directors Meeting.

Thank you.

Yolanda L. Cruz  
Assistant Board Secretary  
VTA Office of the Board Secretary  
Voice: 408.321.5669 Fax: 408.955.0891

Response to Ex Officio Board Member Yeager  
Letter Dated April 29, 2008  
West San Carlos Property Sale  
May 1, 2008  
Item 25

Point 1 –As in many commercial property transactions, the seller is expected to provide a clean site for sale. VTA has prepared, at Green Republic expense, a soils report that established a conservative estimate of soil remediation necessary to deliver a clean site. Although actual costs will not be known until remediation is complete, VTA staff is confident that the cost estimate is valid. Comparisons to other remediation sites - such as Newhall Yard clean up currently underway at a cost of ~\$6m to remediate 35 acres clearing soil up to 5-6 feet below grade - also were used to validate the estimate.

Point 2 – VTA will receive the first payment of \$7 million on 12-31-2010. The property is proposed to be developed in phases with development and construction commencing in 2010, 2012, 2014, with the last phase of occurring in 2019. The June 1, 2012 date is also the beginning of the 4% escalation. The developer may extend for one year by making a non-refundable payment to VTA of \$550,000 which would be applicable to the purchase price. The developer may extend for another six months by making a non-refundable payment to VTA of \$100,000 which is not applicable to the purchase price.

Point 3 – The phases of the development were established by developer and accepted by VTA as reasonable worst case time frames for the development projects to receive building permits, complete construction and to sell the units. Extensions of the dates can be purchased by the Developer, if economic market conditions are not favorable. VTA still receives 4% escalation of value, extension payments and ultimately the property sale price payments as each phase is developed. This flexibility is an important consideration in allowing the developer to craft an economically viable project and commit to completing the entire project. Moreover, the phases represent the outside closing dates that the developer is contractually bound to adhere to – depending on market conditions the developer may chose to advance those dates or concurrently complete multiple phases.

Point 4 – The 4% escalation rate of remaining phase balances was a point of negotiation with developer. The rate reflects the current market cost of funds. The rate is fixed and protects VTA against recessionary downward trends in investment rates.

Point 5 – The concept plan prepared by the developer will be reviewed for consistency with the General Plan after a formal development plan is submitted to the City of San Jose VTA is simply agreeing to sell the property. San Jose will not accept applications until the developer is in contract.

Point 6 – The staff believes that the developer's plans are consistent with San Jose's requirements. That is a question for San Jose to determine in the application process.

Point 7 – The sooner the developer is able to submit a development application to the City of San Jose, the sooner the community involvement and neighborhood input process can begin.

Point 8 – There is no connection between the property sale agreement between Green Republic and the Tamien area issues.

### Conclusion

As is most commonly done, the agreement to purchase the property is conditioned upon entitlements. The developer is required by terms of the agreement to secure development entitlements and construct the project using their own resources. VTA has minimal costs for holding the property and no responsibility for costs of entitlement. By approving the property sale agreement, the developer is contractually bound to proceed with the whole project after City approvals are obtained.

A “straight” sale of property would be very unusual and would likely result in a much lower price received, would result in no control over the timing of the Transit Oriented Development, thereby not achieving either of the two primary goals of the VTA Joint Development Program.

1. Increase Transit (Accomplished by a contractually mandated schedule for the developer.)
2. Establish a Long Term Revenue Source (Accomplished by maximizing the value of VTA property through transactions conditioned on development entitlements)

From: Board.Secretary  
Sent: Thursday, May 01, 2008 3:18 PM  
To: Board.Secretary  
Cc: Burns, Michael  
Subject: May 1, 2008 Board of Directors Meeting - Agenda Item #25. Property Sale Agreement with Green Republic for West San Carlos Site

To VTA Board of Directors:

Attached is a letter from the Rose Garden Neighborhood Preservation Association regarding the West San Carlos Joint Development Project. This pertains to Agenda Item #25 on the May 1st Board of Directors Meeting.

Thank you.

Yolanda L. Cruz  
Assistant Board Secretary  
VTA Office of the Board Secretary  
Voice: 408.321.5669 Fax: 408.955.0891

April 30, 2008

Board of Directors  
Santa Clara Valley Transportation Authority  
3331 North First Street  
San Jose, CA 95134

RE: 860 West San Carlos Joint Development Project

Dear Board Members:

We are writing this letter in objection to the manner in which VTA is treating the sale to Green Valley Republic of the property on West San Carlos and Sunol.

We have been notified that this development could contain three 120 foot towers and four 60 foot buildings on a 8.2 acre piece of property.

We, like our neighbors, have grave concerns over the extreme height of the buildings and the possibility of minimal parking spaces. As one citizen stated, we are not against growth – just bad growth.

We are not against this project as a transit-use project, but have some concerns that a piece of public land is being considered for sale while it directly conflicts with the City of San Jose's General Plan for the property which calls for 90 foot limitations.

The view from the public is that there are five City Council members who sit on the VTA Board who are approving the sale even though the present plan does not heed the General Plan's original design for this piece of property. If this sale is approved by VTA as it stands now, does it not send a message to the rest of the City Council that this project has been already blessed by five members who sit on the Board?

The RGNPA received a copy of an e-mail that states the Green Valley Republic will meet with neighborhood associations "after the sale of the property and the San Jose Planning Process has begun." We believe the planning process is already in place, and the Association objects to the sale while the concerns of the public on a public piece of property are still outstanding.

City of San Jose Planners have told us many times in the past that they cannot make a developer do anything if they are conforming to the zoning rules and other ordinances. Given conflicting interpretations of the land use policies governing this property, it is naïve to agree to a purchase price and a contract that relies on both an unpopular design and exceeding the City's allowable heights and density to achieve VTA's objectives of revenue and quality transit-oriented development. There is no guarantee that the developer will change the design as it has been submitted to VTA even with us neighbors and taxpayers protesting to the hilt.

Not to question this development with so many objections from the public would be negligent of the officials appointed to the VTA.

We support the Position Paper delivered to you this week by the Advocates for Smart Growth in San Jose.

Respectfully,

Linda Dittes, President  
RGNPA

C: RGNPA Board  
Advocates for Smart Growth in San Jose