



## **BOARD OF DIRECTORS' WORKSHOP MEETING**

February 16, 2007

### **MINUTES**

#### **1. CALLED TO ORDER**

The Workshop Meeting of the Santa Clara Valley Transportation Authority's (VTA) Board of Directors was called to order by Chairperson Chu at 9:07 a.m., Holiday Inn, Mediterranean Center, 1740 North First Street, San Jose, California.

#### **2. ROLL CALL**

##### **Members Present**

David Cortese  
Dean Chu, Chairperson  
Don Gage  
Liz Kniss, Vice-Chairperson  
Sam Liccardo  
Laura Macias  
Dolly Sandoval  
Greg Sellers  
Forrest Williams

##### **Alternates Present**

Pete McHugh

##### **Members Absent**

Nora Campos  
Breene Kerr  
Chuck Reed  
Ken Yeager, Ex-Officio

##### **Alternates Absent**

Dominic Caserta  
Judy Chirco  
Kathleen King  
Roland Velasco

\* Alternates do not serve unless participating as a Member.

**A quorum was present**

#### **3. PUBLIC PRESENTATIONS**

There were no Public Presentations

#### **4. Board of Directors' Fiduciary Responsibilities**

Michael Burns, General Manager, introduced the item and noted that the issue of fiduciary responsibility has arisen in different situations over the last year. He highlighted that it has also been a primary focus of the organizational audit.

Mr. Burns stated that the discussion will focus on Duty of Loyalty and the Duty of Care. He noted that the August Board Workshop will include a second discussion that will highlight fiduciary responsibility with regard to bond issuances.

Suzanne Gifford, General Counsel, provided a presentation titled, “The Foundation (Enabling Act, Administrative Code, Congestion Management Law)” that highlighted the following: 1) California Public Utilities Code, Division 10, Transit Districts; 2) Santa Clara Valley Transportation Authority Administrative Code; 3) Chapter 2, Article VII Code of Ethics; 4) Selected Excerpts from Title 9 of Chapter 4 of the Government Code; and, 5) Sample §84308 Disclosure List Recommended Prime and Sub-Consultants.

Mr. Burns introduced Kathryn Pett, Attorney with Snell and Wilmer L.L.P and former General Counsel of the Utah Transit Authority, who will conduct the Fiduciary Responsibility workshop.

Ms. Pett provided a PowerPoint presentation titled, “Discharging Your Fiduciary Duty as a VTA Board Member, Reconciling Conflict When Responsibilities Diverge,” highlighting the following: 1) Fiduciary Responsibility; 2) Duty of Loyalty General; 3) Duty of Loyalty to Not Further Personal Interests; 4) Duty of Loyalty to District as a Whole; 5) Duty of Loyalty Disclosure of Conflict; 6) Duty of Loyalty Discharging Duty of Loyalty; 7) Duty of Care General; 8) Duty of Care Acting in Best Interest of Agency; and, 9) Duty of Care Discharging Duty of Care.

Ms. Pett highlighted a situation in which an appointing municipality appointed a Utah Transit Authority Board member and instructed him to stop all spending of funds for light rail projects. Ms. Pett noted that the way to address this situation is to discharge the duty of care and take the necessary steps to educate oneself about the specific issue. She also noted that this situation requires discharging the duty of loyalty and making a decision based on one’s independent judgment and in the best interest of the agency.

Alternate Member McHugh referenced the slide titled, “Duty of Care General,” and highlighted the situation whereby some Board members who disagree with the expansion of BART to San Jose. He asked that as long as a Board Member reviews the materials and makes an independent judgment are they discharging their duty of care. Ms. Pett affirmed Alternate Member McHugh’s comments and highlighted that to achieve duty of care a Board member must make an informed decision based on the best interest of the agency.

Member Liccardo took his seat at 9:50 a.m.

Member Sellers inquired about the steps he would have to take as a VTA Board Member if hypothetically his City Council opposed a VTA project. He asked whether the City Council would be overstepping its duty should it require him to vote a specific way. Ms. Pett responded that he could legally discharge his duty of loyalty and vote for and against the same issue while serving as a City Council Member and as a VTA Board Member. She further stated that a Board Member is legally obligated to act with due care and any

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direction that a Board Member must vote a certain way prohibits this duty and violates a Board Member's responsibility to act accordingly.

Member Macias encouraged the VTA to offer a short presentation to the various city council's on the responsibilities of VTA Board Member to discharge their duties. She also referenced the duty of loyalty and asked if Board Member must disclose their self-interest if they vote on a capital project that will positively impact their city. Ms. Pett responded that disclosure is only necessary in very narrow circumstances and only when an actual conflict or legal prohibition exists.

Ms. Pett referenced the development of the first commuter rail line in Utah. She noted that the rail line was to go through 26 cities and each city wanted a station even though ridership projections only justify 5 stations. She referenced the slide entitled, "Duty of Care Acting in Best Interest of Agency," and stated in making the decision as to which city receives a station, a Board Member must think locally and act regionally.

Vice-Chairperson Kniss took her seat at 10:05 a.m.

Member Cortese asked about the independent judgment requirement and asked if a Board Member can ignore the position of their city in making a decision. Ms. Pett responded that a Board Member must consider the comments made by their city in making a decision while still acting in the best interest of VTA.

Member Gage noted that Board Members are appointed to represent their respective city or city grouping and to insure that their constituents receive a fair share of transit service and transportation funding. Ms. Pett responded that Board Members assume a legal duty that trumps the Board Members' responsibility to their constituency.

Member Sandoval noted that if the cities she represents urge her to make a decision that she disagrees with, she encourages them to present their perspective to the Policy Advisory Committee. She also referenced the disclosure of contributions that equal \$250 or more and asked about the procedure to submit such disclosures. Ms. Gifford responded that Board Members should disclose once they receive the agenda materials.

Member Williams inquired about how the Board should determine the will of voters when they pass a ballot measure that will impact the VTA. He added that Board Members should accept the will of the majority of Board even though they may disagree with the final decision. Ms. Pett responded that Board Members must consider the core meaning of the constituency vote and bring it forward based on intervening changes, experiences and constraints.

In reference to a comment by Vice-Chairperson Kniss, Ms. Pett noted that the politics of a Board appointment makes the discharge of duties difficult and important to understand. She added that Board Members have legal obligations that are superior to political considerations.

Member Cortese left his seat at 10:39 a.m.

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Mr. Burns noted that the Board will discuss the §84308 issue at the March 1, 2007 Board Meeting and highlighted that the duty of loyalty and the duty of care will come into play during the following three upcoming actions: 1) Review of the expenditure plan and the discussion of a “no new revenue source” scenario; 2) Review of the results of the management audit; and, 3) Review of the Comprehensive Operations Analysis.

On order of Chairperson Chu, there being no objection, the Board of Directors’ Fiduciary Responsibilities was discussed.

Member Cortese took his seat at 10:41 a.m.

## **5. Comprehensive Operations Analysis (COA) Market Analysis**

Michael T. Burns, General Manager, noted that the COA has been underway for over a year and will identify opportunities for VTA to provide service to both current and potential new customers. He added that the COA will likely result in significant recommendations with regard to service changes and service delivery.

Members Sandoval and Macias left their seats at 10:44 a.m.

Members Sandoval and Macias took their seats at 10:47 a.m.

Mr. Burns introduced Kevin Connolly, Transportation Planning Manager, who noted that a COA is routine in the transit agency and addresses market, origin and destination changes. Mr. Connolly presented a PowerPoint Presentation entitled, “Comprehensive Operations Analysis (COA) Market Analysis,” highlighting the following: 1) Workshop Agenda; 2) Work Program; 3) COA Outreach and Input; and, 4) 2007 COA Countdown.

Members Sellers and Gage left their seats at 10:48 a.m.

Member Sellers took his seat at 10:50 a.m.

Member Gage took his seat at 10:52 a.m.

Mr. Connolly presented a PowerPoint presentation entitled, “Comprehensive Operations Analysis (COA) Policy Foundation,” highlighting the following: 1) Goals; and, 2) Core Principles.

Mr. Connolly presented a PowerPoint presentation entitled, “Comprehensive Operations Analysis (COA) 2006 Passenger Survey,” highlighting the following: 1) On-board Survey- Key Finding; 2) Rider Demographics; and, 3) Travel Characteristics.

Member Sandoval referenced riders who make \$10,000 or below and asked if VTA has data that illustrates what types of fares (i.e. monthly pass, Eco pass) they use to ride the system. She also requested that staff present this information at the next COA presentation to the Transit Planning and Operations Committee (TP&O). Mr. Connolly noted that the information is available and stated that he will provide the data to the TP&O Committee.

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Member Gage referenced the slide entitled, “Transit Characteristic,” and inquired as to why 47% of the riders surveyed used transit for three years and discontinued using it after that time. Mr. Connolly responded that this information is not readily available given that these individuals no longer use transit. He noted that the Market Segmentation Analysis will provide some of this data.

Mr. Connolly introduced Chris Wornum and Andrew Tang, Consultants from Cambridge Systematics, who presented a PowerPoint presentation entitled, “Comprehensive Operations Analysis (COA) Market Segmentation,” highlighting the following: 1) Market-Based Planning; 2) Understanding Traveler Attitudes; 3) Attitude-Based Survey Results; 4) Grouping Statements into Factors; 5) Seven Key Transportation Factors; 6) Key Transportation Factors; 7) Market Segmentation Analysis Findings; 8) Market Share; 9) Segment Profile- Transit Tripper; 10) Segment Profile- Movers and Shakers 11) Competitive Positioning Transit; 12) Transit Competitive Factor (TCF); 13) Transit Competitive Factor- Origins; 14) Transit Competitive Factor- Destinations; 15) Proposed Core Service Area; and, 16) Market Analysis Summary. Mr. Connolly also referenced a hand-out entitled, “Customer Information by Market Segment Comprehensive Analysis (COA) Market Analysis,” and noted that members can use it as reference during the presentation.

Chairperson Chu left his seat at 10:59 a.m.

Vice-Chairperson Kniss presided over the meeting.

Chairperson Chu took his seat at 11:01 a.m. and presided over the meeting.

Member McHugh left his seat at 11:01 a.m.

Member Macias inquired about whether the survey included a threshold of how far an individual would walk to a transit stop. Mr. Tang responded, “yes”.

Members Liccardo and Gage left their seats at 11:27 a.m.

Member Liccardo took his seat at 11:30 a.m.

Member Liccardo asked if the proposed core area incorporates transit competitive origins and destinations. He also inquired about the data source for the transit competitive factor. Mr. Tang responded that the proposed core area does incorporate both transit competitive origins and destinations. He added that the transit competitive factor seeks to determine where a lot of people go and where a lot people come from.

Mr. Connolly and Mr. Tang presented a PowerPoint presentation entitled, “Comprehensive Operations Analysis (COA) Case Study: Line 68 Gilroy- SJ Diridon,” that highlighted the following: 1) Line 68 Corridor; 2) Line 68 Boardings and Alightings; 3) Line 68 2006 Passenger Survey; 4) Line 68 Corridor- Origins; 5) Line 68 Corridor- Transit Competitive Origins; 5) Line 68 Corridor- Destinations; 6) Line 68 Corridor- Transit Competitive Destinations; and, 7) Line 68 Corridor- Market Analysis Conclusions.

Member Cortese left his seat at 11:45 a.m.

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Mr. Connolly presented a PowerPoint presentation entitled, “Comprehensive Operations Analysis (COA) Case Study: Line 38 Branham” that highlighted the following: 1) Line 38 Corridor; 2) Line 38 Boardings and Alightings; 3) Line 38 2006 Passenger Survey; 4) Line 38 Corridor- Origins; 5) Line 38 Corridor- Transit Competitive Origins; 5) Line 38 Corridor- Destinations; 6) Line 38 Corridor- Transit Competitive Destinations; and, 7) Line 38 Corridor- Market Analysis Conclusions.

Mr. Connolly displayed a PowerPoint Presentation entitled, “Comprehensive Operations Analysis (COA) Upcoming Activities,” listing the next steps and upcoming activities for the COA.

Member Sellers referenced the “Movers and Shakers” customer segment and asked what percentage of these individuals are riding a transit mode other than bus. He added that “Transit Tolerance” is a key factor in the market segmentation analysis. He queried about the possibility of modifying the six current customer segments into three segments that include: 1) Transit Tripper; 2) Mellow Movers; and, 3) LINKs and MINKs, Boomers and Blazers, Young and Restless, and Movers and Shakers. Mr. Connolly responded that most of these individuals are riding light rail and/or Caltrain. He added that transit tolerance is key factor and VTA needs to develop a service and product that better appeals to the existing market.

Member Sandoval left her seat at 11:52 a.m.

Alternate Member McHugh referenced the slide entitled, “Line 38 Corridor- Market Analysis Conclusion,” and noted that Line 38 is a prime candidate for discontinuance. He also expressed his support for the COA and noted that it will help VTA develop rules for where it will provide greater service or continue to maintain existing service. Mr. Connolly responded that the current service on the line is not currently appealing to the existing market. He added that another service may have better appeal and staff is in the process of exploring these options. Mr. Burns affirmed Alternate Member McHugh’s comments and noted that the intent of the COA is to place resources where VTA has the most opportunity to serve existing and potential riders.

Member Sandoval took her seat at 11:55 a.m.

Member Macias noted that the working poor, seniors and students need transit options. She asked if VTA has analyzed the use of small buses in areas that have small populations, but still have populations of individuals who need transit options. Mr. Connolly responded that staff will bring forward recommendations that address populations that are not a “one size fits all” approach.

Member Liccardo inquired about how often this analysis will have to take place and asked if VTA should modify the process to take into account where development should occur in areas that VTA expects high ridership. Mr. Connolly responded that the COA has a 5-7 year shelf life. He added the Service Design Guidelines and Transit Sustainability Policy address the development issues.

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Member Kniss highlighted the Marguerite Shuttle between the Palo Alto Caltrain Station and Stanford University. She added that VTA should analyze the use of smaller buses versus the current large bus fleet. Mr. Burns noted that the COA will include the use of smaller community buses.

Member Williams referenced "Transit Tolerance" and noted that staff should identify ways to meet the needs of the community and modify the segments to address the tolerance levels of riders.

Vice-Chairperson Kniss left her seat at 12:02 p.m.  
Alternate Member McHugh left his seat at 12:03 p.m.

Member Sandoval noted that staff will present possible route changes to the Board of Directors by August 30, 2007 for implementation in January 2008. She also noted that the product that VTA produces will have to change.

Chairperson Chu noted that this information will allow VTA to mold its service to serve most people more efficiently. He added that it will allow VTA to attract more riders and increase farebox recovery.

Member Liccardo left his seat at 12:07 p.m.

Mr. Burns noted that the Transit Planning and Operations Committee will receive more details in March 2007, Board of Directors review in April 2007, and it will be brought forward to the Board for final adoption on August 30, 2007.

**On order of Chairperson Chu**, there being no objection, the Comprehensive Operations Analysis Market Analysis was discussed.

**6. ADJOURNMENT**

**On order of Chairperson Chu**, there being no objection, the Board of Directors Workshop Meeting was adjourned at 12:10 p.m.

Respectfully submitted,

Daniel Murillo, Assistant Board Secretary  
VTA Board of Directors

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