MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors

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

DATE: June 29, 2009

SUBJECT: Weekly Legislative Update: Week of June 22, 2009

FEDERAL

SAFETEA-LU Reauthorization: The bipartisan leaders of the House Transportation and Infrastructure Committee—Chairman James Oberstar (D-MN), Ranking Minority Member John Mica (R-FL), Highways and Transit Subcommittee Chairman Peter DeFazio (D-OR), and Subcommittee Ranking Minority Member John Duncan (D-TN)—released their proposal for the next surface transportation authorization bill to replace the Safe, Accountable, Flexible Efficient Equity Act: A Legacy for Users (SAFETEA-LU), which currently is set to expire on September 30. The summary of the proposal, entitled "A Blueprint for Investment and Reform," describes in detail the committee leadership's plan, which will be introduced as the Surface Transportation Authorization Act of 2009 (STAA).

As proposed, STAA recommends a $450 billion investment in federal surface transportation programs over a six-year period, covering FY 2010 through FY 2015. The bill calls for an additional $50 billion to support President Barack Obama's vision to create a high-speed rail network in the United States. However, as expected, the committee's proposal does not address where the revenues would come from. That portion of the legislation must be developed by the House Ways and Means Committee.

From a policy perspective, STAA defines a new role and specific objectives for the federal government in the area of surface transportation. These objectives include:

- Creating a National Transportation Strategic Plan.
- Improving the safety of the nation's surface transportation network.
- Bringing existing highway and transit facilities and equipment to a state of good repair.
- Facilitating goods movement.
- Improving metropolitan mobility and access.
- Expanding rural access and interconnectivity.
- Lessening environmental impacts from the transportation network
- Improving project delivery.

- Facilitating private investment in transportation that furthers the public interest.
- Ensuring that states receive a fair rate of return on their contributions to the Highway Trust Fund.
- Providing transportation choices.
- Improving the sustainability and livability of communities.

In addition, STAA calls for a significant consolidation of existing federal surface transportation programs and introduces performance standards. The legislation proposes creating a National Infrastructure Bank to fund large-scale transportation projects, as well as two new multi-modal programs aimed at reducing congestion in major metropolitan areas and funding projects of national significance.

Funding Provisions: According to the House Transportation and Infrastructure Committee's blueprint, the $450 billion proposed for federal surface transportation programs would be divided as follows: (a) $337.4 billion for highways: (b) $99.8 billion for public transit; and (c) $12.6 billion for highway and motor carrier safety. It is important to note that STAA proposes to fund the two new multi-modal programs from the same $450 billion pot—$50 billion for Metropolitan Mobility and Access, and $25 billion for Projects of National Significance. However, at this time, the legislation does not indicate where the funds needed to finance these two programs will be drawn. Moreover, details were not provided regarding the distribution of funds among the various programs within the highway and public transit titles.

Highway Program Structure: STAA recommends consolidating the majority of highway funding into four core formula categories. These are:

1. Critical Asset Investment Program – STAA consolidates the existing Interstate Maintenance, National Highway System and Highway Bridge Programs into one streamlined, outcome-based program. The goals of this consolidated program would be to bring the highways and bridges on the National Highway System to a state of good repair and then to maintain that condition.

2. Highway Safety Improvement Program – STAA restructures the existing Highway Safety Improvement Program to focus on reducing fatalities and injuries on the nation's highways, grade-crossings and rural roads by targeting investments to projects that would remove or lessen roadway safety hazards.

3. Surface Transportation Program (STP) – STAA retains this flexible funding program, which was originally created through the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991.

4. Congestion Mitigation and Air Quality Improvement Program (CMAQ) – STAA restructures this existing flexible funding program to focus on projects that improve air quality, reduce congestion, improve public health, and foster livable communities.

Public Transit Program Structure: STAA proposes to consolidate the majority of public transit funding into the following six core categories:

1. New Starts and Small Starts – In order to speed up project delivery, STAA proposes to greatly simplify the existing New Starts and Small Starts Programs by "eliminating a variety of programmatic steps and requiring program reforms." In addition, the legislation aims to "equalize the treatment of proposed transit projects and elevate the importance of the benefits that will occur in the community once the project is built." Of particular note, STAA would prohibit the use of the current "cost-effectiveness index," and replace it with a ratings process that comparably weighs economic development, energy savings, increased mobility, and congestion relief.

2. Fixed Guideway Modernization Program – STAA proposes to simplify the existing Fixed Guideway Modernization Program by eliminating the complex seven-tiered distribution formula, and replacing it with a single formula based on documented maintenance and rehabilitation needs.

3. Urban and Rural Formula Programs – STAA largely retains the current Urbanized Area (UZA) and Rural Area Formula Programs, but institutes new performance measures. In addition, STAA would allow all public transit systems, regardless of size, to use a portion of their formula funds for operating purposes, but eligibility would be tied to incentives to ensure that state and local operating funds are maintained and/or increased.

4. Coordinated Access and Mobility Program (CAMP) – STAA calls for combining the existing Job Access/Reverse Commute, New Freedom Initiative, and Elderly and Disabled Programs into a single initiative. The consolidated program would distribute funds through a formula that takes into account low-income, elderly and disabled populations. Any of the activities under the three previous programs would be eligible for funding under CAMP. In addition, there would be performance measures to ensure that the needs of each target population are being met.

5. Intermodal and Energy Efficient Transit Facilities Program – STAA establishes a new program that would combine elements of the Intermodal Facilities Program under SAFETEA-LU and the Transit Investments for Greenhouse Gas and Energy Reduction Program (TIGGER) created under the American Recovery and Reinvestment Act (ARRA). Discretionary grants under this program would be made available to public transit agencies to build intermodal facilities that connect two or more transportation modes, or facilities that reduce greenhouse gas emissions.

6. Transit in the Parks Program – STAA proposes to streamline and increase funding for the existing Transit in the Parks Program. Under this program, grants are provided to enhance public transit service and reduce congestion in and around national parks.

<u>Multi-Modal Programs</u>: STAA proposes to create the following new multi-modal programs:

1. Metropolitan Mobility and Access Program – STAA calls for making $50 billion available to provide dedicated funding to help the largest metropolitan areas in the United States deal with congestion. The program would require communities to develop

metropolitan mobility plans that would articulate their regional/local strategies for addressing traffic congestion and its impacts.

2. Projects of National Significance – Under STAA, a total of $25 billion would be provided for high-cost projects that: (a) have significant national economic benefits; and (b) cannot be accommodated through other highway or public transit grant programs.

3. Freight Improvement Program – This new formula program would provide funding for freight and goods movement projects, as well as for improving a state's ability to conduct freight planning.

High-Speed Rail: STAA makes $50 billion in General Fund revenues available to support the development of a high-speed rail network in the United States. These funds would be provided for planning activities and construction in federally designated high-speed rail corridors, as well as for research dealing with high-speed rail technologies.

Planning Provisions: STAA proposes to link the transportation planning process with national goals to reduce greenhouse gas emissions. Under the provisions of the legislation, the U.S. Environmental Protection Agency (EPA) would be responsible for establishing national emissions reduction goals for surface transportation in consultation with the U.S. Department of Transportation. States and metropolitan areas would then be required to develop their own emissions reduction targets that support the EPA-established national goals, and to incorporate strategies designed to meet those targets in their state/regional transportation plans.

National Infrastructure Bank: STAA proposes to create a National Infrastructure Bank to finance a wide variety of large-scale transportation infrastructure projects that promise to deliver significant national or regional economic benefits. The bank would be in a position to provide grants and credit assistance, including secured loans, loan guarantees and stand-by lines of credit, as well as allocations of tax-exempt private activity and tax-credit bonding authority. The bank would focus on projects under the Metropolitan Mobility and Access, Projects of National Significance and High-Speed Rail Programs.

Miscellaneous Provisions: Other notable provisions included in STAA are as follows:

- Establishes the Office of Livability within the Federal Highway Administration (FHWA) to advance environmentally sustainable modes of transportation, including public transit, walking and bicycling. This office would be responsible for encouraging integrated planning to support the creation of livable communities.

- Establishes the Office of Intermodalism to develop and implement a National Transportation Strategic Plan for addressing the long-term needs of the country's surface transportation network.

- Establishes an Office of Expedited Project Delivery within both FHWA and the Federal Transit Administration (FTA) to improve project delivery through the elimination of duplicative documentation and procedures.

Meanwhile, the White House made a major announcement regarding its own proposal for surface transportation authorization. According to the Congressional Budget Office, the Highway Account within the Highway Trust Fund will become insolvent sometime prior to the end of the current fiscal year. To prevent the looming shortfall, Transportation Secretary Ray LaHood announced that the Obama Administration would push for the enactment of an immediate 18-month extension of SAFETEA-LU that would continue current surface transportation programs and replenish the Highway Account. Given the White House's continued opposition to a gas tax increase during a recession, it is expected that the shortfall fix would come from the General Fund. The White House also has proposed several substantive policy reforms to accompany the SAFETEA-LU extension, such as including cost-benefit analyses when deciding which projects to fund, providing greater investment in metropolitan areas, and fostering the idea of livable communities.

Congressional reaction to the White House's proposed extension of SAFETEA-LU was mixed. Oberstar said he is adamantly opposed to an extension in any form. On the other hand, Senate Environment and Public Works Committee Chairwoman Barbara Boxer (D-CA) expressed support for an extension, indicating that it would buy time to craft a comprehensive surface transportation authorization bill that provides "stable and reliable" sources of funding.

STATE

State Budget: Gov. Arnold Schwarzenegger and lawmakers failed to reach an agreement on how to close the state's massive budget deficit before July 1, which marked the beginning of the new fiscal year. As a result, Controller John Chiang is set to issue IOUs to contractors, vendors, local governments, and taxpayers expecting refunds. In addition, the Governor announced plans to force 220,000 state workers to take a third unpaid day off per month starting in July. Furthermore, the state will forfeit more than $3 billion in budget savings through cuts to K-12 education that had to be made in FY 2009. These cuts to public education cannot be rolled over to the new fiscal year without suspending California's constitutional funding requirements under Proposition 98 and without losing $10 billion from the federal economic stimulus bill, which requires states to spend a certain amount of money for public education.

Over the objections of GOP lawmakers, the Assembly and Senate approved a Democratic 14-bill budget package that included a controversial scheme that calls for imposing a new 9.9 percent oil severance tax, increasing the existing excise tax on a pack of cigarettes by $1.50 and imposing a new $15 vehicle registration surcharge, while, at the same time, eliminating the state's 18-cent excise tax on gasoline. Democratic lawmakers claimed that this approach was "revenue-neutral," thereby allowing for a simple majority vote. Democrats then used a simple majority vote to pass legislation to replace the gas tax with a new 18-cent fee on gasoline. Gov. Schwarzenegger, however, was not amused and he vowed to veto the package, calling it an "illegal tax increase."

Legislative leaders then tried to push a three-bill, $5.6 billion stopgap solution that would free up enough cash to avoid IOUs through most of July and give lawmakers more time to negotiate the rest of the budget package. The trio of bills called for cutting spending on K-12 education in FY

2009; deferring payments to schools, colleges and local governments that are due early in FY 2010 until later in the year; and redirecting money from local redevelopment agencies to school districts. This approach ran into opposition from Republicans in the Senate and Gov. Schwarzenegger, who said he was reluctant to sign anything that did not address the entire $24 billion problem.

Although the FY 2010 budget was passed in February, the state's deteriorating economy and voter rejection of significant portions of the package at a May 19 special election have thrown it out of balance. And there appears to be little progress in negotiations toward an overall plan that would be acceptable to Republicans, who want no taxes or fees, and Democrats, who have vowed not to accept deeper cuts in health and human services programs.

For his part, Gov. Schwarzenegger initially sought to eliminate the state's welfare-to-work program, Cal Grants for college students and Healthy Families low-cost medical insurance for children. But recognizing that Democrats would not agree to these wholesale program eliminations, he is now willing to preserve them if Democrats accept roughly $2 billion more in spending cuts. In addition, the Governor has presented Democratic leaders with a list of reforms that he want to see enacted, including beefing up the state's anti-fraud efforts with regard to its in-home care programs, streamlining procedures for other human services programs, and changing the pension system for future state employees. And in the wake of the missed July 1 deadline, the Governor has ordered three furloughs days per month for state employees, reiterated his promise to veto any budget bills that fail to solve the entire deficit, and proclaimed that he would not sign any legislation until the budget is done.

REGIONAL

Metropolitan Transportation Commission (MTC): At its June 24 meeting, MTC approved guiding principles for determining which projects the region will submit for funding through the Transportation Investment Generating Economic Recovery Program (TIGER). The TIGER Program is an element of the federal economic stimulus bill. The principles adopted by MTC are as follows: (a) the region's list of projects will be valued at no more than $125 million; (b) the list will include $50 million for Doyle Drive; (c) MTC will seek to include a goods movement project on the list; (d) the list will include a transit project of regional significance; (e) MTC will support projects seeking TIFIA commitments (the most likely candidate is the BART-Oakland Airport Connector); and (f) if additional funding capacity is available after these earlier priorities are met, then a highway or roadway project of regional significance would be included. MTC has issued a call for projects and will be bringing the project list to the full commission for its approval in July. Once approved, the list will be sent to Caltrans, which is planning to recommend a statewide list of projects to the Governor. Once approved by the Governor, the applications will be sent to the U.S. Department of Transportation for a final decision.

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

MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors

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

DATE: July 6, 2009

SUBJECT: Weekly Legislative Update: Week of June 29, 2009

FEDERAL

SAFETEA-LU Reauthorization: The White House distributed to Congress a two-page memorandum outlining President Barack Obama's recommendations for an 18-month extension of federal surface transportation programs. The President wants Congress to pass his plan by the end of this month. The proposal calls for transferring $20 billion from the General Fund of the Treasury to the Highway Trust Fund in order to prevent both the Highway Account and the Mass Transit Account of the Trust Fund from running out of cash before March 31, 2011. The White House is recommending that the $20 billion be offset by undefined spending cuts and revenue increases that would be implemented over a 10-year period, not over the 18 months covered by the extension. This approach opens the door for the offset to be a tax increase that does not kick in for several years. The White House memorandum acknowledges that the "international tax enforcement" proposals that previously have been offered by the President could be used as the offset.

Beyond that, the memorandum articulates some minor reforms that the Obama Administration wants to see included in the 18-month extension. For example, the President supports establishing performance goals and basing project selection on merit criteria in order to improve transportation investment decisions that are being made at the federal, state and local levels. Along these lines, the White House memorandum spells out the following specific reforms:

- Improving state and metropolitan planning organization (MPO) project evaluation capacity: The Obama Administration is proposing to spend $300 million over 18 months to help states and localities build capacity for collecting and analyzing data on transportation goals. States and MPOs that choose to participate would be given funding to establish project evaluation infrastructure, including information on usage or ridership, accidents and fatalities, average speeds and travel times, and environmental impacts. This voluntary program would provide participating entities with the opportunity to integrate analysis into their investment decisions, and set the stage for improved accountability standards and merit criteria to be included in the eventual long-term authorization of federal surface transportation programs.

- Improving project assessment tools: The Obama Administration is proposing to provide $10 million to the U.S. Department of Transportation to develop performance goals, and to establish guidelines for states and localities on project evaluation. According to the White House memorandum, as states and localities build informational and analytical capacity, the federal government must work to refine assessment tools and develop standards for cross-modal comparisons of projects.

- Increasing transparency in state and local public reporting: The Obama Administration is proposing stronger requirements for tracking and reporting on the projected and actual outcomes of transportation investments that use federal dollars. These requirements would include information on project costs, timelines and selection processes, as well as expected and actual outcomes of individual projects. The President believes improved reporting requirements would increase the transparency of transportation spending, and improve state and local decision-making. These requirements are also intended to lay the groundwork for further accountability reforms in the long-term authorization of federal surface transportation programs.

In addition, the White House memorandum acknowledges support for efforts to improve regional access and mobility, and to enhance the livability of communities. Along these lines, the Obama Administration is recommending that the following reforms be included in the 18-month extension:

- Regional access: Developing guidelines for multimodal regional access plans, establishing local transportation governance standards and best practices, and funding approved multimodal access plans.

- Livability: Developing guidelines for community plans; and providing funding for projects with a special emphasis on convenience of transportation options, reductions in travel times, smart growth, preservation of open space, and more integrated responses to land use and transportation needs.

Congressional reaction to the White House memorandum was less than favorable. House Transportation and Infrastructure Committee Chairman James Oberstar (D-MN), who recently unveiled a six-year, $500 billion authorization plan, called the proposal “terribly detrimental” and “irresponsible.” He vowed to move ahead with his six-year bill. Meanwhile, key Senate lawmakers were critical of the White House plan, but for different reasons. While Senate leaders are receptive to the idea of a short-term extension, they do not want it to include any modifications to current law, contending that reforms would only endanger the measure’s passage before the August congressional recess. In fact, Senate Environment and Public Works Committee Chairwoman Barbara Boxer (D-CA) said her committee plans to mark up a "clean" extension during the week of July 20 that would not include any reforms.

Climate Change: The House approved comprehensive climate change legislation that requires a 17 percent reduction in U.S. carbon emissions by 2020 and an 80 percent reduction from 2005 levels by 2050. In addition, H.R. 2454, the so-called American Clean Energy and Security Act, does the following: (a) requires electric utilities to meet 20 percent of their electricity demand through renewable energy sources by 2020; (b) makes investments in new clean energy technologies; (c) increases energy efficiency through the development of renewable sources, carbon capture and sequestration, and the deployment of electric and other advanced technology vehicles; (d) mandates new energy-saving standards for buildings and appliances; and (e) sets up a cap-and-trade program.

With regard to transportation, the American Clean Energy and Security Act requires each state and MPO with a population exceeding 200,000 to establish targets under the direction of the U.S. Environmental Protection Agency for reducing greenhouse gas emissions from the transportation sector. These plans must be updated every four years. The bill lists different strategies that may be included in a state or MPO plan, including: (a) efforts to improve public transportation; (b) zoning and land-use regulations; (c) implementation of a complete streets policy; and (d) pricing measures such as tolling, congestion pricing and pay-as-you-drive insurance. The legislation also authorizes a competitive grant program that would support the development and implementation of these plans.

Other transportation-related provisions included in the American Clean Energy and Security Act are as follows: (a) implementation of a SmartWay Transportation Efficiency Program to promote energy efficient freight shipping; (b) promulgation of emission standards for new heavy-duty vehicles; (c) requirements for utilities to consider plans to support electric vehicle infrastructure and protocols for integration with the smart grid system; (d) establishment of a large-scale vehicle electrification program to provide financial assistance for regional deployment and integration of grid-connected vehicles; and (e) creation of programs to support the manufacture of energy efficient vehicles and engines.

In order to secure House passage of the legislation, Energy and Commerce Committee Chairman Henry Waxman (D-CA) had to agree to a number of amendments to his original draft plan, including relaxing the 2020 target in order to reduce the costs of tradable emission allowances—the price-per-ton that industry would have to pay to emit greenhouse gases. Waxman also agreed to allow industry to receive 85 percent of the emission allowances to ease the transition for businesses, rather than requiring that all of the allowances be auctioned. Under the compromise, electric utilities would receive 35 percent of the allowances, energy-intensive industries with international competition (steel, paper and cement manufacturers) 15 percent, natural gas distribution companies 9 percent, and refineries 2 percent. States would get between 5-10 percent of the free allowances to invest in renewable power sources and energy efficiency. Allowances would be phased out over time, ending between 2026 and 2030. In the end, the bill reflects a carefully crafted compromise designed to retain the support of the environmental community by imposing a cap-and-trade program, and industry by providing emission allowances to reduce costs.

It is important to note that prior to the legislation's passage, the House adopted a floor amendment that provides potential funding for public transit and other energy efficient transportation projects. Specifically, the amendment allows states to use up to 10 percent of their allowances from the cap-and-trade program for eligible transportation projects, including public transit. The potential funding is estimated to represent about 1 percent of the total allowances.

Senate Environment and Public Works Committee Chairwoman Boxer is hoping to mark up companion legislation before the August recess. Moreover, the Senate Democratic leadership has asked the other Senate committees with jurisdiction (Agriculture, Energy, Finance, and Foreign Affairs) to complete their work by September 18, so that a final bill could be brought up for a floor vote in October.

STATE

Tax Reform: The California Commission on the 21st Century Economy is on the verge of proposing a comprehensive tax system overhaul to Gov. Arnold Schwarzenegger and the Legislature. The plan is expected to include: (a) abolishing corporate income taxes and the state sales tax in favor of a "net receipts" tax that is similar to the value-added taxes that are common in European countries; (b) replacing the progressive personal income tax with a flat tax, perhaps 6 percent; and (c) adding a "carbon tax" to reduce fuel use.

The plan aims at reversing the state's decades-long drift toward dependence on the personal income tax, which at one time generated about 10 percent of the state's revenues, but now accounts for more than 50 percent. Further compounding the problem is the fact that half of the revenues from the income tax are being paid by just 1 percent of California's taxpayers—those with the highest incomes. And the incomes of the wealthy are largely tied to stocks and other capital markets, which swing wildly with the economy.

The commission's plan is likely to be controversial. Indeed, those on the political left are already complaining about shifting a significant portion of the tax burden from rich people to middle- and lower-income Californians, while those on the right worry that the plan is merely a smoke screen for imposing big tax increases. For those reasons, achieving a two-thirds vote in the Legislature to approve it will be extremely difficult.

REGIONAL

Peninsula Corridor Joint Powers Board (Caltrain): At its July 2 meeting, the JPB approved a series of service and fee changes. These actions were recommended after extensive public outreach and are necessary in order to balance the FY 2010 Caltrain operating budget. The key changes are as follows: (a) reducing midday service to every hour; (b) increasing the GO Pass price to $140 per employee, while maintaining the existing minimum purchase requirement of 70 passes; and (c) increasing parking fees to

$3 per day and $30 per month. The new GO Pass pricing will be effective on August 1, while the parking fee increases and the reduction of midday service will take place in September.

The JPB also adopted the FY 2010 capital budget for Caltrain. The capital budget is divided into the following areas: (a) maintenance of existing Caltrain infrastructure; (b) legal mandates and infrastructure enhancements; and (c) system electrification and 2015/25 expansion programs. The majority of the capital budget is committed to maintenance-related projects.

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