Santa Clara Valley Transportation Authority

(ENDORSED)
FILED
SEP 11 2026
Clerk of the Court
Superior Court of CA County of Santa Clara
BY Britney Huelbig DEPUTY

September 10, 2026

Honorable Julie A. Emede
Presiding Judge
Superior Court of California, County of Santa Clara
191 North First Street
San Jose, CA 95113

Re: VTA Response to the 2025-2026 Santa Clara County Civil Grand Jury Report, "VTA's Management and Oversight of BART Silicon Valley Phase II"

Dear Judge Emede,

Enclosed is Santa Clara Valley Transportation Authority's (VTA) response to the 2025-2026 Santa Clara County Civil Grand Jury Report, "*VTA's Management and Oversight of BART Silicon Valley Phase II*."

The VTA Board of Directors unanimously approved the enclosed response at its September 3, 2026, meeting.

Please accept the enclosed response for filing in accordance with the requirements of California Penal Code Section 933.

Sincerely,

Elaine F. Baltao
Board Secretary
Santa Clara Valley Transportation Authority

Enclosure: VTA Response to the 2025–26 Santa Clara County Civil Grand Jury Report

Santa Clara Valley Transportation Authority

September 10, 2026

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

Re: VTA Response to Civil Grand Jury Report: *VTA's Management and Oversight of BART Silicon Valley Phase II*

Dear Judge Emede:

Pursuant to California Penal Code sections 933(a) and (b) and 933.05, the Santa Clara Valley Transportation Authority (VTA) Board of Directors (Board) submits the following responses to the 2025-26 Santa Clara County Civil Grand Jury Report entitled "VTA's Management and Oversight of BART Silicon Valley Phase II," dated 06/17/2026 (hereafter referred to as the "report").

The VTA Board of Directors appreciates the time and effort the Grand Jury devoted to the report. The Board takes the findings and recommendations seriously and is committed to transparency and to the prudent stewardship of the resources the public has entrusted to VTA.

While the Civil Grand Jury makes several valid points regarding oversight and public reporting of the BART Silicon Valley Phase II (BSVII) Project ("Project"), VTA does not agree with certain underlying factual assertions and conclusions, which are addressed in the responses below.

VTA notes one correction to the factual record that extends beyond the numbered findings. On pages 5 and 6, the report attributes $375 million in project funding to a potential November 2026 ballot measure. That $375 million is funding from Regional Measure 3, approved by Bay Area voters in June 2018 and allocated to the Project by the Metropolitan Transportation Commission on October 25, 2023; it is not contingent on any future ballot measure.

The Board is required to respond to Findings 1 through 5 and 8 through 10 and their associated recommendations. Findings and Recommendations 6 and 7 are directed to other agencies.

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Administration 408-321-5555
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Finding 1

The BSVII project currently requires voter approval of additional sales tax measures to address gaps in construction and operations funding.

Response

VTA disagrees partially with the finding.

None of the funding currently anticipated for the construction of the Project is contingent on approval of any future sales tax measure. Moreover, this finding is incorrect to the extent it treats the $375 million shown in the project funding plan as contingent on a potential November 2026 ballot measure. That $375 million derives from Regional Measure 3, approved by Bay Area voters in June 2018 and allocated to the Project by the Metropolitan Transportation Commission on October 25, 2023. VTA is addressing construction funding through ongoing cost-reduction and funding-strategy work rather than through any assumed new sales tax.

VTA acknowledges that funding for long-term operating and maintenance expenses beyond 2042 may involve seeking voter renewal of the existing 2008 Measure B.

Like all major public transit service in the United States, BART service in Santa Clara County requires an operating subsidy. It is therefore neither an oversight nor a hidden risk that VTA's long-range plan considers renewal of existing sales taxes measures used for transit operations before their expiration, or identification of an alternative operating revenue source. Planning for the continuation of a dedicated funding stream that voters have already approved and have sustained for decades is the ordinary and prudent approach to funding transit operations.

Recommendation 1

VTA should adopt and publish a strategy for the completion and operation of the project that reduces dependency on new sales tax measures. This should be implemented by December 31, 2026.

Response

The recommendation will not be implemented because it is not warranted.

VTA staff are currently reassessing project cost, schedule, and delivery assumptions and will present an updated funding strategy to the Oversight Committee and the Board on or before December 31, 2026. The capital funds required to build BSVII do not depend on new sales tax measures, and the strategy will confirm and document that approach.

Finding 2

VTA does not maintain a cash-flow model for the BSVII project.

Response

VTA disagrees with the finding.

VTA maintains a 20-year cash flow model for the BSVII Project that incorporates information from several cash flow models forecasting VTA's sales tax programs. The BSVII model is a financial plan that compiles historical data and that forecasts more than 20 years of sources and uses, both for the Project and for the agency as a whole. The model includes costs for capital, operating, and maintenance for both the Project and VTA. It follows Federal Transit Administration (FTA) financial planning guidelines and was most recently provided to FTA in support of the Project's Entry into Engineering submittal in early 2024. This BSVII model is currently being re-baselined and updated with the current project cost estimate. Examples of the cash flow models that VTA maintains and regularly updates are the cash flow models for the 2000 Measure A, 2016 Measure B and 2008 Measure B sales tax programs that fund the Project capital costs and the BART operating and capital maintenance costs. Additionally, the Project's monthly executive progress report presents actual and forecast expenditures by calendar year through completion of construction. VTA acknowledges that these tools have not been consolidated into a single cash flow report presented routinely to the Oversight Committee and the Board. That is addressed in the response to Recommendation 2.

Recommendation 2

The VTA Board should direct the General Manager to prepare a cash-flow model for the BSVII project and present it quarterly to the Oversight Committee and the Board. This should be implemented by December 31, 2026.

Response

The recommendation requires further analysis.

The cash flow models described in the response to Finding 2 exist and are maintained. What requires further analysis is the form of regular reporting to the Oversight Committee and the Board. VTA staff will determine the appropriate frequency and format of a consolidated BSVII cash flow report drawn from the existing models and will return to the Board with that analysis no later than December 17, 2026. Beginning in the first quarter of 2027, staff will present to the Oversight Committee and the Board a BSVII cash flow report that overlays projected revenues, by source, against projected expenditures, including contract payment schedules, by calendar year through completion of the Project, and that identifies any period in which projected receipts fall short of projected expenditures.

Finding 3

VTA has not developed an alternative funding strategy for the project in the event that planned funding sources are unavailable or insufficient.

Response

VTA agrees with the finding.

A formal alternative funding strategy has not been adopted. This reflects a deliberate judgment about prudent sequencing rather than an oversight: with a Full Funding Grant Agreement (FFGA) application pending, publicly developing and adopting a contingency funding plan carries a real risk of undermining the federal commitment such a plan would be hedging against.

Recommendation 3

The VTA Board should direct the General Manager to prepare an alternative funding strategy to meet the project's estimated total capital costs and VTA's responsibility for operating and maintenance costs and present it to the Oversight Committee and Board for approval. This should be implemented by December 31, 2026.

Response

The recommendation requires further analysis.

VTA's current path for meeting the Project's capital and operating funding requirements is the pending Full Funding Grant Agreement (FFGA) process with the Federal Transit Administration, and VTA does not intend to deviate from that path. Developing and publicly adopting a contingency, or "alternative," funding strategy while the FFGA application is pending carries a real risk of undermining the very federal commitment such a strategy would be intended to protect. For that reason, the threshold questions of whether an alternative funding strategy or adaptive plan should be prepared in advance of an FFGA decision, and if so its appropriate scope, timing, and public handling, themselves require further analysis.

This analysis will be agendized for discussion at the Oversight Committee and the Board no later than December 17, 2026. The analysis will define the scope, approach, and timeline for an alternative funding strategy and adaptive plan. Should the FFGA process or other conditions change, VTA will revisit the matter as appropriate.

Finding 4

Project management does not consistently report the operating and maintenance cost implications of design and construction decisions to the Oversight Committee or the Board.

Response

VTA agrees with the finding.

Recommendation 4

VTA should adopt a policy requiring staff to present an analysis of operating and maintenance costs when considering design and construction alternatives for BSVII. This should be implemented by December 31, 2026.

Response

The recommendation will be implemented.

VTA will update the BSVII Project Plans and Procedures to include the requirement of conducting and presenting operating and maintenance cost analysis when considering major design and construction alternatives. This will be implemented by December 31, 2026.

Finding 5

The VTA Board would benefit from longer terms of office to improve continuity and institutional knowledge.

Response

VTA disagrees partially with the finding.

Continuity and institutional knowledge generally benefit governance, and term length is one factor among several that affects them. The appointing authorities, not VTA, control the reappointment practices that most directly drive Board member tenure. The Board's structure and two-year terms are established by the Legislature, and there is no limit to the number of terms an elected official may serve, so tenure is not structurally capped.

Recommendation 5

VTA should reconsider its prior rejections of audit recommendations calling for the establishment of four-year terms and direct its legislative advocates to seek a legislative author to amend VTA's enabling statute to require four-year terms. This should be implemented by December 31, 2026.

<u>Response</u>

The recommendation will not be implemented because it is not warranted.

The two-year term length for VTA Board directors is established by state law, and VTA has examined whether to pursue a four-year term on multiple prior occasions, including a 2019 governance study and VTA's 2024 response to the California State Auditor's Report 2023-101. On each occasion VTA reached the same conclusion, and the concerns underlying it remain. Those concerns include the variation in term lengths and appointment cycles among VTA's sixteen appointing authorities; the risk that a longer term would discourage otherwise qualified elected officials who cannot commit to a full four years; and, for the city groups that share a single seat, a doubling of the rotational interval that would reduce the number of jurisdictions and officials able to serve on the Board. VTA also carries responsibilities beyond those of the transit-only boards to which it has been compared, serving as the county's congestion management agency and its sales-tax implementing authority.

Rather than seek a fixed four-year term, VTA will continue the approach set out in its 2024 State Auditor response: encouraging its appointing authorities to appoint and reappoint directors who are able to serve multiple successive terms, and strengthening the engagement and preparation of alternate directors. VTA believes this approach supports continuity and institutional knowledge while preserving the flexibility and breadth of representation that the current structure provides.

<u>Finding 8</u>

The role assigned to the auditor general is outside the traditional scope of an auditor's responsibilities and has introduced conflict and uncertainty among VTA staff and the Oversight Committee. Being involved in the management and policy-making process threatens the auditor general's independence.

<u>Response</u>

VTA disagrees partially with the finding.

VTA disagrees that the role of the Auditor General is outside the traditional scope of an auditor's responsibilities. An auditor general may perform work as an advisory engagement under the consulting standards of the American Institute of Certified Public Accountants (AICPA), and such advisory work is within the recognized scope of services an auditing firm may provide.

The Auditor General, in his capacity as staff liaison to the Oversight Committee, does not make management or policy decisions. However, the role of the subject matter expert retained for the Committee under the Auditor General's contract can at times be viewed as participation in the management activities of the Project. VTA agrees that the role assigned to the Auditor General as the Oversight Committee liaison managing the subject matter expert's services has introduced conflict and uncertainty among VTA staff and the Oversight Committee.

VTA agrees that support functions for the Oversight Committee should be structured to protect the objectivity of the Auditor General's role. Adherence to the recently adopted charter should reinforce role clarity and protect the objectivity of the Auditor General's function.

Recommendation 8

The Board should implement an alternative model for supporting the Oversight Committee that does not rely on the auditor general to provide services such as agenda preparation, monitoring of VTA staff assignments, or preparation of a synthesis of multiple independent inputs to the Committee's deliberations. This should be implemented by December 31, 2026.

Response

The recommendation requires further analysis.

VTA will review alternative staffing models for supporting the Oversight Committee as part of its preparation of the scope for the procurement for Auditor General services to be solicited in 2027. This review will be completed by December 17, 2026. In addition, the Oversight Committee will review the Committee's bylaws and determine if any changes are necessary and whether the bylaws should be updated to reflect any potential changes in roles and responsibilities.

As a clarification of current practice, the Auditor General does not prepare the Oversight Committee's agendas, which are prepared through the Office of the Board Secretary, and does not monitor VTA staff assignments. Under the Committee's bylaws, the Auditor General, in consultation with the VTA Project Team, maintains the Committee's workplan, which schedules the delivery of reports based on Committee priorities

Finding 9

The Board of Directors has not approved the bylaws, nor the charter of the Oversight Committee.

Response

VTA agrees with the finding.

The Oversight Committee was established by the Board chair in 2023, and its bylaws and revised charter were adopted at the committee level. The Administrative Code approved by the VTA Board delegated that approval authority at the time to the Governance and Audit Committee, which was composed of the Board Chair, Board Vice Chair, and the chairs of the VTA standing committees. Consistent with the Administrative Code, that committee approved the Oversight Committee's bylaws on April 4, 2024. The Governance and Audit Committee no longer exists; its successor for this purpose is the Finance, Audit, and Administration Committee, which approves all bylaws for VTA advisory boards, advisory committees, and oversight committees.

Recommendation 9

VTA should formally adopt a revised Charter for the Oversight Committee, setting the Board's expectations on the following issues:

- *Defining the role of the auditor general to no longer require him to supervise the presentations by VTA staff to the Oversight Committee;*
- *The responsibility of the Oversight Committee to report regularly to the Board on the independent analyses of costs, risks, and schedule by the PMOC and any SMEs; and to provide the Oversight Committee's synthesis of those analyses with recommendations to resolve conflicts when necessary;*
- *The responsibility of the Oversight Committee to consider and present its recommendations before the Board considers major decisions such as scope of the project, contracting, risk management, budgeting, and funding strategy;*
- *The responsibility of the Oversight Committee to hold subject matter experts accountable for timely analysis of costs, risk, and schedule;*
- *The responsibility of the Oversight Committee to report to the Board on the implications of design and construction issues that impact future ongoing operations and maintenance costs to be borne by VTA.*

This should be implemented by December 31, 2026.

Response

The recommendation requires further analysis.

VTA agrees that the Board should have visibility into, and the opportunity to discuss, the charter and bylaws that define the Oversight Committee's roles, responsibilities, and scope. The Finance, Audit, and Administration Committee will analyze the Oversight Committee's charter and bylaws. The scope of the analysis will include whether revisions are warranted and the appropriate process under VTA's Administrative Code for considering any revisions. This analysis will be prepared for the Committee's discussion no later than December 17, 2026. Following that analysis, the General Manager will consider bringing the charter and bylaws to the full Board for discussion.

VTA does not believe it is reasonable to prescribe that this review be organized around the specific issues enumerated in the recommendation, although those issues may be taken into account as part of the analysis. In addition, the Auditor General does not supervise VTA staff presentations to the Oversight Committee.

Finding 10

VTA's vtabart.org website is poorly organized and not always intuitive to navigate, making it hard to find information about the status, cost, and schedule of the BSVII project.

Response

VTA disagrees partially with the finding.

The report itself credits improvements to the website, including timely construction updates, a frequently asked questions section, and posted technical reports from the federally required Project Management Oversight Consultant. Contrary to the report's assertion, the website also includes reports from the Auditor General. VTA believes the site is informative but acknowledges that it can be made easier to navigate and that consolidating status, cost, and schedule information would serve the public.

Recommendation 10

The VTA Board should direct the General Manager to implement and maintain a project dashboard on its vtabart.org website that includes status, cost, and schedule information. This should be implemented by October 31, 2026.

Response

The recommendation has not yet been implemented but will be implemented.

VTA will implement a project dashboard on its vtabart.org website presenting status, cost, and schedule information by December 17, 2026.

This letter responds directly to the findings and recommendations by the Civil Grand Jury as required by Penal Code section 933.05. VTA notes that the body of the Civil Grand Jury report contains additional statements, characterizations, and conclusions that are not specifically contained in the Civil Grand Jury's ten findings and recommendations. VTA's decision to not respond to those additional statements, characterizations and conclusions should not be construed or deemed as an agreement or concurrence by VTA as to those statements.

A memorandum from the Auditor General is attached. This memorandum was prepared before the Board completed this response and informed the Board's consideration of Findings and Recommendations 8 and 9. It is furnished as supplemental information to illuminate that discussion. It is not part of the Board's response under Penal Code section 933.05.

Sincerely,

Sergio Lopez
Chairperson, VTA Board of Directors

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Santa Clara Valley Transportation Authority

Date: August 21, 2026
Current Meeting: September 3, 2026

**BOARD MEMORANDUM**

**TO:** Santa Clara Valley Transportation Authority Board of Directors

**FROM:** Auditor General, Scott P. Johnson, CPA, CGMA

**SUBJECT:** **Cover Memo and Supplemental Information to Auditor General's Memorandum dated August 6, 2026, to the Board, in Response to the Civil Grand Jury Report**

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## BACKGROUND

This Cover Memorandum is submitted as supplemental information and provides context for the Auditor General's previously issued memorandum dated August 6, 2026 (attached) to the Board titled "Auditor General's Response to the Civil Grand Jury Report Pertaining to BSVII Management & Oversight", This cover memorandum, alongside the Auditor General's (AG) August 6th memorandum is included as an attachment to VTA's response to the 2025–26 Santa Clara County Civil Grand Jury (CGJ) Report on the BART Silicon Valley Phase II Extension.

This memorandum is provided for two reasons: (1) to document the process that has occurred since the AG's August 6 Memorandum was issued, and, (2) to record the Auditor General's response along with VTA's responses for Findings and Recommendations 8 and 9 as part of the official response now before the Board. We are documenting the interactive process in issuing the formal response and offer clarification and correction of some inaccuracies in the CGJ report related to the Auditor General's roles, responsibilities and independence.

## DISCUSSION

The August 6 Memorandum identifies statements in the Civil Grand Jury report that the AG believes are factually inaccurate as they pertain to the role, scope, and conduct of the Auditor General function. Those items are set out in the attached memorandum and are not restated here. The Auditor General offers them for the accuracy of the record only. They are not part of VTA's formal response under Penal Code Section 933, and no response from the Civil Grand Jury or the Presiding Judge is sought or expected. The August 6 Memorandum was prepared and distributed in advance of the Board's August 6, 2026, meeting. Leading up to and following that Board meeting, the Auditor General engaged in extensive discussions with VTA Executive Staff through numerous conversations over multiple days, reviewing the Auditor General's comments item by item. That collaboration produced substantive changes to the draft response. Among them, the response now accurately reflects that:

- The Auditor General does not prepare the Oversight Committee's agendas; the Office of the Board Secretary performs that function.
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- The Auditor General does not monitor VTA staff assignments under the Committee's bylaws.
- The Auditor General does not supervise VTA staff presentations to the Committee.
- The Auditor General maintains the Committee's work plan in consultation with the VTA's BSVII project team.
- The response also recognizes that advisory and consulting engagements are within the scope of services contemplated by AICPA Statement on Standards for Consulting Services, Section 100, under which the AG performs a majority of VTA engagements, including serving as the Liaison to the Oversight Committee. Further, the VTA administrative code provides the Auditor General the discretion to determine the appropriate standards to perform engagements.[1]

Based on our work with VTA staff, the Auditor General supports the consolidated response as presented to the Board for adoption. The Auditor General participated in its refinement and considers it a sound and fair statement of VTA's position. The August 6 Memorandum is offered as a supplement to the consolidated response for the following reasons: VTA has three positions reporting directly to the Board of Directors: the General Manager/CEO, the General Counsel, and the Auditor General[2]. Consistent with that structure, the Auditor General does not speak on behalf of the General Manager or the General Counsel, and neither speaks on behalf of the Auditor General.

The CGJ Report asserted a threat to the Auditor General's independence without identifying the applicable standard or applying any threats and safeguards analysis. Our August 6 Memorandum explains the standards under which this office performs its VTA engagements, the safeguards embedded in the Committee's structure and the Administrative Code, and why the roles described in the report do not impair the Auditor General's objectivity or independence.

The August 6 Memorandum reflects the independent professional judgment of this office, exercised in accordance with AICPA Statement on Standards for Consulting Services, Section 100[3]. It received quality control review by a partner of the firm providing Auditor General services. Preserving that separate record is a function of the Auditor General's independence, not an indication of disagreement with VTA's response.

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[1] The Auditor General's functions are set forth by the VTA Administrative Code Chapter 12. Section 12-5 states that the AG will follow appropriate professional standards, as applicable for the specific audit or project, and indicate in the corresponding written report which standards were utilized. https://www.vta.org/about#accordion-administrative-code

[2] Section 12-2 of VTA's Administrative Code assigns the Auditor General to report to the Board, overseen by the G&A Committee (Now the FAA Committee), and has an administrative reporting relationship with the General Manager. https://www.vta.org/about#accordion-administrative-code

[3] AICPA Section 100 establishes professional standard governing consulting services. It defines advisory services as engagements in which the practitioner's function is "developing findings, conclusions, and recommendations for client consideration and decision making." CS Section 100 subjects such engagements to the general standards of the profession of CPA's: professional competence, due professional care, adequate planning and supervisions, and sufficient and relevant data to afford a reasonable basis for conclusions. https://www.aicpa-cima.com/resources/download/statement-on-standards-for-consulting-services-no-1

CONCLUSION

The Auditor General appreciates the Board's direction on this item and the engagement of the General Manager, General Counsel, and VTA senior staff in drafting the combined responses to Recommendations 8 and 9. This office remains available to the Board and to the Oversight Committee as the commitments made in the response are carried forward.

Santa Clara Valley Transportation Authority

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Date: August 6, 2026
Current Meeting: August 6, 2026

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors

FROM: Auditor General, Scott Johnson

SUBJECT: Auditor General's Response to the Civil Grand Jury Report Pertaining to BSVII Management & Oversight (Item 8.1 on August 6, 2026 Board Agenda)

RECOMMENDATION:

The Auditor General (AG) recommends that the Board consider the AG's input outlined within this Memorandum regarding VTA's formal response to the Civil Grand Jury Report entitled *VTA's Management and Oversight of BART Silicon Valley Phase II*.

EXECUTIVE SUMMARY:

- On June 17, 2026, the Civil Grand Jury issued a report entitled, *VTA's Management and Oversight of BART Silicon Valley Phase II* (Civil Grand Jury Report). The report contains findings and recommendations, including findings and recommendations pertaining to the Auditor General's Office (AG) and the role the AG plays with regards to the BSVII Oversight Committee.

- VTA Management has provided a Draft Response for consideration by the Board at the August 6th Board of Directors meeting. VTA Management did not request input from the AG in drafting VTA's proposed response, nor did Management notify the AG that the response would be placed on the August 6th agenda for the Board's consideration.

- The AG has reviewed the Civil Grand Jury Report and has identified factual inaccuracies.

- The AG has reviewed the Draft Response to the Civil Grand Jury Report after being notified it was placed on the public agenda and believes the response could be improved as it pertains to the proposed responses to findings and recommendations related to the AG.

- The purpose of this memorandum is to further communicate the factual inaccuracies within the Civil Grand Jury Report, to provide the AG's responses and disposition regarding the findings and recommendations within the Civil Grand Jury Report.

- This Memorandum summarizing the AGs input pertaining to the response to the Civil Grand Jury Report is limited to Observation and Recommendations 8 and 9.

STRATEGIC PLAN/GOALS:

The AG's Office aligns with VTA's core values and strategic goals. VTA's AG program is responsible for assisting the Board in fulfilling its fiduciary responsibilities of overseeing risks and controls in financial reporting, financial integrity, program activities, reputation, and public perception of the organization.

FISCAL IMPACT:

There is no financial impact associated with receiving this report.

BACKGROUND:

On June 17, 2026, the Civil Grand Jury issued a report entitled, *VTA's Management and Oversight of BART Silicon Valley Phase II*. It presents ten findings and ten recommendations and designates the VTA Board of Directors as a responding agency for Findings and Recommendations 1 through 5 and 8 through 10. Findings and Recommendations 6 and 7 are directed to the County of Santa Clara and the cities that serve as VTA appointing authorities. While the report did not direct Recommendations to the Auditor General's Office (AG), because the report contains findings and recommendations, including Findings and Recommendations 8 and 9 pertaining to the AG and the role the AG plays with regards to the BSVII Oversight Committee, we determined a response was appropriate to those items.

VTA Management has provided a Draft Response for consideration by the Board at the August 6th Board of Directors meeting. VTA Management did not request input from the AG in drafting their response, nor did Management notify the AG that the response would be placed on the August 6th agenda for the Board's consideration.

The AG has reviewed the Civil Grand Jury Report and has identified factual inaccuracies. Additionally, the AG has reviewed the Draft Response under consideration from the Administration to the Board. The AG believes further discussion and input with regards to certain findings and recommendations would improve the ultimate response to the Grand Jury Report.

Within the Discussion section of this Memo, the AG team summarizes the following:

- Factual inaccuracies within the Civil Grand Jury Report
- The AG's disposition regarding findings and recommendations noted within the Civil Grand Jury Report
- Feedback with regards to the current response to the Civil Grand Jury Report as drafted and presented to the Board

Certain findings and recommendations center around the AG's role in general as well as the

AG's role as the liaison to the BSVII Committee. This Memorandum summarizing the AG's input pertaining to the response to the Civil Grand Jury Report is limited to Findings and Recommendations 8 and 9. Additionally, it is important to point out some historical background that is relevant to the AG's role as the liaison to the BSVII Committee.

Historical Context

During the November 29, 2023, BSVII Ad Hoc Steering Committee meeting, the Committee took action to review and approve the BSVII Ad Hoc Steering Committee Charter (later renamed BSV II Oversight Committee). The AG is named in the Charter as the liaison to the Committee. The Board subsequently approved this action. The AG team was engaged by VTA to serve as a liaison to the BSVII committee to promote independence, objectivity, and transparency.

In January of 2024, the Auditor General issued a report highlighting concerns regarding the oversight and transparency pertaining to the BSVII project. This important context as to the AG's role with regards to the BSVII Oversight Committee is not considered within the Civil Grand Jury Report.

Lastly, it is important to note that the basis of professional work on engagements performed by the AG's office on the BSVII Oversight Committee are performed as advisory engagements under American Institute of Certified Public Accountants (AICPA) statements on standards for consulting services. The integrity and objectivity rule applies to those services and prohibits conflict of interest and the subordination of judgment. Those standards also call for an understanding with the client as to the nature, scope and limitation of services.

Overview of the Auditor General's Role

In addition to highlighting historical context, it is important to highlight the role the AG plays with regards to the BSVII Oversight Committee.

As it pertains to the BSVII Oversight Committee, the AG's role is defined within the By Laws for the BART to Silicon Valley Phase II Oversight Committee (By Laws). It is important to note the following:

- The AG serves as the Liaison to the BSVII Oversight Committee
- The AG adheres to professional standards, as required and noted within the By Laws
- The AG assists in identifying and assessing risk, coordinates meetings, performs analysis at the direction of the Committee, and assists in maintaining the Committee Workplan.
- Note that the AG does not assume management responsibilities in this role, which is one of the key elements to maintaining independence.

<u>DISCUSSION:</u>

In review of the Civil Grand Jury report, the AG identified factual inaccuracies. Furthermore, the AG has a different perspective from that presented by the Administration in the Draft

Response as it pertains to certain Findings and Recommendations. In this section of the memo, we detail the AG's initial responses to the Civil Grand Jury Report (CGJ). The AG plans to discuss these matters further, should the AG's Recommended Action be accepted by the Board.

Finding 8

The role assigned to the auditor general is outside the traditional scope of an auditor's responsibilities and has introduced conflict and uncertainty among VTA staff and the Oversight Committee. Being involved in the management and policy-making process threatens the AG's independence.

AG's Response

Serving in an advisory capacity to an oversight body is consistent with a traditional Internal Audit function. The Institute of Internal Auditors (IIA) standards allow advisory and consulting services, meaning that internal audit departments, such as VTA's AG office, routinely support governance bodies by providing risk information, tracking management's responses to identified issues, and advising committees charged with oversight. Facilitating an oversight committee's access to independent analysis, with regard to the Committee's Subject Matter Expert (SME), and helping the Committee monitor whether requests are addressed, fall within internal audit's recognized governance role. The CGJ report offered no evidence to support their conclusion in this finding.

Furthermore, the AG does not exercise management responsibility as it pertains to VTA's operations. At times we may provide advisory services in the form of comments, recommendations, and considerations as it pertains to policies and procedures from an internal control perspective as issues arise.

Additionally, the Board Secretary maintains responsibility for preparing the BSVII Oversight Committee agenda. As a component of its role, the AG maintains a workplan including a forecast for the delivery of various reports. The workplan is done in collaboration with the BSVII Project Team, the AG and the Board Secretary, but is solely driven by Committee priorities. The AG does not supervise or control VTA staff presentations, though we may at times comment independently on them. With this said, we do agree that the Charter should be periodically reviewed, including refining roles and responsibilities over time. The BSVII Committee may consider reviewing and updating the Committee Bylaws from time to time as the project evolves.

In regard to scope, the basis of professional work on engagements performed by the AG's office on the BSVII Oversight Committee are performed as advisory engagements under AICPA statements on standards for consulting services. The integrity and objectivity rule applies to those services and prohibits conflict of interest and the subordination of judgment those standards also call for an understanding with the client as to the nature, scope and limitation of services.

Recommendation 8:

The Board should implement an alternative model for supporting the Oversight Committee that does not rely on the auditor general to provide services such as agenda preparation, monitoring of VTA staff assignments, or preparation of a synthesis of multiple independent inputs to the Committee's deliberations. This should be implemented by December 31, 2026.

AG's Response:

Disagree.

This recommendation as written does not describe work the AG actually performs in its duties pertaining to the BSVII oversight committee. For example:

Agenda preparation: As previously stated, the Board Secretary prepares the Committee Agenda. The AG maintains a workplan containing a forecast of topics VTA staff will present on recurring or one-off basis that have been raised by the Committee and developed in collaboration with the Project team The AG does not select what and when the Committee considers items, or how the items are framed.

Synthesis of independent input: The Committee Bylaws requires the AG to record final input received alongside the majority view where dissenting views are expressed. This role is simply to document discussion, not to guide discussion or be involved in management or Board decision-making.

Recording competing positions on matters before the Committee: The AG does not make policy recommendations, nor does it make any comment on those dissenting or majority review dispositions.

Monitoring of staff assignments: During Committee meetings, Committee Members make requests for further information or analysis from the BSVII Project Team, and/or the AG. The AG tracks those requests by date and topic. The AG team does not manage or direct these tasks. Instead, the AG team coordinates with the Project team to seek input on the timing for the deliverables related to the Committee requests. The "tracker" is then submitted on the Committee agenda for review and possible comment by the Committee.

We note that the Civil Grand Jury Report documented three occasions where analysis did not reach the Board intact or on time: the June 2025 KST approval made without the risk analysis the Committee had reviewed; the October 2025 scenario 1/1(a) decision made while the authorized Gall Zeidler analysis was still pending; and the single bore analysis delivered roughly 22 months after first reported. Each is documented in part because the AG tracked and reported it. We do not and should not play a role in the enforcement of turn-around-time on requests from Committee members, as that is Management's responsibility. Rather, we are tracking and reporting on these tasks as they are assigned, and then on the disposition of the deliverable dates. We have, however, enhanced and made changes to our Actionable Request "Tracker" report and accompanying presentation to show severity of time lags for committed resolution.

<u>Finding 9</u>

The Board of Directors has not approved the bylaws, nor the charter of the Oversight Committee.

<u>Recommendation 9</u>

VTA should formally adopt a revised Charter for the Oversight Committee, setting the Board's expectations on the following issues:

- *Defining the role of the auditor general to no longer require him to supervise the presentations by VTA staff to the Oversight Committee;*
- *The responsibility of the Oversight Committee to report regularly to the Board on the independent analyses of costs, risks, and schedule by the PMOC and any SMEs; and to provide the Oversight Committee's synthesis of those analyses with recommendations to resolve conflicts when necessary;*
- *The responsibility of the Oversight Committee to consider and present its recommendations before the Board considers major decisions such as scope of the project, contracting, risk management, budgeting, and funding strategy;*

- *The responsibility of the Oversight Committee to hold subject matter experts accountable for timely analysis of costs, risk, and schedule;*
- *The responsibility of the Oversight Committee to report to the Board on the implications of design and construction issues that impact future ongoing operations and maintenance costs to be borne by VTA.*

This should be implemented by December 31, 2026.

AG Response

Partially agree.

We agree that the Committee Charter and By Laws should be reviewed periodically as needed and recommend review of the roles and responsibilities to be reviewed and updated, as needed, by December 31, 2026. We also agree that the Committee review the By-laws, the role of the AG related to this Committee, as they may be outdated and given the maturation of the Committee, some roles initially envisioned are not applicable.

The recommendation to define the role of the AG to no longer require supervision of the presentations by VTA staff is misleading. The AG does not currently supervise the reports issued by VTA management. The AG reviews reports and provides independent and objective analysis for the benefit of the Committee. Further, engaging the General Manager, or another member of management, would create independence concerns. For example, management might be charged with providing analysis or identifying an independent expert to review the work of management. As such, the proposed recommendation creates independence issues.

ALTERNATIVES:

No alternative actions applicable.

CLIMATE IMPACT:

There is no climate impact associated with this report.

Prepared By: Scott Johnson, Auditor General

ATTACHMENT:

No attachments.