

To: VTA Board of Directors
From: Kurt Evans, Government Affairs Manager
Date: August 20, 2008
Subject: General Information: Weekly Legislative Report

For your information, I am attaching the weekly legislative update for the week of August 11, 2008.

MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors

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

DATE: August 18, 2008

SUBJECT: Weekly Legislative Update: Week of August 11, 2008

FEDERAL

Public Transit: Sen. Hillary Rodham Clinton (D-NY) introduced S. 3380, the Saving Energy through Public Transportation Act of 2008. This bill is a companion to H.R. 6052, which was introduced in the House by James Oberstar (D-MN), chairman of the House Transportation and Infrastructure Committee, and John Mica (R-FL), the ranking minority member of the committee. H.R. 6052 passed the House in June by a vote of 322-98.

S. 3380 authorizes \$850 million for FY 2008 and \$850 million for FY 2009 to help public transit systems cope with rising fuel costs and to promote ridership as a way to reduce domestic fuel consumption. Of the amounts authorized, \$750 million would be distributed through the Urbanized Area Formula (UZA) Program and \$100 million would be added to the Rural Transit Formula Program for each fiscal year. The funds could be used by public transit agencies to: (a) expand service or reduce fares; (b) avoid fare increases or service cuts that would otherwise result from increased fuel costs; or (c) meet additional equipment or facility maintenance expenses caused by increased ridership.

Although H.R. 6052 was approved by the House as a stand-alone bill, the difficulty of obtaining Senate Floor time indicates that for S. 3380 to pass, it would have to be incorporated into a larger energy package.

FY 2009 Appropriations: As expected, Congress has ended further consideration of the FY 2009 spending bills, including the Transportation and Housing and Urban Development (THUD) Appropriations Act, and the Homeland Security Appropriations Act. Congress is not expected to enact these bills until after the November general election.

The Senate Appropriations Committee approved its version of the FY 2009 THUD appropriations bill in July. Included was \$10.225 billion for transit, an increase of \$838 million (8 percent) over the FY 2008 enacted level, yet still \$113 million short of the amount authorized and guaranteed by the Safe, Accountable, Flexible, Efficient Transportation Equity

Act: A Legacy for Users (SAFETEA-LU). Also included in the bill was an \$8 billion transfer from the General Fund to the Highway Account to postpone the projected insolvency of the account and to allow for highway projects to be funded at the level authorized in SAFETEA-LU for FY 2009. Meanwhile, the House Appropriations Subcommittee on Transportation and Housing and Urban Development approved its version of the FY 2009 THUD spending bill at the end of June, providing \$10.3 billion for transit, the full amount authorized and guaranteed by SAFETEA-LU.

In June, the House Appropriations Committee approved the FY 2009 homeland security spending bill, which includes \$400 million for public transit and rail security grants, the same level of funding as last year. This amount is \$225 million more than the Bush Administration requested in its budget, but \$350 million short of the level authorized in H.R. 1, the 9/11 Commission Recommendations Act of 2007. In addition, the legislation includes language to prohibit a local match requirement for receipt of the grant funds, and calls for the U.S. Department of Homeland Security to distribute the grants directly to public transit agencies instead of through the states. The Senate Appropriations Committee approved its version of the bill in June, which also provides \$400 million for public transit and rail security grants. Similar to the House bill, it prohibits a local match requirement, but does not direct the Department of Homeland Security to distribute the grants directly to public transit agencies.

Amtrak: Congress continues to work to advance the Passenger Rail Investment and Improvement Act of 2008, better known as the Amtrak reauthorization bill. Senate and House leaders are hoping to convene a conference committee in September to develop a compromise version of the legislation for final passage. The House bill was enacted in July by a vote of 311-104. It authorizes \$14.4 billion for Amtrak over a five year period. In addition, it: (a) creates a capital grant program for intercity passenger rail projects; (b) helps Amtrak to reduce its debt; (c) authorizes grants to finance the construction of high-speed rail corridors; and (d) establishes a forum at the Surface Transportation Board (STB) to help mediate disputes between passenger rail providers and the freight railroads over the use of freight railroad rights-of-way. The Senate version of the Amtrak reauthorization bill contains \$11.4 billion over six years for Amtrak. It does not include a number of the policy provisions proposed in the House legislation.

Highway Account Fix: By a vote of 387-37, the House passed H.R. 6532, a bi-partisan bill that calls for transferring \$8 billion from the General Fund to the Highway Account. This stand-alone legislation, authored by Ways and Means Committee Chairman Charles Rangel (D-NY), Transportation and Infrastructure Committee Chairman Oberstar, and Transportation and Infrastructure Committee Ranking Minority Member Mica, is the latest in a series of attempts to address the projected shortfall in the Highway Account. President George W. Bush has threatened to veto the legislation, but there appears to be sufficient votes in the House and Senate to override such a move. H.R. 6532 is similar to the language that was included in the Senate version of the THUD appropriations bill. However, since the Senate THUD spending bill is not expected to advance, Senate proponents will have to find some other legislative vehicle to address the issue prior to adjournment in October.

Global Warming: President Bush drew rare praise from environmentalists last year when he signed into law the biggest increase in fuel economy standards in three decades. But consumer groups and environmentalists now warn that the Administration's new rules to implement the law are too weak to shift the country from gas-guzzling to gas-sipping cars and trucks. At the first public hearing on the rules, critics accused the National Highway Traffic Safety Administration (NHTSA) of using false assumptions about gas prices and environmental impacts when it set the proposed fuel economy standards.

The Energy Independence and Security Act, passed by Congress last year, requires automakers to meet a fleetwide average of at least 35 miles per gallon (mpg) by 2020, but left it up to federal regulators to set the year-by-year targets that companies must achieve. Along these lines, NHTSA is proposing that automakers meet a fleetwide average of 31.6 mpg starting in the 2011 model year, including 35.7 mpg for passenger cars and 28.6 mpg for light trucks.

Environmentalists and consumer groups criticized NHTSA for basing the new standards on what they consider to be a "ludicrous" assumption—that gas prices will be \$2.25 a gallon in 2015, some 40 percent lower than today's prices. Advocates said that using a more realistic price would have changed the calculations, making it economically feasible to demand that automakers install fuel-saving technologies even sooner. In addition, environmental groups believe NHTSA may be short-changing the environmental benefits of increasing fuel economy.

Justice Department: A new U.S. Justice Department report concludes that politics illegally influenced the hiring of career prosecutors and immigration judges, and largely lays the blame on top aides to former Attorney General Alberto Gonzales. The 140-page report singles out the department's former White House liaison, Monica Goodling, for violating federal law and Justice Department policy by discriminating against job applicants who were not Republican or conservative loyalists. But it does not indicate whether Goodling or former Gonzales chief of staff Kyle Sampson should face any charges.

The report marks the culmination of a year-long investigation by the Justice Department's Office of the Inspector General and Office of Professional Responsibility into whether Republican politics were driving hiring policies at the nation's premier law enforcement agency, whose appointees are expected to be selected on a non-partisan basis. The investigation was one of several examining accusations of White House political meddling within the Justice Department. Those accusations were initially driven by the dismissal of nine U.S. attorneys in late 2006 and culminated with Gonzales' resignation as attorney general last September.

STATE

State Budget: California's budget impasse may get worse if Gov. Arnold Schwarzenegger and the Democratic-controlled Legislature do not reach a compromise sometime soon. Without a timely resolution, two significant pieces of the budget negotiations that require voter approval could miss the deadline for being placed on the November ballot, making them

no longer viable. Time is running out for the Governor's proposal to borrow against future state lottery sales to help erase the current \$15.2 billion budget deficit and jump-start a "rainy-day" fund to avoid future fiscal crises. Any change to the lottery requires voter approval because the lottery was originally enacted through the ballot box. Budget reform is the other issue that Republicans want to get before the voters this November. Taking the lottery and budget reform off the negotiating table could aggravate the already polarized debate within the Legislature.

California has been without a budget since the new fiscal year began on July 1. If the lottery and budget reform are not in play, then that would leave essentially three ways to solve the deficit:

1. Spending cuts for various state programs, which Democrats argue are already suffering.
2. Taxes, which Republicans refuse to support.
3. Borrowing from money earmarked for transportation, local government and other purposes, which Democrats say they would not do.

In recent weeks, Gov. Schwarzenegger has tried to break the logjam by laying off more than 10,000 state workers, attempting to cut pay for nearly 200,000 employees to the federal minimum wage, and reversing his earlier stance of no tax increases by proposing a temporary, one-cent bump in the sales tax. In addition, he has threatened not to sign any bills until the Legislature approves a budget. While his actions have failed to push lawmakers toward a compromise, the moves illustrate his frustration over the budget impasse.

State Employees: The Schwarzenegger Administration sued Democratic Controller John Chiang in an effort to force him to cut pay for about 200,000 state employees by the end of August, moving the salary battle from the political arena to the courtroom. In filing the suit, the Department of Personnel Administration alleged that Chiang, by paying full salaries, would violate parts of the state Constitution and the Government Code sections that prevent the controller from issuing pay without a budget in place. Chiang disputes this legal interpretation. He also said it would take a minimum of six months to reduce pay to the federal minimum wage because of an outdated computer system and numerous individual deductions for each employee. The controller faces an August 21 deadline to begin processing final payroll for the month.

High-Speed Rail: A coalition of transportation and planning groups, and two Peninsula cities filed a lawsuit that seeks to invalidate the environmental study—and the choice of the Pacheco Pass alignment—for the state's high-speed rail project. The suit, filed in Sacramento County Superior Court, contends that the California High-Speed Rail Authority staff intentionally slanted the study to steer its Board of Directors into selecting a route through the Pacheco Pass over one through the Altamont Pass. High-Speed Rail Authority staff maintains that the environmental study would hold up in court.

Plaintiffs in the case include the cities of Menlo Park and Atherton, and four non-profit transportation and planning groups: the Planning and Conservation League, the

Transportation Solutions Defense and Education Fund, the California Rail Foundation, and Bay Rail Alliance. Most of those groups supported the Altamont Pass alignment.

Meanwhile, the Assembly passed AB 3034, a bill aimed at improving the \$10 billion high-speed rail bond measure on the November ballot. However, the legislation will not be sent to Gov. Schwarzenegger until there is “a signal” that he will sign it, said Assembly Member Cathleen Galgiani (D-Tracy), the bill’s author. The Governor has indicated that he supports the bill, but has vowed to veto all measures until lawmakers strike a deal on the FY 2009 budget. If a budget deal is cut soon, it would clear the way for the Governor to sign AB 3034 without breaking his pledge. The measure calls for replacing Proposition 1, the original high-speed rail bond drafted years ago, with Proposition 1a, which includes more financial oversight.

Water: Warning that California faces catastrophic water shortages from a worsening drought, U.S. Sen. Dianne Feinstein upbraided state lawmakers for failing to rally behind a proposed \$9.3 billion water bond for the November ballot. Feinstein has joined Gov. Schwarzenegger in calling for major improvements to state water storage and delivery systems. But their water bond plan has run aground in the Legislature. So far, lawmakers have been unwilling to support the program, which includes \$3 billion for water storage, and \$1.9 billion to repair levees and restore the ecosystem of the Sacramento-San Joaquin Delta.

REGIONAL

Bay Area Rapid Transit District (BART): The BART Board of Directors decided not to ban Segways and similar self-propelled transportation devices from BART trains. While staff recommended limiting the use of these devices to people with disabilities, the board disagreed and elected to allow anyone to bring his or her Segway on BART trains after obtaining a free permit. However, passengers without disabilities may only bring their devices on the trains during off-peak hours. People with disabilities would be allowed to use their devices at all times of the day. BART estimates that about 20 people a day use the devices.

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, August 20, 2008 4:31 PM
To: Board.Secretary
Cc: Burns, Michael
Subject: BART SVRT Operating Costs

To VTA Board of Directors:

Attached is a memo from the General Manager in response to the BayRail Alliance memo received at the August 7th Board of Directors meeting and to the questions raised by Board Member Yoriko Kishimoto.

Thank you.

Yolanda L. Cruz
Assistant Board Secretary
Voice: 408.321.5669 Fax: 408.955.0891

MEMORANDUM

TO: Board of Directors

FROM: Michael T. Burns, General Manager

DATE: August 20, 2008

SUBJECT: BART Operating Costs

On August 7, 2008 the VTA Board received a memo from the BayRail Alliance (BRA). In response to the memo and questions raised by Board Member Kishimoto, I have attached a technical memo from AECOM Consult, dated August 19, 2008, which supports their previous conclusion that revenue from the 1/8-cent sales tax is sufficient to cover the BART on-going costs with reserve.

I would like to highlight key points of comparison and clarification between the AECOM Consult analysis and spreadsheet provided by Bay Rail Alliance.

- Collection of additional 1/8-cent sales tax revenue dedicated to SVRT Extension operations and ongoing capital expenses is projected to begin approximately four years prior to revenue operations of the SVRT Extension. Revenue collected during this period—an estimated \$220 million—will serve as an important cushion between revenue collected from the 1/8 cent sales tax and VTA's annual obligation to BART. In addition, interest earnings on the 1/8-cent sales tax fund balance contribute significantly to the projected 2036 closing cash balance. The BRA numbers do not reflect this.
- To the extent that the proposed 1/8-cent sales tax does not equal the amount that VTA is obligated to advance to BART on a quarterly basis, VTA will draw from the reserve that will accrue between the institution of the sales tax and commencement of SVRT operations.
- The BRA spreadsheet assumes that all excess revenues would accrue to BART. This would not be the case and it ignores a key point of the agreement that VTA and BART must agree on funds in excess of capital contingency needs. The AECOM Consult analysis assumes levels of capital contingency that would be expected for a brand new system, which VTA is providing on the extension. The SVRT Extension capital program is structured to provide sufficient capital facilities on opening day through the 2030 design year.

- Therefore, additional investment in capital infrastructure (including vehicles, shop capacity, and automatic fare collection equipment) beyond the maximum annual capital reserve contribution of 30% will unlikely be necessary to serve projected ridership. The allocation of the capital reserve funds to capital projects will require agreement between VTA and BART on the annual capital improvement program for the SVRT Extension.
- In addition to revenue from the proposed 1/8-cent sales tax and SVRT farebox revenue, there are additional sources included in full flow of funds between VTA and BART. Operating revenues include parking and advertising revenues. Capital sources of funds include federal transit grants from the Section 5309 Fixed Guideway Modernization and Section 5307 Urbanized Area Formula programs. These funds provide further opportunities for covering operating, maintenance and capital contingency increases. See the attachment for details.

AECOM Consult has successfully provided financial analysis for transit agencies with similar projects and for projects that have successfully received New Starts funding. AECOM Consult has supported FTA in establishing professional standards for financial planning. Their work is based on years of experience in performing cost analysis on major transportation projects throughout the country.

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Memorandum

Date: August 19, 2008
To: Carolyn Gonot, VTA
From: Nathan Macek, AECOM Consult
Subject: Response to BayRail Alliance Memo to VTA Board Regarding Proposed 1/8-cent Sales Tax Increase

This memorandum is written in response to the BayRail Alliance August 7, 2008 “Memo to the VTA Board regarding the proposed 1/8-cent tax increase.”

According to the BayRail Alliance, revenue from a new 1/8-cent sales tax will be insufficient to fund VTA’s annual subsidy payment to BART. The BayRail Alliance analysis focuses on the mechanism by which VTA makes routine payments to BART, \$12 million per quarter in FY02 dollars, growing annually on the basis of Santa Clara County sales tax receipts. The BayRail Alliance memo states, “BART will only remit funds back to VTA if the mandatory payment and passengers can completely cover the operating cost plus the 30 percent maximum capital reserve contribution. For the first 15 years, BART can keep the excess revenue beyond the maximum 30 percent capital contribution unless both parties agree that VTA has contributed enough to support BART’s infrastructure. In simple terms, there cannot be surpluses for VTA resulting from the proposed 1/8-cent sales tax.”

This statement overlooks an important caveat. Section IV.F.5 of Comprehensive Agreement states that “during the first 15 years of SVRT Extension Operation, VTA will not receive revenues in excess of the required maximum 30 percent capital reserve fund allocation unless mutually agreed levels of revenue vehicles, shop capacity, and AFC [automatic fare collection] equipment have been provided by VTA to support actual and projected ridership levels for the next five year period.” Therefore, upon mutual agreement between BART and VTA, funds in excess of the maximum 30 percent capital reserve fund contribution may be remitted to VTA. The proposed SVRT Extension capital program is structured to provide sufficient capital facilities on opening day and through the 2030 design year. Therefore, additional investment in capital infrastructure (including vehicles, shop capacity, and AFC equipment) will likely be unnecessary to meet projected ridership. Ongoing negotiation between BART and VTA regarding the annual scope of the SVRT Extension capital program will be essential, as these projections will determine the extent to which excess capital revenues may be remitted to VTA.

The BART Operating Subsidy analysis prepared by AECOM Consult demonstrates that if the 1/8-cent sales tax is in place VTA would be able to fund its payment obligations to BART for the SVRT Extension, including direct and fixed indirect operating and maintenance (O&M) costs and the capital reserve contribution. Per the terms of the agreement, VTA will be credited for farebox revenue, other operating revenues (including parking and advertising revenue attributable to the SVRT Extension) and federal transit formula funds. This flow of funds may be summarized as follows:

- VTA makes a payment to BART equal to approximately 31 percent of 2000 Measure A 1/2-cent sales tax revenue;
- From this payment, the SVRT Extension O&M costs, including direct and fixed O&M costs, are funded;
- VTA is credited with operating revenues the SVRT Extension generates, including fare revenue, advertising income, and parking income.
- The difference between VTA’s payment to BART plus SVRT operating revenues credited to VTA and SVRT Extension O&M costs is applied as SVRT capital sources of funds.
- In addition, federal transit formula funds are applied as SVRT capital sources of funds.

- Capital sources of funds fund a capital reserve contribution. Capital sources of funds equaling up to 30 percent of SVRT Extension O&M costs are credited to a Capital Reserve Fund. Capital sources of funds in excess of 30 percent of SVRT Extension O&M costs are either credited to an Excess Capital Reserve Fund or refunded to VTA's SVRT Operating Tax Fund.

When all sources and uses of funds are applied, the revenue projected from VTA's proposed 1/8-cent sales tax measure would be sufficient for VTA to meet its quarterly tax payment obligations to BART, providing full funding of SVRT Extension O&M costs and capital reserve fund requirements.

Furthermore, collection of the additional 1/8-cent sales tax revenue is projected to begin approximately four years prior to revenue operation of the SVRT Extension. Revenue collected during this period—an estimated \$220 million—will serve as an important cushion between revenue collected from the 1/8-cent sales tax and VTA's annual obligation to BART. In addition, interest earnings on the 1/8-cent sales tax fund balance contribute significantly to the projected 2036 closing cash balance. Furthermore, it should be noted that according to the ballot language approved by the VTA Board of Directors at its August 7, 2008 meeting, the projected 1/8-cent sales tax fund cash balance must be fully applied to O&M and ongoing capital costs associated with the SVRT Extension project and may not be diverted to fund other purposes.

Summary of Other SVRT BART Extension Project Revenues

VTA may receive additional revenue from other sources, including concession, fiber optic and advertising revenue; and parking revenues from parking fees and parking fines. In addition, federal transit formula grants, including Section 5307 Urbanized Area Formula Funds and Section 5309 Fixed Guideway Modernization funds, that VTA receives because of the operation of the SVRT BART Extension in Santa Clara County could be allocated to and used to meet VTA's financial responsibilities for ongoing capital costs.

Other Potential Operating Revenue Sources

An estimation of two revenue sources that could be used for operations of the BART extension, advertising and parking, are described below.

- **Advertising Revenue:** Advertising revenue is calculated on the basis of incremental SVRT riders, multiplied by BART's FY08 budgeted advertising revenue per passenger (per BART's FY08 Short-Range Transportation).
- **Parking Revenue:** Parking revenue is calculated on the basis of planned SVRT parking spaces, with an opening day figure of 5,000, growing by 500 spaces annually from 2021 to 2030, and holding steady at 10,000 spaces from 2030 onward. Revenue from parking spaces is annualized at 280 days annually. The average revenue per space per day is assumed to equal \$3.00, which is escalated by projected CPI.

Other Capital Revenue Source - Federal Transit Formula Grant Program

For on-going capital costs, VTA may use the federal transit formula program grants, including Section 5307 Urbanized Area Formula Funds and Section 5309 Fixed Guideway Modernization funds. Federal transit formula grant revenue is awarded on the basis of SVRT incremental annual revenue vehicle miles and incremental directional route miles. Congress may amend these programs at any point in the future as part of a future authorization of federal surface transportation policy. Currently, these funds are distributed through Metropolitan Transportation Commission (MTC).

The revenue sources are summarized in the attached table by year of receipt.

Summary of Other BART Extension Project Revenues
(millions of \$)

Year	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Potential Operating Revenues										
Advertising Revenue	\$ 0.88	\$ 0.94	\$ 1.01	\$ 1.07	\$ 1.13	\$ 1.21	\$ 1.27	\$ 1.34	\$ 1.42	\$ 1.49
Parking Revenue from SVRT stations	\$ 5.68	\$ 5.84	\$ 6.05	\$ 6.20	\$ 7.01	\$ 7.91	\$ 8.76	\$ 9.66	\$ 10.68	\$ 11.61
Federal Formula Programs - Capital										
Federal Section 5307 Program Grants (see note)	\$ 8.63	\$ 9.30	\$ 10.02	\$ 10.79	\$ 11.61	\$ 12.48	\$ 13.42	\$ 14.42	\$ 15.49	\$ 16.63
Federal Section 5309 Program Grants (see note)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 14.33	\$ 15.27	\$ 16.28

Year	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
Potential Operating Revenues										
Advertising Revenue	\$ 1.57	\$ 1.66	\$ 1.75	\$ 1.83	\$ 1.92	\$ 2.01	\$ 2.10	\$ 2.20	\$ 2.27	\$ 2.36
Parking Revenue from SVRT stations	\$ 12.67	\$ 13.80	\$ 14.94	\$ 16.05	\$ 16.51	\$ 16.83	\$ 17.22	\$ 17.64	\$ 17.76	\$ 18.08
Federal Formula Programs - Capital										
Federal Section 5307 Program Grants (see note)	\$ 17.84	\$ 19.13	\$ 20.52	\$ 21.99	\$ 23.56	\$ 25.23	\$ 27.02	\$ 28.91	\$ 30.94	\$ 33.09
Federal Section 5309 Program Grants (see note)	\$ 17.35	\$ 18.48	\$ 19.69	\$ 20.97	\$ 22.33	\$ 23.77	\$ 25.30	\$ 26.93	\$ 28.66	\$ 30.49

Note: The Federal Section 5307 and 5309 Program Grants are for capital projects only. Within the Bay Area, the Metropolitan Transportation Commission restricts the funds to capital projects related to maintenance and rehabilitation.