



**BOARD OF DIRECTORS MEETING**

**Thursday, November 3, 2011**

**5:30 P.M.**

**MINUTES**

In the absence of a Chairperson or Vice Chairperson, Kevin Allmand, General Counsel, instructed the Board to appoint a Chairperson Pro Tempore.

M/S/C (Kalra/Herrera) to appoint Board Member Liccardo as Chairperson Pro Tempore.

**CALL TO ORDER**

The Regular Meeting of the Santa Clara Valley Transportation Authority (VTA) Board of Directors was called to order by Chairperson Pro Tempore Liccardo at 5:36 p.m. in the Board of Supervisors’ Chambers, County Government Center, 70 West Hedding Street, San José, California.

**1. ROLL CALL**

<b>Attendee Name</b>	<b>Title</b>	<b>Status</b>
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	Present
Pete McHugh	Alternate Board Member	Present
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	Absent

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

**A quorum was present.**

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

**2. AWARDS AND COMMENDATION**

**A. Employees of the Month for November 2011**

Chairperson Pro Tempore Liccardo recognized and presented an award to Mark Osburn, Management Analyst, River Oaks Administration; Gilbert Negrete, Light Rail Operator, Guadalupe Division; and Daniel Bower, Service Worker, North Division (Maintenance) as Employees of the Month for November 2011; and Russell Anderson, Maintenance Training Supervisor, Chaboya, as Supervisor of the Quarter for the fourth quarter of 2011. Daniel Bower and Russell Anderson were unable to attend.

Board Member Larsen took his seat at 5:40 p.m.

**B. Resolution of Commendation for Robert (Bob) Jacobvitz**

**M/S/C (Kalra/Larsen)** to adopt a Resolution of Commendation No. 2011.11.32 expressing VTA's appreciation for outgoing Citizens Advisory Committee (CAC) /2000 Measure A Citizens Watchdog Committee (CWC) Member Robert (Bob) Jacobvitz's service and contribution to VTA and the community.

Chairperson Pro Tempore Liccardo recognized and presented the Resolution of Commendation to outgoing CAC/CWC Member Bob Jacobvitz.

**3. Citizens Advisory Committee (CAC) Chairperson's Report**

There was no CAC report.

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

The PAC report was provided as a handout to the Board.

**5. RECESSED TO CLOSED SESSION at: 5:45 p.m.**

Chairperson Abe-Koga arrived at the meeting at 5:56 p.m. and entered Closed Session.

**A. 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

- B.** Conference with Real Property Negotiators  
[Government Code Section 54956.8]
- Property: Fee title purchase of 700 Montague Expressway, Milpitas, CA  
APN 092-08-083
- Agency Negotiator: Bijal Patel, Deputy Director, Property Development &  
Management
- Negotiating Parties: CSS Montague, L.P.
- Under Negotiation: Price and terms of payment

- C.** Conference with Real Property Negotiators  
[Government Code Section 54956.8]
- Property: Partial lease of 2350 Lundy Place, San José, CA 95131,  
Milpitas, CA
- Agency Negotiator: Bijal Patel, Deputy Director, Property Development &  
Management
- Negotiating Parties: Sheet Metal Workers Local 104 & Bay Area Industry  
Training Fund
- Under Negotiation: Price and terms of payment

**RECONVENED TO OPEN SESSION at: 6:08 p.m.**

**6. CLOSED SESSION REPORT**

- A.** 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
- Mr. Allmand stated there was no reportable action taken during Closed Session.
- B.** Conference with Real Property Negotiators  
[Government Code Section 54956.8]
- Property: Fee title purchase of 700 Montague Expressway, Milpitas, CA  
APN 092-08-083
- Agency Negotiator: Bijal Patel, Deputy Director, Property Development &  
Management

Negotiating Parties: CSS Montague, L.P.

Under Negotiation: Price and terms of payment

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

**C. Conference with Real Property Negotiators**

[Government Code Section 54956.8]

Property: Partial lease of 2350 Lundy Place, San José, CA 95131,  
Milpitas, CA

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

Negotiating Parties: Sheet Metal Workers Local 104 & Bay Area Industry  
Training Fund

Under Negotiation: Price and terms of payment

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

**7. Negotiated Labor Agreement**

**M/S/C (Herrera/Larsen)** to authorize the General Manager to approve and formally adopt amended successor labor agreements negotiated between the Santa Clara Valley Transportation Authority (VTA) and American Federation of State, County and Municipal Employees (AFSCME).

**8. 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 Bay Area Rapid Transit (BART) Silicon Valley Berryessa Extension (SVBX) Project.

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) Project Map; 2) Federal New Starts Program Status; 3) Status of Acquisition Activities; 4) RON Hearing – Key Board Findings; and 5) RON Hearing – Subject Property.

Ms. Patel requested anyone wishing to speak on the properties to come forward at that time.

Board Member Moylan referenced correspondence received regarding the Gladding Court properties and confirmed with Ms. Patel that adoption of the resolutions would not prevent further discussions with the property owner.

**M/S/C (Kniss/Larsen)** to close the hearing and adopt Resolutions of Necessity determining that the public interest and necessity require the acquisition of property interests from three properties owned by: Milpitas Mobile Home Estates, LP, located in Milpitas, California; 1523 Gladding Court LLC and 1535 Gladding Court, LLC, located in Milpitas, California; and unknown (property located within Upper Penitencia Creek), located in San José, California for the BART Silicon Valley Berryessa Extension (SVBX) Project. **Motion approved by 10 Board Members.**

**Resolution No. 2011.11.33**

**Property ID/Assessor's Parcel Number/Owner**

B2253-01 (APN 092-08-002 and APN 092-08-003) owned by 1523 Gladding Court LLC and 1535 Gladding Court, LLC

**Resolution No. 2011.11.34**

**Property ID/Assessor's Parcel Number/Owner**

B2078 (APN 022-02-003) owned by Milpitas Mobile Home Estates, LP

**Resolution No. 2011.11.35**

**Property ID/Assessor's Parcel Number/Owner**

B3607-01 (APN – None) owned by Unknown (Property located within Upper Penitencia Creek)

B3607-02 (APN – None) owned by Unknown (Property located within Upper Penitencia Creek)

B3607-03 (APN – None) owned by Unknown (Property located within Upper Penitencia Creek)

**9. PUBLIC PRESENTATIONS**

Eileen Hunter, Interested Citizen, expressed concern over service for the 522 Route.

Board Member Page took his seat at 6:21 p.m.

Russell Haynes, Interested Citizen, expressed concern with the Board adoption of Resolution Number 2011.09.28, *The property owned by Heirs and/or devisees of Anna Catherine Vennum*, identified as B2553-01, at the September 1, 2011, board meeting. He stated that staff did not perform reasonable due diligence in contacting heirs. Jim Lawson, Executive Policy Advisor, directed staff to meet with Mr. Haynes.

Board Member Kniss left her seat at 6:24 p.m.

**10. ORDERS OF THE DAY**

Chairperson Abe-Koga stated Regular Agenda Item #22, *Mission Warren Truck Transfer Facility Programming and Resolution*, would be moved to the Consent Agenda.

Board Member Larsen requested Agenda Item #16, *Habitat Conservation Plan - Final Plan Approach*, be removed from the Consent Agenda and placed on the Regular Agenda.

Chairperson Abe-Koga stated that due to multiple board members recusing themselves on Agenda Item #14, *On-Call Planning, Architectural & Engineering Services*, the item would be removed from the current board agenda and brought back to a future meeting. Mr. Allmand requested that board members identify the firms giving rise to the conflict in advance of this item's placement on a future agenda, so that they may be treated separately, allowing approval of the remainder of the firms.

**Public Comment**

Tom Cervantes, Interested Citizen, expressed concern with the Habitat Conservation Plan (HCP) and the adverse effect construction will have on wildlife and endangered species.

Christophe Courtier, Interested Citizen, expressed concern with the HCP and the adverse effect recreational use will have on wildlife and endangered species. He recommended protective, warning signs be displayed.

M/S/C (**Page/Herrera**) to approve the Orders of the Day and the Consent Agenda.

<b>CONSENT AGENDA</b>
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**11. Regular Meeting Minutes of October 6, 2011**

M/S/C (**Page/Herrera**) to approve the Board of Directors Regular Meeting Minutes of October 6, 2011.

**Administration and Finance Committee**

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

**12. Fiscal Year 2011 Quarterly Statement of Revenues and Expenses for the period ending June 30, 2011**

M/S/C (**Page/Herrera**) to review and accept the Fiscal Year 2011 Quarterly Statement of Revenues and Expenses for the period ending June 30, 2011.

**13. VTA Permit Fee Schedule Revisions**

M/S/C (**Page/Herrera**) to adopt Resolution No. 2011.11.36 amending the VTA Permit Fee Schedule, adjusting fees to be collected for Restricted Access Permits and Construction Access Permits to be consistent with the revision of VTA allocated rates.

**14. (Deferred to a future meeting.)**

**On-Call Planning, Architectural & Engineering Services**

Approve an eligible list of consultants to perform highway planning and engineering, transit engineering, and facilities architecture and engineering services for a variety of projects. The list will be valid for a five-year period.

**15. Equal Employment Opportunity/Affirmative Action Plan**

M/S/C (Page/Herrera) to approve the triennial revision of the Valley Transportation Authority (VTA) Equal Employment Opportunity/Affirmative Action Plan (EEO/AAP) for the period beginning January 1, 2012 through December 31, 2014 in accordance with federal and state civil rights regulatory requirements.

**16. (Moved to the Regular Agenda.)**

Approve proposed revisions to the Draft Habitat Conservation Plan/Natural Community Conservation Plan (Habitat Plan) in order to proceed with preparation of the Final Habitat Plan, Final Environmental Impact Statement/Final Environmental Impact Report (EIS/EIR), and Final Implementing Agreement (IA); 2) Approve recommendation to coordinate with the San Francisco District of the U.S. Army Corps of Engineers (ACOE) to obtain a federal Clean Water Act Section 404 Regional General Permit based upon the Final Habitat Plan; and 3) Approve \$98,749 for Fiscal Year 2011/2012 to incorporate the revisions into the final documents and obtain an ACOE Regional General Permit, resulting in VTA's overall cost allocation for development of the Habitat Plan becoming \$1,118,841.

**Congestion Management Program and Planning Committee**

*The Congestion Management Program and Planning Committee did not meet in October.*

**17. Community Design and Transportation Program – FY 14/15 Capital Grant Award**

M/S/C (Page/Herrera) to approve the project list to program Fiscal Years 2014 - 2015 Community Design & Transportation Program Capital Grant.

**18. Express Lanes Update**

M/S/C (Page/Herrera) to receive a report on the status of Express Lanes projects within Santa Clara County and other Express Lanes efforts within the Bay Area and California.

**Transit Planning and Operations Committee**

*The Transit Planning and Operations Committee did not submit items for the Consent Agenda.*

**Audit Committee**

*The Audit Committee did not submit items for the Consent Agenda.*

**CONSENT AGENDA (Continued)**

**22. Mission Warren Truck Transfer Facility Programming and Resolution**

M/S/C (Page/Herrera) to adopt State Transportation Improvement Program (STIP) and AB 1171 Resolutions of Support Nos. 2011.11.37 and 2011.11.38, and an AB 1171 Initial Project Report (IPR) to receive \$3.5M in STIP programming and \$6.5M in AB 1171 funding for the Mission Warren Truck-Transfer program. Authorize the General Manager to enter into agreements as necessary with Caltrans and MTC to receive allocations of these funds.

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Board Member Kniss took her seat at 6:34 p.m.

<b>SPECIAL REPORTS</b>
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**19. REPORT FROM THE GENERAL MANAGER**

Mr. Lawson provided a report highlighting: 1) Bus average-weekday ridership increased by 2.6 percent; 2) Light Rail average-weekday ridership is up 2.9 percent; 3) Light Rail Express: a) 524 average-weekday ridership in September 2011; and b) averaging 495 boardings per day since its October 2010 inception; 4) 12-month average for Light Rail Line 901 (Alum Rock – Santa Teresa) is up by 3.1 percent; 5) System-wide, the average weekday ridership is up 2.7 percent; 6) September 2011 recorded boardings were 136,095, an increase from August 2011's 131,942 boardings; 7) System boardings per revenue hour was up 2.5 percent during the first 3 months of FY12; 8) Santa Clara County unemployment in August 2011 was 9.9 percent; 9) Fare revenue is up by 2 percent; 10) Clipper ridership continues to grow with an average fare per boarding at \$0.88, the same level as September 2010; and 11) Gas prices in San José averaged \$3.91 per gallon for the month of September 2011, up from August 2011's average of \$3.77 per gallon.

Mr. Lawson further reported: 1) VTA hosted a Bus Rapid Transit Tour of El Camino Real, on October 22, 2011; 2) VTA is host agency for the California Transit Association's fall Conference and Exposition at the San José Marriott and Convention Center November 2 – 4, 2011; 3) VTA is participating in the City of San José's Veteran's Day Parade on Thursday, November 11, 2011; 4) VTA will have significant staff presence in downtown San José on Thanksgiving morning, November 24, 2011, during the annual Turkey Trot. Staff has worked with race organizers to minimize rider-impact while accommodating race participants; and 5) VTA will run historic trolleys on Saturday, December 3, 10, 17 and 31, 2011.

**Caltrain Staff Report on Caltrain/High Speed Rail Blended System Capacity Study**

Marian Lee, Modernization Program Acting Director, Caltrain, provided a PowerPoint presentation on the Caltrain/High Speed Rail (HSR) Blended System-Capacity Study, highlighting: 1) HSR Priority Segments; 2) HSR Business Plan; 3) San Francisco to San José Segment; 4) Peninsula Vision; 5) Corridor Capacity Analysis; 6) Scope of Work; 7) Model Description: System, Trains; 8) Model Description: Tracks, Stations; 9) Model Description: Passing Tracks; 10) Preliminary Findings; 11) Tested Service Characteristics; 12) Next Steps; and 13) Input to HSR.

**20. REPORT FROM THE CHAIRPERSON**

Chairperson Abe-Koga reminded the Board that its next meeting would be held at 9:00 a.m. on Thursday, December 8, 2011. Board member attendance is encouraged due to a significant number of items on the agenda. Board Member Kniss noted she would be absent from the December 2011 board meeting due to her attendance at the meeting of the National Association of Counties.

Chairperson Abe-Koga reminded the Board that a BART construction contract is scheduled for approval at the December 2011 board meeting. She noted this contract will be brought before the November 2011 standing committees.

Chairperson Abe-Koga stated: 1) The 2012 draft board meeting calendar is scheduled for adoption at the December 2011 board meeting; and 2) Any board member interested in being nominated for the positions of 2012 Board Chair or Vice Chair should submit a letter to her in advance of the December 2011 board meeting.

## REGULAR AGENDA

### 21. **BART Silicon Valley Program Update**

Carolyn Gonot, Chief Silicon Valley Rapid Transit (SVRT) Program Officer, provided the staff report and a PowerPoint presentation highlighting: 1) Program Time Line; 2) SVRT Program Costs; 3) Program Management Costs; and 4) Upcoming Board Actions.

Ms. Gonot noted the BART SVBX C700 Design-Build Contract Procurement Process would be presented at each of the November standing committee meetings.

Board Member Reed questioned whether staff had engaged outside expertise to assist with the design build contract. Ms. Gonot noted, among others, staff is working with: 1) outside counsel, Nossaman, Guthner, Knox & Elliott, LLP; 2) City of San José staff; and 3) an experienced design-build consultant. Ms. Gonot reported VTA also has the oversight of the Federal Transportation Administration (FTA).

Ex-Officio Board Member Cortese left the meeting at 6:54 p.m.

Board Member Woodward relinquished his seat to

Alternate Board Member McHugh at 6:55 p.m.

Board Member Liccardo questioned funding for the Hayward facility. Kurt Evans, Government Affairs Manager, State & Federal, reported the grant application deadline for the third round of the Transportation Investment Generating Economic Recovery Program (TIGER) funds was October 31, 2011. Mr. Evans noted the Department of Transportation will be reviewing the applications and it is uncertain when the awards will be announced.

**On order of Vice Chairperson Abe-Koga** and there being no objection, the Silicon Valley Rapid Transit (SVRT) Program Update was received.

### 22. **(Moved to the Consent Agenda.)**

Adopt State Transportation Improvement Program (STIP) and AB 1171 Resolutions of Support, and an AB 1171 Initial Project Report (IPR) to receive \$3.5M in STIP programming and \$6.5M in AB 1171 funding for the Mission Warren Truck-Transfer program. Authorize the General Manager to enter into agreements as necessary with Caltrans and MTC to receive allocations of these funds.

## **Administration and Finance Committee - Liz Kniss**

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

### **23. Silicon Valley BART Operating and Maintenance Transactions and Use Tax Ordinance**

Board Member Kalra, Vice Chairperson of the Administration and Finance Committee, reported a Committee of the Whole (COW) met on October 20, 2011. The COW recommended this item be placed on the regular agenda.

Kimberly Koenig, Fiscal Resources Manager, provided the staff report.

Sandra Weymouth, Board Secretary, corrected the agenda language by noting the motion requires an affirmative of seven votes to pass this item.

Ms. Weymouth then provided the first reading of the ordinance title, as: “*An Ordinance of the Santa Clara Valley Transportation Authority Imposing a Transactions and Use Tax to be Administered by the State Board of Equalization.*”

**M/S/C (Liccardo/Kniss)** to 1) waive the reading of the Ordinance beyond the title; and 2) introduce the Ordinance and place it on the next regular agenda for adoption. (**First Reading**)

## **Congestion Management Program and Planning Committee - Chuck Page**

*The Congestion Management Program and Planning Committee did not meet in October.*

### **16. Habitat Conservation Plan (HCP) - Final Plan Approach**

Board Member Larsen questioned whether approvals could be dealt with on a case-by-case basis.

Board Member Kalra noted: 1) The HCP has been in the planning stage for many years; 2) The goals of the plan are particularly important to the South County for habitat preservation; 3) The HCP has a noble and important objective to create a sustainable environment; and 4) Although it is his belief that the HCP has been scaled back too much, it is important for the plan to keep moving forward. He stated VTA has been an important partner in the HCP.

Board Member Herrera stated that she would be supporting the motion, but wanted to register her concerns about protecting the habitat, including the hillsides and open space. She noted the focus should be on growing up and not out.

Board Member Kniss provided a history of the HCP discussion that began approximately ten-years ago. She stated the desired widening of Interstate 101 could only take place if a habitat plan was established. She noted this HCP is a trading tool that will allow future development. Board Member Kniss expressed concern with the diminished scope of the HCP, but noted that people will look back and say thank you to those who protected areas that would have otherwise been subjected to urban sprawl.

**M/S/C (Kalra/Page)** on a vote of 10 ayes to 1 no to approve proposed revisions to the Draft Habitat Conservation Plan/Natural Community Conservation Plan (Habitat Plan) in order to proceed with preparation of the Final Habitat Plan, Final Environmental Impact Statement/Final Environmental Impact Report (EIS/EIR), and Final Implementing Agreement (IA); 2) Approve recommendation to coordinate with the San Francisco District of the U.S. Army Corps of Engineers (ACOE) to obtain a federal Clean Water Act Section 404 Regional General Permit based upon the Final Habitat Plan; and 3) Approve \$98,749 for Fiscal Year 2011/2012 to incorporate the revisions into the final documents and obtain an ACOE Regional General Permit, resulting in VTA's overall cost allocation for development of the Habitat Plan becoming \$1,118,841. Board Member Larsen opposed.

## **Transit Planning and Operations Committee - Rich Larsen**

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

### **24. Silicon Valley Rapid Transit Program – Contract Award for Construction of Water, Storm, and Sewer Utility Relocation at Piper Drive**

Ms. Gonot provided the staff report.

Upon inquiry of Board Member Moylan regarding the City of Milpitas' (Milpitas) request for an amended agreement, Mr. Allmand stated: 1) The letter received from Milpitas reflects the discussion held between VTA and Milpitas regarding Milpitas' easement rights on Piper Drive and VTA's obligations to relocate utilities within Piper Drive; 2) An agreement with Milpitas has not yet been reached; 3) The key to the question is what the Union Pacific (UP) Railroad is willing to acknowledge or grant with regard to Milpitas' roadway easement and a response from UP is expected within a few days; 4) Once UP acknowledges in writing its willingness to acknowledge the right that Milpitas has in the roadway easement area, VTA can continue its discussion with Milpitas; and 5) A conversation needs to be held with Milpitas to determine if VTA is obligated to change the nature of the roadway easement and how that would be achieved.

Alternate Board Member McHugh noted the importance of protecting the health and safety of Milpitas citizens and expressed concern that Milpitas feels it has not received requested information. Alternate Board Member McHugh proposed two options: 1) amend the master agreement to provide assurances that VTA will obtain the needed public right of acquisition; or 2) to defer the contract award until VTA acquires a Piper Drive easement from UP.

Mr. Allmand stated the Board cannot take action on the letter or the proposed agreement from Milpitas, because these items were not agendaized and would be in violation of the Brown Act. He noted the Board may discuss the matter and give staff direction.

Board Member Kalra stated he was comfortable approving the contract and noted staff should continue to work with Milpitas to ease their legitimate concerns. He requested that staff come back to the Board with any future amendments based upon discussions with Milpitas or any other party of interest. Ms. Gonot assured the Board that staff would continue to work with Milpitas. She noted the contractor cannot begin work until Milpitas approves the permits.

**Public Comment**

Greg Armendariz, Public Works Director and City Engineer, Milpitas, stated: 1) Plans within the agreement are not complete or compliant with California Department of Public Health and city standards for relocation of the potable water lines; and 2) VTA has not acquired the appropriate rights-of-way for the contemplated work.

Bryan Otake, Assistant City Attorney, Milpitas, stated: 1) The contract is not ready to award without proper acquisition, provisions for public right-of-way, or easement rights; 2) Encroachment permits are required; 3) The easement grant document, which allows the city water and sewage lines to exist in their current locations, states that unauthorized relocations or movements might result in a surcharge or a termination of the easements; 4) Milpitas needs assurances that the utilities can be moved to the new location; 5) Without the assurances, 40 percent of Milpitas' water supply will be put at risk, 6) This action would place the (future) BART station at risk; and 7) The Board should accept the amendment as proposed or continue the item until the matter is resolved.

Mr. Lawson acknowledged Milpitas' concerns. He stated there was a limited window for construction due to the schedules for the BART project and the Santa Clara Valley Water District. He noted staff's intention is to work with Milpitas to reach a mutually-satisfactory resolution.

Ms. Patel explained the project requires that the existing utilities be relocated. Ms. Patel further explained this is a conveyance issue since VTA is already working with UP, the underlying fee-holder on the acquisition side. In the most recent conversation with UP, they have acknowledged the existence of the utility lines and indicated they will not require additional easements or licenses for utility relocation. The project does not put Milpitas utilities (sewer, water line, etc.) in greater risk than that which already exists, because there are no recorded or unrecorded agreements between UP and Milpitas for those utility lines. She added Milpitas is asking for higher rights, a betterment of the public right-of-way than is currently in existence.

Upon inquiry of several Board Members, Ms. Gonot stated staff would like to begin construction by December 1, 2011, and noted deferring the item will mean delay in the project schedule. Ms. Patel confirmed that work cannot proceed without Milpitas issuing an encroachment permit. VTA and Milpitas are working to find a reasonable solution to the conveyance requirements under the master agreement.

Board Member Kniss expressed her frustration with immediate deadlines presented by staff. Ms. Gonot stated that the current deadline was necessitated by the date given by the Water District and the coordination between the UP, Milpitas and the utility companies, as well as with design changes.

Board Member Liccardo expressed his concern that a delay to the schedule would add considerable cost to the project and noted that Milpitas is protected, because the project will not move forward without the encroachment permit.

Board Member Kalra noted that with staff's assurance they are close to an agreement with UP, he would strongly suggest that this item be approved due to the project schedule.

Member Kniss requested it be noted in the record that she voted reluctantly.

**M/S/C (Kalra/Liccardo)** on a vote of 9 ayes to 2 noes to authorize the General Manager to execute a contract with Con-Quest Contractors, Inc., the lowest responsible bidder, in the amount of \$2,198,920.00 for the construction of Water, Storm, and Sewer Utility Relocation at Piper Drive. Board Members McHugh and Moylan opposed.

### **Audit Committee - Rose Herrera**

Board Member Herrera reported the Audit Committee met as a Committee of the Whole on November 3, 2011, in advance of the current board meeting. The Committee reviewed multiple complex items in the areas of risk, financial reporting, internal controls, and detection capabilities. The Fiscal Year (FY) 2011 Comprehensive Annual Financial Report (CAFR), Pension Plan Report, and the Oath of Trust Report were reviewed and are scheduled for the December 8, 2011, board meeting. The auditor's reports on Fraud Risk Assessment and Paratransit Provider Contract Compliance were also presented and will be brought before the Board at its February 2012 meeting.

<b>OTHER ITEMS</b>
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**25. Monthly Legislative History Matrix**

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

**26. ITEMS OF CONCERN AND REFERRAL TO ADMINISTRATION**

There were no Items of Concern and Referral to Administration.

**27. REPORTS (UNAPPROVED MINUTES) FROM STANDING COMMITTEES**

**A. Administration and Finance Committee**

**On order of Chairperson Abe-Koga** and there being no objection, the October 20, 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 October 21, 2011, Notice of Cancellation was accepted as contained in the agenda packet.

**C. Transit Planning and Operations Committee**

**On order of Chairperson Abe-Koga** and there being no objection, the October 20, 2011, Transit Planning and Operations Committee Minutes were accepted as provided on the dais.

**D. Audit Committee**

There was no report from the Audit Committee.

**28. REPORTS (UNAPPROVED MINUTES) FROM ADVISORY COMMITTEES**

**A. Committee for Transit Accessibility**

**On order of Chairperson Abe-Koga** and there being no objection, the October 12, 2011, Committee for Transit Accessibility Minutes were accepted as contained in the agenda packet.

**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 October 12, 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 October 12, 2011, Notice of Cancellation was accepted as contained in the agenda packet.

**D. Technical Advisory Committee (TAC)**

**On order of Chairperson Abe-Koga** and there being no objection, the October 13, 2011, Technical Advisory Committee Minutes were accepted as contained in the agenda packet.

**E. Policy Advisory Committee (PAC)**

**On order of Chairperson Abe-Koga** and there being no objection, the October 13, 2011, Policy Advisory Committee Minutes were accepted as contained in the agenda packet.

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

**A. Peninsula Corridor JPB**

**On order of Chairperson Abe-Koga** and there being no objection, the November 3, 2011, Peninsula Corridor JPB Summary Notes were accepted as provided 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)**

**On order of Chairperson Abe-Koga** and there being no objection, the October 26, 2011, Metropolitan Transportation Commission Summary Notes were accepted as provided on the dais.

**E. Sunol Smart Carpool Lane Joint Powers Authority**

**On order of Chairperson Abe-Koga** and there being no objection, the October 10, 2011, Sunol Smart Carpool Lane Joint Powers Authority Summary Notes were accepted as provided on the dais.

**F. SR 152 Mobility Partnership**

**On order of Chairperson Abe-Koga** and there being no objection, the Unapproved Minutes for the October 14, 2011, Mobility Partnership for SR 152 Trade Corridor Project were accepted as provided on the dais.

**30. 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.

**31. ANNOUNCEMENTS**

Board Member Herrera announced the City of San José would be holding a Veterans Day Parade on Friday, November 11, 2011.

Chairperson Abe-Koga noted she would be participating in the San José National Veterans Day 11K Run at the Heritage Rose Garden.

**32. ADJOURNMENT**

**On order of Chairperson Abe-Koga** and there being no objection, the meeting was adjourned at 8:03 p.m.

Respectfully submitted,

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