



BOARD OF DIRECTORS MEETING

Thursday, September 1, 2011

MINUTES

CALL TO ORDER

The Regular Meeting of the Santa Clara Valley Transportation Authority’s (VTA) Board of Directors was called to order by Chairperson Abe-Koga at 5:32 p.m. in the Board of Supervisors’ Chambers, County Government Center, 70 West Hedding Street, San José, California.

1. ROLL CALL

Attendee Name	Title	Status
Margaret Abe-Koga	Chairperson	Present
Marshall Anstandig	Alternate Board Member	Absent
Xavier Campos	Board Member	Present
Dave Cortese	Ex-Officio Board Member	Present
Rose Herrera	Board Member	Present
Ash Kalra	Board Member	Present
Liz Kniss	Board Member	Present
Rich Larsen	Board Member	Present
Sam Liccardo	Board Member	Present
Jamie Matthews	Alternate Board Member	Absent
Pete McHugh	Alternate Board Member	Absent
Chris Moylan	Board Member	Present
Chuck Page	Board Member	Present
Nancy Pyle	Alternate Board Member	Absent
Chuck Reed	Board Member	Present
George Shirakawa	Alternate Board Member	Absent
Perry Woodward	Board Member	Present
Ken Yeager	Vice Chairperson	Present

* Alternates do not serve unless participating as a Member.

A quorum was present.

Chairperson Abe-Koga noted: 1) The board agenda packet is available on VTA’s website; 2) Those who would like to receive a link to the agenda packet, in lieu of receiving a paper packet, should contact the Board Secretary’s Office; 3) **Agenda Item #2A., Conference with Real Property Negotiators**, was removed from the Closed Session Agenda; and 4) The items scheduled for Closed Session are: a) **Agenda Item #2B., Conference with Real Property Negotiators**; b) **Agenda Item #2C., Existing Litigation - Conference with Legal Counsel**; and c) **Agenda Item #2D., Conference with Labor Negotiators**.

Chairperson Abe-Koga stated anyone wishing to speak to a Closed Session item would be heard at that time.

Nancy Ostrowski, representing Transportation Authority Engineers and Architects Association (TAEA), IFPTE, Local 21 thanked VTA staff for their efforts during the recent contract negotiations, noted the TAEA had ratified the contract by 97 percent, and encouraged the Board to approve the tentative labor agreement.

Steve Barber, Assistant Chief Steward, Service Employees International Union (SEIU), Local 521 thanked the Board and staff for their efforts and encouraged the Board to approve the tentative labor agreement. He noted the negotiations were a good example of what could be accomplished with collective bargaining.

Ron Roberts, Chief Steward, SEIU thanked the Board, staff, and the SEIU negotiating team for their efforts and encouraged the Board to approve the tentative labor agreement. He noted 93% of the SEIU membership voted to ratify the agreement.

2. RECESSED TO CLOSED SESSION at: 5:37 p.m.

Board Member Herrera arrived at the meeting and entered closed session at 5:47 p.m.

A. (Removed from the Agenda.)

Conference with Real Property Negotiators
[Government Code Section 54956.8]

Property: 1610, 1620, 1630, 1640, 1650 Berryessa Road, San José, CA

Agency Negotiator: Bijal Patel, Deputy Director, Property Development & Management

Negotiating Parties: John W. Jordan, UBS Realty Investors LLC, on behalf of San Jose V Investors LLC

Under Negotiation: Price and terms of payment

B. Conference with Real Property Negotiators
[Government Code Section 54956.8]

Property: 2365 Quimby Road, San José, CA

Agency Negotiator: Bijal Patel, Deputy Director, Property Development & Management

Negotiating Parties: Gregg O. Dawley, Kearny Real Estate Company, on behalf of MS Kearney CT 1, LLC

Under Negotiation: Price and terms of payment

C. Existing Litigation - Conference with Legal Counsel

[Government Code Section 54956.9(a)]

Name of Case: Santa Clara Valley Transportation Authority v. BRCP-Landmark, LLC, et al. (Santa Clara Superior Court No.: 1-10-CV-182021)

- D.** Conference with Labor Negotiators
[Government Code Section 54957.6]

VTA Designated Representatives:

Joseph Smith, Chief Financial Officer
Bill Lopez, Chief Administrative Officer
Robert L. Escobar, Human Resources Manager

Employee Organizations:

American Federation of State, County and Municipal Employees (AFSCME), Local 101
Service Employees International Union (SEIU), Local 521
Transportation Authority Engineers and Architects Association (TAEA), IFPTE,
Local 21

RECONVENED TO OPEN SESSION at: 6:12 p.m.

3. CLOSED SESSION REPORT

A. (Removed from the Agenda.)

Conference with Real Property Negotiators
[Government Code Section 54956.8]

Property: 1610, 1620, 1630, 1640, 1650 Berryessa Road, San José, CA

Agency Negotiator: Bijal Patel, Deputy Director, Property Development & Management

Negotiating Parties: John W. Jordan, UBS Realty Investors LLC, on behalf of San Jose V Investors LLC

Under Negotiation: Price and terms of payment

- B.** Conference with Real Property Negotiators
[Government Code Section 54956.8]

Property: 2365 Quimby Road, San José, CA

Agency Negotiator: Bijal Patel, Deputy Director, Property Development & Management

Negotiating Parties: Gregg O. Dawley, Kearny Real Estate Company, on behalf of MS Kearney CT 1, LLC

Under Negotiation: Price and terms of payment

Kevin Allmand, General Counsel, stated there was no reportable action taken during Closed Session.

C. Existing Litigation - Conference with Legal Counsel
[Government Code Section 54956.9(a)]

Name of Case: Santa Clara Valley Transportation Authority v. BRCP-Landmark, LLC, et al. (Santa Clara Superior Court No.: 1-10-CV-182021)

Mr. Allmand stated there was no reportable action taken during Closed Session.

D. Conference with Labor Negotiators
[Government Code Section 54957.6]

VTA Designated Representatives:

Joseph Smith, Chief Financial Officer
Bill Lopez, Chief Administrative Officer
Robert L. Escobar, Human Resources Manager

Employee Organizations:

American Federation of State, County and Municipal Employees (AFSCME), Local 101
Service Employees International Union (SEIU), Local 521
Transportation Authority Engineers and Architects Association (TAEA), IFPTE,
Local 21

Mr. Allmand stated there was no reportable action taken during Closed Session.

4. Negotiated Labor Agreements

Public Comment

Tammy Dhanota, VTA SEIU Chairperson, thanked the Board for its consideration of the tentative labor agreement, noting the positive benefits of collective bargaining when all parties are willing to act in good faith. Ms. Dhanota stated SEIU members took the lead in making the agreed upon sacrifices due to their belief in VTA. She then noted the importance that all VTA employees share those sacrifices.

M/S/C (Kniss/Herrera) to authorize the General Manager to approve and formally adopt the amended successor labor agreement negotiated between the Santa Clara Valley Transportation Authority (VTA) and Service Employees International Union (SEIU), Local 521.

Public Comment

Mark DeLong, VTA TAEA President, thanked the Board for its consideration. He noted the TAEA and staff had worked hard to develop an agreement that would address the long term fiscal stability of the agency and provide fair and equitable treatment of employees.

NOTE: M/S/C MEANS MOTION SECONDED AND CARRIED AND, UNLESS OTHERWISE INDICATED, THE MOTION PASSED UNANIMOUSLY.

M/S/C (Liccardo/Page) to authorize the General Manager to approve and formally adopt the amended successor labor agreement negotiated between the Santa Clara Valley Transportation Authority (VTA) and Transportation Authority Engineers and Architects Association (TAEA), IFPTE, Local 21.

Board Member Page left the meeting at 6:20 p.m.

5. PUBLIC PRESENTATIONS

Greg Flowers, Interested Citizen, requested a two-to-three-hour extension of Bus Line 27 to enable connections to other bus lines running during that period.

VTA employees Terry L. Russell and Glenn Bellamy addressed the Board to express concerns over bus passenger misconduct and the use of racially-based, derogatory names when addressing VTA bus drivers. It was noted that: 1) The incidents were brought to the attention of the Joint Safety Committee; 2) There appears to have been no follow-up to the Security Incident Reports the drivers were directed to submit; and 3) VTA needs to ensure its employees are not subjected to derogatory or racially-based comments. Mr. Russell requested that a specific passenger be prohibited from riding VTA-operated vehicles. Messrs. Russell and Bellamy requested that VTA ensure that its employees be treated with the respect they deserve.

Board Member Kniss expressed concern with the report and requested the General Manager and Legal Staff follow-up on these incidents. Michael T. Burns, General Manager, noted staff would report back to the Board, Messrs. Russell and Bellamy and the other operators involved.

Roland LeBrun, Interested Citizen, reported on the untimely connection between Caltrain and the Mountain View Light Rail at Diridon Station. Mr. LeBrun suggested utilizing Clipper data to both understand and help resolve connection issues between Light Rail and Caltrain.

6. HEARING - NOTICE OF INTENTION TO ADOPT RESOLUTIONS OF NECESSITY

Chairperson Abe-Koga stated this was a hearing regarding the intention of the Board to adopt Resolutions of Necessity (RONs) for certain property interests in connection with the Capitol Expressway Light Rail (CELR) Phase I Project (Project). She noted the RONs for the properties owned by the County of Santa Clara and BP West Coast Products had been removed from the agenda and would not be heard at the current meeting.

Bijal Patel, Deputy Director of Property Development, provided a PowerPoint presentation highlighting the Right of Way (ROW) Acquisition Process and the RONs Hearing, including: 1) Appraisal Process; 2) Negotiations; 3) Resolution of Necessity; and 4) Legal Proceedings.

Ken Ronsse, Deputy Director Construction, provided a PowerPoint presentation on the CELR Project and highlighted the project will be implemented in phases: a) Phase 1 – Pedestrian and Bus Improvements; and b) Phase 2 – Light Rail Improvements. He discussed the project overview for CELR Phase I and provided maps of the existing

Eastridge Transit Center. He briefly discussed the proposed enhancements, which will improve pedestrian access and bus operations.

Ms. Patel discussed the CELR Phase I project schedule and stated the importance of meeting the deadlines in order to satisfy requirements imposed by the California Transportation Commission (CTC). She noted any delay to the RONS results in funding risk of missing allocation request in FY12.

Ms. Patel reported on the status of acquisitions for the CELR Phase I noting that offers to all six (6) property owners were made and attempts to negotiate commenced in May/June 2011.

Ms. Patel reported a resolution had been reached with the County of Santa Clara for the property identified as CP236; and a settlement offer was reached with BP West Coast Products, LLC (BP) property identified as CP 244. Therefore, these two properties were removed from this agenda and are not part of the hearing.

Ms. Patel noted Pacific Gas & Electric indicated they would prefer that VTA move forward for the property identified as CP237, due to the lengthy California Public Utilities Commission (CPUC) approval process.

Ms. Patel reported there were two property owners impacted on the Eastridge Transit Center: 1) Eastridge Shopping Center (“Eastridge”) and 2) Macy’s Secondary Real Estate, Inc. (“Macy’s”). Ms. Patel stated that offers were made to the two property owners on May 5, 2011. She reported VTA has attempted good faith negotiations with both property owners since that date.

Ms. Patel identified for the record the key forward findings the Board is making in adopting the resolutions. She noted with all of the key board findings there is sufficient information for the Board to make a decision.

Ms. Patel stated that there were no findings that the Board needed to make related to valuation and that valuation should not be a consideration on whether to adopt the RONS.

Ms. Patel reminded the Board the four properties that are the subject of the hearing are: 1) Pacific Gas and Electric; 2) Eastridge Shopping Center, LLC; 3) Macy’s Secondary Real Estate, Inc.; and 4) MS Kearny CT 1. She reported VTA has attempted good faith negotiations with both property owners since May 5, 2011.

Kevin Kemper, Esq., Gordon Kemper LLP, attorney for General Growth Properties (General Growth), affiliated entities of Eastridge Shopping Center (Eastridge), reported that General Growth was not opposed to the project nor did they wish to stand in the way. He noted: 1) General Growth wants to be compensated to ensure they are made whole, as indicated in the Fifth Amendment 2) Before General Growth can negotiate with VTA they need to know what is being negotiated and what the impact will be on Eastridge; 3) General Growth expressed concern about the business impacts and costs associated with loss of parking; and 4) General Growth relayed their belief that VTA did not satisfy the statutory requirements for the pre-condemnation.

Upon inquiry of Board Member Moylan, Ms. Patel noted VTA retained expert consultants who performed a detailed analysis. Ms. Patel reported: 1) VTA can only analyze the existing improvements on any given property for which acquisitions are being acquired; 2) VTA cannot value future plans that may not be permitted; and 3) The appraisers have looked at what has already been approved for Eastridge, which shows they do have excess parking per the code requirement.

Ms. Patel noted the confusion between VTA and the property owners may be because the property owners are referring to future plans that may not be part of the approved entitlements.

Board Member Herrera noted: 1) her support of the project; 2) the effort that went into obtaining funding to initiate Phase 1; 3) the benefit to Eastridge due to increased foot traffic once the light rail is built; 4) the improvements will be very significant for the safety of pedestrians and bicyclists; 5) acknowledged legal obligations of Eastridge to its tenants; and 6) requested staff further investigate parking issue.

David A. Battaglia, Gibson, Dunn & Crutcher LLP, representing General Growth and Eastridge, noted there were two options from a business standpoint: 1) allow the parties the next five-week period to discuss and try to negotiate a resolution, which will not affect funding; or 2) a finding of condemnation that will result in serious financial damages of tens of millions of dollars.

Mr. Battaglia requested that the Board instruct staff to continue good faith negotiations with General Growth.

Ms. Patel reviewed the acquisition activities related to General Growth.

Upon inquiry of Board Members, Mr. Ronsse and Ms. Patel reviewed the adverse impacts to funding if the CTC critical April 2012 deadline is not met. Ms. Patel noted CTC requires VTA to submit the right-of-way certification package in February 2012. This means that VTA should have possession of property and have gone through the five to six months process of condemning the property.

Mr. Allmand stated that to gain possession, once the complaint is filed, there must be a motion, a deposit of the amount of the offer, and all of the defendants must be served. After the defendants are served, there is a 90-day window before the hearing and once the hearing is held if the order for possession is issued by the court there is an additional 30-day wait before VTA can take possession of the property.

Mr. Burns stated VTA staff has every intention of participating in negotiations, after the Resolutions of Necessity have been approved, with the goal of trying to reach an agreement.

Gerry Houlihan, Matteoni O'Laughlin & Hechtman, representing Macy's, Inc. reported Macy's concerns are: mall operation, future growth, and unintended consequences. He noted Macy's owns its parcel, has the right to expand another 115,000 square feet, and through this action VTA is preventing Macy's ability to plan and expand. Mr. Houlihan stated for every 5 parking spaces lost on the site, Macy's loses 5,000 square feet for expansion.

Board Member Campos questioned whether the easement would be needed in Macy's plan for expansion. Mr. Houlihan stated his concern was with parking spaces. He noted once General Growth's 129 parking spaces are surpassed Sears and Macy's parking space allotment is affected.

M/S (Kniss/Yeager) to close the Hearing and adopt Resolutions of Necessity determining that the public interest and necessity require the acquisition of property interests from four parcels owned by: Pacific Gas & Electric Co.; Eastridge Shopping Center, LLC; MS Kearny CT 1, LLC; and Macy's Secondary Real Estate, Inc. located in San José, California for the Capitol Expressway Light Rail Phase I Project.

Board Member Herrera noted her concern with regard to the unintended consequences and questioned whether there would be time to negotiate prior to filing for condemnation. She suggested a friendly amendment to the motion that the court filing be delayed one week to allow a meeting with the parties involved prior to the filing of the condemnation action. Board Members Kniss and Yeager accepted the friendly amendment.

Board Member Reed commented parties can still negotiate and reach a settlement until the final court date.

M/S/C (Kniss/Yeager) to close the Hearing and adopt Resolutions of Necessity determining that the public interest and necessity require the acquisition of property interests from four parcels owned by: Pacific Gas & Electric Co.; Eastridge Shopping Center, LLC; MS Kearny CT 1, LLC; and Macy's Secondary Real Estate, Inc. located in San José, California for the Capitol Expressway Light Rail Phase I Project, with the amendment that the court filing be delayed one week to allow a meeting with the parties involved prior to the filing of the condemnation action. **Motion approved by 11 Board Members.**

Resolution No. 2011.09.22

Property ID/Assessor's Parcel Number/Owner

CP237-01 (APN 491-15-004) owned by Pacific Gas & Electric Co.
CP237-02 (APN 491-15-004) owned by Pacific Gas & Electric Co.

Resolution No. 2011.09.23

Property ID/Assessor's Parcel Number/Owner

CP242-01 (APN 491-04-050) owned by Eastridge Shopping Center, LLC
CP242-02 (APN 491-04-050) owned by Eastridge Shopping Center, LLC
CP242-03 (APN 491-04-050) owned by Eastridge Shopping Center, LLC
CP242-04 (APN 491-04-050) owned by Eastridge Shopping Center, LLC
CP242-05 (APN 491-04-050) owned by Eastridge Shopping Center, LLC
CP242-06 (APN 491-04-050) owned by Eastridge Shopping Center, LLC
CP242-09 (APN 491-04-050) owned by Eastridge Shopping Center, LLC

Resolution No. 2011.09.24

Property ID/Assessor's Parcel Number/Owner

CP243-01 (APN 491-48-005) owned by MS Kearny CT 1, LLC
CP243-02 (APN 491-48-005) owned by MS Kearny CT 1, LLC

Resolution No. 2011.09.25

Property ID/Assessor's Parcel Number/Owner

CP359-01 (APN 491-04-007) Macy's Secondary Real Estate, Inc.

Board Member Kniss left her seat at 7:50 p.m.

7. HEARING - NOTICE OF INTENTION TO ADOPT RESOLUTIONS OF NECESSITY

Chairperson Abe-Koga noted this was a hearing regarding the intention of the Board to adopt Resolutions of Necessity for certain property interests in connection with BART Silicon Valley Berryessa Extension Project. She reported that the Resolution for the property located within Upper Penitencia Creek, property identified as B3607 had been deferred to a future meeting.

Ms. Patel provided a PowerPoint highlighting: 1) ROW Acquisition and RON Hearings; 2) Project Overview; 3) Project Schedule; 4) Status of Acquisition Activities; 5) RON Hearing – Key Board Findings; and 6) RON Hearing – Subject Properties.

Ms. Patel noted that two of the properties have heirs that had not been located after reasonable diligence.

M/S/C (Liccardo/Reed) to close the Hearing and adopt Resolutions of Necessity determining that the public interest and necessity require the acquisition of property interest from four parcels owned by: San Jose V Investors, LLC; heirs and/or devisees of Anna Catherine Vennum, located in San José, California; and heirs and/or devisees of Tito de la Rosa, located in Milpitas, California for the BART Silicon Valley Berryessa Extension (SVBX) Project. **Motion approved by 10 Board Members**

Resolution No. 2011.09.26

Property ID/Assessor's Parcel Number/Owner

B2313 (APN 254-17-066) owned by San Jose V Investors LLC
B2313 (APN 254-17-067) owned by San Jose V Investors LLC
B2313 (APN 254-17-068) owned by San Jose V Investors LLC
B2313 (APN 254-17-069) owned by San Jose V Investors LLC
B2313 (APN 254-17-070) owned by San Jose V Investors LLC

Resolution No. 2011.09.27

Property ID/Assessor's Parcel Number/Owner

B2220A-02 (APN – None) owned by Heirs and/or devisees of Tito de la Rosa

Resolution No. 2011.09.28

Property ID/Assessor's Parcel Number/Owner

B2553-01 (APN 245-48-005) owned by Heirs and/or devisees of Anna Catherine Vennum

8. Citizens Advisory Committee (CAC) Chairperson's Report

There was no CAC Report.

9. **Policy Advisory Committee (PAC) Chairperson's Report.**

There was no PAC Report.

Board Member Kniss took her seat at 7:55 p.m.

10. **ORDERS OF THE DAY**

Chairperson Abe-Koga proposed that **Agenda Item #31.**, *Kato Road Grade Separation Construction Contract*, be moved from the Regular Agenda to the Consent Agenda.

Chairperson Abe-Koga noted that Regular Agenda action items would be heard in advance of the information items, in the following order: 1) **Agenda Item #28.**, *SVBX Project Labor Agreement*; 2) **Agenda Item #29.**, *2001 Sales Tax Revenue Refunding CTFA Bonds*; 3) **Agenda Item #27.**, *BART Silicon Valley Program Update*; and 4) **Agenda Item #30.**, *One Bay Area Grant Proposal*.

Chairperson Abe-Koga noted that the meeting would be adjourned in the memory of Randy Tamez, former member and Chair of VTA's Committee for Transit Accessibility (CTA).

Board Member Reed indicated he will abstain from the Consent Agenda per Government Code Section 84308.

M/S/C (**Kniss/Herrera**) on a vote of 10 ayes to 1 abstention to approve the Orders of the Day and the Consent Agenda, including **Agenda Item #31**, *Kato Road Grade Separation Construction Contract*. Board Member Reed abstained per Government Code Section 84308.

CONSENT AGENDA

11. **Regular Meeting Minutes of August 4, 2011**

M/S/C (**Kniss/Herrera**) on a vote of on a vote of 10 ayes to 1 abstention to approve the Board of Directors Regular Meeting Minutes of August 4, 2011. Board Member Reed abstained per Government Code Section 84308.

Administration and Finance Committee

Items submitted for the Consent Agenda by the Administration and Finance Committee.

12. **Substance Abuse Professional Services Contract**

M/S/C (**Kniss/Herrera**) on a vote of 10 ayes to 1 abstention to authorize the General Manager to execute a contract with Free Life Enterprises for Substance Abuse Professional Services for a three-year term from November 1, 2011 through October 31, 2014, with options for two one-year extensions. The initial contract amount is \$250,800; the cost for each one-year extension is \$83,600 for a total amount not to exceed \$418,000. Board Member Reed abstained per Government Code Section 84308.

Congestion Management Program and Planning Committee

Items submitted for the Consent Agenda by the Congestion Management Program and Planning Committee.

13. Programmed Project Monitoring - Quarterly Report

M/S/C (Kniss/Herrera) on a vote of 10 ayes to 1 abstention to receive the Programmed Projects Quarterly Monitoring Report for April-June 2011. Board Member Reed abstained per Government Code Section 84308.

14. Proactive CMP Quarterly Report for April – June 2011

M/S/C (Kniss/Herrera) on a vote of 10 ayes to 1 abstention to receive the Proactive CMP Quarterly Report for April through June 2011. Board Member Reed abstained per Government Code Section 84308.

15. VTP Highway Program Semi-Annual Report

M/S/C (Kniss/Herrera) on a vote of 10 ayes to 1 abstention to receive the VTP Highway Program Semi-Annual Report. Board Member Reed abstained per Government Code Section 84308.

16. Supporting the Development of a Regional Network of Express Lanes

M/S/C (Kniss/Herrera) on a vote of 10 ayes to 1 abstention to adopt a position to support the Metropolitan Transportation Commission's (MTC) application to the California Transportation Commission to gain authority to implement express lanes in the Bay Area with the following conditions: (1) The VTA Board of Directors' authority to develop, implement, own and operate express lanes and approve revenue expenditure plans within Santa Clara County is not superseded or diminished by the authority being sought by MTC under AB 1467; and (2) The Regional Transportation Plan, approved by MTC, includes all express lane corridors consistent with the Valley Transportation Plan approved by the VTA Board of Directors. Board Member Reed abstained per Government Code Section 84308.

17. Project Readiness Initiative

M/S/C (Kniss/Herrera) on a vote of 10 ayes to 1 abstention to approve extension of the term of the Project Readiness Initiative Program until all of the approved funding is depleted or June 30, 2013, whichever occurs first. Board Member Reed abstained per Government Code Section 84308.

18. I-680 Express Lanes Update

M/S/C (Kniss/Herrera) on a vote of 10 ayes to 1 abstention to receive update on I-680 Express Lane project. Board Member Reed abstained per Government Code Section 84308.

19. Update on Regional and Local Long Range Planning Activities

M/S/C (Kniss/Herrera) on a vote of 10 ayes to 1 abstention to receive an update on the

Valley Transportation Plan, Regional Transportation Plan and Sustainable Communities Strategy activities. Board Member Reed abstained per Government Code Section 84308.

Transit Planning and Operations Committee

Items submitted for the Consent Agenda by the Transit Planning and Operations Committee.

20. Laser Intrusion Detection System at the Hamilton Elevated Guideway – Construction Contract

M/S/C (Kniss/Herrera) on a vote of 10 ayes to 1 abstention to authorize the General Manager to execute a contract with Amland Corporation, the lowest responsive and responsible bidder, in the amount of \$447,700 for the procurement and installation of a Laser Intrusion Detection System at the Hamilton Elevated Guideway. Board Member Reed abstained per Government Code Section 84308.

21. Capitol Expressway Light Rail Project Pedestrian Improvements – Amendment to the Construction Contract

M/S/C (Kniss/Herrera) on a vote of 10 ayes to 1 abstention to authorize the General Manager to amend the Capitol Expressway Light Rail Pedestrian Improvements construction contract with Gordon N. Ball Inc. to include the lighting improvements in the amount of \$2,250,000 for a new contract amount of \$9,916,860. Board Member Reed abstained per Government Code Section 84308.

22. Silicon Valley Berryessa Extension Master Agreement Between VTA and the City of Milpitas: Amendment No. 1

M/S/C (Kniss/Herrera) on a vote of 10 ayes to 1 abstention to authorize the General Manager to execute an amendment to the existing Master Agreement with the City of Milpitas regarding infrastructure improvement work to be performed by VTA on a cooperative basis with the City of Milpitas as part of the BART Silicon Valley Berryessa Extension Project and cost reimbursement to the City of Milpitas in support of the BART Silicon Valley Berryessa Extension Project. Board Member Reed abstained per Government Code Section 84308.

23. Trade Zone Boulevard Utility Cooperative Agreement Between VTA and the City of San José

M/S/C (Kniss/Herrera) on a vote of 10 ayes to 1 abstention to authorize the General Manager to enter into a cooperative agreement with the City of San José regarding utility relocations within Trade Zone Boulevard in support of the BART Silicon Valley Berryessa Extension Project. Board Member Reed abstained per Government Code Section 84308.

31. Kato Road Grade Separation – Construction Contract

M/S/C (Kniss/Herrera) on a vote of 10 ayes to 1 abstention to authorize the General Manager to execute a contract with Gordon N. Ball, the lowest responsive and responsible bidder, in the amount of \$22,145,770 for the construction of the Kato Road Grade Separation. Board Member Reed abstained per Government Code Section 84308.

Audit Committee

The Audit Committee did not meet in August 2011.

CEREMONIAL ITEMS/SPECIAL REPORTS

24. AWARDS AND COMMENDATION

(Deferred to October 6, 2011 Board Meeting.)

Employees of the Month for September 2011

Recognize Eric Rosenberg, Transit Service Development Specialist II, River Oaks; Jason Finstad, Transit Mechanic, Chaboya Maintenance; and Akihiro Terasawa, Coach Operator, North Division as Employees of the Month for September 2011.

25. REPORT FROM THE GENERAL MANAGER

Mr. Burns stated he would provide a written report to the Board.

26. REPORT FROM THE CHAIRPERSON

Chairperson Abe-Koga reported: 1) on Friday, August 12, 2011, she represented VTA at the San José Jazz Festival; and 2) VTA has prepaid the Other Post Employment Benefits (OPEB) and Amalgamated Transit Union (ATU) pension funds. She noted this was one of the recommendations from the VTA Ad-Hoc Financial Recovery Committee.

REGULAR AGENDA

28. **Silicon Valley Berryessa Extension Project Labor Agreement**

Carolyn Gonot, Chief SVRT Program Officer, noted staff had presented this item to each of the board standing committees in September.

Dennis Ratcliffe, SVRT Deputy Project Manager, provided the staff report and informed the Board that staff would be making a minor, technical change to the last paragraph of Section 14.7 to clarify that the potential use of 4/10 shifts must conform not only to California Prevailing Wage Law, but also to all applicable California Laws. The revision will delete the specific reference to the California Prevailing Wage Law and make a broader reference to California Law in general.

Board Member Kalra left the meeting at 7:45 p.m.

Mr. Ratcliffe introduced Neil Struthers, Chief Executive Officer of the Santa Clara and San Benito Counties Building & Construction Trades Council. Mr. Struthers stated: 1) A Project Labor Agreement (PLA) makes sense for a five-year project; 2) In the next 24 months 16 different collective bargaining agreements within the building trades will expire and have to be renegotiated, which would affect effect this type of project; 3) Hundreds of thousands of dollars in savings can be generated from the standardized holidays; 4) The agreements are a progressive way to deal with construction industry

issues; and 5) Organizing the construction industry reduces collateral damage.

Board Member Larsen noted his agreement with all of the fundamental reasons for moving forward with the PLA. He reported he had received multiple comments from non-union contractors stating the PLA was unfair and questioned whether there was a way to make the non-union workers feel a part of the process. He further asked about the percentage of non-union membership within the Santa Clara County PLA

Mr. Ratcliffe noted the PLA does not preclude any contractor from participating. There is a mechanism within the PLA that allows contractors to refer core staff and have larger access to labor by drawing from the labor pool. Mr. Struthers noted non-union labor is approximately 20 percent and that non-union contractors are encouraged to participate.

Board Member Herrera noted her support of the PLA and the importance for small and minority businesses to get involved with the PLA. She expressed concern with monies paid by the non-vesting workers staying in the funds. Mr. Struthers stated small businesses can use their core group of employees and expand their workforce using the labor hall workers. He further stated this is a prevailing wage job, with the costs already factored into the project. He added there are vesting requirements in the pension funds and a trust fund is set up for healthcare and pension. Each employee can set up a healthcare and retirement account and if a worker does not make the hours to vest on one project, they have the ability to apply for another project at a later date. He noted the idea that the non-union workers do not get benefits is misleading, because two levels of benefits cannot be created without threat of lawsuit.

Public Speakers

Eric Christian, Executive Director, Coalition for Fair Employment in Construction, spoke on: 1) the banning of PLAs in the County of San Diego; 2) a six-part series on PLAs in the Los Angeles Times; 3) his belief that PLAs are exclusionary; and 4) non-union workers paying into a union benefit program and not receiving benefits.

Jose Radzinsky, Local Contractor, spoke against PLAs.

Dick Johnson, Concerned Citizen, spoke against PLAs and against non-union workers paying into a union benefit program and not receiving benefits.

Nicole Goehring, Associated Builders and Contractors (ABC), spoke against PLAs. She requested the Board: 1) amend the PLA to be more inclusive of small and/or minority businesses; 2) allow contractors to use their own employees and their own benefits program if equal or greater to the PLAs; and 3) include state apprenticeship programs.

Matt Heavey, Pacific Coast Reconstruction and Building, Inc., spoke against PLAs and against non-union workers paying into a union benefit program and not receiving benefits. He noted the importance of not excluding small businesses.

Nancy Ostrowski, IFPTE, Local 21, noted the IFPTE members stand in solidarity with the building trades to approve the Berryessa PLA. She defined Local 21's successful involvement in the San José International Airport Expansion PLA.

Connie Norlander, ABC, spoke against PLAs. She noted her employees would never

receive a return from the monies paid into a PLA benefits program.

Mr. Struthers refuted statements made by the speakers representing the ABC.

Board Member Larsen suggested an alternative approach to the PLA: 1) make dues and fees refundable to non-union workers; 2) enable non-union contractors to use their core workforce; and 3) enable non-union apprenticeships. He noted this is not a union issue, but a moral issue. Board Member Larsen questioned staff if the agreement could be modified.

Mr. Ratcliffe noted VTA has been upfront with the contracting community about its intent to use a PLA. He noted staff spent many months negotiating the PLA. Mr. Allmand added staff has to evaluate the legal ramifications if the PLA language is changed.

Board Members Campos, Kniss, Reed, and Moylan expressed support for the PLA noting the benefits of the PLA as seen in other projects in the Santa Clara County. They added the Federal Government supports PLAs.

Board Member Larsen made a motion to approve the item with the amendments: 1) make dues and fees refundable to non-union workers; 2) enable non-union contractors to use their core workforce; and 3) enable non-union apprenticeships. Without a second, the motion failed.

M/S/C (Moylan/Campos) on a vote of 9 Ayes to 1 No to adopt **Resolution No. 2011.09.29** for a resolution of findings that use of a Project Labor Agreement for the Line, Track, Stations and Systems Design-Build contract (VTA contract C700) of the Silicon Valley Berryessa Extension Project will ensure the availability and stability of labor resources throughout the duration of the project; and authorize the General Manager to enter into a Project Labor Agreement with the Santa Clara & San Benito Counties Building & Construction Trades Council for the Line, Track, Stations and Systems Design-Build contract of the Silicon Valley Berryessa Extension Project. Board Member Larsen opposed.

Chairperson Abe-Koga stated that 1) **Agenda Item #27.**, *BART Silicon Valley Program Update*; and 2) **Agenda Item #30.**, *OneBayArea Grant Proposal*, would be deferred to the October 6, 2011, Board of Directors meeting.

Board Member Kniss left the meeting at 8:49 p.m.

Administration and Finance Committee - Liz Kniss

Items submitted for the Regular Agenda by the Administration and Finance Committee.

29. 2011 Sales Tax Revenue Refunding CTFB Bonds

Joseph T. Smith, Chief Financial Officer, provided the staff report.

M/S/C (Liccardo/Larsen) to adopt **Resolution No. 2011.09.30** authorizing the General Manager or Chief Financial Officer to take all necessary actions, enter into agreements and execute documents for VTA to issue refunding bonds in a par amount not to exceed

\$60 million via a competitive or negotiated method of sale, the proceeds of which will refund VTA's Junior Lien Sales Tax Revenue Bonds, 1998 Series A Bonds and Junior Lien Sales Tax Revenue Bonds, 2000 Series A Bonds and to pay the cost of issuance.

27. (Deferred to October 6, 2011, Board of Directors Meeting)

Receive Silicon Valley Rapid Transit (SVRT) Program Update.

Congestion Management Program and Planning Committee - Chuck Page

Items submitted for the Regular Agenda by the Congestion Management Program and Planning Committee.

30. (Deferred to October 6, 2011, Board of Directors Meeting.)

Discuss Metropolitan Transportation Commission's "One Bay Area" Grant proposal in the context of the VTA Board's adopted Regional Transportation Plan/Sustainable Communities Strategies (RTP/SCS) principles.

Transit Planning and Operations Committee - Rich Larsen

Items submitted for the Regular Agenda by the Transit Planning and Operations Committee.

31. (Removed from the Regular Agenda and placed on the Consent Agenda.)

Authorize the General Manager to execute a contract with Gordon N. Ball, the lowest responsive and responsible bidder, in the amount of \$22,145,770 for the construction of the Kato Road Grade Separation.

Audit Committee - Rose Herrera

The Audit Committee did not meet in August 2011.

OTHER ITEMS

32. ITEMS OF CONCERN AND REFERRAL TO ADMINISTRATION

There were no Items of Concern and Referral to Administration.

33. Monthly Legislative History Matrix

On order of Vice Chairperson Abe-Koga and there being no objection, the Monthly Legislative History Matrix was accepted as contained in the Agenda Packet.

34. REPORTS (UNAPPROVED MINUTES) FROM STANDING COMMITTEES

A. Administration and Finance Committee

On order of Chairperson Abe-Koga and there being no objection, the August 18, 2011 Administration and Finance Committee Minutes were accepted as contained in the Agenda Packet.

B. Congestion Management Program and Planning Committee

On order of Chairperson Abe-Koga and there being no objection, the August 19, 2011 Congestion Management Program and Planning Committee Minutes were accepted as contained on the dais.

C. Transit Planning and Operations Committee

On order of Chairperson Abe-Koga and there being no objection, the August 18, 2011 Transit Planning and Operations Committee Minutes were accepted as contained on the dais.

D. Audit Committee

There was no report from the Audit Committee.

35. REPORTS (UNAPPROVED MINUTES) FROM ADVISORY COMMITTEES

A. Committee for Transit Accessibility (CTA)

There was no report from the Committee for Transit Accessibility (CTA).

B. Citizens Advisory Committee (CAC) and 2000 Measure A Citizens Watchdog Committee (CWC)

On order of Chairperson Abe-Koga and there being no objection, the August 10, 2011 Citizens Advisory Committee (CAC) and 2000 Measure A Citizens Watchdog Committee (CWC) Minutes were accepted as contained in the Agenda Packet.

C. Bicycle & Pedestrian Advisory Committee (BPAC)

On order of Chairperson Abe-Koga and there being no objection, the August 10, 2011 Bicycle & Pedestrian Advisory Committee (BPAC) Minutes were accepted as contained in the Agenda Packet.

D. Technical Advisory Committee (TAC)

On order of Chairperson Abe-Koga and there being no objection, the August 11, 2011 Technical Advisory Committee (TAC) Minutes were accepted as contained in the Agenda Packet.

E. Policy Advisory Committee (PAC)

On order of Vice Chairperson Abe-Koga and there being no objection, the August 11, 2011 Policy Advisory Committee (PAC) were accepted as contained in the Agenda Packet.

36. REPORTS FROM JOINT POWERS BOARDS (JPBs) & REGIONAL COMMISSIONS

A. Peninsula Corridor JPB

Public Comment

Eugene Bradley, Silicon Valley Transit Users, questioned Caltrain's operating contract with Transit America. Chairperson Abe-Koga noted that Jim Lawson, Executive Policy Advisor, would respond to Mr. Bradley.

On order of Vice Chairperson Abe-Koga and there being no objection, the Summary Notes from the September 1, 2011 Peninsula Corridor Joint Powers Board were accepted as contained on the dais.

B. Capitol Corridor JPB

There was no report from the Capitol Corridor Joint Powers Board.

C. Dumbarton Rail Corridor Policy Committee

There was no report from the Dumbarton Rail Corridor Policy Committee.

D. Metropolitan Transportation Commission (MTC)

There was no report from the Metropolitan Transportation Committee.

E. Sunol Smart Carpool Lane Joint Powers Authority

There was no report from the Sunol Smart Carpool Lane Joint Powers Authority.

F. SR 152 Mobility Partnership

There was no report from the SR 152 Mobility Partnership.

37. REPORTS FROM VTA POLICY ADVISORY BOARDS (PABs)

A. Diridon Station Joint Policy Advisory Board

There was no report from the Diridon Station Joint Policy Advisory Board.

B. Downtown East Valley PAB

There was no report from the Downtown East Valley PAB.

C. El Camino Real Rapid Transit PAB

There was no report from the El Camino Real Rapid Transit PAB.

D. Silicon Valley Rapid Transit Corridor & BART Warm Springs Extension PAB

There was no report from the Silicon Valley Rapid Transit Corridor & BART Warm Springs Extension PAB.

38. ANNOUNCEMENTS

There were no announcements.

39. ADJOURNMENT

On order of Chairperson Abe-Koga and there being no objection, the meeting was adjourned at 9:00 p.m. in memory of Randy Tamez, former CTA Chairperson and advocate for persons with disabilities.

Respectfully submitted,

Susan E. Garcia, Board Assistant
VTA Office of the Board Secretary