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September 3, 2019

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

(ENDORSED)
FILED
SEP 10 2019
Clerk of the Court
Superior Court of CA County of Santa Clara
BY BntneyHuelbig DEPUTY

Re: Civil Grand Jury Report – Inquiry into Governance of the Valley Transportation Authority (June 18, 2019)

The City of Cupertino expresses our appreciation for the effort and commitment demonstrated by the June 18, 2019 Santa Clara County Civil Grand Jury's report, entitled *Inquiry into Governance of the Valley Transportation Authority*. This letter represents the City's response to Finding # 1 and on recommendations 1a, 1c, 1d and 1e consistent with California Penal Code §§ 933(c) & 933.05 (a) & (b).

Finding # 1: The City agrees with this finding and provides clarifying comments as contained in our response to recommendations 1a, 1c, 1d and 1e.

Recommendation 1a: VTA should commission a study of the governance structures of successful large city transportation agencies, focusing on such elements as: board size; term of service; method of selection (directly elected, appointed or a combination); director qualifications; inclusion of directors who are not elected officials; and methods of ensuring proportional demographic representation. This study should be commissioned prior to December 31, 2019.

Response: The City of Cupertino requests that an independent agent, such as the Cities Association of Santa Clara County, commission the recommended study with funding provided by VTA. Furthermore, for the study to be effective, this comment letter and others received by the Presiding Judge, should be included and considered by the study. To increase the competency of the Board and promote greater accountability, the City of Cupertino suggests that the study include consideration of:

- *Directly elected, full-time VTA Board Members*
- *5 Board Members corresponding to Santa Clara County Board of Supervisors districts*
- *Reasonable Compensation of Board Members in consideration for their full-time service*

Once VTA funding is committed, at least 180 days will be needed to complete the study and ensuing discussion and documentation of perspectives and recommendations by all represented governing bodies to the VTA Board and County Board of Supervisors. This study should be completed prior to June 30, 2020.

The City also requests that the charge be clarified to include not only "large city" transportation agencies, but specifically metropolitan areas (such as Portland, Oregon) where transit agency service areas span multiple municipalities.

Recommendation 1c: As constituent agencies of VTA, each of the cities in the County should prepare and deliver to VTA and the County Board of Supervisors a written report setting forth its views regarding VTA governance, with specific reference to the elements listed in Recommendation 1a. These reports should be completed and delivered prior to December 31, 2019.

Response: To expand on the response provided in Recommendation 1a, the City of Cupertino is often not effective in directly and actively engaging in equitable governance of VTA under the current structure of being represented by one rotating board member among the West Valley cities of Campbell, Los Gatos, Monte Sereno and Saratoga. The composition of the Board, as originally set in 1995, appears to have been based primarily on geographic proximity and/or population instead of other significant transportation and regional economic factors. Much has changed since 1995 and for the City of Cupertino equitable representation on the Board needs to take into consideration other transportation need factors that include centers of employment, sales tax generation, education centers, proximity to other similar cities (San Jose, Santa Clara, Sunnyvale, Mountain View & Palo Alto) and access to major transit infrastructure such as Highways 85, Interstate 280, Stevens Creek Boulevard and Caltrain.

VTA has been ineffective in bringing employees to most major employment centers, particularly those in the West Valley and North County. Figure 1 shows the importance of effective transit near job centers. Several years ago, a transportation specialist with a major employer pointed out that there are some 42,000 jobs in north Sunnyvale, serviced by one ineffective (slow) light rail line and one public bus. He compared that to 35,000 jobs in downtown San Jose serviced by lavish transit resources. Rather than address transit demand with new VTA service in the North County and West Valley over the past two decades, VTA suggested that cities impose aggressive transportation demand management (TDM) plans, and that has become the status quo. Major employers are now serving their own employees with extensive bus networks. This has taken many cars off the road, however has become a disincentive to creating a transit solution for the general public, urgently needed as an alternative to cars. Major employers report that while their buses are often stuck in traffic, their employees are able to work on the bus. Corporate buses have become an important tool in recruiting and retaining employees in our tight labor market, an advantage they hold over smaller employers with which they compete for talent. Consequently, large employers have no clear incentive to help change the status quo in the major employment centers in the North County and West for the benefit of the general public; notably, none of the major employers have publicly engaged at the VTA SR85 Policy Advisory Board meetings.

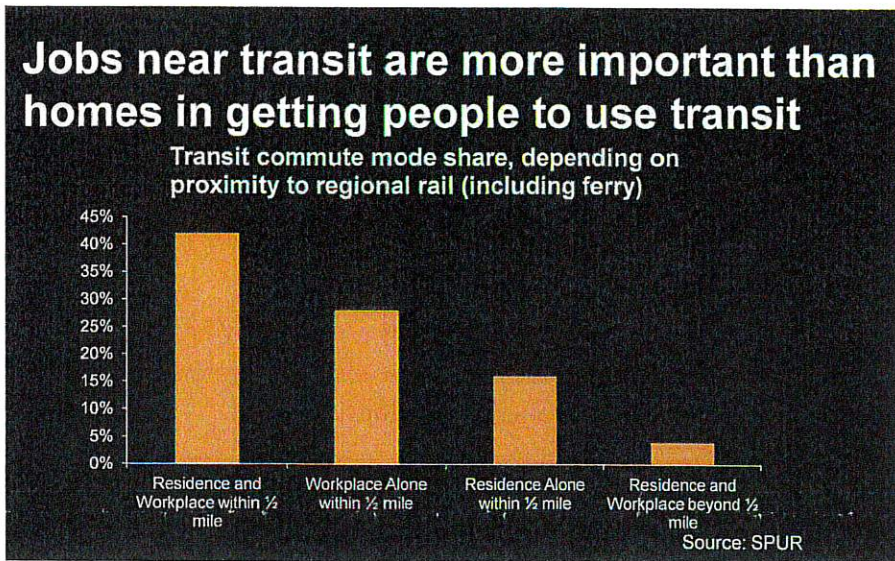


Figure 1: Credit SPUR & Stanford Consulting Professor Stefan Heck

Further compounding the issue of a regional solution is public trust. Public confidence in VTA has been damaged by longstanding but unfulfilled promises in the 1992 transit plan, reinforced by Measure A 2000, that would have connected the North County, West Valley and South San Jose along the SR 85 corridor and Cupertino, Santa Clara and downtown San Jose on the Stevens Creek corridor. Cupertino is at the nexus of these corridors with hours of stop-and-go traffic every morning and evening, but with no effective transit for the general public.

Voters have become fatigued and distrustful of transportation measures due to overpromising and underdelivering. Last year's arguably regressive Regional Measure 3 (RM3) is an example of a promise to mitigate traffic congestion, but all of the transit dollars coming to Santa Clara County were allocated to projects in San Jose: BART, Eastridge and Diridon Station. Moreover, the process that created the allocation was done with complete lack of transparency, behind closed doors with no participation of the public or the majority of its representatives serving on VTA. According to Jim Beall, the author of SB-595, the enabling legislation which set allocations, VTA's allocation came from Executive Director Nuria Fernandez. In July 2018, the allocations were introduced into the bill and passed through committee. In August 2018, the allocation was presented as a fait accompli to the VTA Policy Advisory Board and Board. As a result of such lack of transparency and fairness, future measures to fund needed improvements will be more difficult to achieve.

Per the Civil Grand Jury's report, VTA has begun to expend Measure A and Measure B sales tax receipts originally earmarked for capital improvements to help fund transit operations. This is concerning to the City of Cupertino. Accordingly, and as outlined in our response under Recommendation 1a, the City of Cupertino requests that VTA

provide funding to an appropriate fiscal agent to provide the resources needed to complete a commissioned study that would facilitate a thoughtful discussion of alternatives and positions by cities without designated seats on the VTA Board.

Pending any change to the governance of the VTA Board, and as described in the Civil Grand Jury's report, cities without designated seats on the VTA Board need to be given the time and resources necessary to consider a consensus position.

The City's comments herein represent the City's views regarding VTA governance to implement this recommendation. The City may provide additional responses either in future reports or in coordination with other governing bodies.

Recommendation 1d: Within six months following the completion of the studies and reports specified in Recommendations 1a, 1b and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation, including appropriate amendments to Sections 100060 through 100063 of the California Public Utilities Code, to improve the governance structure of VTA (which potentially could include an increase in the directors' term of service, the addition of term limitations and the inclusion of appointed directors who are not currently serving elected officials).

Response: Per the response comments provided for Recommendation 1c, the City of Cupertino is open to participating in the development of such legislation, assuming it addresses the significant factors that lead to ineffective governance and poor decisions. Thus, the recommendation requires further analysis and the City will coordinate with other governing bodies over the next six months.

Recommendation 1e: In order to provide more continuity in the leadership of the VTA Board, within six months following the completion of the studies and reports specified in Recommendations 1a, 1b and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation amending Section 100061 of the California Public Utilities code to provide that the Chairperson of the VTA Board shall be elected for a term of two years rather than one.

Response: The City of Cupertino agrees that extending the Chairperson's term may be advantageous for continuity and experience – especially if the two-year term were to coincide in time with the fiscal year. However, the advantage is dependent upon the qualifications of the person and, in the case of City of Cupertino, the assurance that the opportunity is equitably available to cities without designated seats on the VTA Board. The City of Cupertino would prefer to hold this recommendation in abeyance in order to allow time for overall recommendations to be developed and our response to Recommendation 1a considered.

Should you have any questions or concerns regarding this response, please feel free to contact City Manager Deborah Feng at deborahf@cupertino.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Steven Scharf". The signature is fluid and cursive, with a prominent initial "S" and a long, sweeping tail.

Steven Scharf, Mayor

cc: Valley Transportation Authority Board
City of Cupertino City Council