

September 13, 2019

Honorable Deborah A. Ryan  
Presiding Judge  
Santa Clara County Superior Court  
191 North First Street  
San Jose, CA 95113

Re: VTA Response to *Inquiry into the Governance of the Valley Transportation Authority*

Dear Judge Ryan:

Per California Penal Code 933 (a) and (b), the Santa Clara Valley Transportation Authority (VTA) Board of Directors (Board) submits the following responses to the 2018-2019 Santa Clara County's Civil Grand Jury Report entitled, "Inquiry into the Governance of the Valley Transportation Authority, dated 06/18/2019 (hereafter referred to as the "report").

While the Civil Grand Jury makes several valid points regarding the Board and their fiduciary duties, VTA does not agree with several underlying assumptions and conclusions.

The VTA Board appreciates the time and effort the Grand Jury spent on the report. The VTA Board takes the findings and recommendations seriously and is committed to transparency and the prudent allocation of resources the public entrusted to VTA.

### **Finding 1**

*The VTA Board, currently made up exclusively of elected officials from the Santa Clara County, Board of Supervisors, the City of San José and the other smaller cities in the County, suffers from:*

*A lack of experience, continuity and leadership;*

*Inadequate time for the directors to devote to their duties to the VTA Board due to their primary focus on the demands of their elected positions;*

*A lack of engagement on the part of some directors, fostered in part by the committee system, resulting in VTA functioning largely as a staff-driven organization;*

*Domination, in terms of numbers, seniority and influence, by representatives of the Santa Clara County Board of Supervisors and the City of San José; and*

*Frequent tension between the director's fiduciary duties to VTA and its regional role, on the one hand, and the political demands of their local elected positions, on the other.*

### **Response**

VTA disagrees partially with the finding.

As is true of boards of large organizations, there are different levels of tenure on the Board. The goal is to encourage a balance of new perspectives with institutional knowledge and continuity. It is important to point out there is significant longevity on the Board. The combined years of service for all existing Board members is 95 years. The average (mean) length of service is five (5) years, the median is four (4) years, and the mode (the years of service most common to all Board Members) is three (3) years. The longest tenure is 15 years. Additionally, staff provides significant resources to orient and assist Board members on a regular basis.

The finding that the organization is staff driven and simultaneously dominated by the largest member agency is contradictory. Similar to other organizations, the Board sets the policy and provides direction to staff. Staff then implements the Board adopted policy and direction.

Regarding the finding of the Board's fiduciary responsibilities and regional role, the Board's voting history shows there is generally consensus in approving projects with regional benefits.

### **Recommendation 1A**

*VTA should commission a study of the governance structures of successful large city transportation agencies, focusing on such elements as: board size; term of service; method of selection (directly elected, appointed or a combination); director qualifications; inclusion of directors who are not elected officials; and methods of ensuring proportional demographic representation. This study should be commissioned prior to December 31, 2019.*

### **Response**

The recommendation has been implemented.

The Board, through the Ad Hoc Board Enhancement Committee (Ad Hoc), directed staff to commission an independent study to evaluate how VTA's current governance structure and practices help support VTA's mission, goals and objectives. The governance study will identify leading practices and potential enhancements for consideration by the Board. The governance study is now underway.

### **Recommendation 1F**

*Prior to December 31, 2019 and pending changes contemplated by Recommendation 1e, VTA should adopt a policy of routinely reappointing an incumbent Chairperson for a second one-year term at the end of his or her initial term, absent unusual circumstances.*

## **Response**

The recommendation requires further analysis.

The idea of a two-year term for Chair and Vice Chair has been raised in the past as it may provide more time for the Chair to set direction and monitor policy. This proposal is contained within the scope of work of the aforementioned governance study. The Ad Hoc will consider this item in the future and a recommendation is anticipated.

## **Recommendation 1G**

*In order to better connect the Chairperson with the budget process and accountability for operating and financial results, prior to December 31, 2019, VTA should amend Section 2-26 of the VTA Administrative Code to provide that the Chairperson and Vice Chairperson shall serve terms coinciding with VTA's fiscal year ending June 30, rather than the calendar year.*

## **Response**

The recommendation will not be implemented.

While the intent of the finding is commendable, as a practical matter VTA's two-year budget process begins well prior to the start of the fiscal year, as is the case for most organizations. The timing does not align with current election cycles and in the event of a directly elected board would result in significant expense to hold a special election to match this cycle.

## **Finding 2**

*The California Public Utilities Code, the VTA Administrative Code and the Guidelines for Member Agency Appointments to the VTA Board of Directors adopted by the Governance and Audit Committee of the Board (Guidelines) all contain provisions requiring that, to the extent possible, the appointing agencies shall appoint individuals to the VTA Board who have expertise, experience or knowledge relative to transportation issues. Nevertheless, appointees to the VTA Board often lack a basic understanding of VTA's operations and transportation issues, generally.*

## **Response**

VTA partially agrees with the finding.

VTA does not have the authority to require compliance with the guidelines. VTA will take further steps to inform the appointing authorities of the advantage of appointing individuals with helpful experience or knowledge, to the extent possible, as well as communicate the time commitment required for Board Members.

## **Recommendation 2**

*In order to help assure that individuals appointed to serve on the VTA Board have the appropriate qualifications, prior to December 31, 2019, VTA should take vigorous action to enforce compliance by appointing agencies with the qualification and suitability requirements of: (i) Section 100060(c) of the California Public Utilities Code; (ii) Section 2-14 of the VTA Administrative Code; and (iii) the Guidelines.*

### **Response**

The recommendation will not be implemented. VTA has no ability to “enforce compliance.” Appointing authorities are encouraged by VTA to appoint an individual based on the guidelines.

## **Finding 3**

*The VTA Board lacks effective policies designed to assure productive participation by members of the VTA Board.*

### **Response**

VTA disagrees wholly with the finding.

Board policies are designed to provide transportation and congestion management services and products to the public. As previously mentioned, VTA has no authority to initiate nor enforce a policy to address something as vague as “to assure productive participation.” The study commissioned by the VTA may result in best practices that can assist in enhancing Board participation.

## **Recommendation 3a**

*In order to help make directors become and remain productive members of the VTA Board, prior to December 31, 2019, VTA should: (i) implement and enforce attendance at an intensive, multisession onboarding bootcamp for incoming directors that would provide detailed information regarding VTA’s operations, financial affairs and currently pending large-scale projects as well as the organization and operations of the Board and directors’ duties and obligations; (ii) prepare and provide to each director a detailed handbook of directors’ duties, similar to the “Transit Board Member Handbook” published by the American Public Transportation Association; (iii) enforce attendance at Board and committee meetings by providing Board attendance records to appointing agencies and removing directors from committees for repeated non-attendance; and (iv) implement a robust director evaluation process, with the participation of an experienced board consultant, that would include mandatory completion by each director of an annual self-evaluation questionnaire and Board review of a composite report summarizing the questionnaire responses.*

## **Response**

The recommendation will not be implemented.

While well intentioned, VTA has no ability to implement the recommendation. However, the Board will take steps to provide more workshops designed around the organization and its functions. Staff will continue to provide improved orientation material and information on general Board function and operation.

## **Recommendation 3b**

*In order to further enhance the effectiveness of the directors, prior to December 31,2019, VTA should develop a program to encourage continuing education of the Board members by: (i) scheduling and enforcing attendance at more frequent and intensive Board workshops on important issues regarding transit policy, developments in transportation technology, major capital projects and VTA's financial management; and (ii) requiring directors to attend, at VTA's expense, third-party sponsored industry conferences and educational seminars.*

## **Response**

The recommendation will not be implemented.

While well intentioned, VTA has no ability to enforce attendance at workshops or other educational opportunities. A continuing education program for Board members will be recommended by the Ad Hoc Board Enhancement Committee. VTA will continue providing opportunities for Board members to attend industry workshops and further education.

## **Finding 4**

*The Grand Jury commends the Chairperson of the VTA Board for recognizing the need to improve Board engagement and effectiveness by convening the Ad Hoc Board Enhancement Committee to review the Board's governance structure and practices.*

## **Response**

VTA agrees.

## **Finding 5**

*VTA continues to consider an extension of VTA's light rail system to the Eastridge Transit Center, at an additional capital cost of over \$450 million, although VTA's light rail system is one of the most expensive, heavily subsidized and least used light rail systems in the country, many transit experts consider light rail obsolete, and VTA is suffering from chronic structural deficits that would be exacerbated by the continuation of the project as currently defined.*

**Response**

VTA disagrees with the finding.

The Eastridge to BART Regional Connector has been approved by the voters and the Board. See response for Recommendation 5a for more details.

**Recommendation 5a**

*VTA should consider following recommendations made by several directors that it undertake a thorough review of VTA's light rail system and its future role as a mode of transportation in Silicon Valley before proceeding with the Eastridge extension project. This review, as it pertains specifically to the analysis of the viability of the Eastridge extension, should be undertaken with the participation of an independent consultant and should consider such issues as projected ridership estimates, project cost estimates including future operating and capital costs, and the projected impact on traffic congestion on Capitol Expressway with the removal of two HOV lanes.*

**Response**

The recommendation has been implemented.

Prior to this recommendation, the Board initiated a review of light rail technology due to the anticipated cost of necessary upgrades and replacements for the existing system.

**Recommendation 5b**

*VTA should consider whether the recognized needs of the residents of East San José for modern, efficient public transportation can be better served by an alternative to the proposed light rail extension.*

**Response**

The recommendation requires further analysis.

The abovementioned study may provide an alternative technology to existing light rail. Nevertheless, the current Board approved project of a dedicated, grade separated right of way is progressing.

Sincerely,



Teresa O'Neill  
Chairperson, VTA Board of Directors