

From: Board.Secretary
Sent: Tuesday, November 04, 2008 2:16 PM
To: Board.Secretary
Cc: Burns, Michael
Subject: Weekly Legislative Update - Week of October 27, 2008

MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors

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

DATE: November 3, 2008

SUBJECT: Weekly Legislative Update: Week of October 27, 2008

FEDERAL

Transit Lease-Leaseback Transactions: The U.S. Treasury Department is working on ways to broaden its \$700 billion financial rescue program to help insurance companies that are a critical backstop to a wide range of deals, bond issues and leasing arrangements. Treasury officials are worried that other insurance companies could face similar fates as American International Group (AIG) as the credit crisis worsens, triggering a new wave of problems for the financial markets. AIG nearly collapsed in September when it was overwhelmed by losses from real estate investments and derivatives, requiring massive federal government loans of more than \$123 billion. It has already burned through three-quarters of that money.

Concerns about insurers were brought to the forefront in recent weeks when Washington Metro and several other public transit agencies suddenly faced demands to pay significant sums of money to their banks as years-old financing deals began to unravel. In a once-common practice that the Internal Revenue Service (IRS) has since ended, many public transit agencies entered into arrangements in which they sold equipment or other assets to banks. The banks then turned around and leased the equipment or assets back to the transit agencies. Both sides benefited from the transaction. The transit agencies were given a large sum of money up front, which could be used to pay for capital upgrades. The banks were able to rely on frequent lease payments while also writing off taxes on the depreciating property. If the arrangement involved federally funded assets, then the deals were approved by the Federal Transit Administration (FTA). In many cases, AIG collected fees paid by the transit agencies to guarantee that the lease payments to the banks would be made on

time. But AIG's financial problems have triggered a clause in the transaction agreements that allow the banks to demand their money all at once.

Collectively, the impacted transit agencies, along with the American Public Transportation Association (APTA), are asking Treasury and Congress for help. They have proposed that the federal government step in and serve as the guarantor for the deals instead of AIG, given that it is unlikely that the transit agencies will be able to find a replacement for AIG. Treasury says it has a team of officials studying the issue, as well as the mounting troubles in the insurance industry, with the goal of seeing if assistance can be provided through the rescue program that Congress passed for the financial system in October.

Financial Markets: Describing the current financial situation as a "once-in-a-century credit tsunami," former Federal Reserve Chairman Alan Greenspan acknowledged that the crisis has exposed flaws in his thinking and in the workings of the free-market system. Testifying before the House Oversight Committee, Greenspan told lawmakers that his belief that banks would be more prudent in their lending practices because of the need to protect their stockholders was proven wrong by the current crisis.

During questioning from committee members, Greenspan was challenged about various statements that he had made during the five-year housing boom, including forecasts that it was unlikely that there would be a nationwide collapse of home prices. Greenspan said he had failed to predict a significant decline in home prices because the country had never experienced such a decline before. He commented that the current crisis has "turned out to be much broader than anything that I could have imagined."

The House Oversight Committee called Greenspan to testify, along with former Treasury Secretary John Snow, and Securities and Exchange Commission (SEC) Chairman Christopher Cox, as lawmakers sought to discover if regulatory failings contributed to the crisis. Committee Chairman Henry Waxman (D-CA) said he believed the Federal Reserve, the SEC and the Treasury all played a role in contributing to the mistakes. "The list of mistakes is long and the cost to taxpayers is staggering," he commented. "Our regulators became enablers rather than enforcers. Their trust in the wisdom of the markets was infinite. The mantra became that government regulation is wrong. The market is infallible."

In his testimony, Greenspan blamed the problems on heavy demand for securities backed by subprime mortgages by investors who did not worry that the boom in home prices might come to a halt. He pointed out that a necessary condition for the crisis to end will be a stabilization in home prices, but he said that was not likely to occur for "many months in the future." When home prices finally stabilize, then "the market freeze should begin to measurably thaw and frightened investors will take tentative steps towards re-engagement with risk,"

Greenspan noted. Until that occurs, he said the federal government was correct to move forward aggressively with efforts to support the financial sector. He called the \$700 billion rescue package passed by Congress “adequate to serve the need” and said its impact was already being felt in the markets.

Greenspan’s critics charge that he left interest rates too low in the early part of this decade, spurring an unsustainable housing boom, while also refusing to exercise the Fed’s powers to impose greater regulations on the issuance of new types of mortgages, including subprime loans. It was the collapse of these mortgages and rising defaults that triggered the current crisis.

Meanwhile, the Treasury Department made the first payments from the \$700 billion financial rescue fund, a total of \$125 billion in stock purchases from nine major financial institutions, including Bank of America, Citigroup and JP Morgan Chase. In addition, Treasury is in the process of reaching preliminary agreements with more than a dozen major regional banks, which will share an additional \$125 billion that the federal government hopes to pump into the banking system. Before the end of the year, Treasury Secretary Henry Paulson intends to have spent \$250 billion of the \$700 billion bailout package buying ownership stakes in U.S. banks. The goal is to improve their balance sheets, so that they will resume more normal lending practices and prevent the country from sliding into a deep recession. Another \$100 billion is earmarked to buy troubled assets from banks, such as bad mortgage loans, as another way to spur banks to resume lending.

STATE

State Budget: Gov. Arnold Schwarzenegger announced that he will formally call a special legislative session on November 5 to tackle the state’s troubled budget. The aim is for the current group of lawmakers to come up with solutions to bridge this year’s emerging budget gap. Their term officially ends November 30.

While he is still awaiting the latest estimate on the projected deficit for the current fiscal year, the Governor said he expects the state’s revenues to fall short by more than the earlier estimate of \$3 billion. And with the economy continuing to falter, he commented that it is important to tackle the state’s fiscal situation as soon as possible. The Governor also said he believes it would be more prudent to ask the current group of legislators to handle the problem, rather than the newly elected lawmakers who will take office on December 1.

Gov. Schwarzenegger made the announcement outside his Capitol office with legislative leaders from both parties standing behind him shortly after they had met for about an hour in a closed-door session to discuss the state’s continuing fiscal woes. The Governor and lawmakers said everything will be on the table for discussion, including enacting business tax credits, pushing out

voter-approved infrastructure bonds faster, passing new legislation to help homeowners facing foreclosures to keep their homes, and revamping the state's tax code.

The \$103.4 billion budget that Gov. Schwarzenegger signed in September used a mix of accounting maneuvers and budget cuts to close a \$15.2 billion deficit. Several provisions simply accelerated the collection of taxes to boost this year's numbers at the expense of future years. Critics said the plan did little to fix the ongoing \$6 billion-\$8 billion "structural" gap between spending and income.

That criticism could make a new legislative session on the budget even more contentious. During this summer's record 85-day budget impasse, Republicans blocked attempts by Democratic legislators and the Governor to raise taxes, taking advantage of the rule requiring a two-thirds vote to approve a budget. At the same time, the majority party came under criticism from advocates for schools, health care and other Democratic constituencies for agreeing to the cuts that they did.

Compounding the state's problems is a national economy that appears to be worsening by the day. The tailspin in the stock market could be especially painful because California relies heavily on taxes on stock-related capital gains. Those revenues shoot up in good times, but can drop precipitously in bad times.

On top of everything else, U.S. District Court Judge Thelton Henderson recently ordered the state to prepare to turn over \$250 million to the federal receiver charged with improving health care in the state's prisons. Altogether, the receiver is seeking \$8 billion. Henderson ordered state officials to spell out at a hearing later this month how and when they will transfer the \$250 million down payment to the court-appointed receiver.

Housing: The federal government should move swiftly to enact a second economic stimulus package to help homeowners, Gov. Schwarzenegger said. "The key is to make people stay in their homes," he commented during a panel discussion with investor Warren Buffet. "I think that this is the direction that the second economic stimulus package should go in." According to the Governor, money should be used to buy loans after the value of homes has been adjusted to reflect lower market prices.

In addition, Gov. Schwarzenegger said a second economic stimulus package should include a temporary increase in federal Medicaid funds for states and another extension of unemployment insurance benefits for those who remain jobless. He also called for more spending on large-scale construction projects, such as roads and bridges.

The Governor's appeal for urgent federal help comes at a time when foreclosures have ravaged the California housing market, jobless rates are climbing, and Sacramento contends with an ongoing budget crisis. In September, he vetoed a bill that would have prohibited some of the lending practices that advocates say contributed to the downturn in California's housing market. The legislation would have banned so-called negative amortization loans, in which homeowners pay less than the interest on their loan and can end up owing more than their homes are worth. It also would have prevented mortgage brokers from steering borrowers into more profitable but higher-risk loans if those buyers actually qualified for lower-cost mortgages.

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, November 05, 2008 4:54 PM
To: Board.Secretary
Cc: Burns, Michael
Subject: New York Times Article - Transit Agencies Seek Aid in Avoiding A.I.G Fees

To VTA Board of Directors

Attached please find an article from The New York Times dated November 5, 2008, titled: Transit Agencies Seek Aid in Avoiding A.I.G. Fees.

The attached article is additional information for the closed session item on the November 6, 2008 Board of Directors Meeting agenda.

Michael T. Burns
General Manager

November 5, 2008

Transit Agencies Seek Aid in Avoiding A.I.G. Fees

By [LYNNLEY BROWNING](#)

The troubles of the [American International Group](#) are causing headaches for dozens of municipal transit authorities, which want the federal government to help them avoid multimillion-dollar early-termination fees for tax shelters linked to the troubled insurance giant.

The authorities are asking the government to assume A.I.G.'s role in scores of tax shelters, even though the [Internal Revenue Service](#) considers the transactions abusive. They also want the government to help them avoid billions of dollars in payments caused by the downgrading of A.I.G.'s credit rating.

The deals are guaranteed by A.I.G., which was rescued by the government in September. But a prominent trade group that represents major transit authorities in the United States, including agencies in Chicago, Los Angeles, San Francisco and New York, has asked the government to back them instead.

Doing so, the authorities say, would allow them to avoid paying about \$4 billion in early-termination fees to A.I.G., other insurance companies and banks involved in the deals. The banks say they are owed the money because A.I.G.'s credit ratings have been downgraded.

The tax shelters, known as Lilo and Silo, have been under intense scrutiny from the I.R.S. in recent years. They flourished from the late 1990s through 2003, and cost the Treasury an estimated \$34 billion in unpaid federal taxes.

The I.R.S. banned a version of Lilo in 1999 and again in 2002, and then banned Silo in 2004. The agency says it has never considered them valid for tax deductions, meaning that the banks and insurers, and not the transit authorities, which are exempt from paying taxes, are the ones who got into tax trouble.

The shelters revolve around long-term lease-back arrangements. In the deals, corporations bought infrastructure like subways and bridges from municipal authorities and then leased them back to the authorities. The corporations got big tax breaks, and the authorities got enhanced cash flow.

From 1988 to 2003, dozens of transit authorities in 25 large cities did 87 Lilo and Silo deals worth more than \$16 billion, according to the Federal Transit Administration.

Lilo is short for lease-in/lease-out, and Silo is short for sale-in/lease-out.

Over the years, about 45 corporations bought more than 1,000 of the shelters, according to the I.R.S. Last August, the agency offered buyers a final chance settle up or face back taxes, fines, penalties and potential

litigation.

A spokesman for the Treasury said Tuesday that the department “is aware of the situation.”

But on Oct. 22, the American Public Transportation Association, a leading trade group, sent a letter to the Transportation Department asking it to urge Treasury Secretary [Henry M. Paulson Jr.](#) and [Ben S. Bernanke](#), the [Federal Reserve](#) chairman, to replace A.I.G.’s role in the deal with the federal government. Several prominent Congressional Democrats have also urged the change.

A.I.G. played a crucial role in the transactions by acting as a guarantor.

The Washington Metropolitan Area Transit Authority, for example, bought 16 Lilos, 14 of them with A.I.G. providing guarantees, according to Carol Kissal, the authority’s chief financial officer.

In a 2002 deal, done through a Cayman Islands subsidiary of an A.I.G. unit, the Washington authority sold 16 railroad cars to a Belgian bank, KBC Bank NV, which then leased them back through a Delaware trust. A.I.G. guaranteed the credit lines for the deal.

But the transaction carries \$435 million in early-termination fees to various banks, including \$43 million to KBC.

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From: Board.Secretary
Sent: Wednesday, November 05, 2008 5:30 PM
To: Board.Secretary
Cc: Burns, Michael
Subject: Response to Mr. Noel Tebo

To VTA Board of Directors:

Below is a copy of the letter from the Chief Operating Officer, Donald A. Smith, in response to the questions raised by Mr. Noel Tebo, Secretary of the Modern Transit Society, at the October 18th Transit Planning and Operations Committee meeting.

Thank you.

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

November 5, 2008

Mr. Noel Tebo, Secretary  
Modern Transit Society  
P.O. Box 5582  
San Jose CA 95150

Dear Mr. Tebo,

You addressed the Transit Planning and Operations Committee on October 18th during Public Presentations and submitted three questions. This letter responds to your questions.

1) San Jose State University  
San Jose State University announced that enrollment this Fall reached an all-time high over 32,000 students. With staff, the campus has a total transit market of over 36,000 (less a small amount of dorm students). The percentage of students taking transit is still dismally low.

Question: What plans does the VTA have to serve this large market much better?

According to a recent letter addressed to State Assembly Members from the SJSU

Associated Students in support of funding for public transit, it was estimated that 25 percent of the University population depends on VTA to commute to the campus. Another 13 percent uses alternative modes. Given the number of students, availability of parking and freeway access, this share of the commute market is significant. Still, there is always room for improvement.

In terms of transit plans affecting the San Jose State market, there are several projects in varying stages of planning and development that will significantly enhance transit service to the university:

The BART project should address the strong East Bay market to the university.

This is a long-term project with BART opening in 2018.

The Bus Rapid Transit projects identified for near-term development – Santa Clara/Alum Rock, El Camino and Stevens Creek – will all serve San Jose State at the 6th Street Station and pull students and faculty originating along either of these three corridors.

The Express Bus Business Plan will investigate strengthening already successful express services terminating at San Jose State from South County, Santa Cruz or Fremont BART as well as evaluating new markets.

The Light Rail System Analysis will be looking at potential new extensions and how they can serve the downtown/San Jose State market. Also, the study will be examining ways to make the existing system more effective and attract more riders to major destinations like San Jose State. This may mean speeding up service from the outer reaches of the system or even providing express or skip stop service.

Finally, it should be mentioned that the New Bus Service introduced in January 2008 significantly enhanced all services to San Jose State with the 66, 68, 72, 73, 64, 22 and 23 lines all part of the core all-day 15-minute network.

## 2) Valley Fair/Santana Row

Even while the Interstate 280/880 intersection is being studied to reduce the awful congestion backing up on the freeways around Valley Fair Mall and Santana Row, mall management announced a new major expansion to add 25% to their retail volume. This will be opened within 2 years.

Note: very few people even know there's a tiny 'transit center' hidden behind the parking garage on Forrest Avenue.

Question: What major plans does the VTA have to create a significant increase in transit use to help offset the additional traffic congestion that's coming soon?

The Transit Center currently located behind Valley Fair is modest in scale and it is agreed that the facility is little known or utilized given the major generators in the area. With the implementation of the New Bus Service plan in January 2008, VTA improved service on the Route 60, which operates on Winchester to all-day 15-minute frequencies and the 23 Stevens Creek to all-day at

12-minute frequencies.

Currently, VTA is engaged in two efforts that could result in a significant upgrade to transit service and facilities in the area. The first is the Bus Rapid Transit Strategic Plan, which identified Stevens Creek Boulevard for near-term development of BRT service. In the Valley Fair/Santana Row area, the plan has been evaluating a range of treatments for Stevens Creek Boulevard that accommodates a future improvement to the freeway interchange and plans by both malls to improve access and connections to the street.

The second effort is the conceptual engineering study for the Stevens Creek Boulevard/I-880/I-280 interchange. For that effort, VTA has incorporated a future BRT facility into conceptual plans. A potential BRT busway ranges from an at-grade single-lane to a two-lane viaduct facility bridging over the freeway and Winchester Boulevard. A new BRT station would be located at Baywood/Santana Row at the front doorstep of both malls.

These transit improvements are being evaluated as part of a broader effort to implement long-term transportation solutions for the area. The freeway improvements alluded to in the question #2 are also part of the transportation solutions for the area. This effort to find a comprehensive transportation solution for the area is a collaborative effort that will require the efforts of the local agencies, Caltrans, VTA, and local stakeholders such as Valley Fair and Santana Row.

VTA staff has met with both malls and will continue to work together with the property owners, community residents and City of San Jose staff to craft a project that improves congestion and provides enhanced transit options at this important economic center.

Currently VTA marketing staff is working with Westfield Valley Fair and Oakridge to promote use of VTA bus and light rail for this season's holiday shopping. Joint promotional efforts will include print advertising, television and radio. In addition VTA staff is pursuing a partnership with the marketing and promotions staff at Santana Row.

### 3) Capitol Expressway Light Rail

The East Side Light Rail project hasn't broken ground yet and there are concerns about potential cutbacks in funding. The cost has climbed to over \$350 million dollars with no firm date for completion.

The Capitol Expressway Light Rail project will be considered by the VTA Board of Directors in an upcoming workshop and meetings to update the Measure A Revenue and Expenditure Plan. Based on a revised date for construction, staff will have a revised estimate of project costs.

Question: Has the VTA Board, Committees or staff seriously considered the following:

a. Increase potential ridership and farebox income by actually delivering people to the doors of the shopping mall rather than dumping them 1500 feet away across the parking lot. This was done with Light Rail at the Great Mall of Americas in Minneapolis with great results.

The location of the station at the Eastridge Mall was determined through years of planning work with community members, neighboring property owners and the mall itself. Some of the factors that led to its current configuration include the need to provide seamless bus-to-rail transfer opportunities at VTA's second-busiest transit center. Also, the concept of a further extension of light rail south to Nieman Boulevard and even beyond to Highway 87 has been a factor in project planning. Both the owners of the mall and the Arcadia property, which borders Nieman Boulevard, have been opposed to Light Rail operating in the middle of their properties. Finally, if an extension is constructed, a satellite storage yard could be located at the corner of Quimby Road and Capitol Expressway.

b. Decrease the capital cost by at least \$100 million dollars by single-tracking this extension at grade level instead of double-tracking on high cost overpasses. The single track concept is used on other ends of the Light Rail system (Vasona, Mountain View, Almaden).

The existing segments of the Light Rail System with single-track configurations (Vasona and Mountain View) severely limit the flexibility and efficiency of the entire rail system, contributing to slow operating speeds, disruptions in service and poor incident-recovery times. VTA is currently engaged in a Light Rail Systems Analysis that will have as one of its focus areas an opportunity assessment on how to double-track these segments. While it may be less expensive to build single-track segments at the time of construction, it permanently hinders the ability of a system to provide adequate service and is not considered a model within the transit industry.

The Board adopted LRT Service Design Guidelines clearly state "for all rail transit systems, double-tracking is considered the optimal operational environment." Moreover, the specific Track Layout and Configuration Policy states that "all new (LRT) line segments shall provide double-tracks unless the proposed LRT route operates on a one-way street, in which case a track couplet is acceptable."

The goal of the Capitol Expressway Light Rail extension or any extension of the Light Rail system should be to provide superior transit service and attract riders to transit and out of automobiles. To achieve this, the Capitol

extension design requires viaduct sections of double track to ensure trains will not be stuck in traffic.

I hope you find this information helpful and should you require additional information please feel free to contact me (408.321.7005) or John Ristow, Chief CMA Officer (408.321.5713) who is responsible for VTA's planning programs.

Sincerely,

Donald A. Smith, Jr.  
Chief Operating Officer  
Staff Liaison Transit Planning and Operations Committee

cc: Transit Planning and Operations Committee  
VTA Board of Directors  
Michael T. Burns, General Manager  
John Ristow, Chief Congestion Management Agency Officer