

From: Board.Secretary  
Sent: Tuesday, May 06, 2008 3:44 PM  
To: Board.Secretary  
Cc: Burns, Michael  
Subject: Airspace Impacts Study on Downtown San Jose Building Heights

Attachments: Airspace Impacts Study on Downtown San Jose Building Heights.pdf

To VTA Board of Directors:

Attached is a memorandum from the General Manager regarding "Airspace Impacts Study on Downtown San Jose Building Heights."

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:** May 6, 2008

**SUBJECT:** Airspace Impacts Study on Downtown San Jose Building Heights

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VTA recently partnered with the San Jose Downtown Association to conduct a study on airspace impacts on building heights in downtown San Jose. As you are probably aware, building heights in downtown San Jose are limited due to the close proximity of the Mineta San Jose International Airport (SJC). The height restrictions are a concern for downtown San Jose developers and property owners as it limits the development potential of their property. With the recent acquisition of the Mitchell Block, this issue has long-term financial implications for VTA.

The purpose of the study is to work with the Federal Aviation Administration (FAA), SJC and the airlines to determine if alterations can be made to the existing height regulations without compromising safety. The study revealed two different scenarios that could safely alter the current building height restrictions. The San Jose Downtown Association is working with stakeholders, the FAA and SJC to determine the preferred scenario. Once the preferred scenario is selected, the report and recommendation will be presented to the City of San Jose for consideration.

As a significant landowner in the downtown area, we have a major interest in this important effort. As such, I agreed to participate in this cooperative effort and authorized a payment of \$7,500 as VTA's contribution for the study.

From: Board.Secretary  
Sent: Wednesday, May 07, 2008 8:44 AM  
To: Board.Secretary  
Cc: Burns, Michael  
Subject: General Information: Weekly Legislative Report

Attachments: Weekly Legislative Update -- 4-28-08.doc

To: VTA Board of Directors  
From: Kurt Evans, Government Affairs Manager  
Date: May 6, 2008  
Subject: General Information: Weekly Legislative Report

For your information, I am attaching the weekly legislative update for the week of April 28, 2008.

## MEMORANDUM

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

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

**DATE:** May 5, 2008

**SUBJECT:** Weekly Legislative Update: Week of April 28, 2008

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### **FEDERAL**

**SAFETEA-LU Reauthorization:** The transportation committees in the House and Senate continued their review of federal transportation programs in preparation for the reauthorization of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) next year. The Senate Committee on Commerce, Science and Transportation heard testimony about the National Surface Transportation Policy and Revenue Study Commission's report. The report's recommendations, which were not unanimously supported by all members of the commission, call for a \$225 billion-\$340 billion annual investment over the next 50 years to repair and upgrade the nation's transportation infrastructure, and an increase in the federal gas tax of between 25-40 cents per gallon to pay for it. The commission's report also outlines a plan for consolidating the 108 existing federal surface transportation programs into 10 new programs that would be performance-driven, outcome-based, generally mode-neutral, and refocused to pursue objectives of national interest. Vice Chairman Jack Schenendorf testified that the main distinction between the majority and minority opinions on the commission stemmed from the majority's support for: (a) federal leadership to develop a national transportation strategy; and (b) a continued reliance on public dollars to fund transportation infrastructure needs. In contrast, Schenendorf noted that the minority view, led by Transportation Secretary Mary Peters, emphasizes a diminished federal role in transportation, and an increased reliance on user fees and privatization instead.

Meanwhile, hearings before two separate subcommittees of the House Transportation and Infrastructure Committees dealt with the issue of facilitating freight movement along transportation corridors and through congested metropolitan regions. Testimony at both of these hearings focused on the shortfall in investments in passenger and freight rail infrastructure, highways and other facilities that support intermodal transportation. Witnesses also predicted that the current system cannot support an estimated 70 percent increase in freight volumes by 2020 or population growth to 420 million people by 2050.

**Gas Tax:** Since Sen. John McCain (R-AZ) announced his campaign proposal to suspend the federal gas tax over the summer months, his colleagues in the House and Senate have been scrambling to put together their own alternative plans to provide some relief for motorists from high gas and diesel fuel prices. Senate Majority Leader Harry Reid (D-NV) is working on a package for short-term price relief that may be considered before the Memorial Day recess. The specifics of his proposal are not yet known. House Speaker Nancy Pelosi (D-CA), and House Energy and Commerce Committee Chairman John Dingell (D-MI) have asked the Federal Trade Commission to exercise its authority to investigate possible price-gouging on the part of the oil companies. Pelosi also has called for the Bush Administration to suspend contributions to the Strategic Petroleum Reserve, hoping that increased supply may bring retail prices down by as much as 10 cents a gallon. Sen. Olympia Snowe (R-ME) has introduced a bill to bring targeted relief to truckers by lowering the excise tax on diesel fuel by 6 cents a gallon, while a group of Democratic senators are threatening to block U.S. arms sales to OPEC countries in order to pressure them to increase production.

**President's News Conference:** In a wide-ranging Rose Garden news conference, President George W. Bush criticized Congress for "letting the American people down" on issues ranging from food and gas prices to foreign trade and intelligence, and he called for new bipartisan efforts to solve them. The news conference was President Bush's first in two months. The President said Congress has ignored many of his proposals, such as expanding U.S. energy production, reducing subsidies to wealthy farmers and overhauling federal mortgage lending agencies. He said he would consider proposals to lower gas prices, but he did not endorse Sen. McCain's plan for a gas tax holiday this summer, and he opposes House Speaker Pelosi's proposal to suspend contributions to the Strategic Petroleum Reserve. In a more conciliatory tone, the President said he would "work with Congress" to improve Iraq and Afghanistan veterans' educational benefits.

**Fuel-Economy Standards:** Proposed federal fuel-economy standards would require cars and trucks to get an average of 31.6 miles per gallon by 2015, a significant increase over the current fleet. But the plan also includes surprising language barring California and other states from regulating automobile greenhouse gas emissions. The new mileage requirements were warmly received by environmentalists and automakers. The attempt to put restrictions on California, however, brought a fierce response from Atty. Gen. Jerry Brown and other critics, who called it an unexpected attack on the states. The language in question starts on page 374 of the 417-page document prepared by the National Highway Traffic Safety Administration (NHTSA). The new rules will be open for a 60-day comment period, after which a final version will go into effect.

The proposal was delivered by Transportation Secretary Peters at an Earth Day ceremony in Washington, D.C. In large part, it sets out rules for achieving the fuel-economy standards called for in energy legislation that was passed by Congress last year. According to NHTSA, the proposal would save nearly 55 billion gallons of fuel, and reduce carbon emissions from vehicles built from 2011 to 2015 by 521 million metric tons. It requires that cars reach an average efficiency of 35.7 miles per gallon (mpg) by 2015, compared with the current average of about 31.3 mpg. Light trucks must reach 28.6 mpg, up from 23.1 mpg. Under the energy legislation passed last year by Congress, an automaker's overall fleet average must reach 35 mpg by 2020.

Initial reaction was positive, with environmentalists and carmakers agreeing that the rules were tough but achievable. But as lawyers for non-profit groups and state agencies pored over the document, concern arose over the section dealing with the right of the states to set their own greenhouse gas emissions standards separate from federal mileage standards. NHTSA said it rejected that right, arguing that there was “no way that NHTSA can tailor a fuel-economy standard so as to avoid preemption” of state rules. It further contended that limiting greenhouse gas emissions is tantamount to setting fuel-economy standards—something only the federal government can do.

Lowering auto emissions is crucial to California’s strategy for dealing with greenhouse gases. State officials said current federal law is not aggressive enough to let California meet its targets. Under California’s rule, fuel-economy standards would in effect be raised to 42.5 miles per gallon by 2015, according to some calculations. But since California’s rule was put in place in 2002, it has been under siege by automakers, which have filed numerous lawsuits in a bid to block it. A series of court decisions during the past two years has favored the state, most recently a November 2007 decision in a federal court in Fresno that said California was permitted to set its own emissions regulations. Those decisions were important to states beyond California. While only California is permitted to set its own vehicle emissions standards, subject to a waiver from the U.S. Environmental Protection Agency (EPA), other states can elect to follow either federal rules or California’s. Fifteen states have adopted California’s limits. Together, those states and California account for about 40 percent of the U.S. population.

In December 2007, however, the EPA denied California’s waiver to implement its law. That decision was criticized by Gov. Arnold Schwarzenegger and 13 other governors, while members of Congress called for hearings on the decision. Last month, EPA Administrator Stephen L. Johnson defended his decision on grounds that battling global warming was a federal issue, and he denied that the White House played a role. NHTSA’s proposal would render the California rule moot regardless of an EPA waiver.

**Supplemental Appropriations Bill:** House Democratic leaders have a plan to add extended unemployment benefits and new education funding for veterans to President Bush’s supplemental appropriations bill for the wars in Iraq and Afghanistan, while dropping lots of other party priorities. Facing a veto threat, Democrats are backing away from trying to add billions of dollars for transportation infrastructure, heating subsidies for the poor, increases in food stamp benefits, and other similar ideas to the bill. It was a sign that Democrats want to avoid loading up the bill and lose a veto and public relations clash with the President.

President Bush has promised to veto any supplemental appropriations bill that exceeds his \$108 billion request to fund U.S. military and diplomatic efforts in Iraq and Afghanistan. It is a tougher line than he took last spring, when he accepted about \$17 billion in domestic program add-ons as part of a \$120 billion war funding measure. Democrats are in fact planning not only to provide the \$108 billion to fund the war effort through the end of the current federal fiscal year (September 30, 2008), but they also are likely to include another \$70 billion for Iraq and Afghanistan for FY 2009 so that they do not have to vote on war funding again during the fall election season. But the hard line from the White House has Democrats scaling back plans to use the must-pass bill as a vehicle for funding some of their domestic agenda.

## **STATE**

**State Budget:** Addressing a district attorneys' conference in Sacramento, Gov. Schwarzenegger said the state budget deficit will be "probably more than \$10 billion" in FY 2009 as the state takes in lower-than-expected revenues in a flagging economy. A \$10 billion gap would be at least \$1 billion more than previously predicted for the fiscal year that begins on July 1. The Governor blamed budget formulas that lock in spending increases and a downturn in the economy related to problems in the housing market for the rising deficit.

At the same time, Republican lawmakers unveiled a plan that would restore about half of the \$4.8 billion reduction that the Governor proposed for K-12 education. The GOP plan would give schools more than they are getting in FY 2008, but less than they are entitled to receive under the state's constitutional school funding guarantee. To do that, the Republican plan calls for delaying funding for new education programs, using unspent cash from existing school accounts, shifting more money from public transit, and cutting other state programs.

Gov. Schwarzenegger is scheduled to release his revised budget proposal on May 14, 2008, which will take into account updated revenue and expenditure numbers. He reiterated his opposition to tax increases, but renewed his call for lawmakers to get creative to find new revenues. He continues to express his interest in leasing the California Lottery.

**Business Issues:** Senate Republicans stood with business representatives in demanding a series of reforms as part of the state budget talks. These changes include the following:

- Allowing employers to offer flexible work schedules by removing a requirement that they pay workers overtime after an eight-hour day.
- Allowing businesses to come into compliance with the federal Americans with Disabilities Act (ADA) before regulators levy fines.
- Delaying the implementation of California's landmark greenhouse gas emissions law by one year.
- Extending deadlines for diesel engine retrofits. At present, heavy-duty equipment has to be turned over twice within eight years.
- Allowing individuals and employers to purchase health insurance through any licensed provider.
- Requiring state agencies to assess the economic impact of regulations on small businesses.

Legislative Democrats had different reactions to the package. "It's unfortunate Senate Republicans are once again trying to use their budget leverage to push unrelated proposals that would dirty our air and hurt working families," Assembly Speaker Fabian Núñez (D-Los Angeles) said in a statement. "They tried unsuccessfully to do that last year, and their efforts will fail again this year." But Senate President Pro Tem Don Perata (D-Oakland) said he welcomed Republican suggestions. "We are in such dire trouble fiscally, I am glad for anybody who wants to get into the game," Perata commented. "We have not yet come to grips with how difficult this year will be. Everything must be on the table."

**Water:** The Assembly Water, Parks and Wildlife Committee shelved legislation to build a canal around the Sacramento-San Joaquin River Delta. Two years in the making, SB 27 (Simitian) would have created a new seven-member authority to contract for the design and construction of a new facility to move water from the Delta to pumps that would send water to cities and farms. In addition, the legislation would have asked voters to approve a \$4 billion bond to pay for environmental restoration of the Delta.

Voters rejected a so-called Peripheral Canal in 1982, but the idea has drawn renewed interest recently as groups take a closer look at the Delta's woes. There are a number of troubling signs. Declining fish populations have led to court-ordered pumping cutbacks. Elevated ocean levels, predicted as the climate warms, could cause floods. And the ever-present threat of a Delta earthquake has water users on edge.

While Assembly Water, Parks and Wildlife Committee members agreed with the urgency, they said it would be wiser to wait for a much-anticipated Delta report. The Delta Vision Blue Ribbon Task Force, appointed by Gov. Schwarzenegger, is scheduled to release a "strategic plan" for the estuary in October 2008.

## **REGIONAL**

**Metropolitan Transportation Commission (MTC) Partnership Board:** At the Partnership Board's May 1 meeting, MTC staff presented the Transportation 2035 Project Performance Assessment Findings. The results of the assessment will assist MTC commissioners as they consider which projects will be included in the financially constrained element of Transportation 2035, the regional transportation plan (RTP) for the Bay Area. The findings will be forwarded to the MTC Planning Committee on May 9 and to the Joint Policy Committee on May 16 for their consideration.

**Peninsula Corridor Joint Powers Board (JPB):** At its May 1 meeting, the JPB approved the following: (1) authorized staff to submit a Labor Compliance Program applicable to all future Caltrain public works contracts to the California Department of Industrial Relations; (2) approved publication of the proposed FY 2009 Disadvantaged Business Enterprise (DBE) overall goal of 10 percent for Federal Transit Administration-assisted contracts; and (3) awarded a contract to CBS Outdoor Group, Inc., for train and station advertising services. In addition, the JPB received a report from staff on the proposed FY 2009 operating budget for Caltrain. The proposed \$95.4 million budget represents a 6 percent increase over last year, but expenditures exceed revenue projections by approximately \$5.4 million. JPB staff will be working to find reductions and cost savings to balance the budget before it is presented to the JPB for adoption next month. It should also be noted that Caltrain reserves are well below reasonable levels, and the JPB continues to face a structural budget imbalance.

**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.