

MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors

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

DATE: August 24, 2009

SUBJECT: Weekly Legislative Update: Week of August 17, 2009

FEDERAL

Driver Safety: Transportation Secretary Ray LaHood announced a plan for a “distracted driving summit,” an action on the part of the Obama Administration that comes after several senators proposed withholding federal highway money from states that fail to ban texting while driving. The summit, which is tentatively scheduled to take place in September, is intended to give safety experts, academics, elected officials, law enforcement, and others an opportunity to discuss legal and policy changes. But safety advocates cautioned that the summit would fail to make a difference if it did not lead to policies that begin to affect drivers’ behavior as seat belt and drunken driving laws have.

Several recent reports have highlighted the dangers of distracted driving. For instance, a study released in late July by the Virginia Tech Transportation Institute found that truck drivers faced a risk of an accident or near accident that was 23 times higher when texting while driving. A study conducted by the University of Utah using a driving simulator found that college students faced a crash risk that was eight times higher when texting. A number of other studies have found that drivers talking on cell phones face an accident risk that is four times higher.

Currently, five states, including California, and the District of Columbia require motorists to use a headset when talking on the phone while driving. But many researchers contend that hands-free laws do not solve the problem because the chief distraction comes not from having one’s hands off the wheel, but rather from the mind being focused on a conversation and not on the road. Meanwhile, 14 states, including California, have banned texting while driving.

The federal government generally does not pass laws governing conduct behind the wheel; it sets a standard for the states and makes adherence a condition of receiving federal highway money. Congress used this technique to persuade all 50 states to raise the legal drinking age to 21 and to set a blood-alcohol level that became the uniform definition for drunken driving.

Health Care: President Barack Obama is using political tactics and rhetorical devices that were honed during his White House campaign to regain the upper hand in the health care debate over increasingly vocal and organized critics. Familiar tools from the Obama candidacy that are being employed in the health care debate include town hall meetings where the President rolls up his sleeves, and discards his tie and jacket; a rapid-response website to counter critics' claims; and a populist pitch against the entrenched powers in Washington, D.C.

In person and over the Internet, the President is trying to counter intense public skepticism over Democratic plans to overhaul the nation's health care system. Changing the system is his top domestic priority and arguably his most challenging political fight yet, in no small part because of the vast number of diverse stakeholders involved. His goal is to ensure health care for everyone in a country that has the world's costliest system and about 48 million uninsured people. It is an issue that touches virtually everyone in the United States. There are thickets of competing interests among patients, doctors, drug manufacturers, insurers, labor, businesses, and others. Any plan must get through a Democratic-controlled Congress, where most lawmakers are up for re-election next year. Also, there is an ideological fault line between Democrats and Republicans over the level of government involvement in health care.

While conservative activists have stepped up their attacks in recent weeks, President Obama has been carefully trying not to alienate opponents even while taking them on, citing "legitimate differences worthy of the real discussion that America deserves." But as Democratic allies face taunts and insults at town hall gatherings, the President has asked his audiences to "lower our voices, listen to one another and talk about differences that really exist. Ensuring access to affordable and quality care for every American is not a Republican or Democrat issue—it is an American issue."

President Obama reiterated his contention that Democratic health care legislation would not create "death panels" to deny care to frail seniors. He explained that the provision that has caused the most recent uproar would actually authorize Medicare to pay doctors for counseling patients about end-of-life care, living wills, hospice care, and other issues only if the patient wants it. Conservatives have called end-of-life counseling in government health care programs such as Medicare a step toward euthanasia, and former Alaska Gov. Sarah Palin has likened the idea to a bureaucratic "death panel" that would decide whether sick people get to live.

STATE

State Budget: The recently enacted budget revisions for FY 2010 contain plenty of uncertainties that could throw the General Fund out of balance and force the Legislature to return to the negotiating table in a matter of months. The biggest question mark is the state's economy. While the budget accounts for lower revenues as California works its way through an economic recession, if the state's 11.6 percent unemployment rate worsens or the stock market slumps, the state could miss its projections and face another shortfall.

Other uncertainties exist. For instance, the state is counting on a \$1.7 billion payment from redevelopment agencies that faces a tough legal fight. The California Redevelopment Association is preparing to file a lawsuit against the fund shift within the next 60 days. Part of

that diversion—\$350 million—is money that the state wanted to take last year. However, a Sacramento Superior Court judge blocked the payment on grounds that the state planned to take money from redevelopment districts and give it to schools outside those areas. Lawmakers believe the new \$1.7 billion shift is constitutional because they wrote the authorizing language in a way that addresses that flaw. However, the California Redevelopment Association says there are multiple grounds for filing a lawsuit against the state.

The latest budget revisions also assume that California will receive \$1 billion by selling a portion of the State Compensation Insurance Fund, a quasi-governmental agency that is California's largest writer of workers' compensation insurance, to private insurers. However, the non-partisan Legislative Analyst's Office said in May that it did not believe such a sale could help the General Fund in FY 2010 and classified the proposal as a significant risk. In addition, the authorizing legislation requires the fund's board of directors to agree that assets identified by the state are appropriate to sell. Whether that gives the fund's board veto power is already under dispute, a key point since the board opposes any sale.

The state is also counting on \$1 billion in federal waivers and payments for the Medi-Cal Program. The budget revisions anticipate significant savings by shifting costs to the federal government to be paid through Medicare, as well as obtaining waivers that would enable Medi-Cal to reduce coverage. However, the federal government has resisted previous state attempts to shift costs and obtain waivers.

Retirement Benefits: Weeks after wrapping up a deal to close a \$24 billion budget deficit, Gov. Arnold Schwarzenegger is taking aim at what he calls California's next great fiscal problem—the state's pension system. Reviving an idea that he floated during budget negotiations in June, the Governor wants legislation creating a two-tiered system that would deliver lower benefits to newly hired public employees—not only state workers, but also firefighters, police officers, teachers, and other local government employees. According to the Governor, along with proposed cutbacks in retiree health benefits, his plan would save \$90 billion over the next 30 years. He contends that the state's pension system faces tens of billions of dollars in unfunded obligations and is increasingly unaffordable.

Service Employees International Union (SEIU) Local 1000, California's biggest state workers union, and other labor organizations have indicated that they are willing to discuss Gov. Schwarzenegger's plan or other cost-saving proposals—but through contract negotiations, not legislation. Democratic lawmakers also say the proposal should be negotiated with the unions first. But the Governor believes legislators will ultimately be receptive to his plan because pension obligations are crowding out other state spending priorities.

Declines in the stock market and other investments have hammered the California Public Employees' Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS), making it more difficult for them to meet their pension obligations. The two funds, which lost a combined \$100 billion in the just-finished fiscal year, point out that they need more money from taxpayers. CalPERS can impose higher rates at will and plans to do so beginning next summer for the state and in mid-2011 for local governments. CalSTRS needs legislative approval to raise rates and has begun initial talks with lawmakers.

Water: Lawmakers say they are determined to start solving California's water problems. But with less than four weeks left in the regular session for 2009, groups on all sides of the debate are skeptical that Democrats and Republicans will be able to strike a deal to stabilize city and agricultural water supplies, while reversing the environmental decline of the Sacramento-San Joaquin Delta. Informational hearings on the issue are scheduled for the next two weeks. After that, a special joint committee of the Assembly and Senate will convene, leaving only two weeks to pull together a compromise.

Southern California cities and San Joaquin Valley agricultural interests are pushing for a canal to send water around the Delta and bring more certainty to their supplies. While environmental objections to the decades-old proposal has somewhat softened, Delta residents and farmers remain steadfastly opposed because they fear a water grab. On the east side of the Central Valley, agricultural groups continue to push for new dams and they have the backing of Republican lawmakers. But environmentalists favor other alternatives, such as groundwater storage and recycling. In fits and starts, Gov. Schwarzenegger and the Legislature have sought a major water deal for three years. However, they have been paralyzed as regional interest groups fight for their own needs.

The starting point for this round of negotiations will be a five-bill package offered by Democrats that focuses on the Delta. The key measure calls for forming the Delta Stewardship Council, a seven-member panel to be appointed by the Governor and the Legislature. The council would be charged with adopting a plan to restore the Delta, while assuring more reliable water supplies. At present, more than 200 agencies have some role in the Delta, a 700-mile maze of rivers, tributaries and sloughs that is the hub of California's complex water delivery system. But none of the agencies has the authority that is needed to press for major changes.

State Government Reform: Lawmakers tiptoed into the debate over how to reform state government. With less than a month left in the regular legislative session for 2009, proponents of change urged the Senate to quickly adopt ideas that have bipartisan support, while continuing to push for solutions to tougher problems—or risk having the voters do it for them. The three-hour Senate hearing came as legislators face plummeting approval ratings and growing momentum behind several fix-it movements. In addition to the proposals being advocated by the Bay Area Council and California Forward, another group is circulating petitions for a ballot measure calling for a part-time Legislature.

Within the Legislature, more than three dozen bills to change state government are in the pipeline. Assembly Speaker Karen Bass (D-Los Angeles) has been holding brainstorming sessions with fellow lawmakers and has asked Gov. Schwarzenegger to call a special session on remodeling California government. Still, she vowed not to let her house be rushed into quick decisions, saying the Assembly would instead proceed in a “thoughtful manner on our own timetable.” Meanwhile, Senate President Pro Tem Darrell Steinberg (D-Sacramento) noted that lawmakers need to focus on what they can achieve in the short term. In particular, Steinberg wants to shift more responsibilities and funding to local governments, and to adjust the initiative process to stop ballot-box budgeting.

Last week, California Forward, a bipartisan group backed by major foundations, dispatched a letter to Gov. Schwarzenegger and legislative leaders outlining an 11-point plan that includes proposals to realign the relationship between the state and local governments, change term limits, and reduce the state's two-thirds budget vote requirement to a simple majority. Meanwhile, the Bay Area Council is considering sponsoring ballot measures calling for a constitutional convention. The council envisions a few hundred randomly selected responsible citizens meeting over the course of several months in a setting insulated from traditional Sacramento interests to craft improvements to state government.

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.

From: Board.Secretary
Sent: Monday, August 24, 2009 2:00 PM
To: Board.Secretary
Subject: OUTREACH Paratransit Service and Fare Changes, effective Oct. 1

To VTA Board of Directors:

Attached is information that was mailed to all paratransit clients (~15,000) to inform them of changes to paratransit fares and service that will be in effect October 1, 2009.

Thank you,

Deborah Harrington
Board Secretary
Santa Clara Valley Transportation Authority
408.321.5773



Santa Clara Valley Transportation Authority (VTA) **OUTREACH Paratransit Service Changes** ***Effective October 1, 2009***

The Americans with Disabilities Act of 1990 (ADA) requires VTA to provide paratransit service at a level that is comparable to its bus and light rail service. The service is for eligible individuals with functional disabilities who are unable to use VTA's fully accessible bus and rail service for some or all of their trips. VTA contracts with OUTREACH, a non-profit organization, to provide ADA paratransit service.

VTA and OUTREACH collaborated to develop a set of proposals for the paratransit service to align it with the fixed route bus and rail services per the ADA. Six public meetings were held, information was posted on VTA's website and about 15,000 letters were sent to all OUTREACH customers describing the proposals. Paratransit customers take over 1 million trips annually, however, the vast majority of riders take standard pre-scheduled trips and only 2 to 3% use premium services. Based on this information and the comments submitted by OUTREACH customers, the VTA Board of Directors adopted the changes.

The following changes to paratransit services, fares, and scheduling options will be effective October 1, 2009. For more information about eligibility for or use of paratransit, please contact OUTREACH at (408) 436-2865 or visit www.outreach1.org.

Fares

| <i>Paratransit Service</i> | <i>Fare</i> |
|-----------------------------------|--------------------|
| One-Way Standard Paratransit Trip | \$4.00 |
| Standard Trip Companion | \$4.00 |
| Standard Trip No-Show | \$4.00 |
| Open Return Trip | \$16.00 |
| Second Vehicle Sent | \$16.00 |
| Same-Day Trip | \$16.00 |
| Same-Day Trip Companion | \$16.00 |
| Same-Day Trip No-Show | \$16.00 |
| Extended Service Area Trip | \$16.00 |

See back for additional information.

Second Vehicle Sent

Second Vehicle paratransit service is provided as a premium service option only when a scheduled return ride is missed by the customer and they are stranded. Second vehicles are not sent to pick up a customer if a trip is missed with a scheduled pick-up at the customer's residence. Second vehicles may take up to 2 hours to pick-up customers.

Open Return Trip

Open Return Trips allow customers to make reservations without a specific time for the return trip. On the day of service, customers can call when they are ready for their return trips. The following conditions apply:

- Provided on a space available basis only
- One open return can be scheduled per day
- Trip must be performed by 8pm
- Pick-up will occur within a 90-minute pick-up window after request for trip
- Customers cannot schedule a fixed pick-up and an open return for same trip
- Not available for pickup at residence or for subscription trips

Same Day Service

Same-Day paratransit service is a premium service option provided on a space-available basis by calling the OUTREACH Day of Service Department between the hours of 8:00 AM and 4:00 PM. Please allow up to 3 hours for pick-up.

Outside the Service Area

As required by federal Americans with Disability Act regulations, VTA's paratransit service area is defined as a 3/4-mile corridor around all of VTA's bus routes and light rail system. Extended Service Area Trips are an additional 1 mile beyond the VTA paratransit service area. The fare for this premium service is four times the regular one-way trip fare (\$16.00). Customers who live or travel outside the service area are still eligible for paratransit service, however they now need to come into the paratransit service area and pay the base paratransit fare to use the service.

Service Hours

VTA's paratransit service is provided within the service area boundary of VTA bus routes and light rail only during the same hours of the day and days per week that bus and light rail trains are running on those routes. This approach provides equity between the bus/rail service network and the paratransit service.

Advanced Trip Scheduling

The ADA requires one-day advance reservations. The advance reservation period will change from 14 days to 3 days in two phases. Phase 1 will start on October 1, 2009 and the reservation period will be 7 days. OUTREACH will initiate a new automated booking system and customers will be able to book trips to their "favorite" pre-selected places (e.g. work, home, doctor, church, shopping, etc.). Customers will also be able to confirm or cancel trips through the automated system. The reservation period will be reduced from 7 days to 3 days effective July 1, 2010 as the second phase of this transition. Customers or other parties may continue to send trip reservation requests in by fax, mail or email. Live reservation agents will continue to take calls.

From: Board.Secretary
Sent: Wednesday, August 26, 2009 11:31 AM
To: Board.Secretary
Subject: VTA Letter to Caltrans (CCJPA Projects)

To VTA Board of Directors:

Attached is a letter from Chairperson Dolly Sandoval to the California Department of Transportation in support of the Capitol Corridor Joint Powers Authority's list of projects for the American Recovery & Reinvestment Act High-Speed/Intercity Passenger Rail Track 1 grant funds.

Deborah Harrington
Board Secretary
Santa Clara Valley Transportation Authority
408.321.5773

August 12, 2009

Mr. Randy Iwasaki, Director
California Department of Transportation
1120 N Street, MS 49
Sacramento, CA 95814

Dear Director Iwasaki:

The Santa Clara Valley Transportation Authority (VTA) supports the Capitol Corridor Joint Powers Authority's (CCJPA) request to include their list of projects in the State of California's comprehensive submittal of applications for the American Recovery & Reinvestment Act High-Speed/Intercity Passenger Rail Track 1 grant funds.

As a member agency of the CCJPA Board of Directors, our support for the Capitol Corridor Intercity Passenger Rail Service is based on the CCJPA's leadership in making the service the third busiest route in the Amtrak system. The management of the Capitol Corridor by the CCJPA serves as a nationwide model for how to bring together freight and passenger rail in order to grow together, implement capital projects and consistently achieve a high level of on-time performance.

The six projects in the CCJPA's list provide benefits to current and future customers with improved mobility options and quality of service along the entire route. The San Jose Diridon Station Project is but one example. As the terminal for Capitol Corridor, Altamont Commuter Express, Caltrain, Amtrak, Union Pacific, VTA Light Rail as well as future BART and California High Speed Rail, it represents a unique intermodal transportation opportunity for our region and state. All the projects proposed by CCJPA will provide integration with the proposed High Speed Rail project and provide an integrated rail transportation network for Northern California.

We have the utmost confidence that the CCJPA has the established working relationships with their freight rail partner (Union Pacific Railroad) and local agencies to deliver these ready-to-go projects. These projects will improve the Capitol Corridor service while meeting the goal of providing new jobs and environmental benefits to the state of California.

Sincerely,

Dolly Sandoval, Chairperson
VTA Board of Directors

cc: CCJPA Board of Directors
VTA Board of Directors
Eugene Skoropowski, CCJPA
Michael Burns, VTA
Jim Lawson, VTA

From: Board.Secretary
Sent: Wednesday, August 26, 2009 12:05 PM
To: Board.Secretary
Subject: Response to Concerned Resident

To VTA Board of Directors:

Attached is a response letter to Tim Ranz who spoke at the August Board meeting under Public Presentations.

Deborah Harrington
Board Secretary
Santa Clara Valley Transportation Authority
408.321.5773

August 25, 2009

Tim Ranz

Dear Mr. Ranz:

During the Public Comment section of the August Board Meeting you addressed the Board and reported being refused boarding by a west bound Line 32 bus on July 28th. You stated the operator stopped the bus and informed you that he could not pick you up due to an emergency. We appreciate that you were able to provide us with exact information. As a result we were able to investigate the incident.

The operator was brought into the office and interviewed. He remembered the incident and acknowledged trying to hurry through the route to meet with a sheriff's deputy who was waiting to take off the bus an elderly female passenger with dementia. In his haste to complete the trip, the operator did not board you because of the time it would take to operate the wheelchair lift on the vehicle he was operating, though he did board other able bodied passengers. The operator was counseled and we will monitor the route to make sure there is no repetition of this situation.

Oh behalf of the Santa Clara Valley Transportation Authority staff I apologize that you were inconvenienced. I appreciate that you were able to provide precise information about the incident and will use this situation to further improve our level of customer service.

Yours truly,

Jim Lawson
Executive Policy Advisor

cc: Board of Directors
General Manager

From: Board.Secretary
Sent: Wednesday, August 26, 2009 4:46 PM
To: Board.Secretary
Subject: VTA Response to Civil Grand Jury Report

To VTA Board of Directors:

Attached is the official VTA response to the Civil Grand Jury Report.

Deborah Harrington
Board Secretary
Santa Clara Valley Transportation Authority
408.321.5773

August 24, 2009

The Honorable Jamie Jacobs-May
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

Re: *Santa Clara Valley Transportation Authority*

Dear Judge Jacobs-May:

Per California Penal Code 933 (c), the Santa Clara Valley Transportation Authority (VTA) Board of Directors adopted the following response to the 2008-09 Santa Clara County's Civil Grand Jury (CGJ) Report. In addition, the report has many factual inaccuracies that are documented in Attachment A.

Finding 1a

The term "watchdog" is a misnomer. The structure and composition of the CWC called for in 2000 Measure A, as well as how the CWC responsibilities are interpreted by VTA staff and the Board, prevents the CWC from performing its duties effectively.

Response

VTA disagrees with the finding. The structure and composition of the CWC is in strict conformance to requirements approved by the voters in the Ballot Measure known as 2000 Measure A. It also conforms to the 1996 Measure B Watchdog Committee, which performed its duties effectively for the citizens of Santa Clara County. To date, the current CWC is performing its duties effectively and in full conformance with the requirements establishing it.

Finding 1b

Although arguably the CWC may have technically complied with the minimum functions specified in Measure A, the CWC is failing the public by not providing reliable information to make intelligent decisions regarding transit in the county.

Response

VTA disagrees with the finding. As stated above, the structure and composition of the CWC is identical to the 1996 Measure B Watchdog Committee, which performed its duties effectively for the citizens of Santa Clara County. Following this successful model, the current CWC has and continues to provide appropriate information to the public and the VTA Board of Directors (Board). The information is published in newspapers throughout the community and is available on VTA's website, www.vta.org.

Recommendation 1a

The CWC should reevaluate its scope and expand its functions beyond the minimum standards stated in 2000 Measure A and operate as a true “watchdog” committee.

Response

The CWC provides the public with a valuable service by ensuring that Measure A revenues are spent consistently with what the voters approved in 2000. The CWC provides this oversight for the public through its reviews and independent audits. VTA disagrees with the recommendation to expand the authority of the watchdog committee as this would require VTA to return to the voters with a list of new responsibilities.

Recommendation 1b

The Board should provide the CWC with independent advisors, including legal counsel, to assist them in this effort.

Response

Per Measure A, the CWC is empowered to and does spend money on an independent compliance auditor. It is unclear why the CWC might need legal counsel or other independent advisors to fulfill their responsibilities. If legal counsel were ever required, VTA’s Board would provide it in the most effective manner available.

Finding 2

The CWC is not independent. CWC members are appointed or have their appointment approved the VTA Board, the very people they are charged with overseeing. In other transportation agencies in California, citizen oversight bodies are appointed and/or approved by independent third parties (See Appendix A).

Response

VTA disagrees with the finding. While the Board of Directors does ratify CWC appointments, the appointments come from a variety of specified organizations. The model used was the successful 1996 Measure B Citizens Watchdog Committee. The Board has never rejected a proposed CWC appointment.

Recommendation 2a

The Grand Jury recognizes that the assignment of members of the CAC as the CWC is part of existing law and cannot be changed without a new ballot measure. However, the Board is at liberty to change the CAC bylaws and hence change who approves membership in this combined committee. The Grand Jury recommends that the Board change the bylaws so that the selection process is conducted by, and selections approved by an independent third party.

Response

VTA disagrees with the finding. Since there is no evidence that the CWC has failed or is likely to fail in its responsibilities, VTA does not feel it prudent or necessary to change this successful oversight model.

Recommendation 2b

Former elected officials should not be allowed to sit on the Citizens Advisory Committee to eliminate the possibility of bias from prior responsibilities.

Response

VTA disagrees with this finding. It is unclear why former elected officials serving on the Citizens Advisory Committee (CAC) is detrimental to the committee. Neither the independent organizational assessment conducted by the Hay Group in 2007 nor the California State Bureau of Audits analysis in 2008 identified this as a concern. In fact, VTA advisory committees function best when members have a long history of public service, are active in their community and are interested in regional transportation issues.

Recommendation 2c

The CWC should have its own staff, independent of VTA staff, to set meeting agendas, coordinate project investigations, write reports and do other tasks assigned to the CWC.

Response

VTA disagrees with the finding. VTA staff supports all VTA committees, the Board of Directors and most importantly, the citizens of Santa Clara County. The general manager serves at the will of the Board; the general manager and the staff support the efforts of the Board and the committees. Through the Board's leadership and the work carried out by staff, VTA is able to provide transportation services to the citizens of Santa Clara County.

Hiring separate staffs for each committee would result in a fractured collection of staff members reporting to various committees. It would require new resources, create inefficiencies and duplicate work efforts.

Finding 3

The CWC is not in control of its own agenda. CWC bylaws do not explicitly allow members to participate in setting the agenda for their own meeting. Other VTA committees such as the Policy Advisory Committee have this explicit right. The CWC chairperson reviews the staff-proposed agenda in advance and can suggest changes. Other members only view the agenda when formally published.

Response

VTA disagrees with the finding. At each meeting, the CWC agenda includes a standing item to review the committee's work plan. The work plan lists the items that the committee will consider over the next several months. Members can and do make suggestions or add items to the work plan for consideration.

Recommendation 3

The bylaws should be amended to allow the CWC to prepare and set their own agenda without involvement of VTA staff. If VTA staff wishes to place an agenda item, they should consult with CWC Chairperson, not the other way around.

Response

VTA disagrees with the finding. The CWC serves the citizens of Santa Clara County through 2000 Measure A. The role mandated by the citizens is to ensure that the revenues collected through Measure A are spent appropriately on Measure A projects. VTA staff provides the CWC with the necessary information and resources to ensure that the committee fulfills their mission. If the CWC requires additional information or resources, VTA provides these needs as well. It is essential that the CWC remain focused entirely on the assignment mandated through Measure A.

Finding 4a

While meeting the minimum requirement, CWC reports to the public have not been comprehensive, timely or complete. The CWC has published only two three-page status reports since its inception in July 2006. The financial audit for FY 2007 (June 2007) was conducted by an independent auditor retained by VTA staff, not an independent auditor retained by the CWC. In FY 2008, audits of 2000 Measure A expenditures will be conducted by BOTH an independent auditor retained by VTA and an independent auditor retained by the CWC.

The CWC has failed to take the opportunity to file more frequent reports on Measure A 2000 expenditures, such as monthly or quarterly reports.

Response

VTA disagrees with the finding. The reports produced by the CWC have provided the necessary independent oversight to ensure the public that Measure A is being spent appropriately. The compliance auditor hired for the FY 2008 audit was hired by the CWC for this purpose. Again, these reports are similar to the efforts of the 1996 Measure B watchdog committee which served the public well.

Finding 4b

The CWC has failed to inform the public that the 2000 Measure A sales tax revenue is not sufficient to complete all of the Measure A programs, and federal and state funding has not been identified to fill the gap. This has been clear to VTA management for some time.

Response

VTA disagrees with the finding. This is not a responsibility of the CWC. The CWC is mandated to oversee the expenditure of 2000 Measure A funds.

VTA has made it clear for many years that the 2000 Measure A sales tax revenue will not be sufficient to complete all the projects contained in Measure A. In fact, VTA's Measure A Revenue & Expenditure (R&E) Plan, which was approved in 2006 by the VTA Board of Directors, stated that VTA would need the equivalent of an additional ¼ cent sales tax to meet the shortfall. Measure A revenues have been the subject of many board workshops and discussions in the media. At the April 25, 2008 Board workshop (a noticed and public meeting), the financial consulting firm of AECOM updated the Board on the financial projections for Measure A. Their findings stated that the sales tax projections for Measure A were \$4.9 billion less than previously expected.

Recommendation 4a

CWC should independently decide on report frequency and content without VTA staff involvement or supervision.

Response

VTA disagrees with this finding. The CWC has this authority in place.

Recommendation 4b

No recommendation.

Response

No response.

Finding 5

The VTA staff has forced its own perspective on the CWC regarding committee roles and responsibilities. VTA staff dictates have stifled independent thinking on the part of CWC members.

Response

VTA disagrees with the finding. The role of the CWC is defined by Measure A, not by staff. The CWC is comprised of community leaders who bring a history of community activism and service to the table.

Recommendation 5

The Board should direct VTA staff to revise its training materials and memoranda to include best practices of other transit agency watchdog committees and encourage the CWC to establish its own priorities and responsibilities.

VTA disagrees with the finding. The role of the CWC is defined by Measure A – not by VTA staff or the members of the CWC. Regarding revising training materials and memorandum, VTA is always open to review best practices of other agencies to improve our processes. With reference to Appendix A of the report, we believe CGJ’s own work indicates that VTA’s CWC compares favorably when compared to others.

Finding 6

Board work plans and meeting agendas are developed primarily by VTA staff.

Response

VTA agrees with the finding. VTA staff primarily develops the work plan and agendas. Staff meets regularly with the chair and vice-chair of the Board to discuss agendas and upcoming policy issues.

Recommendation 6

The VTA Board should prepare its own agenda and work plans. The Chairperson of the Board should consult with Board members, standing and advisory committees and VTA staff to formulate the agenda.

Response

VTA disagrees with the finding. As is the case in both the public and private sector, the role of the board of directors is to provide policy direction to the executive management and to make final decisions on these policies. The Board hires a general manager to implement the vision set forth by the Board; the general manager hires professional staff, who provide the board with the technical expertise necessary to carry out the vision. As stated previously, the staff meets regularly with the chair and vice-chair of the Board to discuss agendas and upcoming policy issues.

Finding 7

With the exception of members from San Jose and the County, Board members have inadequate staff support to fully participate in Board activities. The volume of information supplied to Board members can serve to obscure key issues that deserve focus.

Response

VTA disagrees with the finding. While the City of San Jose and the County of Santa Clara do have full-time staff support, the smaller cities all have transportation and/or public works departments who are also full time, professional staff. In addition, board members contact VTA staff on a regular basis for assistance.

The agenda packets are compiled to provide members with the information they need to make decisions, not to obscure key issues. In fact, each agenda item is presented in an orderly fashion and includes: (a) a recommendation from staff; (b) background on the item; (c) discussion on the item; (d) the fiscal impact; and (e) comments provided by the standing committees, and advisory committees, if appropriate; and (f) any relevant attachments.

Recommendation 7

The VTA Board should have its own staff, independent of VTA staff, to set meeting agendas, do project investigations, write reports, publish minutes and do other tasks required by the Board.

Response

VTA disagrees with the finding. The VTA Board has its own staff. As stated earlier, VTA staff supports the Board of Directors and most importantly, the citizens of Santa Clara County. The general manager serves at the pleasure of the Board. Through the Board's leadership and the work carried out by staff, VTA is able provide transportation services to the citizens of Santa Clara County.

Finding 8

Both the Hay Report and the State Auditor Report recommended that the VTA Board make every effort to insure that new board members have transportation experience by appointing new members with previous transportation experience and reappointing members for multiple terms. Nevertheless the Mayor of San Jose recently appointed two

new board members to represent San Jose who have no previous transportation experience.

Response

VTA agrees that transportation experience on the Board is important. In fact, the Board has already taken action to encourage appointments with transportation experience. VTA disagrees with the statement that the Mayor of San Jose appointed members with no previous transportation experience. The Mayor appointed members who are experienced in community issues (including transportation), land use and planning. One member, a well respected community activist and private sector software executive made transportation improvements her second highest priority during her campaign. The other served on the San Jose Planning Commission dealing with a myriad of development issues including transportation, and served one year as chair. Since a major portion of VTA's work is planning and congestion management, these skills are also provide value for Board service.

Recommendation 8

New VTA Board members must have transit knowledge. The VTA Board should require at least one full year on the PAC or another VTA advisory committee prior to being appointed to the Board.

Response

VTA disagrees with the finding. VTA agrees that having experience in transportation is beneficial to Board members prior to joining the Board. So too is having experience in land use planning, public policy, finance, law and construction. VTA's responsibilities are far broader and its need for meaningful policy guidance is not constrained to public transit. As mentioned above the VTA Board has taken action on these matters.

Finding 9

VTA failed to provide an updated Measure A Revenue and Expenditure Plan per their published schedule. As a result, voters were deprived of critical information necessary to make an informed decision regarding 2008 Measure B, an additional 1/8-cent sales tax to fund operating costs for a BART extension to San Jose/Santa Clara. The VTA had sufficient time and information to complete this update and made a deliberate decision not to publish it prior to the election. As a result, voters were never told that full funding for the BART extension would jeopardize the completion of other Measure A projects.

Response

VTA disagrees with the finding. VTA elected not to update the Measure A Revenue and Expenditure (R&E) Plan as economic issues, such as the dramatic downturn in the economy and its impact on sales tax receipts for the longer term are not fully understood, even today. VTA has instead adopted a fiscally sound two year budget based on a pay as you go approach to manage our way through this debilitating recession.

Concerning the statement that the public was unaware that VTA needs additional revenue to complete the Measure A program, as referenced above, VTA has been clear for the

past several years that an additional revenue source is needed to complete the Measure A Program. Again, the R&E that was approved by the VTA Board of Directors in 2006 stated that VTA would need additional revenues equivalent to a ¼-cent sales tax to complete the Measure A Program. And, at the April 25, 2008 Board Workshop, the financial consulting firm of AECOM informed the Board that the sales tax projections were \$4.9 billion less than previously expected. This was widely reported in the media.

Recommendation 9a

The VTA Board should explain why these facts were withheld from the public.

Response

VTA disagrees with the finding. The shortage of funding required to complete all Measure A projects has been discussed repeatedly during 2008 and was widely reported in the media. No facts were withheld from the public.

Recommendation 9b

In future elections, the VTA Board should ensure that VTA staff provides the public with a comprehensive explanation of the ramification of each measure, including the impact on both capital and operating fund, projections and budgets, as well as the effect on other projects.

Response

VTA agrees with the finding. The finding is consistent with the history and policy of VTA. Again, VTA does not withhold information from the public at any time nor will we in the future.

Finding 10

VTA effectively suspended the shovel-ready light rail extension to Eastridge, without informing the VTA Board or the CWC in advance. Additionally, they used evasive language to prevent the Board and the public from understanding the true status (“reaffirming” support) of the project. The people of the east Valley deserve better from the representatives of San Jose on the VTA Board.

Response

VTA disagrees with the finding. Large construction projects are frequently advanced and slowed down due to a variety of factors including but not limited to: funding availability, property acquisition, contractor availability and funding opportunities. The project continues to move forward in a phased approach. Furthermore, VTA is actively seeking potential funding opportunities at the regional, state and federal levels for this project.

Recommendation 10a

The Board should amend the CAC/CWC bylaws to provide the CWC with the authority to review and make recommendations regarding any changes to the priority and status of all 2000 Measure A programs. This is a specific request over and above the responsibilities assigned by the 2000 Measure A ballot wording.

Response

VTA disagrees with the finding. VTA already provides the CWC with regular updates on Measure A projects. The finding is a recommendation that the Board of Director's abdicate their public policy responsibility for Measure A projects to the CWC.

As stated earlier, the CWC provides the public with a valuable tool in ensuring that Measure A revenues are spent consistent with what the voters approved in 2000. The CWC provides this oversight for the public through its reviews and audits. Expanding the authority of the watchdog committee would require VTA to return to the voters with a list of new responsibilities.

Recommendation 10b

The staff should not make unilateral changes regarding Measure A projects without prior CWC review and Board approval. Specific procedures should be put into place to assure that the VTA Board has reviewed and approved all changes to the scope, funding and schedule of Measure A projects before VTA staff proceeds.

Response

VTA disagrees with the finding. Staff makes recommendations but does not make significant changes to projects without the Board's approval. All Measure A updates relating to the CWC's authority are brought to the committee.

Finding 11

The Board approved Measure C and D to be placed on the November 2009 ballot as part of the consent agenda and without prior review by advisory committees. This occurred on the day prior to the deadline for the submittal of ballot measures for the November 2008 election.

Response

VTA agrees with the finding. VTA is required by law to place Measure C on the ballot and did so. Measure D was placed on the ballot as a cost savings mechanism. The Board acted within the scope of their capacity. VTA did take the contents of Measure C (Valley Transportation Plan (VTP) 2035) to the advisory committees multiple times prior to placing Measure C on the ballot. None of the advisory committees expressed significant concern with the contents of VTP 2035.

Recommendation 11

The Board should ensure the ballot measures are submitted for Board approval on the regular agenda (never the consent agenda) after thorough review and discussion at both advisory and standing committee meetings.

Response

VTA disagrees with the finding. VTA has a prescribed process that takes agenda items to one of three board standing committees prior to the item moving forward to the full board. The committee considers the item carefully and makes any recommended policy changes to the item. The item is then sent to the full board for their approval. The

committee recommends the item be placed either on the consent or regular agenda. Any item on the consent agenda may be removed and placed on the regular agenda by any board member, member of the public or staff request. Committee members use their judgment to determine if an item should be placed on the consent or regular agenda. The authority to place an item on the consent or regular agenda will remain at the discretion of the committee.

Due to issues of timing or the public interest (such as ballot measures) the Board may or may not solicit the input of advisory committees.

Finding 12

The Board put 2008 Measure D on the ballot, assigning the responsibility for citizen review of future VTA long-range strategic plans to the CWC, without notifying the CWC of its intent to do so. In addition, the CWC will cease to exist on June 30, 2036, leaving the subsequent responsibility for review of the long-range plan in limbo.

Response

VTA agrees with the first statement of the finding. Please see the response to “Finding 11” above. The second sentence is factually inaccurate. The committee continues to exist as long as it has the legal requirement granted by Measure D to do so.

Recommendation 12

The hastily implemented Measure D needs to be rethought before 2036. The Board should assign the responsibility for reviewing the long-range strategic plan to an organization that will remain in existence permanently.

Response

VTA disagrees with the finding. Measure D was not hastily implemented, in fact it is yet to be implemented as the CWC will not be required to review VTA’s long-range transportation plan for five years. Measure D was not hastily put together, as the Administration & Finance Committee analyzed the issues carefully.

Finding 13

The Board allowed Measure C to be placed on the November 2008 ballot asking voter approval of the VTP 2035 plan when neither the Board nor the public had seen a draft of the full plan.

Response

VTA disagrees with the finding as it is factually incorrect. VTA provided many updates to the board and the advisory committees on the draft plan throughout 2008. Furthermore, draft chapters were available on VTA’s website well before the election; VTA held open houses as well as conducting an online survey to solicit input from the public. Had the public rejected Measure C, VTA would have considered reevaluating the long-term plan. However, the public overwhelmingly approved the plan (by nearly 70%), which sent a message to VTA that the public approved of the direction of the plan. This was taken into account when the Board ultimately approved the full plan in early 2009.

Recommendation 13

The Board should ensure that VTA's long-range strategic plans are thoroughly reviewed and vetted by the public prior to being offered for approval by whatever body is deemed responsible.

Response

VTA agrees with the finding. As outlined above, VTA's long-range plans are thoroughly vetted through the appropriate committees and the public.

Finding 14

Measure A funds were used on non-Measure A projects. The Measure A fund exchange violated to 2000 Measure A ballot requirements that 2000 Measure A revenue was to be spent only on 2000 Measure A programs. But VTA believes it is entitled to use these funds for other programs as long as repayment is certain. It appears that there is in fact repayment uncertainty. Even though the initial \$50M swap was approved in February 2007, the CWC certified (over the chairperson's signature) in the FY 2007 2000 Measure A Status Report that all Measure A revenue was spent only on Measure A programs. It is clear that the CWC does not fully understand its responsibility with respect to this requirement.

Response

VTA disagrees with the finding. VTA does not believe it is entitled to use Measure A funds for other programs. Measure A is clear regarding which projects may be built with Measure A revenues. VTA does exchange funds from various local, regional, state and federal sources as a means for advancing projects and finding efficiencies. These exchanges are always approved by the board and provide agencies with the flexibility needed to advance and complete projects. If agencies were not aggressive in identifying funding opportunities, cities and counties would be left with a series of under funded projects that are unable to move forward.

Recommendation 14

The Board should give the CWC the opportunity to review all 2000 Measure A fund transfers. The CWC should point out such usage of funds to the public in their reports. The CWC should make a public decision whether this usage of funds is consistent with the intention of the voters with respect to 2000 Measure A.

Response

VTA agrees with the finding. VTA does provide this information to the CWC.

Finding 15

Measure B on the 2008 Ballot approved a 1/8-cent sales tax for BART operations. Tax collection is slated to start when the BART project receives full federal and state funding. However, VTA intends to start collecting this tax when only the first 2.2 miles of the BART project are funded, not the complete project.

Response

VTA disagrees with the finding. VTA will begin collecting the tax once the requirements contained in Measure B are met.

Recommendation 15

The Board should consider the intention of the voters as well as the specifics of the ballot measure when considering the issue. This tax should only be collected when funding for the full 16.1- mile BART extension is obtained from the state and federal government.

Response

VTA disagrees with the finding. As stated above, VTA will begin collecting the tax once the requirements contained in the 2008 Measure B are met. Also the first phase is 9.9 miles (not 2.2).

Sincerely,

Dolly Sandoval, Chairperson
Santa Clara Valley Transportation Authority

VTA Response
2008-09 Santa Clara County Civil Grand Jury (CGJ) Report
Errors, Omissions, Exaggerations

NOTE:

The following detailed analysis and responses to the 2008-09 Santa Clara County Civil Grand Jury (CGJ) Report follows the structure of the Grand Jury Report. The specific page number, heading, title, and, where applicable, item number are listed for easy cross-reference to the CGJ Report. Statements quoted from the report are shown in *italics*.

Page 1

“VTA is a multi-billion dollar enterprise...”

This implies VTA is a company organized for commercial purpose, no mention VTA is a special district, etc.

Page 2

“At any one point in time, nine cities are not represented.”

All cities are in fact represented through their city grouping. The city groupings hold meetings outside of the Board meetings to discuss VTA issues. A correct statement: that “...nine cities are not directly represented.”

VTA Committee Structure

Regarding the CAC appointment process, it states that “*San Jose chooses two, County Board of Supervisors choose one, ...*” In fact, these entities appoint their members and the Board ratifies the appointment.

Page 3

VTA Committee Structure (continued)

It is stated that the *National Association of Industrial and Office Properties* (NAIOP) is an appointing authority for CAC, which is incorrect. Approximately three years ago (June 2006) the Board approved replacing NAIOP, with Building Owners & Managers Association – Silicon Valley (BOMA-SV). The correct membership structure is reflected multiple places on VTA’s website (roster, CAC bylaws, etc.). The current CAC/CWC Vice Chair Bob Jacobvitz is BOMA’s representative

Page 4

“Regarding the CWC, ... this committee would be comprised of the existing VTA’s Citizen’s Advisory Committee (CAC).” Although the report acknowledges that the ballot established the CWC’s membership structure, later in the report when it states the membership structure is somehow a problem (former elected officials, etc.). The report fails to recognize the cost of a ballot measure (estimated at about \$1 million) that would be required to modify the CWC membership structure.

“The Eastridge light rail extension, which is shovel-ready is on hold.”
The statement is not correct.

“Measure C was an advisory vote. It asked the voters to approve VTP 2035.”
It is not an accurate statement that Measure C asked voters to approve VTP 2035. Measure C was an affirmation of VTA and county-wide transportation services, and passed with 69.7% of voters voting in favor. Measure C was required by the 1976 ½ cent sales tax measure. VTP 2035 is not approved by the voters but by the Board.

Page 5

Page 6

“The Hay Group Report proposed a comprehensive overhaul of VTA’s organization and practices.”

End of statement gives reader impression VTA did not pursue and/or achieve recommendations set forth. This gives an impression to the public that VTA has not made significant progress on addressing the recommendations (not overhaul) of VTA’s organization.

“Thus even as VTA attempts to reform its governance structure it continues to follow a practice the Hay Group report specifically criticized; namely, advisory committees do not have an opportunity to consider policy and plans in the early stages of development ...”

Not true. Examples of early and frequent committee participation are the Comprehensive Operational Analysis (bus), Bus Rapid Transit, HOT Lanes, etc.

“The Hay Report made a number of recommendations that would improve the VTA Board’s ability to exercise its responsibilities with “reasonable care and loyalty’.”

End of statement implies Board of Directors ignored recommendation. Report fails to acknowledge Board Workshop on Fiduciary Responsibility and the work of the original Governance Subcommittee on these issues.

City Representation

“San Jose, with five members on the Board, dominates the Board.”

San Jose cannot technically dominate the board as they do not hold a majority. A total of seven affirmative votes are required to pass any measure except those with higher threshold requirements mandated by statute.

“For a Board that is pledged to have a countywide outlook irrespective of city boundaries the current structure of representation does not promote this ideal and lends itself to the question of just where allegiances should lie.”

This statement is refuted by Light Rail expansion, Comprehensive Operations Analysis (COA), BART, Caltrain, Capital Corridor, ACE, Highway 17 service, etc.

Page 7

“...was ultimately shuffled to the Audit and Finance Committee for burial.”

This statement is false. First, it was sent to the Administration & Finance (A&F) Committee, not "Audit". Second, the A&F Committee discussed the item in August, September and October 2009, as well as in April 2009. The A&F committee has instructed staff to return with the item in August 2009. It is not "buried."

“Meeting agendas are prepared by VTA staff with input from the Board chairperson.”

This contradicts other statements in the report and the report's "staff driven" references. Every Board agenda has a standing item entitled "Items of Concern and Referral to Administration" where members may bring up any item not on the agenda for future discussion.

Token committees

- Does not cite specific examples, although report states, *“This Grand Jury uncovered examples that support this conclusion.”*
- The statements *“... Committees are presented with items to review only after the Board and/or staff (emphasis added) has already made a decision”* and *“Thus, the Advisory Committee is only asked to bless the decision after the fact”* are inaccurate. Except for unusual circumstances where urgency precludes the normal process, items are vetted with the appropriate Advisory Committee(s) and their input is transmitted to the Board and, in many cases, incorporated into the proposal. Also, the Board is responsible for decisions, not staff.
- The report does not reflect Advisory Committee Enhancement (ACE) Process or the changes it has recommended. These include adding Advisory Committee votes and the addition of major comments from Committees to the Board memo.
- The report does not acknowledge that the CAC Chairperson Report and the similar PAC Chairperson Report are standing items on every Board agenda. This provides the Advisory Committee chair the opportunity to apprise the Board of his committee's comments and concerns on items considered or on future issues. (The CAC Chair Report to the VTA Board was a specific recommendation of the Bureau of State Audits report and the Board approved amending the CAC bylaws to add this provision in September 2008. Both the CAC and PAC Chairperson Reports are standing items on every Board agenda.)

- *“VTA's attitude toward these committees ...”*

The statement cannot be verified, no specific examples are cited. This is especially true for *“retaliation for independent thinking”*.

- *“One of the key criticisms is that the Advisory Committees are presented with items to review only after the Board and/or staff has already made a decision.”*

The statement is not correct.

- *“One advisory committee member, responding to the question of whether the Board provided direction to the committee said, ‘The Board does not even know we exist’.”*

VTA understands the sentiment conveyed by this statement and has taken action to address it. Examples are ACE process, VTA Chair & Vice-Chair meetings with Advisory Committee chairs, advisory committee meeting minutes in Board agenda packet, advisory committee input on items included in board memorandums, and the orientation and training materials provided to new Board members.

Page 8

Board/Committee communication

- Staff collaborates with the Committee chairperson on setting the Advisory Committee meeting agendas. For example, the CAC/CWC Chairperson reviews, provides input, and approves the draft agenda prior to distribution.
- Formal review of the Advisory Committee Work Plan with the committee is done at every meeting to receive committee input and direction. It is a standing item on every agenda, and is the last agenda item in order to incorporate any committee changes or requests made earlier at that meeting.
- The Board Chair reviews and approves the Consolidated Board & Committee Work Plan every six months. This planning document includes the items projected to be reviewed and considered by the Advisories (and Standing Committees) prior to Board consideration, including those requiring Board adoption.
- The report does not reflect the recently-implement ACE recommendation that the vote and the addition of major comments from the Advisory Committees on the memo submitted to the Board and that becomes the official record. Due to timing constraints, the vote and major comments are provided to the Standing Committees via a summary report. Prior to this, Advisory Committees comments were verbally relayed to the Standing Committees.
- It is not a correct statement: "... *the PAC and CAC Chairs were recently invited to make a short presentation at each meeting*". The PAC Chairperson Report was added approximately five years ago and the CAC in September 2008.

PAC and CAC: Committee views not valued

- "*PAC is the only place in VTA governance where there is equal representation for each city without an overwhelming advantage to San Jose.*"

This is factually inaccurate. There is no advisory committee where the City of San Jose with over fifty percent of the population has "*an overwhelming advantage.*" The TAC has one member representing each Member Agency (the 15 cities and the County of Santa Clara); TAC members are staff of the Member Agency they represent. The BPAC also has one member representing each Member Agency; BPAC representatives are private citizens appointed by the Member Agency they represent; CTA membership has representatives from City Groupings.

- "*The VTA Board has recently formed ACE, the Advisory Committee Enhancement Committee, to develop a new structure and methodology by which the Advisory Committees can start to provide some form of useful service to the Board.*"

This is inaccurate. Numerous examples can be cited to disprove it. These include but are not limited to the valuable input provided by CAC and PAC on the Comprehensive Operations Analysis (COA), CAC's initiative to ban smoking at all VTA facilities, the BPAC's input

and expertise on development of technical works such as the Bicycle Technical Guidelines, Pedestrian Technical Guidelines, etc.

- Referencing PAC, "... it frequently serves as a breeding ground for new Board Members." This contradicts the statement that Board members have little transit experience.

Role of the CAC/CWC in VTA Governance

The CAC bylaws (as well as those for BPAC, PAC and TAC) provide that items may be placed on the agenda by the committee chairperson (which is done consistently and frequently) and by the vote of a majority of the committee.

The same group of citizens is assigned to both committees

- This structure was defined by the 2000 Measure A ballot. The voters put it in place and an election would be required to change it.
- Report fails to delineate the major differences between CAC and CWC: CAC is an advisory committee established by, and reporting to the VTA Board. Membership is derived from a variety of community stakeholder groups including business and labor. The CWC is an oversight committee established by the electorate that reports to county residents, not the VTA Board.
- The statement "... the same people, serving as the CWC, have the duty to communicate to the public, hold hearings, issues reports," fails to acknowledge these responsibilities apply only to 2000 Measure A-related activities.

Page 9

CWC Performance

- "VTA Staff released an audit for FY2008 performed by the VTA auditor (VTD) without review or approval by the CWC."

This is factually inaccurate. This was the Comprehensive Annual Financial Report (CAFR), which presents VTA's financial statements for the period. It was brought to the CWC, as an information item at its 2/11/09 meeting where Leonard Dana, a VTD partner, presented the item and explained the audit's findings. The CWC does not have the authority to approve this report since it covers all aspects of VTA ("Comprehensive"), not just Measure A.

- "CWC reports to the public have been neither comprehensive, timely nor complete."

VTA disagrees with this statement. The Committee responsible for preparing them, the CWC, judged they were comprehensive, complete and as timely as possible. Neither CWC members nor VTA have received negative comments or complaints about the reports.

What's Wrong with the Citizens Watchdog Committee?

1. *The members of the CAC/CWC interviewed all stated they work for the VTA Board.*

The primary tenet emphasized at new CAC/CWC orientation is the different, separate duties of the CAC versus the CWC. This includes that CAC is advisory to the VTA Board, reports to the Board, and is free to express opinions and recommendations on Measure A policy decisions (project composition, funding, schedule, etc.). For the CWC, it is made clear that they are established by the electorate, report to the public, not the

VTA Board, and that it is not within their purview to express opinions on Measure A policy decisions.

These points are reiterated and emphasized at annual training provided separately to each committee on its specific duties and responsibilities (the last training on CWC duties and responsibilities was held at the February 2009 meeting:

http://www.vta.org/inside/boards/committee_advisory/cac/agendas_minutes/2009/02_feb/cac_021109_fullpacket.pdf).

2. *“CAC/CWC members are approved by the Board, compromising independence of thought and action.”*

The Board ratifies the appointments made by stakeholder groups, such as BOMA-Silicon Valley or the Chamber of Commerce Coalition; this procedure was in place when voters approved Measure A that established the membership process for the CWC. The statement that this appointment process compromises *independence of thought and action* cannot be not substantiated.

3. *“Many CAC/CWC members complained and confirmed that the VTA staff shows them little or no respect. The VTA staff does not return their calls or answer their questions.”*

This statement cannot be substantiated by VTA.

Members have indicated that there is a substantial amount of information contained in their agenda packets but have not stated that it is *“overwhelming.”* A substantial amount of information in each agenda packet is to be expected since it is for two committees and given the importance and magnitude of the oversight responsibilities of the CWC.

CAC/CWC does control its own agenda. The committee and the committee chair, not individual members that make the decision. The final item on each agenda is the Committee reviewing and modifying its work plan as it sees fit. It is common for the Committee to add/ delete or change the timing of specific items. In addition, the draft agenda is sent to the committee chair and vice chair each month for review, input and approval prior to publication. Under ORDERS OF THE DAY the Committee has, and often utilizes, the ability to defer or change the sequencing of items on that specific agenda.

4. *“A conflict of interest is present, whether actual or perceived, in the discharge of their duties as a member of the CWC.”*

This statement cannot be substantiated.

5. The statement that the bylaws for the CWC *“were written by staff”* is not correct. Staff drafted the bylaws and submitted them for Committee review and adoption. The CWC’s bylaws (which are a part of the CAC bylaws) were primarily derived from, and, in many cases, quoted the Measure A ballot. The CWC is not free to select duties and responsibilities other than those specified in the ballot.

Page 10

“An additional sales tax of ½ cent was proposed to the voters in November, 2006 but was rejected.”

While the statement is factually accurate it implies this was a VTA measure. The referenced measure was placed on the ballot by the Santa Clara County Board of Supervisors for general fund purposes, not VTA. While the campaign literature (not in any way connected to VTA) did mention the BART project, the measure was not a VTA ballot measure.

Page 11

Page 12

Date of June 2008 Downtown/East Valley Policy Advisory Board is wrong. (should be June 11)

“Particularly noteworthy was the fact that VTA staff suspended the project (DTEV) without prior Board authorization.”

Construction projects are frequently advanced and slowed down to account for a variety of factors including but not limited to: funding availability, property acquisition process, contractor availability, competition for resources, etc.

“However, property acquisition, utility relocation construction and completion of bid documents for construction contracts were not authorized.”

VTA does not agree with this statement, it is factually inaccurate. These items are authorized via adopted budget.

“The public was not informed of the 2000 Measure A 30-year financial situation before the November 2008 election.”

This comment is a well-utilized ballot argument The Board and public were informed of the financial implications of the economic downturn by VTA and the news media (KCBS, KGO, Mercury News and other local newspapers).

Page 13

“If the 30-year Revenue and Expenditure Plan had been updated as planned, it likely would have shown that if the BART extension was built as planned, the remaining 2000 Measure A projects would require massive additional investment ...”

“If the updated Revenue & Expenditure Plan had been readily available to the public, Measure B might not have passed.”

These are speculative comments. The fact that more funding is needed to complete Measure A has been publicly stated by VTA. In fact, the 2006 Revenue & Expenditure Plan assumed the equivalent funding of revenue equivalent to a new 1/4 cent sales tax to complete the plan. Furthermore, at the April 25, 2008 Board workshop, the financial consulting firm AECOM reported that sales tax projections were \$4.9 billion less than previously expected. This was widely reported in the news media and was discussed publically at several VTA Board meetings.

“According to the Measure A Semi-Annual Report (internal) dated June 2008 ...”

Implies document was not made available to the public and did not go to the Committee, which is not factually correct.

“Now that virtually all Measure A tax revenue is being reserved for the shortened BART extension project, the light rail to Eastridge project has been put on hold until other funding sources can be identified.”

The statement is false.

“The VTA Board has approved the exchange (swap) of approximately \$107M of Measure A funds... The payback from the state depends on state approval of two Measure A projects for state (STIP) funding, ...”

The projects have been approved by the state. Copies of the State Transportation funding database listing (CTIPS) are available.

“There was no prior discussion or notification to the Citizen Watchdog Committee. The CWC was informed after the fact in a report from VTA staff.”

This is only partially correct. There were two exchange actions. The first, approved by the VTA Board in February 2007, was presented to the CAC at its January 10, 2007 meeting. This item was correctly submitted to CAC for consideration since it provides advice and counsel to VTA Board, whereas the CWC does not. It would be inappropriate for the CWC to provide comment on this item since Measure A policy decisions (project composition, schedules and funding levels) are the responsibility of the VTA Board and the CWC is solely responsible for reviewing Measure A expenditure to ensure they were spent in accordance with the ballot.

The CAC discussed the first exchange at its January 2007 meeting and unanimously recommended approval to the VTA Board, as reflected in the approved minutes. The second exchange did not go to the CWC in advance. The timing of the 2008 STIP information from the State was such that VTA staff was unable to bring the program to any of the VTA advisory committees and standing committees prior to its review and subsequent approval by the VTA Board in December 2007. VTA staff made a follow-up report to the CWC at its next (January 2008) meeting and there was no comment. Minutes are available.

The CWC subsequently determined that the fund swaps were appropriate as long as the funds were repaid in full, with appropriate interest, and that other projects in Measure A were not adversely affected by the swap. In effect, the swap is a loan subject to future repayment – the funds were loaned to a non-Measure A project and STIP funds will be used to repay Measure A.

Page 14

“At its February 11, 2009 meeting, a discussion regarding the CWC’s responsibilities in this area was initiated by a CWC member, and stifled by VTA staff.”

VTA disagrees with this statement. Items not on the published agenda may not be discussed at the meeting. Allowing the unagendized discussion to move forward would have violated the Brown Act. The committee chose not to pursue this discussion further.

“VTP 2035 was first presented to the public eight days after the November 2008 election.”

The statement is factually incorrect. The draft VTP 2035 had been presented to the board, advisory committees and public several times. Also, draft chapters were available online during the fall, before the election. The time frames for formal adoption of VTP 2035 were driven by the Metropolitan Transportation Commission (MTC).

Page 15

“2008 Measure B Sales Tax – Promised 16.1 miles, Delivering 2.2 miles”

The statement is factually incorrect.

“The Board tolerates behaviors that do not encourage informed public debate...”
The statement is factually incorrect.

“VTA staff develops plans internally with little or no public (or Board) input at the early stages ...”
The statement is factually incorrect.

“The board has taken a passive role, ...”
VTA disagrees with this statement.

From: Board.Secretary
Sent: Thursday, August 27, 2009 9:16 AM
To: Board.Secretary
Subject: Letter to Mr. Morrow CTA Chair re: budget questions

To VTA Board of Directors:

Attached is a letter from Chief Financial Officer Joseph Smith regarding follow-up questions on the Recommended Biennial Budget for FY 2010 and FY2011 to Aaron Morrow, Chairperson of the Committee for Transit Accessibility.

Deborah Harrington
Board Secretary
Santa Clara Valley Transportation Authority
408.321.5773



August 26, 2009

Mr. Aaron Morrow
Chairperson Committee for Transit Accessibility

Ref: Response re: Follow-up questions on Recommended Biennial Budget for FY 2010 and FY 2011

Dear Mr. Morrow:

Listed below are your follow-up questions on the Recommended Biennial Budget for FY 2010 and FY 2011 along with my responses, also the attachment enclosed has been provided for further clarification.

- 1. Paratransit contractor costs are going down but VTA indirect cost pool allocated amount to paratransit is going up, because the overall VTA cost pool is increasing. VTA needs to explain why steps to cost-contain are not reducing these expenses? This trend is in part driving the need for fare increases and potential cut-backs in services.*

CTA Chair recommendation: In the future, VTA's public budget documents need to be transparent so that they clearly identify contractor cost in dollars within the respective budget number so the public can see in dollars the actual allocated cost amount to each contract and the size of the allocation pool overall.

The indirect cost rate used in FY 2009, based on the approved Indirect Cost Allocation Plan, is 14.91%. The rate used when estimating the FYs 2010 and 2011 overhead is 14.30%. The decline in these rates could be attributed to VTA's cost-containment measures. Despite the decline, however, Outreach budgeted contractor cost in FY 2011 increased relative to FYs 2009 and 2010. Please note that the overhead amount is derived by multiplying the indirect cost rate to contractor costs. Future presentations of the VTA budget to the CTA will provide information on the breakdown of contractor costs and overhead, as well as the indirect cost rate. The FYs 2010 and 2011 Adopted budget document will include this breakdown. The enclosed attachment from the FY 2010 and FY 2011 Budget Document reflects this breakdown.

Response re: Follow-up questions on Recommended Biennial Budget for FY 2010 and FY 2011

2. *VTA should provide a total line-item (direct costs) of the Accessible Services budget. It appears (Smith correspondence dated May 20, 2009) that 72% of the labor and 72% of fringe cost of Accessible Services staff are allocated to the Paratransit Contract. Please explain this percentage and method used. Please explain the distribution of the remaining 28% of labor cost and 28% fringe. Staff time on the Mobility Options grant was allocated where in FY 09 and planned for FY 10?*

The allocation of labor and fringe of 72% to paratransit contractor cost is based on actual direct time charging by staff to the program in FY 2008. The remaining 28% of the cost of the Accessible Services cost center formed part of the Operations indirect cost rate.

Staff time eligible under the Mobility Options Travel Training Program is not allocated specifically in the FY 09 or FY 10 budget.

3. *Please report back to CTA about how much can be saved by eliminating the Accessible Services Department as its duties and responsibilities can easily be assigned to other areas within VTA. The Deputy Director of Operations already staffs CTA.*

On August 13, 2009 the Chief Operating Officer announced a restructuring of the Accessible Services department. The Accessible Services department functions and staff have been reassigned to the Customer Service department and other departments within VTA. The Accessible Services department FY 2010 budget of \$907,208 will be reassigned within the VTA Transit Budget.

I hope this information is helpful and would like to thank you for voicing your concern. If you have additional questions or require further assistance with any other issues, please feel free to contact me directly at my office at (408) 321-5630 or via email at joseph.smith@vta.org .

Sincerely,

Joseph T. Smith
Chief Financial Officer

Enclosures: Attachment A

c: Committee for Transit Accessibility
VTA Board of Directors
Office of the Board Secretary
Michael T. Burns, General Manager

Paratransit Costs

(Dollars in Thousands)

| Category | FY08 Actual | FY09 Adopted Budget | FY09 Actual ¹ | FY10 Adopted Budget | % Variance from FY09 Actual | FY11 Adopted Budget | % Variance from FY10 Budget |
|--------------------------|----------------|------------------------|-----------------------------|------------------------|-----------------------------------|------------------------|-----------------------------------|
| Contract Cost | 27,253 | 29,400 | 26,843 | 28,112 | 4.7% | 29,976 | 6.6% |
| Indirect Cost Allocation | 3,454 | 3,886 | 4,013 | 4,020 | 0.2% | 4,287 | 6.6% |
| Total | 30,707 | 33,286 | 30,856 | 32,132 | 4.1% | 34,263 | 6.6% |

¹ Preliminary Unaudited