

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0023
(916) 319-2023
FAX (916) 319-2124

DISTRICT OFFICE
721 COLORADO AVE, SUITE 101
PALO ALTO, CA 94303
(650) 324-0224
FAX (650) 324-7932

WEBSITE
www.assembly.ca.gov/berman



MARC BERMAN
ASSEMBLYMEMBER, TWENTY-THIRD DISTRICT

December 12, 2022

RECEIVED
12/12/2022

Joint Legislative Audit Committee
1020 N Street, Room 107
Sacramento, California 95814

Re: Santa Clara Valley Transportation Authority

Dear JLAC Members,

I respectfully request the Joint Legislative Audit Committee approve an audit of the Santa Clara Valley Transportation Authority (VTA), with a focus on the areas of governance structure, project planning and management, financial viability, and fiscal oversight. Over the last 20 years, three Civil Grand Jury Reports, multiple consultants hired by VTA, and a 2008 audit by the State Auditor have identified the need for change to VTA's governance structure in order for the Board to be best equipped to provide high-quality oversight of the agency. Current VTA Board Chair and San Jose Vice Mayor Chappie Jones supports this request.

- According to the [2019 Civil Grand Jury Report](#), the third in 20 years, VTA's operating performance has continued to deteriorate over the last 10 years, relative to both its own historical performance and the performance of its peers, across a wide variety of metrics. Yet, in the face of this deterioration, the VTA Board has not taken significant action to reform the governance structure.
- The opaque, political nature of VTA's board member selection process has fostered an unwillingness among board members to adopt audit, Grand Jury, or consultant recommendations. In VTA's [2021 Board Self-Assessment](#), board members reported that "cities or agencies often select a VTA representative based upon that individual's interest in higher elected office, and not on their interest in and familiarity with transportation."
- In [2008, the State Auditor](#) identified numerous operational deficiencies within VTA which were again identified eleven years later by the 2019 Grand Jury and VTA's

own consultants, including the flawed committee system, lack of stability on the board, and poor long-term project management.

- The 2019 Grand Jury report concluded that today, more so than in 2004 or 2009, the VTA Board is in need of structural change to enable it to better protect the interests of the County’s taxpayers and address the many complex challenges presented by emerging trends in transportation, rapidly evolving technology and the changing needs of Silicon Valley residents. The Board suffers from inadequate time for the directors to devote to the Board’s oversight and policy-making functions, a lack of engagement by some of the directors, fostered in part by the committee system, resulting in VTA functioning largely as a staff-driven organization; and conflicts of interest, which are often irresolvable, between the directors’ fiduciary duty to VTA and its regional role, on the one hand, and the political demands of their local elected positions, on the other.

Background

The VTA is an independent special district responsible for bus and light rail operations, congestion management, specific highway improvement projects, and countywide transportation planning. VTA is both a transit provider, and a multi-modal transportation planning organization involved with transit, highways and roadways, bikeways, and pedestrian facilities.

The VTA was established to alleviate Santa Clara County’s then-failing public transportation system. The California Legislature passed the Santa Clara County Transit District Act in 1969, but there was no appropriation to fund the new district. For the County to have a public transportation system, voters would have to pass a measure to tax themselves to fund the district, and after three years, they finally did. The program had merged several times with other county transportation agencies, and in 1995, it became known as the Santa Clara Valley Transportation Authority.

The VTA is governed by an 18-member board of directors comprised of:

- 2 Santa Clara County supervisors
- 5 City of San Jose council members
- 5 council members selected from the other 14 cities in the county
- 6 alternates

Stability

The State Audit in 2008 highlighted a key structural deficit: lack of stability. The State Auditor wrote, “to promote stability in its leadership and to bring the tenure of VTA board members in line with comparable transit agencies, VTA should request the Legislature to amend its enabling statutes to allow for a four-year board term.” VTA did not accept the recommendation.

The 2019 Grand Jury found that as of 2019 members of the VTA Board representing San José and the County had served an average of 4.3 years and 10.5 years, respectively.

However, the voting members representing the smaller cities had served an average of only 1.9 years.

VTA's 2021 Board Self-Assessment highlights why this imbalance matters: on issue after issue the report identified a split between new members and veteran board members. This included how well-informed they felt to make good decisions at board meetings. The Self-Assessment also reported that "most members caution that VTA presents a steep learning curve for most members, and observe that some elected members never fully understand the complexities of VTA operations."

After the 2019 Grand Jury report, VTA hired RSM US LLP to perform an independent and unbiased evaluation of the governance structure, resulting in the [2020 VTA Governance Assessment Report](#). One of the many recommendations made by the consultant that VTA rejected was to increase the Director term length to four years.

The 2008 State Auditor also highlighted the imbalance in San Jose tenure vs small city tenure. In the 11 years between the audit and grand jury report, the tenure for small city representatives only grew from 1.5 years to 1.9 years, not even completing a full term on average. The audit assumed that VTA had fully abolished the city rotation schedule and emphasized the negative impact of high board turnover; however, the rotation schedule still exists to this day and plays a significant role in the high turnover rate for the smaller cities.

Project and Fiscal Oversight

According to the [2018-2019 Grand Jury Report](#):

- The VTA Board has consistently failed to adequately monitor VTA's financial performance and has taken action, albeit less than fully effective action, only in the face of imminent financial crises.
- Year after year, VTA operates one of the most expensive and least efficient transit systems in the country. Empty or near-empty buses and light rail trains clog the County's streets but are used regularly by fewer than 5% of the County's commuters. Operating costs increase continuously, and taxpayers subsidize 90% of these costs, to the tune of about \$5.50 per rider for each bus trip and \$10.75 per rider for each light rail trip.
- Despite the serious ongoing structural financial deficit, the VTA Board has been unwilling to review and reconsider decisions made years or even decades ago regarding large capital projects (and their attendant operating costs) that are no longer technologically sound or financially viable, based on their costs and projected ridership.

In addition, federal reports have raised concerns about VTA's project management and decision making.

Regional Duty

In addition to the lack of transparency, appropriate project oversight, and stability, analyses of VTA's governance structure have consistently identified the balance of county-wide vs jurisdictional focus as a critical limitation. The parochial nature of the Board was identified as a key opportunity for improvement in the aforementioned 2021 Board Self-Assessment. The assessment reported that many board members expressed concerns that some significant decisions are made for political reasons and are not in the best interest, or the best return on investment for the County as a whole. The 2019 Grand Jury determined that the Board faces conflicts of interest, which are often irresolvable, between the directors' fiduciary duty to VTA and its regional role, on the one hand, and the political demands of their local elected positions, on the other.

Request and Scope of Audit

At a minimum, the audit should address:

1. Governance Structure
 - a. To what extent have the recommendations provided in the 2008 Audit been implemented and what implementation issues remain?
 - b. Are the roles and responsibilities comparable to other transportation authorities and are they successful?
 - c. Effectiveness of current statutes and practices used for member selection and tenure.
 - i. Does the cities' selection process for board members align with comparable best practices?
 - ii. How can VTA improve board transparency? What policies are in place to inform the public of the board member selection processes?
 - d. Are committees used effectively? How are advisory committees involved in the development of policy solutions?
 - e. Do alternates align with good governance policies? How often are alternates called on to vote? Does the existence of alternates reduce board member attendance and engagement?
 - f. Do board members serve a fiduciary duty to the entire county or to the city from which they are appointed? Do board members confer with their respective city staff and council for direction on how to vote?
 - g. Does management promote a culture of efficient and effective performance and compliance?
 - h. Is there sufficient oversight in place to detect and prevent waste, fraud, abuse, illegal conduct, mismanagement, and conflicts of interest?
2. Project Planning and Management
 - a. Assessment of project management and monitoring of large projects.
 - b. Strategic planning and project planning efforts. How they set goals, objectives, and priorities. How the goals are achieved and how performance is measured? Assessment of control over project-planning process.
 - c. Can project objectives be achieved more efficiently and effectively?
 - d. Are project estimates of cost and construction time accurate?
3. Financial Viability

- a. Financial reporting structure. Is there adequate review of quarterly reports to ensure forecasts are on track? What happens when there is deviation?
 - b. Revenues, expenditures, and ridership for the last four years.
 - c. Financial plans for the next five and ten years to determine whether they have considered recent factors.
4. Fiscal Oversight
- a. Board and management oversight and capacity to exercise prudent and appropriate oversight over the agency's funds. How does the capital budget report planned spending by year, capital carryover by source, and expected total project costs?
 - b. Compare operating costs per trip, the number of passenger trips per revenue hour, and farebox recovery to similar peer transit agencies.
 - c. Are policies and procedures in place to ensure project management and fiscal transparency?

Thank you for your consideration of this audit request. If you have any questions, please do not hesitate to contact me or my staff.

Sincerely,



Marc Berman
Assemblymember, 23rd District