



FILED

AUG 31 2009

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk,  
Superior Court of CA County of Santa Clara  
BY D. ALDYCKI

August 24, 2009

The Honorable Jamie Jacobs-May  
Presiding Judge  
Santa Clara County Superior Court  
191 North First Street  
San Jose, CA 95113

Re: *Santa Clara Valley Transportation Authority*

Dear Judge Jacobs-May:

Per California Penal Code 933 (c), the Santa Clara Valley Transportation Authority (VTA) Board of Directors adopted the following response to the 2008-09 Santa Clara County's Civil Grand Jury (CGJ) Report. In addition, the report has many factual inaccuracies that are documented in Attachment A.

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.*

Response

VTA disagrees with the finding. The structure and composition of the CWC is in strict conformance to requirements approved by the voters in the Ballot Measure known as 2000 Measure A. It also conforms to the 1996 Measure B Watchdog Committee, which performed its duties effectively for the citizens of Santa Clara County. To date, the current CWC is performing its duties effectively and in full conformance with the requirements establishing it.

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.*

Response

VTA disagrees with the finding. As stated above, the structure and composition of the CWC is identical to the 1996 Measure B Watchdog Committee, which performed its

duties effectively for the citizens of Santa Clara County. Following this successful model, the current CWC has and continues to provide appropriate information to the public and the VTA Board of Directors (Board). The information is published in newspapers throughout the community and is available on VTA's website, [www.vta.org](http://www.vta.org).

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.*

Response

The CWC provides the public with a valuable service by ensuring that Measure A revenues are spent consistently with what the voters approved in 2000. The CWC provides this oversight for the public through its reviews and independent audits. VTA disagrees with the recommendation to expand the authority of the watchdog committee as this would require VTA to return to the voters with a list of new responsibilities.

Recommendation 1b

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

Response

Per Measure A, the CWC is empowered to and does spend money on an independent compliance auditor. It is unclear why the CWC might need legal counsel or other independent advisors to fulfill their responsibilities. If legal counsel were ever required, VTA's Board would provide it in the most effective manner available.

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).*

Response

VTA disagrees with the finding. While the Board of Directors does ratify CWC appointments, the appointments come from a variety of specified organizations. The model used was the successful 1996 Measure B Citizens Watchdog Committee. The Board has never rejected a proposed CWC appointment.

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.*

Response

VTA disagrees with the finding. Since there is no evidence that the CWC has failed or is likely to fail in its responsibilities, VTA does not feel it prudent or necessary to change this successful oversight model.

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.*

Response

VTA disagrees with this finding. It is unclear why former elected officials serving on the Citizens Advisory Committee (CAC) is detrimental to the committee. Neither the independent organizational assessment conducted by the Hay Group in 2007 nor the California State Bureau of Audits analysis in 2008 identified this as a concern. In fact, VTA advisory committees function best when members have a long history of public service, are active in their community and are interested in regional transportation issues.

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.*

Response

VTA disagrees with the finding. VTA staff supports all VTA committees, the Board of Directors and most importantly, the citizens of Santa Clara County. The general manager serves at the will of the Board; the general manager and the staff support the efforts of the Board and the committees. Through the Board's leadership and the work carried out by staff, VTA is able to provide transportation services to the citizens of Santa Clara County.

Hiring separate staffs for each committee would result in a fractured collection of staff members reporting to various committees. It would require new resources, create inefficiencies and duplicate work efforts.

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.*

Response

VTA disagrees with the finding. At each meeting, the CWC agenda includes a standing item to review the committee's work plan. The work plan lists the items that the committee will consider over the next several months. Members can and do make suggestions or add items to the work plan for consideration.

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 CWC Chairperson, not the other way around.*

Response

VTA disagrees with the finding. The CWC serves the citizens of Santa Clara County through 2000 Measure A. The role mandated by the citizens is to ensure that the revenues collected through Measure A are spent appropriately on Measure A projects. VTA staff provides the CWC with the necessary information and resources to ensure that the committee fulfills their mission. If the CWC requires additional information or resources, VTA provides these needs as well. It is essential that the CWC remain focused entirely on the assignment mandated through Measure A.

Finding 4a

*While meeting the minimum requirement, 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.*

Response

VTA disagrees with the finding. The reports produced by the CWC have provided the necessary independent oversight to ensure the public that Measure A is being spent appropriately. The compliance auditor hired for the FY 2008 audit was hired by the CWC for this purpose. Again, these reports are similar to the efforts of the 1996 Measure B watchdog committee which served the public well.

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.*

Response

VTA disagrees with the finding. This is not a responsibility of the CWC. The CWC is mandated to oversee the expenditure of 2000 Measure A funds.

VTA has made it clear for many years that the 2000 Measure A sales tax revenue will not be sufficient to complete all the projects contained in Measure A. In fact, VTA's

Measure A Revenue & Expenditure (R&E) Plan, which was approved in 2006 by the VTA Board of Directors, stated that VTA would need the equivalent of an additional ¼ cent sales tax to meet the shortfall. Measure A revenues have been the subject of many board workshops and discussions in the media. At the April 25, 2008 Board workshop (a noticed and public meeting), the financial consulting firm of AECOM updated the Board on the financial projections for Measure A. Their findings stated that the sales tax projections for Measure A were \$4.9 billion less than previously expected.

Recommendation 4a

*CWC should independently decide on report frequency and content without VTA staff involvement or supervision.*

Response

VTA disagrees with this finding. The CWC has this authority in place.

Recommendation 4b

*No recommendation.*

Response

No response.

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.*

Response

VTA disagrees with the finding. The role of the CWC is defined by Measure A, not by staff. The CWC is comprised of community leaders who bring a history of community activism and service to the table.

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.*

VTA disagrees with the finding. The role of the CWC is defined by Measure A – not by VTA staff or the members of the CWC. Regarding revising training materials and memorandum, VTA is always open to review best practices of other agencies to improve our processes. With reference to Appendix A of the report, we believe CGJ's own work indicates that VTA's CWC compares favorably when compared to others.

Finding 6

*Board work plans and meeting agendas are developed primarily by VTA staff.*

Response

VTA agrees with the finding. VTA staff primarily develops the work plan and agendas. Staff meets regularly with the chair and vice-chair of the Board to discuss agendas and upcoming policy issues.

Recommendation 6

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

Response

VTA disagrees with the finding. As is the case in both the public and private sector, the role of the board of directors is to provide policy direction to the executive management and to make final decisions on these policies. The Board hires a general manager to implement the vision set forth by the Board; the general manager hires professional staff, who provide the board with the technical expertise necessary to carry out the vision. As stated previously, the staff meets regularly with the chair and vice-chair of the Board to discuss agendas and upcoming policy issues.

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.*

Response

VTA disagrees with the finding. While the City of San Jose and the County of Santa Clara do have full-time staff support, the smaller cities all have transportation and/or public works departments who are also full time, professional staff. In addition, board members contact VTA staff on a regular basis for assistance.

The agenda packets are compiled to provide members with the information they need to make decisions, not to obscure key issues. In fact, each agenda item is presented in an orderly fashion and includes: (a) a recommendation from staff; (b) background on the item; (c) discussion on the item; (d) the fiscal impact; and (e) comments provided by the standing committees, and advisory committees, if appropriate; and (d) any relevant attachments.

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.*

Response

VTA disagrees with the finding. The VTA Board has its own staff. As stated earlier, VTA staff supports the Board of Directors and most importantly, the citizens of Santa

Clara County. The general manager serves at the pleasure of the Board. Through the Board's leadership and the work carried out by staff, VTA is able provide transportation services to the citizens of Santa Clara County.

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.*

Response

VTA agrees that transportation experience on the Board is important. In fact, the Board has already taken action to encourage appointments with transportation experience. VTA disagrees with the statement that the Mayor of San Jose appointed members with no previous transportation experience. The Mayor appointed members who are experienced in community issues (including transportation), land use and planning. One member, a well respected community activist and private sector software executive made transportation improvements her second highest priority during her campaign. The other served on the San Jose Planning Commission dealing with a myriad of development issues including transportation, and served one year as chair. Since a major portion of VTA's work is planning and congestion management, these skills are also provide value for Board service.

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.*

Response

VTA disagrees with the finding. VTA agrees that having experience in transportation is beneficial to Board members prior to joining the Board. So too is having experience in land use planning, public policy, finance, law and construction. VTA's responsibilities are far broader and its need for meaningful policy guidance is not constrained to public transit. As mentioned above the VTA Board has taken action on these matters.

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 other Measure A projects.*

Response

VTA disagrees with the finding. VTA elected not to update the Measure A Revenue and Expenditure (R&E) Plan as economic issues, such as the dramatic downturn in the economy and its impact on sales tax receipts for the longer term are not fully understood, even today. VTA has instead adopted a fiscally sound two year budget based on a pay as you go approach to manage our way through this debilitating recession.

Concerning the statement that the public was unaware that VTA needs additional revenue to complete the Measure A program, as referenced above, VTA has been clear for the past several years that an additional revenue source is needed to complete the Measure A Program. Again, the R&E that was approved by the VTA Board of Directors in 2006 stated that VTA would need additional revenues equivalent to a ¼-cent sales tax to complete the Measure A Program. And, at the April 25, 2008 Board Workshop, the financial consulting firm of AECOM informed the Board that the sales tax projections were \$4.9 billion less than previously expected. This was widely reported in the media.

Recommendation 9a

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

Response

VTA disagrees with the finding. The shortage of funding required to complete all Measure A projects has been discussed repeatedly during 2008 and was widely reported in the media. No 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 ramification of each measure, including the impact on both capital and operating fund, projections and budgets, as well as the effect on other projects.*

Response

VTA agrees with the finding. The finding is consistent with the history and policy of VTA. Again, VTA does not withhold information from the public at any time nor will we in the future.

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 the east Valley deserve better from the representatives of San Jose on the VTA Board.*

Response

VTA disagrees with the finding. Large construction projects are frequently advanced and slowed down due to a variety of factors including but not limited to: funding availability, property acquisition, contractor availability and funding opportunities. The project

continues to move forward in a phased approach. Furthermore, VTA is actively seeking potential funding opportunities at the regional, state and federal levels for this project.

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.*

Response

VTA disagrees with the finding. VTA already provides the CWC with regular updates on Measure A projects. The finding is a recommendation that the Board of Director's abdicate their public policy responsibility for Measure A projects to the CWC.

As stated earlier, the CWC provides the public with a valuable tool in ensuring that Measure A revenues are spent consistent with what the voters approved in 2000. The CWC provides this oversight for the public through its reviews and audits. Expanding the authority of the watchdog committee would require VTA to return to the voters with a list of new responsibilities.

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.*

Response

VTA disagrees with the finding. Staff makes recommendations but does not make significant changes to projects without the Board's approval. All Measure A updates relating to the CWC's authority are brought to the committee.

Finding 11

*The Board approved Measure C and D to be placed on the November 2009 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.*

Response

VTA agrees with the finding. VTA is required by law to place Measure C on the ballot and did so. Measure D was placed on the ballot as a cost savings mechanism. The Board acted within the scope of their capacity. VTA did take the contents of Measure C (Valley Transportation Plan (VTP) 2035) to the advisory committees multiple times prior to placing Measure C on the ballot. None of the advisory committees expressed significant concern with the contents of VTP 2035.

Recommendation 11

*The Board should ensure the 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.*

Response

VTA disagrees with the finding. VTA has a prescribed process that takes agenda items to one of three board standing committees prior to the item moving forward to the full board. The committee considers the item carefully and makes any recommended policy changes to the item. The item is then sent to the full board for their approval. The committee recommends the item be placed either on the consent or regular agenda. Any item on the consent agenda may be removed and placed on the regular agenda by any board member, member of the public or staff request. Committee members use their judgment to determine if an item should be placed on the consent or regular agenda. The authority to place an item on the consent or regular agenda will remain at the discretion of the committee.

Due to issues of timing or the public interest (such as ballot measures) the Board may or may not solicit the input of advisory committees.

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.*

Response

VTA agrees with the first statement of the finding. Please see the response to “Finding 11” above. The second sentence is factually inaccurate. The committee continues to exist as long as it has the legal requirement granted by Measure D to do so.

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.*

Response

VTA disagrees with the finding. Measure D was not hastily implemented, in fact it is yet to be implemented as the CWC will not be required to review VTA’s long-range transportation plan for five years. Measure D was not hastily put together, as the Administration & Finance Committee analyzed the issues carefully.

Finding 13

*The Board allowed Measure C to be placed on the November 2008 ballot asking voter approval of the VTP 2035 plan when neither the Board nor the public had seen a draft of the full plan.*

Response

VTA disagrees with the finding as it is factually incorrect. VTA provided many updates to the board and the advisory committees on the draft plan throughout 2008.

Furthermore, draft chapters were available on VTA's website well before the election; VTA held open houses as well as conducting an online survey to solicit input from the public. Had the public rejected Measure C, VTA would have considered reevaluating the long-term plan. However, the public overwhelmingly approved the plan (by nearly 70%), which sent a message to VTA that the public approved of the direction of the plan. This was taken into account when the Board ultimately approved the full plan in early 2009.

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.*

Response

VTA agrees with the finding. As outlined above, VTA's long-range plans are thoroughly vetted through the appropriate committees and the public.

Finding 14

*Measure A funds were used on non-Measure A projects. The Measure A fund exchange violated to 2000 Measure A ballot requirements 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.*

Response

VTA disagrees with the finding. VTA does not believe it is entitled to use Measure A funds for other programs. Measure A is clear regarding which projects may be built with Measure A revenues. VTA does exchange funds from various local, regional, state and federal sources as a means for advancing projects and finding efficiencies. These exchanges are always approved by the board and provide agencies with the flexibility needed to advance and complete projects. If agencies were not aggressive in identifying funding opportunities, cities and counties would be left with a series of under funded projects that are unable to move forward.

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.*

Response

VTA agrees with the finding. VTA does provide this information to the CWC.

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.*

Response

VTA disagrees with the finding. VTA will begin collecting the tax once the requirements contained in Measure B are met.

Recommendation 15

*The Board should consider the intention of the voters as well as the specifics of the ballot measure when considering the 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.*

Response

VTA disagrees with the finding. As stated above, VTA will begin collecting the tax once the requirements contained in the 2008 Measure B are met. Also the first phase is 9.9 miles (not 2.2).

Sincerely,

A handwritten signature in blue ink that reads "Dolly Sandoval". The signature is written in a cursive, flowing style.

Dolly Sandoval, Chairperson  
Santa Clara Valley Transportation Authority

## ATTACHMENT A

### VTA Response 2008-09 Santa Clara County Civil Grand Jury (CGJ) Report Errors, Omissions, Exaggerations

#### NOTE:

The following detailed analysis and responses to the 2008-09 Santa Clara County Civil Grand Jury (CGJ) Report follows the structure of the Grand Jury Report. The specific page number, heading, title, and, where applicable, item number are listed for easy cross-reference to the CGJ Report. Statements quoted from the report are shown in *italics*.

#### Page 1

*"VTA is a multi-billion dollar enterprise..."*

This implies VTA is a company organized for commercial purpose, no mention VTA is a special district, etc.

#### Page 2

*"At any one point in time, nine cities are not represented."*

All cities are in fact represented through their city grouping. The city groupings hold meetings outside of the Board meetings to discuss VTA issues. A correct statement: that "...nine cities are not directly represented."

#### VTA Committee Structure

Regarding the CAC appointment process, it states that "*San Jose chooses two, County Board of Supervisors choose one, ...*" In fact, these entities appoint their members and the Board ratifies the appointment.

#### Page 3

#### VTA Committee Structure (continued)

It is stated that the *National Association of Industrial and Office Properties* (NAIOP) is an appointing authority for CAC, which is incorrect. Approximately three years ago (June 2006) the Board approved replacing NAIOP, with Building Owners & Managers Association – Silicon Valley (BOMA-SV). The correct membership structure is reflected multiple places on VTA's website (roster, CAC bylaws, etc.). The current CAC/CWC Vice Chair Bob Jacobvitz is BOMA's representative

#### Page 4

*“Regarding the CWC, ... this committee would be comprised of the existing VTA’s Citizen’s Advisory Committee (CAC).”* Although the report acknowledges that the ballot established the CWC’s membership structure, later in the report when it states the membership structure is somehow a problem (former elected officials, etc.). The report fails to recognize the cost of a ballot measure (estimated at about \$1 million) that would be required to modify the CWC membership structure.

*“The Eastridge light rail extension, which is shovel-ready is on hold.”*  
The statement is not correct.

*“Measure C was an advisory vote. It asked the voters to approve VTP 2035.”*  
It is not an accurate statement that Measure C asked voters to approve VTP 2035. Measure C was an affirmation of VTA and county-wide transportation services, and passed with 69.7% of voters voting in favor. Measure C was required by the 1976 ½ cent sales tax measure. VTP 2035 is not approved by the voters but by the Board.

#### Page 5

#### Page 6

*“The Hay Group Report proposed a comprehensive overhaul of VTA’s organization and practices.”*  
End of statement gives reader impression VTA did not pursue and/or achieve recommendations set forth. This gives an impression to the public that VTA has not made significant progress on addressing the recommendations (not overhaul) of VTA’s organization.

*“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 ...”*  
Not true. Examples of early and frequent committee participation are the Comprehensive Operational Analysis (bus), Bus Rapid Transit, HOT Lanes, etc.

*“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’.”*  
End of statement implies Board of Directors ignored recommendation. Report fails to acknowledge Board Workshop on Fiduciary Responsibility and the work of the original Governance Subcommittee on these issues.

#### City Representation

*“San Jose, with five members on the Board, dominates the Board.”*  
San Jose cannot technically dominate the board as they do not hold a majority. A total of seven affirmative votes are required to pass any measure except those with higher threshold requirements mandated by statute.

*"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."*

This statement is refuted by Light Rail expansion, Comprehensive Operations Analysis (COA), BART, Caltrain, Capital Corridor, ACE, Highway 17 service, etc.

#### Page 7

*"...was ultimately shuffled to the Audit and Finance Committee for burial."*

This statement is false. First, it was sent to the Administration & Finance (A&F) Committee, not "Audit". Second, the A&F Committee discussed the item in August, September and October 2009, as well as in April 2009. The A&F committee has instructed staff to return with the item in August 2009. It is not "buried."

*"Meeting agendas are prepared by VTA staff with input from the Board chairperson."*

This contradicts other statements in the report and the report's "staff driven" references. Every Board agenda has a standing item entitled "Items of Concern and Referral to Administration" where members may bring up any item not on the agenda for future discussion.

#### Token committees

- Does not cite specific examples, although report states, *"This Grand Jury uncovered examples that support this conclusion."*
- The statements "... Committees are presented with items to review only after the Board and/or staff (emphasis added) has already made a decision" and *"Thus, the Advisory Committee is only asked to bless the decision after the fact"* are inaccurate. Except for unusual circumstances where urgency precludes the normal process, items are vetted with the appropriate Advisory Committee(s) and their input is transmitted to the Board and, in many cases, incorporated into the proposal. Also, the Board is responsible for decisions, not staff.
- The report does not reflect Advisory Committee Enhancement (ACE) Process or the changes it has recommended. These include adding Advisory Committee votes and the addition of major comments from Committees to the Board memo.
- The report does not acknowledge that the CAC Chairperson Report and the similar PAC Chairperson Report are standing items on every Board agenda. This provides the Advisory Committee chair the opportunity to apprise the Board of his committee's comments and concerns on items considered or on future issues. (The CAC Chair Report to the VTA Board was a specific recommendation of the Bureau of State Audits report and the Board approved amending the CAC bylaws to add this provision in September 2008. Both the CAC and PAC Chairperson Reports are standing items on every Board agenda.)

- *"VTA's attitude toward these committees ..."*

The statement cannot be verified, no specific examples are cited. This is especially true for *"retaliation for independent thinking"*.

- *"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."*

The statement is not correct.

- *"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'."*

VTA understands the sentiment conveyed by this statement and has taken action to address it. Examples are ACE process, VTA Chair & Vice-Chair meetings with Advisory Committee chairs, advisory committee meeting minutes in Board agenda packet, advisory committee input on items included in board memorandums, and the orientation and training materials provided to new Board members.

## Page 8

### Board/Committee communication

- Staff collaborates with the Committee chairperson on setting the Advisory Committee meeting agendas. For example, the CAC/CWC Chairperson reviews, provides input, and approves the draft agenda prior to distribution.
- Formal review of the Advisory Committee Work Plan with the committee is done at every meeting to receive committee input and direction. It is a standing item on every agenda, and is the last agenda item in order to incorporate any committee changes or requests made earlier at that meeting.
- The Board Chair reviews and approves the Consolidated Board & Committee Work Plan every six months. This planning document includes the items projected to be reviewed and considered by the Advisories (and Standing Committees) prior to Board consideration, including those requiring Board adoption.
- The report does not reflect the recently-implement ACE recommendation that the vote and the addition of major comments from the Advisory Committees on the memo submitted to the Board and that becomes the official record. Due to timing constraints, the vote and major comments are provided to the Standing Committees via a summary report. Prior to this, Advisory Committees comments were verbally relayed to the Standing Committees.
- It is not a correct statement: "... the PAC and CAC Chairs were recently invited to make a short presentation at each meeting". The PAC Chairperson Report was added approximately five years ago and the CAC in September 2008.

### PAC and CAC: Committee views not valued

- *"PAC is the only place in VTA governance where there is equal representation for each city without an overwhelming advantage to San Jose."*  
This is factually inaccurate. There is no advisory committee where the City of San Jose with over fifty percent of the population has "*an overwhelming advantage.*" The TAC has one member representing each Member Agency (the 15 cities and the County of Santa Clara); TAC members are staff of the Member Agency they represent. The BPAC also has one member representing each Member Agency; BPAC representatives are private citizens appointed by the Member Agency they represent; CTA membership has representatives from City Groupings.
- *"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."*  
This is inaccurate. Numerous examples can be cited to disprove it. These include but are not limited to the valuable input provided by CAC and PAC on the Comprehensive Operations Analysis (COA), CAC's initiative to ban smoking at all VTA facilities, the BPAC's input

and expertise on development of technical works such as the Bicycle Technical Guidelines, Pedestrian Technical Guidelines, etc.

- Referencing PAC, "... it frequently serves as a breeding ground for new Board Members." This contradicts the statement that Board members have little transit experience.

### ***Role of the CAC/CWC in VTA Governance***

The CAC bylaws (as well as those for BPAC, PAC and TAC) provide that items may be placed on the agenda by the committee chairperson (which is done consistently and frequently) and by the vote of a majority of the committee.

### ***The same group of citizens is assigned to both committees***

- This structure was defined by the 2000 Measure A ballot. The voters put it in place and an election would be required to change it.
- Report fails to delineate the major differences between CAC and CWC: CAC is an advisory committee established by, and reporting to the VTA Board. Membership is derived from a variety of community stakeholder groups including business and labor. The CWC is an oversight committee established by the electorate that reports to county residents, not the VTA Board.
- The statement "... the same people, serving as the CWC, have the duty to communicate to the public. hold hearings, issues reports," fails to acknowledge these responsibilities apply only to 2000 Measure A-related activities.

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### ***CWC Performance***

- "VTA Staff released an audit for FY2008 performed by the VTA auditor (VTD) without review or approval by the CWC."

This is factually inaccurate. This was the Comprehensive Annual Financial Report (CAFR), which presents VTA's financial statements for the period. It was brought to the CWC, as an information item at its 2/11/09 meeting where Leonard Dana, a VTD partner, presented the item and explained the audit's findings. The CWC does not have the authority to approve this report since it covers all aspects of VTA ("Comprehensive"), not just Measure A.

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

VTA disagrees with this statement. The Committee responsible for preparing them, the CWC, judged they were comprehensive, complete and as timely as possible. Neither CWC members nor VTA have received negative comments or complaints about the reports.

### ***What's Wrong with the Citizens Watchdog Committee?***

1. *The members of the CAC/CWC interviewed all stated they work for the VTA Board.*

The primary tenet emphasized at new CAC/CWC orientation is the different, separate duties of the CAC versus the CWC. This includes that CAC is advisory to the VTA Board, reports to the Board, and is free to express opinions and recommendations on Measure A policy decisions (project composition, funding, schedule, etc.). For the CWC, it is made clear that they are established by the electorate, report to the public, not the

VTA Board, and that it is not within their purview to express opinions on Measure A policy decisions.

These points are reiterated and emphasized at annual training provided separately to each committee on its specific duties and responsibilities (the last training on CWC duties and responsibilities was held at the February 2009 meeting:

[http://www.vta.org/inside/boards/committee\\_advisory/cac/agendas\\_minutes/2009/02\\_feb/cac\\_021109\\_fullpacket.pdf](http://www.vta.org/inside/boards/committee_advisory/cac/agendas_minutes/2009/02_feb/cac_021109_fullpacket.pdf)).

2. *"CAC/CWC members are approved by the Board, compromising independence of thought and action."*

The Board ratifies the appointments made by stakeholder groups, such as BOMA-Silicon Valley or the Chamber of Commerce Coalition; this procedure was in place when voters approved Measure A that established the membership process for the CWC. The statement that this appointment process compromises *independence of thought and action* cannot be not substantiated.

3. *"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."*

This statement cannot be substantiated by VTA.

Members have indicated that there is a substantial amount of information contained in their agenda packets but have not stated that it is "*overwhelming*." A substantial amount of information in each agenda packet is to be expected since it is for two committees and given the importance and magnitude of the oversight responsibilities of the CWC. CAC/CWC does control its own agenda. The committee and the committee chair, not individual members that make the decision. The final item on each agenda is the Committee reviewing and modifying its work plan as it sees fit. It is common for the Committee to add/ delete or change the timing of specific items. In addition, the draft agenda is sent to the committee chair and vice chair each month for review, input and approval prior to publication. Under ORDERS OF THE DAY the Committee has, and often utilizes, the ability to defer or change the sequencing of items on that specific agenda.

4. *"A conflict of interest is present, whether actual or perceived, in the discharge of their duties as a member of the CWC."*

This statement cannot be substantiated.

5. The statement that the bylaws for the CWC "*were written by staff*" is not correct. Staff drafted the bylaws and submitted them for Committee review and adoption. The CWC's bylaws (which are a part of the CAC bylaws) were primarily derived from, and, in many cases, quoted the Measure A ballot. The CWC is not free to select duties and responsibilities other than those specified in the ballot.

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*"An additional sales tax of ½ cent was proposed to the voters in November, 2006 but was rejected."*

While the statement is factually accurate it implies this was a VTA measure. The referenced measure was placed on the ballot by the Santa Clara County Board of Supervisors for general fund purposes, not VTA. While the campaign literature (not in any way connected to VTA) did mention the BART project, the measure was not a VTA ballot measure.

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**Page 12**

Date of June 2008 Downtown/East Valley Policy Advisory Board is wrong. (should be June 11)

*“Particularly noteworthy was the fact that VTA staff suspended the project (DTEV) without prior Board authorization.”*

Construction projects are frequently advanced and slowed down to account for a variety of factors including but not limited to: funding availability, property acquisition process, contractor availability, competition for resources, etc.

*“However, property acquisition, utility relocation construction and completion of bid documents for construction contracts were not authorized.”*

VTA does not agree with this statement, it is factually inaccurate. These items are authorized via adopted budget.

*“The public was not informed of the 2000 Measure A 30-year financial situation before the November 2008 election.”*

This comment is a well-utilized ballot argument The Board and public were informed of the financial implications of the economic downturn by VTA and the news media (KCBS, KGO, Mercury News and other local newspapers).

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*“If the 30-year Revenue and Expenditure Plan had been updated as planned, it likely would have shown that if the BART extension was built as planned, the remaining 2000 Measure A projects would require massive additional investment ...”*

*“If the updated Revenue & Expenditure Plan had been readily available to the public, Measure B might not have passed.”*

These are speculative comments. The fact that more funding is needed to complete Measure A has been publicly stated by VTA. In fact, the 2006 Revenue & Expenditure Plan assumed the equivalent funding of revenue equivalent to a new 1/4 cent sales tax to complete the plan. Furthermore, at the April 25, 2008 Board workshop, the financial consulting firm AECOM reported that sales tax projections were \$4.9 billion less than previously expected. This was widely reported in the news media and was discussed publically at several VTA Board meetings.

*“According to the Measure A Semi-Annual Report (internal) dated June 2008 ...”*

Implies document was not made available to the public and did not go to the Committee, which is not factually correct.

*“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 statement is false.

*“The VTA Board has approved the exchange (swap) of approximately \$107M of Measure A funds... The payback from the state depends on state approval of two Measure A projects for state (STIP) funding. ...”*

The projects have been approved by the state. Copies of the State Transportation funding database listing (CTIPS) are available.

*“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.”*

This is only partially correct. There were two exchange actions. The first, approved by the VTA Board in February 2007, was presented to the CAC at its January 10, 2007 meeting. This item was correctly submitted to CAC for consideration since it provides advice and counsel to VTA Board, whereas the CWC does not. It would be inappropriate for the CWC to provide comment on this item since Measure A policy decisions (project composition, schedules and funding levels) are the responsibility of the VTA Board and the CWC is solely responsible for reviewing Measure A expenditure to ensure they were spent in accordance with the ballot.

The CAC discussed the first exchange at its January 2007 meeting and unanimously recommended approval to the VTA Board, as reflected in the approved minutes. The second exchange did not go to the CWC in advance. The timing of the 2008 STIP information from the State was such that VTA staff was unable to bring the program to any of the VTA advisory committees and standing committees prior to its review and subsequent approval by the VTA Board in December 2007. VTA staff made a follow-up report to the CWC at its next (January 2008) meeting and there was no comment. Minutes are available.

The CWC subsequently determined that the fund swaps were appropriate as long as the funds were repaid in full, with appropriate interest, and that other projects in Measure A were not adversely affected by the swap. In effect, the swap is a loan subject to future repayment – the funds were loaned to a non-Measure A project and STIP funds will be used to repay Measure A.

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*“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.”*

VTA disagrees with this statement. Items not on the published agenda may not be discussed at the meeting. Allowing the unagendized discussion to move forward would have violated the Brown Act. The committee chose not to pursue this discussion further.

*“VTP 2035 was first presented to the public eight days after the November 2008 election.”*

The statement is factually incorrect. The draft VTP 2035 had been presented to the board, advisory committees and public several times. Also, draft chapters were available online during the fall, before the election. The time frames for formal adoption of VTP 2035 were driven by the Metropolitan Transportation Commission (MTC).

#### **Page 15**

*“2008 Measure B Sales Tax – Promised 16.1 miles, Delivering 2.2 miles”*

The statement is factually incorrect.

*“The Board tolerates behaviors that do not encourage informed public debate...”*

The statement is factually incorrect.

*“VTA staff develops plans internally with little or no public (or Board) input at the early stages ...”*

The statement is factually incorrect.

*“The board has taken a passive role, ...”*

VTA disagrees with this statement.