



2008-2009 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY TAKING THE PUBLIC FOR A RIDE

Summary

The Santa Clara Valley Transportation Authority (VTA) is a multi-billion dollar enterprise whose scope encompasses all matters of transportation, both public and private in Santa Clara County, and influences transportation decisions throughout the San Francisco Bay Region and the State of California. In the past five years, a number of reports have been issued that are critical of VTA. These reports raised issues related to organizational focus, project planning and monitoring, financial uncertainty and governance. This Grand Jury decided to investigate how VTA is doing with respect to these issues.

Recent events demonstrate that there remains a lack of responsiveness and accountability to the public. Existing policies and procedures have been corrupted, circumvented, or otherwise rendered ineffective. VTA has failed time and again to encourage dialog, has obscured facts and occasionally even stifled debate. The more one learns about how VTA executes its mission, the lower the confidence level in the Board's ability to manage the agency.

This report details specific examples of these concerns and recommends actions that can be implemented rapidly and easily. Unless the issues raised in this report and previous reports are corrected, the VTA will remain unaccountable to the residents of Santa Clara County and will fail to fulfill its broad obligations.

Background

This section provides an overview of the VTA Board, committee structure and membership, and recent ballot measures that provide funding for VTA programs. Many of the issues in this report relate to VTA's management of 2000 Measure A and other ballot measures.

VTA Board Organization

The VTA Board of Directors has 12 voting members, five alternates and two ex-officio members. The allocation of Board representation is generally based on population. The 12 voting members include five San Jose City Council members and two County Supervisors.

The remaining five voting members are chosen by the other 14 cities, based on a complex inter-city agreement that expires in 2009.

- One city council member rotating between Gilroy, Milpitas and Morgan Hill
- One city council member rotating between Campbell, Cupertino, Los Gatos, Monte Sereno and Saratoga
- Three city council members chosen from Sunnyvale, Santa Clara, Los Altos, Los Altos Hills, Mountain View, and Palo Alto

Board members serve a term of two years. At any one point in time, nine cities are not represented.

VTA Committee Structure

The VTA Board of Directors has four standing committees: Administration and Finance Committee, Audit Committee, Congestion Management and Planning Committee and Transit Planning and Operations. Each committee is composed of at least four Board members.

There are five Advisory Committees that support the work of the Board of Directors: Policy Advisory Committee (PAC), Technical Advisory Committee (TAC), Committee for Transit Accessibility, Bicycle and Pedestrian Advisory Committee and Citizens Advisory Committee (CAC). The CAC also serves as the 2000 Measure A Citizens Watchdog Committee (CWC).

This report will focus on the Citizen's Advisory Committee because of its dual role. The committee has 17 members, none of whom may be elected officials. These citizen-volunteers are selected as follows:

- Six members represent geographic areas.
 - San Jose chooses two.
 - The County Board of Supervisors chooses one.
 - Los Altos, Los Altos Hills, Mountain View, Palo Alto Santa Clara and Sunnyvale choose one.
 - Campbell, Cupertino, Los Gatos, Monte Sereno and Saratoga choose one.
 - Gilroy, Milpitas and Morgan Hill choose one.
- Six members are selected by the Administration & Finance Committee from nominations submitted by advocacy groups or received at large, representing each of the following:
 - senior citizens
 - disabled persons

- mass transit users
- environmentalists
- bicyclists
- pedestrians
- One member is chosen by each of the following:
 - Silicon Valley Leadership Group
 - Homebuilders Association of Northern California
 - National Association of Industrial and Office Properties
 - South Bay AFL-CIO Labor Council
 - Santa Clara County Chamber of Commerce Coalition

Each nominee must be approved by the Board.

2000 Measure A

In 2000, the voters of Santa Clara County approved a new ½ cent sales tax, to take effect on April 1, 2006 (the day after the expiration of the 1996 Measure B ½ cent sales tax), for a term of 30 years (to March 31, 2036). The proceeds from this tax were to be used only to:

- Extend BART from Fremont through Milpitas to Downtown San Jose and the Santa Clara Cal-train Station;
- Connect San Jose International Airport to BART, Caltrain and light rail;
- Extend light rail from downtown San Jose to the east valley;
- Purchase low floor light rail vehicles;
- Improve Caltrain: double track to Gilroy and electrify from Palo Alto to Gilroy;
- Increase Caltrain service (new locomotives and additional facilities to improve service);
- Construct a new Palo Alto Intermodal Transit Center;
- Improve bus service in major bus corridors;
- Upgrade Altamont Commuter Express;
- Improve Highway 17 express bus service;
- Connect Caltrain with Dumbarton Rail Corridor;
- Purchase zero emission buses and construct service facilities;
- Develop new light rail corridors;
- Fund operating and maintenance costs for increased bus, rail and paratransit service.

Measure A also provided for an independent Citizens Watchdog Committee (CWC) to review the VTA's expenditures on the projects. It specified that this CWC would consist of private citizens, not elected officials (the underline was in the official ballot text), and that this committee would be comprised of the existing VTA Citizen's Advisory Committee (CAC). The CWC responsibilities are:

- Hold public hearings and issue reports, on at least an annual basis, to inform citizens how funds were spent
- Perform annual independent audits each fiscal year to ensure tax dollars were spent in accordance with the intent of the measure
- Publish the audits and annual reports in local newspapers with document copies available to the public at large.

2000 Measure A Today

VTA has clearly established BART as the priority project in an environment in which the county is experiencing an unprecedented financial crisis, a deep recession, uncertain credit markets and declining sales tax revenue, all of which are expected to remain into the foreseeable future. One project was completed in 2004 (the purchase of low-floor light rail vehicles) using funds borrowed prior to the inception of sales tax collection. Active work is being carried out on Bus Rapid Transit along key corridors such as Alum Rock, as well as Caltrain enhancements in South County.

The Eastridge light rail extension, which is shovel-ready, is on hold. Measure A tax revenue is no longer allocated to this project. It may potentially qualify for federal funds as part of a future stimulus package. To this end, VTA is revising the Environmental Impact Reports to meet federal guidelines. This is the only work being done on this project at this time.

The fate of the rest of the projects remains uncertain.

November, 2008 Ballot Measures

In August, 2008, the VTA Board placed three measures on the ballot for the November, 2008 Election.

Measure B authorized a 1/8 cent sales tax to support operation of the BART extension to San Jose/Santa Clara. The tax is to begin only after sufficient funding from the state and federal governments is secured to match local funds to construct the 16.1 mile BART extension.

Measure C was an advisory vote. It asked the voters to approve the Valley Transportation Plan (VTP) 2035 – a long-range transportation plan. Under 1976 Measure B, the electorate must approve a long-range transportation plan at least every six years.

Measure D was to amend the 1976 Measure B to vest approval of the long-range transportation plan in the 2000 Measure A Citizens Watchdog Committee. This would save the cost of placing an approval measure on the ballot every six years.

All three measures passed.

Recent Reports on VTA

Recently, investigations of VTA governance and financial management have resulted in three separate reports:

- 2003-2004 Santa Clara County Civil Grand Jury: "Inquiry Into the Board Structure and Financial Management of the Valley Transportation Authority"
- "Santa Clara Valley Transportation Authority Organizational and Financial Assessment," Hay Group, March 2007
- "Santa Clara Valley Transportation Authority: It Has Made Several Improvements in Recent Years, but Changes Are Still Needed." July 2008 Report 2007-129, California State Auditor

The 2003-2004 Santa Clara County Civil Grand Jury investigated VTA's Board structure and financial management. It concluded that the VTA "Board is too large, too transient, and too occupied with other duties to provide direction and effective oversight to the staff in running VTA." It also concluded that the VTA Board "has proceeded with a transit capital improvement plan that cannot accomplish all that was promised in Measure A."

With the advent of a new General Manager, the VTA commissioned the Hay Group to assess and evaluate the effectiveness of its governance and organizational structures, financial capacity and performance against goals and objectives. The Hay Group report found that the Board faces

"a number of significant challenges that need to be addressed in order for the board to satisfy its responsibilities and function effectively as a regional decision-making body."

Moreover, the Hay Group concluded that the Advisory Committees

"have found their opportunity to help shape and recommend policy has been diminished" (and that they do not) "have a mission with clear goals and objectives articulated."

The Hay Group also found that

"VTA does not have the financial capacity to meet its goals and objectives over the coming decade."

The Hay Group report proposed a comprehensive overhaul of VTA's organization and practices.

The State Auditor's report noted that VTA has attempted to improve its governance structure. However, the State Auditor concluded that VTA has not enhanced the operation of its five advisory committees and has not completely changed the way it engages the advisory committees in the deliberative process as stated below:

“Thus, even as VTA attempts to reform its governance structure, it continues to follow a practice the Hay Group report specifically criticized; namely, advisory committees do not have an opportunity to consider policy and plans in the early stages of development so they can provide meaningful input to VTA staff and the board. Consequently, VTA continues to miss opportunities to gather diverse ideas and build regional consensus for its proposals.”

Discussion

Role of the VTA Board in VTA Management

Board Composition. Much has been said and written about the composition of the VTA Board over the past five years. The 2003-2004 Grand Jury report found that the VTA Board was “too political” and recommended a change in the structure. The VTA rejected this recommendation. The Hay Report made a number of recommendations that would improve the VTA Board's ability to exercise its responsibilities with “reasonable care and loyalty.”

Lack of Regional Focus. VTA board members do not always take a regional perspective or focus on what is best for the county as a whole. Interviews with board members yielded unsolicited complaints that other board members support VTA projects only for their local area. No one felt they were guilty of the behavior themselves, just their fellow members.

City Representation. As the largest city in the county, San Jose, with five members on the Board, dominates the Board. These individuals can and frequently do serve multiple terms. The same applies to the two members from the County Board of Supervisors. In contrast, the 14 remaining cities are dispersed in three groupings, subject to a rotation within each grouping every two years. The practical result is that acquired transportation knowledge and experience tends to vest in the two members from the county and the five members from San Jose. On the other hand, members from the other cities are termed out every two years, resulting in the loss of accumulated transportation knowledge and experience unless these cities reach a collective agreement. Recently, the West Valley cities made a separate agreement to allow one member city (Cupertino) to continue on the Board when their term expired.

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

A governance proposal from a subcommittee (established by the Board) charged with updating how Board members are chosen from the 14 cities in the county (other than San Jose) resulted in petty bickering between north county and south county representatives, heavy-handed repression by VTA staff and was ultimately shuffled to the Audit and Finance Committee for burial. A resolution is required by the end of 2009 when the current scheme expires.

Lack of Transportation Experience. Recent reports on VTA governance have documented that new board members have no previous experience in the transportation arena. Board members' terms are for two years and may or may not be renewed. By the time a Board member is familiar with the issues facing VTA their term is expiring. As a consequence, the VTA Board is not effective in directing VTA staff or making well-informed decisions.

Overwhelming Information. The voluminous board packets provided by VTA staff are frequently several hundred pages and contain information that require many hours of review by the board members before the meeting. Most board members work full time, which leaves them very little time to review the material in the packet. Some members stay up late at night to review the packet the night before the meeting. An exception is the City of San Jose, and Board of Supervisors, who have full-time, paid staff to review and distill the information. The other cities have part-time city council members with no support staff to help with VTA activities.

Staff Driven. All of the above issues contribute to the fact that VTA remains an organization that is frequently referred to as "staff driven." Meeting agendas are prepared by VTA staff with input from the Board chairperson. In some cases, the chairperson follows a "script" prepared by VTA staff. Interviews with VTA board and committee members revealed that independent thinking was discouraged. Board members appear unwilling or unable to bring up items for discussion that are not pre-screened by the staff. Hence, the VTA Board has frequently been referred to as a "rubber stamp" for policy proposals formulated by the VTA staff.

Role of Advisory Committees in VTA Governance

Token committees. Both the Hay Report and the State Auditor Report took the VTA to task for poor use of its Advisory Committees. This Grand Jury uncovered examples that support this conclusion. These committees exist to advise the Board on policy or technical issues. One of the key criticisms is that the Advisory Committees are presented with items to review only after the Board and/or staff has already made a decision. Thus, the Advisory Committee is only asked to bless the decision after the fact. VTA's attitude toward these committees has ranged from ignoring their existence entirely to retaliation for independent thinking. During interviews some board members were unable to identify committee members or even the names of the committees. One advisory committee member, responding to the question of whether the Board provided direction to the committee, said "The Board does not even know we exist."

Board – Committee Communication. The VTA Board communicates with the advisory committees through an intermediary – the VTA staff. The VTA staff sets the work plan and agenda for advisory committee meetings based on the staff requirements for upcoming Board meetings. The output from the advisory committee meetings is communicated back to the Board by the Board “accepting” the minutes of the advisory committee meeting, usually as part of the consent agenda. Recently, the chairperson of the Citizens Advisory Committee (along with the chairperson of the Policy Advisory Committee) has been invited to make a short presentation at each board meeting – essentially reading the details of the minutes of the previous CAC and PAC meetings to board members who have not been able to read them.

PAC and CAC: Committee views not valued. The Grand Jury saw little evidence that the opinions of PAC and CAC are well considered and play any role of significance in the decisions made by the VTA Board. VTA staff channels issues to the advisory committee most appropriate to handle that issue, such as the Bicycle-Pedestrian Advisory Committee or the Committee on Transit Accessibility. Membership of both of these committees includes individuals interested in their particular area. On the other hand, the Policy Advisory Committee (PAC) and Citizen Advisory Committee (CAC) are more broad-based. PAC is the only place in VTA governance where there is equal representation for each city without an overwhelming advantage to San Jose. It frequently serves as a breeding ground for new Board members. The role of PAC and CAC is to review and comment on policy proposed by VTA staff before that policy is brought before the VTA Board.

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

Role of the CAC/CWC in VTA Governance

CAC vs. CWC. The CAC advises the Board on matters of VTA policy. The CAC may only consider matters referred to it by the Board or General Manager/staff. The CAC was chartered by 2000 Measure A as an Independent Citizen’s Watchdog Committee (CWC) for the 2000 Measure A funds.

The same group of citizens is assigned to both committees.

The CAC has no independent duties and no authority to take actions that bind VTA or the Board. The CAC does not have the authority to communicate to the public. On the other hand, the same people, serving as the CWC, have the duty to communicate to the public, hold hearings, issue reports, conduct an independent annual audit, and publish the results directly to the public without review or approval by the Board or staff.

Since the passage of Measure D in November, 2008, the CWC also has the responsibility to review the VTA long-range transportation plan every six years.

CWC Performance

Since its inception in July, 2006 the CWC has issued three reports to the public:

- A report summarizing Measure A activity up to June, 2006 (3 pages)
- A report summarizing Measure A activity for FY2007 ending June 2007 (3 pages)
- An audit for FY2007 performed by the VTA auditor (VTD), as opposed to a special, independent auditor retained by the CWC.

In addition, VTA Staff released an audit for FY2008 performed by the VTA auditor (VTD) without review or approval by the CWC. The “independent” audit by the auditor retained by the CWC is yet to be published. The FY2008 status report is yet to be published.

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

What’s Wrong with the Citizens Watchdog Committee?

There are several issues with the CAC/CWC combination that greatly reduce the effectiveness of this body when operating as the CWC. Under the structure provided by the original ballot measure, the CAC/CWC does not function independently or as a watchdog committee.

1. The members of the CAC/CWC interviewed all stated they work for the VTA Board. This is a reasonable position for a CAC member, but not when acting in the capacity of a CWC member. The very nature of an “independent watchdog committee” is to “oversee” actions of the board for the citizens of Santa Clara County.
2. CAC/CWC members are approved by the VTA Board, compromising independence of thought and action.
3. Some CAC/CWC members are former VTA Board members, former Policy Advisory Committee members and/or former elected officials in the county. One interviewee referred to the committee as the “Board Retirement Plan Committee.”
4. Many CAC/CWC members complained and confirmed that the VTA staff shows them little or no respect. The VTA staff does not return their calls or answer their questions.
5. Just as the Board members are overwhelmed by the Board packet, many committee members interviewed referenced needing to set aside up to ten hours to prepare for meetings.

6. Members of the committee do not control their own agenda. The agenda for CAC/CWC meetings is set by VTA staff, along with input from the CAC/CWC chairperson.
7. Committee members, in their CAC capacity, represent various stakeholders in the county and advise the Board on issues involving their particular areas of interest. They are then expected to switch hats during the course of a single monthly meeting and perform CWC functions that should be seen as both independent and vital to the public interest as a whole, not to specific stakeholders. A conflict of interest is present, whether actual or perceived, in the discharge of their duties as a member of the CWC. The public deserves a watchdog function free of bias. The public expects a sentinel guard dog, not a lapdog.

The conflict and problems with the CAC/CWC combination are not surprising given that the by-laws for this CWC were written by VTA staff, incorporated into the existing CAC bylaws and approved by the Board.

Revenue and Expenditure Plan Update Cancelled

In June, 2006 the Board approved a comprehensive 30-year Revenue and Expenditure Plan for all projects identified in 2000 Measure A. During 2008, an update to this plan was scheduled. Sometime between June 19, 2008 and August 7, 2008, this update was cancelled and a decision was made to place an additional tax on the November, 2008 ballot.

The plan projected sales tax revenue at \$10.58B from Measure A and noted that additional revenue sources would be necessary, not all of which were identified. An additional sales tax of ½ cent was proposed to the voters in November, 2006 but was rejected. In its first full year of collections (FY2007), Measure A 2000 brought in \$161.4 Million. In its second full year, ending in FY2008, the collections dropped slightly to \$160.5 Million.

The total program cost was projected to be \$21.57B (in year of expenditure dollars). Notably, the single largest project was BART, which alone accounted for \$6.2B in estimated year of expenditure dollars.

Figure 1: A portion of the 2000 Measure A Revenue and Expenditure Plan prepared in 2006

| Fiscal Year | Notes | Project Costs in \$2003 | Escalated Project Costs |
|---|--------------|------------------------------------|------------------------------------|
| Beginning Balance | | | |
| REVENUES | | | |
| 1. Measure A 1/2-cent Sales Tax (2005 Midpoint) | | 5,404,457 | \$ 10,582,278 |
| 2. TCRP | | 507,428 | \$ 648,567 |
| 3. Federal New Starts | | 560,157 | \$ 750,000 |
| 4. Prop 42 STIP | | 111,214 | \$ 147,285 |
| 5. 2002 Note/2003/2004/2005 Bond Proceeds | | 469,283 | \$ 474,048 |
| 6. Net Add'l Measure A Bonds | (1) | 2,422,167 | \$ 3,648,000 |
| 7. Net New VTA Bonds | (2) | 1,073,646 | \$ 1,659,600 |
| 7A. NEW: Short-term financing | | 145,438 | \$ 201,000 |
| 8. VTA, Other Funding (Includes new 1/4-cent Tax) | (3) | 1,133,021 | \$ 2,037,827 |
| 8A. Other partners | | 1,092,574 | \$ 1,738,728 |
| 9. Other Funds | | 17,889 | \$ 18,172 |
| 10. Interest Earnings on Avg Bal (1.5%) | | 9,976 | \$ 15,523 |
| Total Revenue | | \$ 12,947,251 | \$ 21,921,028 |

In order to begin Measure A programs in advance of tax collection, VTA issued anticipation bonds. \$445M in proceeds from bond sales, which has to be repaid from Measure A revenue, was already on the books before a single dollar of tax was collected. By June 30, 2008 Measure A long-term debt was still \$371.8M. Debt service cost over the life of Measure A was projected to be in excess of \$2B in the 2006 Revenue and Expenditure Plan.

At its April, 2008, meeting, VTA General Manager Michael Burns introduced the proposed process and guidelines to update the 2000 Measure A Revenue and Expenditure Plan. Concurrently, the Board was in the process of making key decisions on the BART project, the Eastridge light rail extension, and the Caltrain double-track to Gilroy. Approval of the updated Revenue and Expenditure plan was tentatively set for September 4, 2008.

In an April 28, 2008, *San Jose Mercury News* article, Mr. Burns advised that his agency relied on overly optimistic scenarios that it could fund the \$20+ Billion in transit improvements. He conceded that the current expenditure plan does not work and that it was clear that all projects could not be afforded.

At its June 11, 2008 meeting, the Downtown East Valley Policy Advisory Board was told by VTA staff that the Capitol Light Rail Extension to Eastridge had completed the design phase but was being suspended pending the updated Revenue and Expenditure plan. Particularly noteworthy was the fact that VTA staff suspended the project without prior Board authorization.

In a memo to the Downtown East Valley Policy Advisory Board dated June 19, 2008, the General Manager reconfirmed the schedule of the planned update to the Revenue and Expenditure Plan.

At the August 7, 2008 VTA Board meeting, several significant events occurred:

- Mr. Burns advised that the Light-Rail Extension to Eastridge “has not been stopped but that there is not enough money to complete all of the Measure A projects. . .” The Board “reaffirmed” its support for the project and recommended continuation of planning and design activities. However, property acquisition, utility relocation construction and completion of bid documents for construction contracts were not authorized.
- Measure B to increase sales tax by 1/8 cent to be used for BART operating costs was placed on the November ballot.
- The staff presented a report to the Board supporting the sufficiency of the 1/8 cent tax proposal to cover the projected deficit in BART operating costs. The conclusion was based on a new 30-year sales tax revenue estimate. This report also provided sufficient information to update the revenue estimate in the new Revenue and Expenditure Plan.

The September, 2008, scheduled presentation of the update to the Revenue and Expenditure Plan was not delivered and never rescheduled. The VTA Board made no effort to determine the status of the plan or if there would be significant disruption or cancellation of Measure A projects. As a consequence, the public was not informed of the 2000 Measure A 30-year financial situation before the November 2008 election.

At a Board Workshop on December 4, 2008, approximately one month after the election, and in the face of sales tax revenue uncertainty, it was decided to forego a full 30-year plan for Measure A and to focus on a two-year capital expenditure plan. The two-year capital expenditure plan is to be made available in June 2009. It is expected to include capital expenditures for the BART extension and two other programs – BRT (Bus Rapid Transit) on the Alum Rock corridor and certain Caltrain enhancements in South County including double tracking to Gilroy. A notable exception in the preliminary documentation is the absence of any funding for the light rail to Eastridge program which appears to have become totally dependent on unidentified federal funding.

Since that time the VTA staff has responded to pressure from the Board and agreed to provide a ten-year outlook. This plan has yet to be delivered.

If the 30-year Revenue and Expenditure Plan had been updated as planned, it likely would have shown that if the BART extension were built as planned, the remaining 2000 Measure A projects would require massive additional investment by the state and federal government plus additional sales tax revenue from Santa Clara County.

2008 Measure B passed by approximately 700 votes above the 2/3 threshold required for passage. If the updated Revenue and Expenditure Plan had been readily available to the public, Measure B might not have passed. The VTA had sufficient time and information to complete this update and made a deliberate decision not to publish it prior to the election. The public deserves an explanation.

Light Rail to Eastridge Project Status

According to the Measure A Semi-Annual Report (internal) dated June, 2008, this project was to receive \$276.8M of its \$334.3M cost (83%) from Measure A tax revenue. Now that virtually all Measure A tax revenue is being reserved for the shortened BART extension project, the light rail to Eastridge project has been put on hold until other funding sources can be identified. The only work currently being done on the light rail to Eastridge project is to modify the completed EIR to meet federal standards in the hope of receiving federal stimulus or other transportation funding in 2010.

Use of 2000 Measure A Funds for Non-Measure A Projects Puts Measure A Projects at Risk

The VTA Board has approved the exchange (swap) of approximately \$107M of Measure A funds for use on non-Measure A programs in exchange for a payback from anticipated State Transportation Improvement (STIP) funds at a future time. The payback from the state depends on state approval of two Measure A projects for state (STIP) funding, approval that is not guaranteed, especially in difficult budgetary times. In addition, these programs are low on the Measure A priority list and may never be built.

Board approval of the swap was granted in two separate votes in February, 2007 and December, 2007. As of June, 2008, approximately \$9M of Measure A sales tax revenue had been spent on non-Measure A programs. At the same time, the 2000 Measure A program was over \$361M in debt, having issued bonds to pay for project development in advance of the receipt of sales tax revenue.

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

One key Citizen Watchdog Committee duty is to certify to the public that Measure A funds are only spent on Measure A projects. The CWC needs to make an informed decision about what constitutes spending on 2000 Measure A projects and determine whether the fund exchange meets the CWC's definition of legitimate spending. Furthermore, the CWC is obligated to inform the public of the fund exchange and expenditures in its reports to the public.

At its February 11, 2009 meeting, a discussion regarding the CWC's responsibilities in this area was initiated by a CWC member and stifled by VTA staff in attendance by reminding the CWC members of the limitations in their responsibilities. The CWC did agree to ask their auditor to "assist the committee in its fiduciary role." At and following this meeting two members of the CWC resigned, leaving a total of five vacancies.

November 2008 Ballot Measures

Several relevant facts should be noted with respect to the November, 2008 ballot measures:

- VTP 2035 Transportation Plan was first presented to the public eight days after the November, 2008 Election. At the time of the election, the voters were voting to approve a plan that none of them had seen. The plan was formally published in January, 2009.
- Measures C & D were approved for the ballot as part of the Consent Agenda. There was no debate or discussion regarding these Measures.
- Measures C & D were not discussed at any Advisory Committee meetings prior to the vote of the VTA Board.
- The Citizens Watchdog Committee was unaware that the VTA Board was proposing to add responsibility to review and approve the long-range transportation plan every six years. It should also be noted that the CWC ceases to exist on June 30, 2036.
- The tax amount for Measure B (1/8%) was approved for the ballot on August 7, 2008, after selected Board members were briefed on a private poll conducted by Silicon Valley Leadership Group regarding opinions of the electorate with respect to additional tax for transportation purposes. The poll indicated that a ¼% tax would not pass while a 1/8% tax might pass. VTA contracted with a private firm (AECOM) to justify the 1/8% level as sufficient. The report was delivered to the Board on August 4, 2008.

These items taken as a whole provide a picture of a Board that is rushed, overwhelmed and out of touch.

2008 Measure B Sales Tax – Promised 16.1 Miles, Delivering 2.2 Miles

Of particular concern is that VTA intends to start collection of the Measure B tax while only completing a shortened version of the BART extension to Berryessa. The \$750M federal funding that was planned to trigger the Measure B sales tax will now be used only to fund the first 2.2 miles with additional yet-unidentified funding required to complete the entire extension.

The ballot wording specifically refers to funding for the entire 16.1 mile BART extension. At the August 7 board meeting, Michael Burns, VTA General Manager, said “. . . taxpayers would not be responsible to pay the tax unless there was a fully funded project.”

The rationale and financial analysis behind the tax were based on the costs and ridership associated with the full BART extension. The Board should ensure that this tax is not collected until full funding is identified for the entire 16.1 mile BART extension.

Conclusion

Reports cited earlier document that the Board has not lived up to its responsibilities. Following its own investigation, this Civil Grand Jury concurs with these reports.

In reaching this conclusion, the Grand Jury has found that:

- The Board tolerates behaviors that do not encourage informed public debate about transportation and transit issues facing the county.
- VTA staff develops plans internally with little or no public (or Board) input at the early stages. Information relevant to these plans is carefully controlled.
- The Board has taken a passive role, allowing VTA staff to control the Board, the CAC/CWC, other advisory committees and the public at large to minimize any influence or change of its internally developed ideas.

It is critical that citizens of Santa Clara County reach an informed consensus on transportation and transit policy. These are issues upon which reasonable minds can, and do, disagree. Free and open debate is essential to reaching a consensus. The VTA has, however, failed time and again to encourage such debate; to the contrary, VTA has obscured the facts and occasionally even stifled debate.

The recommendations of this report provide steps to enable the public, through the Board and through the CAC/CWC and other advisory committees, to regain the position of providing early, influential input into the VTA planning process.

Findings and Recommendations

Finding 1a

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

Finding 1b

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

Recommendation 1a

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

Recommendation 1b

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

Finding 2

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

Recommendation 2a

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

Recommendation 2b

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

Recommendation 2c

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

Finding 3

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

Recommendation 3

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

Finding 4a

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

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

Finding 4b

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

Recommendation 4a

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

Recommendation 4b

No Recommendation.

Finding 5

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

Recommendation 5

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

Finding 6

Board workplans and meeting agendas are developed primarily by VTA staff.

Recommendation 6

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

Finding 7

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

Recommendation 7

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

Finding 8

Both the Hay Report and the State Auditor Report recommended that the VTA Board make every effort to insure that new board members have transportation experience by appointing new members with previous transportation experience and reappointing members for multiple terms. Nevertheless the Mayor of San Jose recently appointed two new board members to represent San Jose who have no previous transportation experience.

Recommendation 8

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

Finding 9

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

Recommendation 9a

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

Recommendation 9b

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

Finding 10

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

Recommendation 10a

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

Recommendation 10b

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

Finding 11

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

Recommendation 11

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

Finding 12

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

Recommendation 12

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

Finding 13

The Board allowed Measure C to be placed on the November 2008 ballot asking voter approval of the VTP2035 plan when neither the Board nor the public had seen a draft of the full plan.

Recommendation 13

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

Finding 14

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

Recommendation 14

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

Finding 15

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

Recommendation 15

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

Appendix A

Citizens Watchdog Committee Comparisons

| | Santa Clara County CAC/CWC - Current | Santa Clara County Measure B CWC 1996 | Orange County (Transportation Oversight Committee) | ACTIA (Alameda County Transportation Improvement Agency) |
|-------------------------------------|--|--|---|--|
| Total Members | 17 | 17 | 11 | 17 |
| Composition of Committee | <p>Six citizens at large from Cities and County Groupings (2 from San Jose, 3 from all other cities, one from County of Santa Clara);</p> <p>Six citizens from community interests groups (senior citizens, disabled persons, mass transit users, environmentalists, pedestrians, bicyclists);</p> <p>Five citizens from Business and Labor Groups (Silicon Valley Leadership Group, Homebuilders Association of Northern California, Building Owners and Managers Association – Silicon Valley (BOMA-SV), South Bay AFL-CIO Labor Council, Santa Clara County Chamber of Commerce Coalition).</p> | <p>Ten District Representatives, two from each of the five supervisorial districts.</p> <p>Seven Organization Representatives, one from each of the seven different organizations specified by the Measure. (California Taxpayers Association, the San Jose Silicon Valley Chamber of Commerce, the Sierra Club, the South Bay Labor Council, the Silicon Valley Manufacturing Group, the Greenbelt Alliance, and the Building and Construction Trades Council).</p> | <p>Two members from each supervisorial district and the Auditor-Controller who serves as chairman of the committee. As mandated by the Ordinance, the Grand Jurors Association of Orange County Oversight Committee Selection Panel is under contract to solicit, collect, review applications from potential candidates</p> <p>Criteria includes ability to participate in meetings as maintained by time and meeting requirements, demonstrated interest and history of participation in community activities, with special emphasis on transportation-related activities, lack of conflict of interest with respect to the expenditure of the sales tax revenue generated by Measure M.</p> <p>Currently elected or appointed by city, district, county, state or federal officials are not eligible to serve.</p> | <p>Ten members shall be at-large, two each representing the five supervisorial districts in Alameda County.</p> <p>Seven of the members shall be nominated by the seven organizations specified in the Expenditure Plan, <u>viz.</u>, Alameda County Taxpayers' Association, Sierra Club, Alameda County Labor Council, Alameda County Economic Development Alliance for Business, Alameda County Paratransit Advisory Panel, East Bay Bicycle Coalition, and League of Women Voters.</p> <p>Qualification for Membership. Each CWC member shall be a resident of Alameda County. A CWC member shall not (a) be an elected official at any level of government; or (b) be a public employee of any agency that oversees or benefits from the proceeds of the Measure B Tax, or (c) have any economic interest in any Project or Program.</p> |

Appendix A

Citizens Watchdog Committee Comparisons

| | Santa Clara County CAC/CWC - Current | Santa Clara County Measure B CWC 1996 | Orange County (Transportation Oversight Committee) | ACTIA (Alameda County Transportation Improvement Agency) |
|--------------------------|---|---|---|---|
| How Appointed | <p>No member of the Board of Directors or alternate, Policy Advisory Committee member or alternate, or other elected public official shall be appointed to the Committee. Committee members may not be employed by a Member Agency they represent. VTA employees are not eligible for membership. Members shall be appointed as follows, with effort made to reflect the ethnic, gender, and geographic diversity of the County:</p> <p>City and County Groupings: Citizens at large as appointed by groupings as defined by the VTA Administrative Code.</p> <p>Community Interests: appointed by Administration and Finance Committee from nominations submitted by advocacy groups or received at large, one for each category.</p> <p>Business and Labor Groups: appointed by each organization.</p> <p>Board of Directors ratifies each appointment of all members of the committee.</p> | <p>District Representatives: by League of Women Voters or in absence of League, the Grand Jury.</p> <p>Organization Representatives: selected by nominating organization.</p> | <p>Grand Jurors Association of Orange County (GJAOC), which has formed a five-member Taxpayers Oversight Committee Selection Panel to conduct an extensive recruitment program. The panel screens all applications, conducts interviews and recommends potential candidates for membership on the Taxpayers Oversight Committee once a year as terms expire. The GJAOC is made up of former grand jurors who have a continuing concern for good government and whose purpose is to promote public understanding of the functions and purpose of the grand jury. The GJAOC is a neutral body serving the interests of the Taxpayers of Orange County. New members are chosen by lottery from among the finalists at a meeting of the OCTA.</p> | <p>Of ten at-large, one of the two nominated by a member of the Board of Supervisors in their own district and one of the two selected by the Alameda County Mayors' Conference.</p> <p>Of the seven organizations, the organizations each select one subject to approval by the ACTIA Board.</p> |

Appendix A

Citizens Watchdog Committee Comparisons

| | Santa Clara County CAC/CWC - Current | Santa Clara County Measure B CWC 1996 | Orange County (Transportation Oversight Committee) | ACTIA (Alameda County Transportation Improvement Agency) |
|----------------------------|---|--|---|---|
| Length of Term | Committee members shall be appointed for a continuous term, serving until resignation or replacement by their appointing organization or the Board of Directors | District Representatives: 2 years; Organization Representatives: unlimited term | Each member, with the exception of the Auditor-Controller, is appointed for a term of three years. However, any member appointed to replace a member who has resigned or been removed will serve only the balance of such member's unexpired term, and no person shall serve as a member for a period in excess of six consecutive years. | Two years. |
| How Often They Meet | Monthly | Monthly | Bi-Monthly | At least once per quarter. |
| Reports Generated | Once at Year (CWC) | Yearly at required by Measure. Monthly as generated by practice. | Quarterly Progress Reports are generated. | |
| Available Staff | VTA | Board of Supervisors | Local Transportation Authority | |
| Agenda Set | Items may be referred for inclusion on an agenda by: (1) the Board of Directors; (2) the General Manager; (3) the Committee Chairperson; and (4) the Committee, with a quorum present and upon the affirmative vote of a majority of the members present. | The Chair shall prepare the agenda for each Committee meeting. | Independent Committee by Ordinance. | Any member three weeks prior to meeting or agreement by chair. |

Appendix A

Citizens Watchdog Committee Comparisons

| | Santa Clara County CAC/CWC - Current | Santa Clara County Measure B CWC 1996 | Orange County (Transportation Oversight Committee) | ACTIA (Alameda County Transportation Improvement Agency) |
|--|---|--|---|---|
| Agenda Set continued | The secretary shall prepare the agenda for each meeting in consultation with VTA staff and the chairperson. The secretary may withhold placement on the agenda of any matter which is not timely received, lacks sufficient information or is in need of staff review and report prior to Committee consideration. | | | |
| Board of Directors Meetings | The chairperson shall preside at all meetings of the Committee and represent the Committee before the Board of Directors. Except when acting in its capacity as the Citizen's Watchdog Committee as specified in the 2000 Measure A Transit Sales Tax ballot, the Committee shall serve in an advisory capacity to the Board of Directors. It shall have no independent duties and no authority to take actions that bind VTA or the Board of Directors. The Committee shall not have the authority to communicate externally and all communications by the Committee shall be to and through the Board of Directors. | The Chair shall attend, or appoint another Committee member to attend, meetings of the County Board of Supervisors at which expenditure of the Measure B sales tax revenues represents an action item. | | Communicating from time to time to the ACTIA Board by resolution suggestions and concerns pertinent to the administration and expenditure of Measure B funds. |

Appendix A

Citizens Watchdog Committee Comparisons

| | Santa Clara County CAC/CWC - Current | Santa Clara County Measure B CWC 1996 | Orange County (Transportation Oversight Committee) | ACTIA (Alameda County Transportation Improvement Agency) |
|------------------------------|---|--|---|--|
| By-Law Amendments | Majority of its total membership and with the approval of the Board of Directors. | Majority vote of the Committee at any meeting. | No formal by-laws. | Bylaws may be amended, repealed or altered, in whole or in part, by a resolution adopted at a duly-constituted CWC meeting at which a quorum is present. |

PASSED and ADOPTED by the Santa Clara County Civil Grand Jury on this 7th day of May, 2009.

Don Kawashima
Foreperson

Mary Nassau
Secretary