

June 13, 2019

Mr. David Carnahan
City of Sunnyvale
603 All American Way
Sunnyvale, California 94086

Sent via email: dcarnahan@sunnyvale.ca.gov

Dear Mr. Carnahan:

Pursuant to Penal Code § 933.05(f), the 2018-2019 Santa Clara County Civil Grand Jury is transmitting to you its Final Report, **Inquiry into the Governance of the Valley Transportation Authority**.

Penal Code § 933.05(f) states the following:

A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report. Leg. H. 1996 ch. 1170, 1997 ch. 443.

This report will be made public and released to the media on Tuesday, June 18, 2019, at 10 am. If you have any questions please contact Britney Huelbig, Deputy Manager for the Civil Grand Jury, at: (408) 882-2721.

Sincerely,

A handwritten signature in dark ink, appearing to read "John Pedersen", followed by a long horizontal line.

John Pedersen
Foreperson
2018-2019 Civil Grand Jury

Encl.: **Inquiry into the Governance of the Valley Transportation Authority**



June 18, 2019

Mr. David Carnahan
City of Sunnyvale
603 All American Way
Sunnyvale, California 94086

Sent via email: dcarnahan@sunnyvale.ca.gov

Dear Mr. Carnahan:

The 2018-2019 Santa Clara County Civil Grand Jury is transmitting to you its Final Report, **Inquiry into the Governance of the Valley Transportation Authority.**

California Penal Code § 933(c) requires that a governing body of the particular public agency or department which has been the subject of a Grand Jury final report shall respond within 90 days to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. California Penal Code § 933.05 contains guidelines for responses to Grand Jury findings and recommendations and is attached to this letter.

Please note:

1. As stated in Penal Code § 933.05(a), attached, you are required to "Agree" or "Disagree" with the applicable Finding: 1. If you disagree, in whole or part, you must include an explanation of the reasons you disagree.
2. As stated in Penal Code § 933.05(b), attached, you are required to respond to each applicable Recommendation: 1c, 1d, and 1e with one of four possible actions.

Your comments are due to the office of the Honorable Deborah A. Ryan, Presiding Judge, Santa Clara County Superior Court, 191 North First Street, San Jose, CA 95113, no later than **Monday, September 16, 2019.**

Copies of all responses shall be placed on file with the Clerk of the Court.

Sincerely,

A handwritten signature in dark ink, appearing to be 'J. Pedersen', with a long horizontal flourish extending to the right.

John Pedersen
Foreperson
2018-2019 Civil Grand Jury

Encl.: **Inquiry into the Governance of the Valley Transportation Authority**

INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY



2018-2019 Civil Grand Jury
of Santa Clara County

June , 2019

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GLOSSARY AND ABBREVIATIONS

AC Transit	Alameda County Transit. A peer transit agency to VTA.
APTA	American Public Transit Association. A national association of which VTA is a member.
BART	Bay Area Rapid Transit. A peer transit agency.
County	County of Santa Clara
CPC	Capital Program Committee. A standing committee of the VTA Board of Directors.
DOT	US Department of Transportation. A national transportation agency.
EBRC	Eastridge-BART Regional Connector. Current nomenclature for the Eastridge light rail extension (Phase 2).
Farebox recovery ratio	Fares collected from passengers divided by operating expenses.
FTA	Federal Transit Administration. A federal agency providing transit data (see NTD) and services.
HMTA	Houston Metro Transit Agency
HOV	High Occupancy Vehicle
LRT	Light rail transit [system]
MTC	Metropolitan Transportation Commission. A Bay Area regional transportation coordination and planning agency.
Next Network	VTA's Next Network is a redesign of the transit network and is one component of an agency-wide effort to make public transit faster, more frequent and more useful for Santa Clara County travelers.
NTD	National Transportation Database. Database of statistics and metrics maintained by FTA.
PUC	California Public Utilities Code
SCCTD	Santa Clara County Transit District
SCVWD	Santa Clara Valley Water District

VT Santa Clara Valley Transportation Authority

VRH Vehicle Revenue Hours

SUMMARY

The Santa Clara Valley Transportation Authority (VTA) is an independent special district created by the California legislature in 1972. Initially, the Santa Clara County (County) Board of Supervisors provided direct oversight of VTA and acted as its Board of Directors. Effective January 1, 1995, pursuant to further legislation, VTA began operating under a separate Board of Directors (VTA Board) composed of elected officials from throughout the County appointed to serve by the County Board of Supervisors and the governing authorities of VTA's constituent municipalities, with the allocation of VTA Board representation generally based on population.

For many years, VTA has been plagued by declining operating performance and recurring budget gaps between projected revenues and expenses (referred to as structural financial deficits) – notwithstanding significant population growth and, in recent years, increased employment levels throughout much of Silicon Valley.

The 2003-2004 Santa Clara County Civil Grand Jury conducted an “Inquiry into the Board Structure and Financial Management of the Valley Transportation Authority”¹ which found, among other things, that:

- The operating performance of VTA compared unfavorably to its peer organizations;
- The VTA Board had not effectively managed the finances of VTA, resulting in a substantial structural financial deficit that was projected to increase in the following year; and
- A root cause of VTA's poor performance was the governance structure of the VTA Board, which was “too large, too political, too dependent on staff, too inexperienced in some cases, and too removed from the financial and operational performance of VTA.”

To address these issues and attempt to make the VTA Board more responsive, the 2003-2004 Grand Jury proposed various changes to the Board's structure. Although responses filed by seven of VTA's constituent municipalities were supportive of some or all the recommended changes, VTA's response defended the status quo, and most of the other municipalities adopted VTA's position. Accordingly, the recommended changes were not made.

The 2008-2009 Grand Jury again examined the governance of VTA and reiterated some of the same concerns noted in the earlier report, although the focus of the 2008-2009 report was primarily on the role and functioning of the VTA Board's appointed advisory committees.

¹ http://www.sccscourt.org/court_divisions/civil/cgj/2004/BoardStructureFinancialMgmtVTA.pdf

The 2018-2019 Civil Grand Jury (Grand Jury) revisited the subject of VTA's governance and the work of the earlier grand juries and found that:

- 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;
- 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; and
- 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.

The Grand Jury 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 Grand Jury recommends several changes to the governance structure and operations of the VTA Board which will improve the Board's ability to effectively perform its important oversight and strategic decision-making functions. The Grand Jury further recommends that the VTA Board consider deferral of Phase 2 of the Eastridge light rail extension project pending a full review of the future role of light rail in VTA's transit system. Such a review should study alternative ways to meet the needs of the residents of East San Jose for modern, efficient public transportation without extending a costly and outdated light rail system and worsening VTA's already precarious financial condition.

In January 2019, the incoming Chairperson of the VTA Board issued a summary of her "2019 Perspectives and Priorities"² for VTA (see Board of Director's Meeting, January 7, 2019, section 8.2). Among the goals articulated by the Chairperson was improved board governance. The Chairperson announced that she would "convene a board working group to look at a range of board governance practices," with a view to improving "board engagement and effectiveness." The Grand Jury commends the Chairperson for focusing on the important subject of governance. This report may aid the Chairperson and the rest of the Board in that endeavor.

² <http://santalaravta.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=2133&Inline=True>

METHODOLOGY

The 2018-2019 Civil Grand Jury began this investigation of VTA on August 15, 2018 and concluded its work on May 29, 2019. The investigation primarily followed from issues highlighted in the report of the 2003-2004 Grand Jury and focused on the structure of the VTA Board of Directors, the effectiveness of its oversight of VTA's operating and financial performance, its handling of the agency's persistent structural financial deficit and its ability to address the many complex challenges facing VTA as it confronts the future of transportation in Silicon Valley. The Grand Jury employed a broad range of data gathering and investigative methods, including:

- **Site visits** were made to VTA headquarters, one of the VTA bus yards, VTA's downtown customer service center, and bus and light rail stops and stations.
- **The transit system** was used, including the purchase of Clipper Cards, riding buses and light rail trains during peak and off-peak hours, stops at and transit through Diridon Station, Eastridge, downtown and North County rail and bus facilities, and assessing access to transit stops by walking to stations and stops and using VTA parking sites.
- **Interviews** were conducted with 37 individuals (some more than once) over more than 50 hours. Interviewees included a substantial number of individuals who served as members of the VTA Board and its committees during 2018 and 2019, senior and mid-level VTA staff personnel, city and county government officials, and representatives of various community stakeholder groups.
- **Governing documents** were reviewed, including: (i) provisions of the California Public Utilities Code (PUC), which established VTA, particularly PUC Sections 100060 through 100063, which set forth the governance structure of the VTA Board; (ii) provisions of the VTA Administrative Code, adopted by the VTA Board to supplement the provisions of the PUC; and (iii) agreements among members of city groups who share representation on the VTA Board regarding the process for rotating their representation on the Board and collectively choosing their appointees. In addition, data regarding attendance records for VTA Board and committee meetings, directors' terms in office and voting records were examined.
- **Reports specific to VTA** were reviewed, including: (i) the 2003-2004 and 2008-2009 Civil Grand Jury reports and the responses thereto; (ii) a 2007 report entitled "Santa Clara Valley Transportation Authority Organizational and Financial Assessment," by the Hay Group (Hay Report); (iii) a 2008 report on VTA by the California State Auditor; (iv) a 2010 thesis entitled "Assessing Transit Performance: Recommended Performance Standards for the

Santa Clara Valley Transit Authority,” authored by a San Jose State University master degree candidate; (v) a 2016 report entitled “Transit Choices Report,” prepared for VTA by the consulting firm Jarrett Walker +Associates; and (vi) numerous public documents published by VTA and/or available on its website. These and other documents referred to in this report are listed in the Reference Section.

- **Comparisons** were made of VTA’s performance in various operating and financial categories to the performance of other transit organizations utilizing data compiled by the American Public Transportation Association (APTA), the United States Department of Transportation (DOT), The Business Insider, the Federal Transit Administration (FTA) published in the National Transit Database (NTD), the Public Transit Factbook and other federal and industry indices and metrics. Industry and “think tank” reports and articles discussing and comparing transit agency performance, including, among others, the Cato Institute, the Heritage Foundation and the Hudson Institute, were also reviewed. For purposes of comparison, operating data from peer agencies serving the metropolitan areas of Portland, Minneapolis, Houston, Dallas, Salt Lake City, Denver, San Francisco, Sacramento and San Diego were reviewed. In connection with a comparison of governance structures, other agencies, including those serving Los Angeles, Seattle, Vancouver B.C., Austin, Chicago, New York, the District of Columbia and Phoenix, were considered.
- **Attendance** at regularly scheduled meetings of the VTA Board and its committees, including the Administration and Finance Committee, Capital Program Committee (CPC), Governance and Audit Committee, and Ad Hoc Financial Stability Committee between October 2018 and May 2019, as well as Board workshops on the Future of Transportation in Silicon Valley and the proposed biennial budget for fiscal years 2020 and 2021. Audio and video recordings of some of the meetings noted above, as well as other meetings of the VTA Board and certain committees conducted from January 2018 forward were reviewed.

DISCUSSION

A Brief History of the VTA

Santa Clara County Transit District (SCCTD) was created by the County's voters in June 1972 and took over operations of three financially strapped private bus companies. SCCTD was initially managed by the County's Department of Public Works, but in 1974 became a separate agency governed directly by the County Board of Supervisors.

SCCTD initially focused on upgrading and replacing its inherited fleet of buses. Assisted by federal funding and a voter approved half-cent sales tax in 1976, SCCTD began to acquire diesel buses and build repair facilities.

In the 1980s, SCCTD embarked upon the construction of its light rail transit system, utilizing funding received from the federal government and the proceeds of additional voter-approved sales taxes. The first segment of the light rail system opened for service in late 1987, and the entire initial 21-mile system was completed in 1991. Four extensions of the system were completed by 2005, and additional extensions are currently in the planning stages.

SCCTD completed a two-part reorganization, in early 1995. SCCTD was designated the Congestion Management Agency for the County under a joint powers agreement among the County and its 15 cities. At the same time, legislation reconstituting the Board of Directors from five directors, all of whom were County Supervisors, to 12 consisting of two County Supervisors, five San José City Council members and five city council members representing the remaining 14 cities, selected on a rotating basis by the governing authorities of those cities. The name of the agency was changed to the Santa Clara Valley Transportation Authority in 1996, from which the acronym VTA was adopted.

Today, VTA is a complex, multi-billion-dollar enterprise that provides bus, light rail and paratransit services within Santa Clara County. In addition, VTA participates in funding other agencies that provide regional rail service, including Caltrain, the commuter rail line serving the San Francisco Peninsula, the Capitol Corridor operating between Silicon Valley and the Sacramento area, and the Altamont Corridor Express, connecting Stockton and San José. VTA also is responsible for county-wide transportation planning, including congestion management, the design and construction of highway, pedestrian and bicycle improvement projects, and the promotion of transit-oriented development.

Structure of the VTA Board

The present structure of the VTA Board was authorized by legislation effective January 1, 1995. In the legislation proposed by the County Board of Supervisors, the VTA Board was to have been composed of five directly elected members (corresponding to the five county supervisorial districts) and 11 appointed members of various elected bodies in the county. As ultimately adopted, the enabling legislation eliminated the directly elected directors. Instead, PUC Section 100060 provided for a Board consisting of 12 voting members and alternates, all of whom are elected public officials, with the allocation of Board representation generally based on population.

Under the formula outlined in PUC Section 100060, and further spelled out in Section 2-13 of the VTA Administrative Code, the VTA Board is composed of:

- Two voting members and one alternate who are members of the Santa Clara County Board of Supervisors;
- Five voting members and one alternate representing the City of San José;
- One voting member and one alternate representing the cities of Los Altos, Los Altos Hills, Mountain View and Palo Alto;
- One voting member and one alternate representing the cities of Campbell, Cupertino, Los Gatos, Monte Sereno and Saratoga;
- One voting member and one alternate representing the cities of Gilroy and Morgan Hill; and
- Two voting members and one alternate representing the cities of Milpitas, Santa Clara and Sunnyvale.

All the voting members and alternates, other than the County supervisors, must be currently serving as mayors or city council members of the city they represent. Each of the four groups of smaller cities may collectively determine their representative, and each group has adopted an agreement specifying, in varying degrees of detail, the manner in which the group's appointed representatives will rotate among the member cities and how individual representatives are to be selected.

PUC Section 100060(c) provides, importantly, that “[t]o the extent possible, the appointing powers shall appoint individuals to the VTA Board who have expertise, experience, or knowledge relative to transportation issues.” The VTA Administrative Code and the inter-city agreements contain similar directives.

In 2015, the Governance and Audit Committee of the VTA Board adopted a set of Guidelines for Member Agency Appointments to the VTA Board of Directors (Guidelines). The Guidelines

contain several recommendations emphasizing, among other things, the value of a candidate's expertise and prior experience on the VTA Board or its Policy Advisory Committee. The Guidelines also express the expectation that VTA Board members "[h]ave a fiduciary responsibility to vote for the best interests of the region, not those of their city/county group or appointing jurisdiction," and "should be able to attend Board and standing committee meetings regularly." A full copy of the Guidelines is attached as Appendix A.

In addition to the voting members and alternates, the VTA Administrative Code provides that members of the Metropolitan Transportation Commission (MTC) who reside in Santa Clara County, and who are not voting members or alternates, shall be invited to serve as ex-officio, non-voting members of the Board³. The VTA Board currently has one such ex-officio member.

VTA Board members serve for a term of two years⁴. The VTA Administrative Code "strongly encourages" appointing authorities to reappoint representatives to successive terms, and some members do serve multiple terms⁵. One director who recently left the VTA Board had served as a director or alternate representing San José and the County for a total of 13 years, but missed eight Board meetings in his last two years of service. The two voting directors currently representing the County have served as directors or alternates for a total of 14.5 and 12.5 years. The current Mayor of San José has served as a director for 11.5 years. However, many directors who serve on a rotating basis as representatives of the smaller city groups do not serve successive terms, and directors' two-year terms are frequently cut short when they are not re-elected, term out or otherwise cease to serve in their elected position.

PUC Section 100061 requires the VTA Board to elect its Chairperson and Vice Chairperson annually. Both officers serve for terms of one calendar year, straddling two fiscal years of the VTA (July 1 to June 30). By informal convention, the Vice Chairperson one year becomes Chairperson the following year.

³ VTA Administrative Code Section 2-15

⁴ PUC Section 100060.2

⁵ VTA Administrative Code Section 2-14

The VTA Board in Action

As noted above, the VTA Board consists of a rotating group of elected public officials appointed by the County Board of Supervisors, the City of San José and the four groups of smaller cities. Although the PUC, the VTA Administrative Code and the Guidelines all admonish the appointing authorities to appoint VTA Board members who have appropriate expertise, experience and knowledge, as a practical matter, appointments are often made based more on political considerations than on the candidate's qualifications. From the candidate's point of view, appointment to the VTA Board, one of the largest agencies in the County, is generally considered a plus for his or her political advancement. Candidates often express an interest in serving on the VTA Board largely because they see service on the Board as a "resume builder." As a result, appointees to the VTA Board often have no previous experience with transportation, finance or leadership of a commercial enterprise, let alone one with annual revenues of over a half billion dollars and assets of \$5 billion. New directors often know little about VTA's operations or finances, or the organization and functioning of the Board. In our interviews, the Grand Jury learned that one director was unclear about how directors were chosen or even how many directors there are. Another, representing one of the smaller city groups, was unfamiliar with the provisions of the inter-city agreement governing appointments to the Board and considers appointments as simply the political prerogative of the mayor of the city whose turn it is to make the appointment.

Because new directors often have little or no experience with transportation agency operations or transit policy, they face a steep learning curve to even begin to become effective Board members. There is no "boot camp" for new directors. The orientation program provided by the VTA staff is brief and presents only a high-level overview of VTA and basic information regarding Board procedures. When speaking with the Grand Jury, some directors couldn't recall going through any orientation at all.

Workshops are conducted by the VTA staff, generally about twice a year, to provide background information to the directors, often focusing on a specific issue. These workshops are relatively short, sometimes poorly attended and often cancelled. For example, both director workshops scheduled to be held in 2018 were cancelled. A workshop held on February 22, 2019, ambitiously addressed the important and complex topic of "The Future of Transportation in Silicon Valley." The workshop was attended by eight of the 12 voting members of the VTA Board, three of the six alternates and the ex officio member and lasted a little over three hours. Needless to say, the workshop merely scratched the surface of the topic. A few Board members have attended transportation-related, third party-sponsored programs and seminars on their own initiative to enhance their knowledge on issues of transportation management and policy. There is no formal policy requiring or encouraging attendance at external training programs or conferences or other forms of continuing education.

Influence on the VTA Board

The City of San José dominates the VTA Board with the ability to appoint five of the 12 directors, which should not be unexpected given San José's share of the County's population. Although the San José directors technically are appointed by the San José City Council, the Mayor recommends those appointments. Thus, the Mayor effectively controls the initial selection of the San José directors as well as their tenure on the Board and, therefore, has the ability to exercise considerable influence over a substantial portion of the VTA Board. Since some members of the County Board of Supervisors who have served on the VTA Board previously served on the San José City Council or represented supervisorial districts within San José, these relationships may further enhance San José's dominance on the VTA Board.

Given that representatives of the City of San José and the County Board of Supervisors are often able to serve multiple terms on the VTA Board, they gain experience and the ability to add value. However, representatives of the smaller city groups are subject to the rotational provisions of their inter-city agreements, limiting their ability to serve consecutive terms. Accordingly, the San José and County representatives often dominate the Board in terms of experience and influence as well as numbers. Current voting members of the VTA Board representing San José and the County have served an average of 4.3 years and 10.5 years, respectively, including non-concurrent terms but excluding service by some of them as alternates. However, the current voting members representing the smaller cities have served an average of only 1.9 years.

Board Member Preparation

All of the members of the VTA Board are primarily focused on their other duties as local elected officials; their position on the VTA Board is clearly of secondary importance to most, if not all, directors and, as noted above, viewed by some principally as a "resume builder" and a one day a month job. Directors confront their other duties as elected officials and, in the case of smaller city directors, private employment or business interests, which themselves may be demanding and time-consuming.

Directors often find it difficult to digest the massive amounts of information provided to them by the VTA staff to help them fulfill their responsibilities and prepare for meaningful participation in Board meetings. For example, meeting materials for VTA Board meetings typically run more than 300 pages, and committee meeting packages can be as voluminous. Here too the representatives of the smaller city groups are at a disadvantage. While members of the County Board of Supervisors and the San José City Council have dedicated staffs that can help them review and distill VTA-supplied materials and analyze issues, the representatives of the smaller city groups have little or no staff support. Although members of the VTA staff make themselves available to meet with directors to discuss VTA business, particularly in advance of monthly meetings, the Grand Jury learned that some directors take little or no advantage of these opportunities.

VTA Committees

Like many complex organizations — both governmental and private — the VTA Board maintains a system of standing committees. These include the Administration and Finance Committee, the CPC, and the Governance and Audit Committee, among others. The Board also has a number of advisory committees and occasionally appoints ad hoc committees to deal with specific matters. For example, the Ad Hoc Financial Stability Committee (which will be discussed further in this report) was formed in January 2018 and was active throughout 2018.

The Board's committee structure is both a benefit and a detriment. Because Board members have other public and private commitments, it is challenging to deal with all the complex issues affecting VTA; thus, delegation of certain responsibilities is necessary.

On the other hand, the committee structure tends to create a certain level of disengagement. Board members are assigned by the Chairperson to serve on standing committees. Several interviewees expressed the opinion that committee assignments are often made with little or no input from the affected Board members, and some committee members only learn of their appointment when they see their name on a list. Because of their various time commitments, Board members often are unfamiliar with or just defer to and trust the staff and their fellow directors regarding issues passed upon initially by committees of which they are not members. When those issues come before the full Board, often by way of its consent calendar, there is little or no discussion or debate. In some cases, matters of some significance are also placed on the consent calendar at the committee level, with the result that only the staff conducts any significant review of the matter. This system works well for some topics, like the approval of construction contracts, but can leave many directors uninformed about important topics to which the full Board should be attentive. Topics like monitoring VTA's financial affairs and structural financial deficit (which is principally left to the Administration and Finance Committee) and major ongoing capital programs, which are monitored by the CPC demand full engagement by all directors. At the October 2018 Board meeting, in reference to a report on the consent calendar, one of the directors stated, "Instead of going to committee, this type of report should go to the full Board...We should have [Board] workshops on several of these reports."

Alternate VTA Board Members

Like the use of committees, the system of alternate Board members has both advantages and disadvantages. Alternate members cannot vote at meetings except when they are attending in place of a voting member. Accordingly, alternate members often do not attend Board or committee meetings. If they attend meetings at all, they typically sit in the audience and do not participate. The existence of alternate Board members is useful in securing a quorum at Board and committee meetings when a voting member is absent. However, the availability of an alternate can serve as justification for voting members to make meetings a lower priority. Additionally, because alternate members frequently are called upon at the last minute, they may be even less prepared than voting members with the agenda and meeting materials. The alternate faces the decision to vote on matters in accordance with his or her own beliefs and opinions, or to vote the way he or she believes the voting member being replaced would have voted. This type of voting “by proxy” is inconsistent with good governance practices and would not be permitted by members of a corporate board of directors.

VTA Board Meetings

The VTA Board meets once a month in the evening. Board committees meet between three and 11 times a year. Attendance at Board and committee meetings varies greatly. Data compiled by the Grand Jury show that during 2017, 2018 and the first four months of 2019, attendance by voting members at Board meetings and workshops averaged approximately 87%. Individual attendance ranged from 61 to 92%. During the same period, attendance by voting members at committee meetings averaged approximately 86%. Often, directors arrive at meetings late, step away from the meeting, or leave early, but their partial participation is not always reflected in the attendance records. The conduct of Board meetings observed by the Grand Jury is characterized by limited debate and discussion, typically with active participation by only a few directors and some directors not participating at all.

The Board does very little on an ongoing basis to monitor and assess directors’ performance. The Grand Jury learned from our interviews that guidelines were developed to aid the Board in measuring its effectiveness, but no action has been taken to implement these guidelines. Board members receive a self-assessment questionnaire at the end of the year, but, according to several interviewees, many are not completed or returned, and no action is taken to follow up or seek feedback.

VTA Board Effectiveness

In short, the VTA Board suffers from:

- a lack of experience and continuity by many directors;
- dominance, in terms of numbers, seniority and influence, by representatives of San José and the County;
- 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.

In assessing the effectiveness of VTA, several preliminary observations are in order.

First, nothing in this report is meant to suggest that the members of the VTA Board are not honorable and hard-working public servants who are doing their best to perform the duties of a very difficult position under extremely difficult circumstances.

Similarly, the Grand Jury has found that the VTA senior management staff is a competent team of professionals doing their best to run a very complex organization within the policy guidance provided by the VTA Board. As one member of the Board stated at the February directors' workshop, "the staff is like a racehorse that we are keeping in the starting gate." For their part, members of the senior staff are sometimes reluctant to draw the Board's attention to matters of concern where they realize there is political resistance on the part of some directors and feel that raising an issue would be a waste of time. Some senior staff members are frustrated by what they perceive as an unwillingness of the Board to support needed action or make important changes at the policy level. Several staff members pointed to other transit districts, such as those in Portland, Austin and San Diego, as agencies whose policymakers are prepared to make tough decisions and take risks to improve public transit. According to some staff members and directors, this frustration, in part, has resulted in a general decline in morale at the senior staff level. The process used in the recent reorganization of senior staff responsibilities has contributed to additional morale problems. Some key members of senior management have recently announced that they will be leaving VTA.

The Grand Jury also recognizes that many of the problems facing VTA are not unique to it as a transit organization or to the specific geographic or demographic characteristics of the Silicon Valley. Like many other transit organizations, VTA must deal with nationwide transportation trends, including increasing congestion and competition from ride-hailing companies and corporate-run employee bus services, as well as looming challenges posed by autonomous, driverless vehicles. Moreover, operating a transit system in a largely suburban region presents greater challenges than are typically faced in more densely populated urban areas, having concentrated downtown business centers. It is because of the complex and evolving nature of the problems facing VTA that active and enlightened Board oversight and strategic vision are more essential than ever to the organization's future success.

Having those observations in mind, the Grand Jury has noted that VTA and the VTA Board have been subject to criticism over the years from various quarters. As described above, the 2003-2004 and 2008-2009 Grand Juries were critical of the Board and its governance structure. However, criticism of the management and Board of VTA has not been limited to the Civil Grand Jury. A number of investigations, studies and articles, including the Hay Report which was commissioned by VTA itself, have criticized VTA's operational and financial performance and the effectiveness of VTA governance. In 2007, one writer referred to VTA as possibly "the nation's worst managed transit agency, at least among those serving big cities."⁶ Even members of the VTA Board have questioned the Board's effectiveness. For example, at a meeting of the VTA Board in October 2018, one director made the comment, "we have to break the mold of 'same ole, same ole'...Board, we have to step up and change things." Upon assuming her position in January 2019, the current Chairperson of the VTA Board announced that she would "convene a board working group [later designated the Ad Hoc Board Enhancement Committee] to look at a range of board governance practices" with a view to improving "board engagement and effectiveness."⁷ At the Board workshop in February 2019, the participating directors, by a unanimous show of hands, agreed that VTA needs to make "radical changes" to address its many challenges. As one director put it, "We just had a workshop where we had a long conversation and we pretty much had a consensus where we have to do things differently and think outside the box." The Ad Hoc Board Enhancement Committee held its first meeting on May 29, 2019.

A complete review and assessment of the operations and management of VTA is far beyond the means of the Grand Jury or the scope of this report. Accordingly, the Grand Jury has chosen to focus its attention on the consideration of the effectiveness of the VTA Board's oversight and policymaking, as exemplified by three areas of concern:

- VTA's poor and continually deteriorating operating performance;

⁶ "The Nation's Worst Transit Agency", The Antiplanner, March 26, 2007

⁷ <http://santaclaravta.ig2.com/Citizens/FileOpen.aspx?Type=12&ID=2133&Inline=True> . See section 8.2 of Minutes for the January 9, 2019 Board of Directors meeting.

- the VTA Board's inadequate oversight of the agency's financial performance and its structural financial deficit; and
- the VTA Board's unwillingness, to date, to reconsider the merits of significant pending capital projects that may be indicative of its general ability to guide the organization strategically.

VTA's Operating Performance

VTA Operating Trends

The 2003-2004 Grand Jury reviewed VTA's operations and found that its operating performance compared unfavorably to its own benchmarks as well as the performance of peer agencies. Among other things, its report noted that:

- VTA's operating costs had risen substantially faster than the rate of inflation; and
- Fares collected from VTA's passengers divided by VTA's operating expenses (referred to as the farebox recovery ratio) for the previous two years had been 11.6% and 12%, compared to the national average of more than 20%, meaning that the taxpayers of Santa Clara County were providing a much greater than average subsidy of transit operations.

The 2018-2019 Grand Jury again examined VTA's operating statistics and found that VTA's performance has continued to deteriorate over the past 10 years, relative to both its historical performance and the performance of its peers, across a wide variety of metrics, including continuing increases in operating costs and further reductions in farebox recovery.

Since the 2008-2009 recession, the population of Santa Clara County has increased by approximately 10.6%. During that 10-year period, bus and light rail vehicle revenue hours (VRH), which measures the amount of service VTA offers, increased by 6.4% while operations employee headcount (i.e., operators and maintenance personnel) grew by 8.9%. Total operations expense rose by 63.2% between 2009 and 2018, including a one-year increase of 17.1% between 2017 and 2018 alone. As operations expense increased, overall farebox recovery declined from 13.5% in 2009 to 9.3% in 2017 – substantially worse than the ratios that the 2003-2004 Grand Jury cited as unacceptably low back in 2004.

Meanwhile, despite increases in employment and income levels in Silicon Valley, the public's actual *use* of VTA's services (as measured by passenger trips on buses and light rail) dropped by 19.2% between 2009 and 2018 and by 14.8% in the last two years alone. According to U.S. Census Bureau data, in 2017 (the last year for which such data is available), public transit was used as a means of transportation to work by only 4.8% of Santa Clara County's commuters, little more than the combined percentage of those who walked or biked to work and fewer than the 5.3% who worked at home. Despite the declining use of transit during the last ten years, VTA continued to increase its employee headcount (both operations employees and administrative staff) and add to its fleet of buses and train cars, further increasing operating expense.

As a result of the dramatic increases in operations expense and the concurrent decline in ridership, VTA's cost per passenger trip for buses and light rail combined increased from \$5.61 in 2009 to \$9.30 in 2017, 90.5% of which was covered by taxpayer subsidies.

Detailed data regarding VTA's operations are shown in Appendix B, and the trends discussed above are depicted in Figure 1 below.

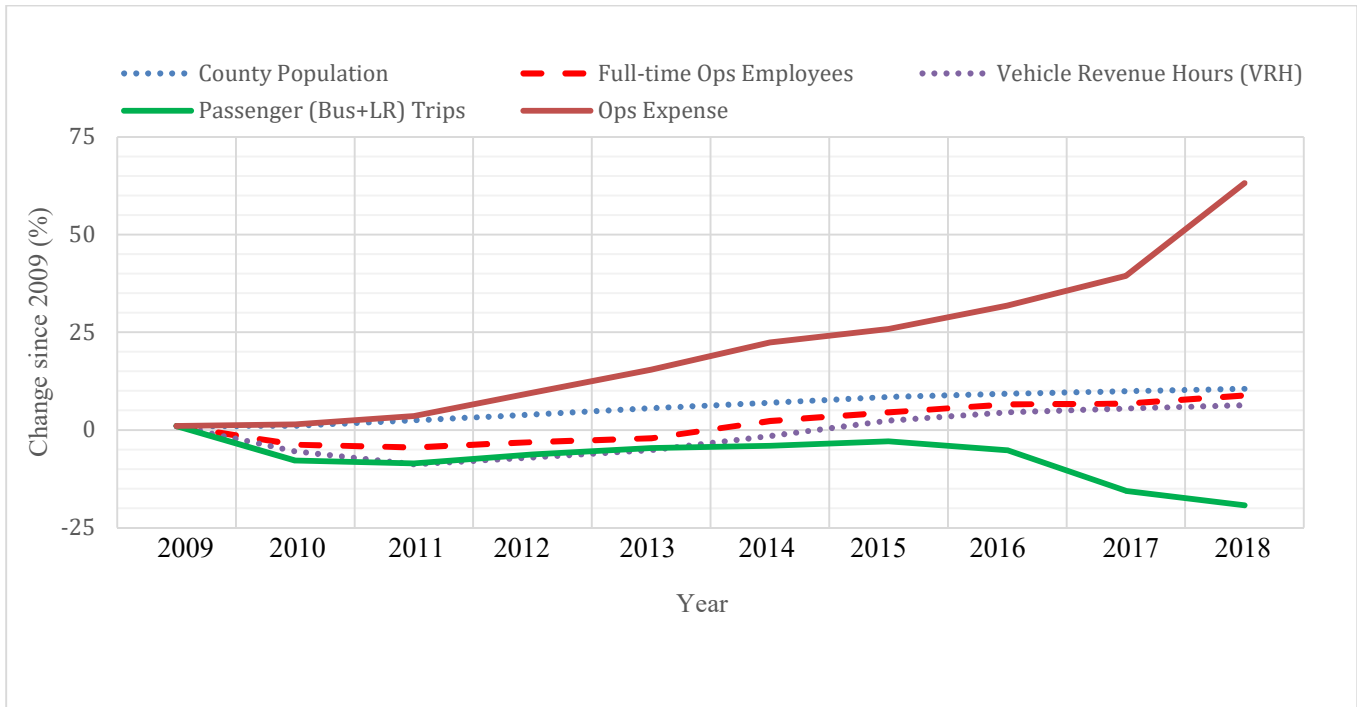


Figure 1 - VTA Operations Trends since 2009

Peer Agency Comparison

The FTA issues an annual NTD report summarizing nationwide data and trends for transit agencies throughout the United States. In its most recent survey, for 2017, the FTA reported that for transit agencies serving populations of more than one million people:

- Operating cost per passenger trip for buses and light rail ranged from a low of \$3.27 to a high of \$9.31 with VTA's cost per trip of \$9.28 nearly the highest in the nation;
- Operating expense per revenue hour ranged from a low of \$84.82 to a median of \$123.20 and a high of \$249.83 with VTA's operating expense per revenue hour of \$199.79 at about the top 10th percentile in the nation; and

- Farebox recovery for light rail systems (combined bus and light rail data was not available) ranged from 7.6% to 47.2% with VTA's light rail system farebox recovery of 7.6%, the lowest in the nation, requiring taxpayers to subsidize 92.4% of the cost of light rail service.

Since the FTA surveys contain data for more than 800 transit agencies, including many with operating environments that differ significantly from VTA's, the Grand Jury selected a cohort of ten peer agencies for further review using the following guidelines:

- Only agencies operating both buses and light rail systems were included;
- Only agencies serving urbanized communities with population and service areas generally comparable to VTA's were included; and
- Agencies identified as VTA's peers by interviewees or transit experts were also considered for inclusion.

Based on these guidelines, public transit agencies serving the metropolitan areas of Portland, Minneapolis, Houston, Dallas, Salt Lake City, Denver, San Francisco (SF), Sacramento and San Diego were chosen for comparison.

Comparisons of FTA operating data for the 10 peer agencies from 2009 through 2017 are shown in Appendix C. In summary, comparative data for three key metrics show the following:

- **Operating Cost per Trip:** VTA's operating cost per trip was the highest of all 10 peer agencies in each of the nine years. In addition, VTA's cost per trip increased by 65% over the period, second only to Sacramento's increase of 86%.
- **Passenger Trips per Revenue Hour:** The effectiveness of VTA's service, as measured by the number of passenger trips per revenue hour, was consistently among the lowest of the peer group, and second lowest in 2017 and 2018. San Diego, with a lower population density than VTA's, achieved almost twice the ridership per hour as VTA in the last five years. Not surprisingly, San Francisco, with its significantly greater population density, consistently recorded the highest number of trips per hour.
- **Farebox Recovery:** VTA had the lowest farebox recovery in the peer group for its total operations since 2012.

Table 1 below summarizes VTA's operating performance in 2017 relative to the peer group.

Table 1 - VTA Operating Performance Versus Peer Group in 2017

Performance Measure		10-Peer Average	Best	Worst	VTA Rating
Service Effectiveness	Passenger Trips per Revenue Hour	34.0	63.8 (SF Muni)	23.4 (Dallas)	24.3 (2nd to last)
Service Efficiency	Operating Cost per Passenger Trip	\$5.30	\$3.00 (San Diego)	\$9.30 (VTA)	\$9.30 (Last)
	Farebox Recovery Ratio	21.5%	34.7% (San Diego)	9.3% (VTA)	9.3% (Last)

In short, while all VTA's peer agencies suffered declines in ridership over the last decade, all but one of the other agencies were more successful than VTA at controlling increases in costs.

It is important to note that, despite the continuing decline in key operating metrics, between 2016 and 2019, VTA's operations management has successfully improved performance in a number of significant areas, including: a 20% improvement in miles between major mechanical schedule loss; a 24% reduction in passenger concerns (complaints); a 3% improvement in light rail miles between chargeable accidents; and a 7% improvement in light rail on-time performance. In addition, the Grand Jury had direct experience utilizing VTA transportation services during our investigation and observed vehicles that were clean, performance that was generally on-time, and operators who were friendly and resourceful.

VTA's Financial Management

VTA is highly dependent on sales tax for its operating revenue. Currently, sales tax receipts provide approximately 80% of VTA's revenue, while farebox revenue provides about 7%. Remarkably, in an environment of robust population and economic growth, VTA's farebox receipts have decreased from \$36.2 million in 2009 to \$34.5 million in 2018, a decline of 5%. Over that same period, operating expenses have increased by a staggering 51%. Adding further pressure to VTA's revenue stream is the steadily decreasing contribution of federal operating grants, which peaked at \$59 million in 2010 and fell to \$3.8 million in 2018.

To address its revenue shortfall, VTA has begun to tap Measure A and Measure B sales tax receipts, originally earmarked for capital improvements, to help fund transit operations. For 2018 and 2019, the VTA Board approved the transfer of \$44 million and \$14 million, respectively, of these funds to supplement VTA's operating revenue. To further address the shortfall, VTA has drawn down its reserves to help fund operating deficits.

Given its history of low fare collections, declining ridership and uncertain governmental assistance, the answer would seem to be increased attention to cost management, with an emphasis on labor costs, by far the largest component of VTA's operating expense. However, VTA's combined operations and administrative headcount continues to rise each year despite the decline in ridership. The Grand Jury found the VTA Board has not vigorously addressed these issues through its budget process by embracing the type of comprehensive cost management strategy that is called for by the environment of limited resources in which VTA is currently operating.

The 2018-2019 Budget Process

VTA operates on a biennial budget cycle with a budget for the following two fiscal years adopted in June of each odd-numbered year. The proposed budget is reviewed by the Administration and Finance Committee and forwarded to the full VTA Board with the Committee's recommendation.

The proposed 2018-2019 budget, as recommended by a three-to-one vote of the Administration and Finance Committee in May 2017, showed projected operating deficits of \$20 million and \$26 million for fiscal years 2018 and 2019, respectively, and similar deficits for subsequent years. Taking into account the annual need for local funds on the order of \$30 million to support VTA's capital programs, the total gap between projected revenues and expenses (referred to as a structural financial deficit) contemplated by the budget was between \$50 and \$60 million. Compounding the widening budget gap was the fact that, over the preceding six years, operating expenses had grown twice as fast as revenues, and VTA had consistently failed to meet its ridership and farebox recovery projections. For example, in fiscal years 2016 and 2017, VTA's farebox recovery had fallen short of budget projections by 7.3% and 18.9%, respectively.

Nevertheless, rather than undertaking a thorough review of the proposed budget and making hard decisions regarding meaningful reductions in operating and capital expenses, or even sending the budget back to the Committee for further study, the VTA Board adopted the budget on June 1, 2017, by a vote of eleven to one, thereby assuring operating deficits for the following two years.

To no one's surprise, the projected operating deficits materialized and were largely funded by drawing down VTA's reserves. Capital reserves, which had stood at \$49.5 million at June 30, 2017, had been depleted to \$5 million by the middle of the following year.

Ad Hoc Financial Stability Committee

In January 2018, the incoming Chairperson of the VTA Board recognized that some action had to be taken to address the structural deficit problem, which had become critical. Rather than engaging the full Board, for example by convening an all-day workshop, to address the problem that the Board and the Administration and Finance Committee should have been actively monitoring all along, the Chairperson chose to create an Ad Hoc Financial Stability Committee. The Committee was chaired by an ex officio member of the Board and included only two actual voting directors. The Committee then invited a group of approximately 12 "stakeholders" to participate. Stakeholders included employees, representatives of organized labor and several individuals from community organizations – each with their own agenda, but none with the fiduciary duty to make tough policy decisions solely in the best interests of VTA and County taxpayers. As the 2003-2004 Grand Jury report noted, "[i]t is the fiduciary responsibility of the Board, not a committee, a business lobbying group, or business community leaders, to provide oversight and direction" regarding VTA's operations and financial management.

The use of an ad hoc committee was hardly a new concept for the VTA Board. The Board had historically followed a pattern of waiting for a financial crisis to arise and then appointing an ad hoc committee. That committee would attempt to deal with the crisis and come up with a fix. In most cases, the fix would last a few years, relying primarily on new sources of revenue that would hopefully emerge. However, in any event, the composition of the Board — and responsibility for dealing with the problem — would have changed. The Board would then realize that another financial crisis was taking place, and the process would be repeated. Most recently, Ad Hoc Financial Stability Committees had been formed to deal with financial crises in 2001 and 2010.

The Ad Hoc Financial Stability Committee met sporadically between March and December 2018 to discuss the structural deficit, its implications and potential cost-saving measures. Three of the nine scheduled meetings were cancelled. At a meeting of the Committee in August 2018, in response to a question, VTA's Chief Financial Officer underscored the urgency of VTA's financial situation by stating that VTA could continue its operations for no more than 18 to 24 months before

going “off a cliff.” On June 20, 2018, the Committee held a three-hour workshop to discuss strategies and solutions to address the budget and structural deficit. During the workshop, the stakeholders broke out into working groups to consider possible solutions. Although no consensus was reached, a wide variety of suggestions were made, which were reviewed by the VTA staff and discussed at subsequent meetings. These recommendations included, among other things, substantial fare increases, implementation of wage cuts, a hiring freeze, a reduction of fleet size, and a delay of further capital expenditures on light rail expansion.

At its final meeting in December 2018, the Ad Hoc Financial Stability Committee concluded that the defeat in November of a ballot measure to repeal fuel taxes and vehicle fees (California Proposition 6) and the collection of sales tax on out-of-state sales beginning at some unspecified point in the future (later determined to be April 2019) would infuse additional revenues into the budget. The fuel and vehicle monies would result in an additional \$23 to \$27 million per year in annual revenues. The sales tax would, when implemented, increase revenues by \$5.5 million per year. After these painless fixes, the Committee then addressed the annual structural deficit of approximately \$25 million that still remained by proposing three initiatives:

- reducing the proposed increase in bus and rail service hours – not from their actual fiscal 2018 levels, but from the even higher levels originally budgeted for fiscal year 2019 as a part of VTA’s Next Network program – saving approximately \$15 million annually;
- a fare increase indexed to inflation, saving approximately \$2 million annually (which was subsequently deferred until 2021); and
- a voluntary early-retirement program projected to save another \$1 million annually.

After six meetings over a nine-month period (including the three-hour workshop) involving three directors and a dozen stakeholders, as well as untold hours of VTA staff support time, the Ad Hoc Financial Stability Committee recommended a total of only \$18 million in projected cost savings to address the remaining \$25 million deficit target, leaving a \$7 million gap unaddressed. Several serious cost-cutting measures brought forward at the workshop were not actively considered. At its meeting, on December 6, 2018, the VTA Board unanimously accepted the recommendations of the Committee, and the Committee stood down.

By any measure, the VTA Board’s oversight of the agency’s financial affairs, as exemplified by its adoption of the 2018-2019 budget and the handling of the built-in structural financial deficit, has been weak and ineffective. The inability of the VTA Board to meaningfully address the deficit can be attributed, in part, to the lack of financial expertise on the Board, a lack of preparation and engagement on the part of some directors — exacerbated by the delegation of the problem to the Ad Hoc Financial Stability Committee — and the VTA Board’s inability or unwillingness to deal

with controversial and politically-charged topics such as labor costs and expensive capital programs.

The 2020-2021 Budget Process

The VTA Board will consider VTA's proposed biennial budget for fiscal years 2020 and 2021 at its meeting on June 6, 2019. The proposed budget shows net surpluses of approximately \$2 million in 2020 and \$4 million in 2021. However, the proposed budget does not take into account the outcome of pending labor negotiations with the Amalgamated Transit Union (ATU) that have been ongoing since August 2018. VTA has reported that its current proposal to the ATU, if accepted, would result in a total additional cost of \$30.9 million over the next three years. Since the VTA's proposal is the best possible outcome of the negotiations, the budget understates expenses and virtually assures continuing deficits. Other risks acknowledged in the budget could further increase these deficits.

The Extension of Light Rail Service to Eastridge

Light Rail in the United States

Light rail transports people using electric motive power and light-weight rails (hence the name). Light rail transit (LRT) systems, originally called trams or trolleys, evolved in the early 1900s to move employees to businesses and industries located in downtown or central business districts. They were less expensive to build than traditional heavy railway systems, and the cars were likewise less expensive to build and operate.

In the late 1960s, private transportation companies, including those that operated LRT systems, began to struggle financially and subsequently were transitioned to public ownership with the expectation that better public transport could be achieved using a mix of city, state and federal funding.

LRT systems in the United States have not met the original expectations of transit planners or the public. Coupled with the downward trend of public transit ridership and expanding infrastructure regulations, LRT systems have experienced ever-increasing installation and operations costs. Due in part to its high costs and fixed routes, light rail is now viewed by many industry experts as a technology whose time has passed. In October 2017, Randal O'Toole, a senior fellow with the Cato Institute and a recognized expert in light rail policy analysis, recommended the following:⁸

“First, transit agencies should stop building rail transit. Buses made most rail transit obsolete nearly 90 years ago. Buses can move more people faster, more safely, and for far less money than light rail, meaning light rail was obsolete even before San Diego built the nation’s first modern light-rail line in 1981.” ...

“Second, as existing rail lines wear out, transit agencies should replace them with buses. The costs of rehabilitating lines that have suffered from years of deferred maintenance is nearly as great as (if not greater than) the cost of building them in the first place.”

Cities whose densities and post-automobile development sprawl aren’t particularly suitable for efficient light rail service have begun to reexamine the viability of constructing, operating and maintaining expensive light rail systems. For example, in March of this year, the Phoenix City Council voted to delay and likely kill an ambitious expansion of its existing light rail system. Calling it a “train to nowhere,” city leaders determined that the reallocation of capital funds from light rail to an expansion of a flexible bus system and the repair of a deteriorating road system would be a better use of the taxpayers’ money and have a more positive impact on transit

⁸ “The Coming Transit Apocalypse”, Randal O’Toole, Cato Institute, October 2017

effectiveness.⁹ A Phoenix Arizona initiative measure that will be on the ballot in August 2019 proposes to halt six additional light rail extension projects that were previously approved by the Phoenix voters in 2015 and forbid the city from funding any other future light rail extensions.¹⁰

VTA's Light Rail System

Santa Clara County's LRT system, first proposed in the early 1980s, was conceived as a loop connecting to a future integration of Bay Area Rapid Transit (BART) and the San José Airport with transfer points throughout the County with feeder lines to support access to and from the loop to business and residential areas. The intent was to transport large numbers of residents quickly — at upwards of 55 mph — and cost-efficiently to and from jobs, entertainment and shopping, and to link San José and Santa Clara County with the entire BART system. As funding issues arose and interest group views emerged, the loop concept was abandoned in favor of direct spoke-like connections between downtown centers (e.g., San José) and various residential and business areas.

VTA's LRT began service in December 1987 with a 6.8-mile corridor between Santa Clara and downtown San José. An additional 14.3 miles were added by 1991 in 5 separate extensions (under the auspices of the SCCTD). VTA then followed with 4 more extensions: into Mountain View (1999), Milpitas (2001), East San José (2004) and the last corridor, Diridon to Winchester, completed in October 2005. The ultimate construction cost of this system was almost \$2 billion. Today, VTA operates a 3-line LRT system consisting of 42 route miles, 61 stations and 21 park-n-ride lots. Due to unprecedented declines in revenues beginning in 2008, the implementation plan for further light rail expansion was modified to provide for construction of additional extensions in phases. Two significant extensions, to Eastridge and Vasona Junction, remain under consideration by VTA.

Overly optimistic ridership projections justified the construction of the \$2 billion light rail system in an environment that did not have the trip densities necessary to support this mode of transit. The federal government had its own doubts and initially did not approve funding, thereby creating the necessity of funding the project, in part, with local tax measures.

As suggested above, the design and layout of the VTA LRT system deviated from the initial concepts, largely driven by political and financial considerations rather than strategic decisions. Despite the high capital costs of the system, the airport remains inaccessible directly via light rail, there is uneven access to jobs, entertainment and shopping, and operating speeds are far below

⁹ "Phoenix Votes to Delay, Likely Kill, West Phoenix Light-Rail Line", Jessica Boehm, Arizona Republic, March 21, 2019

¹⁰ "Phoenix Voters Could Kill Light Rail to These 6 Neighborhoods", Jessica Boehm, Arizona Republic, April 15, 2019

those expected or technically feasible. VTA LRT has been in operation for over 30 years but continues to underperform in effectiveness and ridership.

VTA LRT Operational and Financial Challenges

Since its inception, VTA's light rail system has struggled with operational and financial inefficiencies caused by low ridership and high operating costs. Despite a vibrant local economy with burgeoning job growth and population expansion, the public's interest in and utilization of light rail has deteriorated. Over the past ten years, light rail ridership has declined by 21% and, currently, fewer than 1% of Santa Clara County residents regularly utilize light rail. During the same period, the farebox recovery ratio for light rail has declined 36%. In just the past *five* years, light rail ridership has declined 15% while operating expenses have increased 54%. Meanwhile, VTA has continued to increase capacity without a corresponding demand for its product, resulting in higher operating costs of which less than 8% is covered by fare revenue. Put more bluntly, the taxpayers pay for more than 92% of the LRT system's operating costs. VTA has failed to accurately estimate the ongoing operating and capital costs of maintaining the light rail system, a fact that has led, in part, to its recurring financial deficits.

Table 2 below outlines metrics comparing operations of VTA's light rail system versus its peers (using 2017 NTD data) that reveal its poor performance, including:

- Cost per Passenger: Highest among peers (\$11.61)
- Subsidy per Passenger Trip: Highest among peers (\$10.73)
- Operating Cost per Hour: Highest among peers (\$487.58)
- Farebox Recovery Ratio: Lowest among peers (7.6%)
- Passenger Trips: Lowest among peers (9.1 million miles)
- Passengers Boarded per Hour: Second lowest among peers (42)

INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY

Table 2 - VTA Light Rail Peer Statistics (2017)

Peer Agency Name	Service Area Population	Route Miles	Fare Revenue Earned (\$Ms)	Total Operating Costs (\$Ms)	Farebox Recovery Ratio	Operating Cost per Hour	Boardings per Hour	Passenger Trips (Ms)	Cost per Passenger	Revenue per Passenger	Subsidy per Passenger
Santa Clara VTA	1,664,496	42.2	\$8.06	\$106.0	7.6%	\$487.58	42	9.1	\$11.61	\$0.88	\$10.73
Sacramento Regional Transit District	1,723,634	42.9	\$14.80	\$67.8	21.8%	\$272.55	46	11.4	\$5.93	\$1.29	\$3.64
Dallas Area Rapid Transit	5,121,892	93	\$27.71	\$175.2	15.8%	\$356.20	61	29.9	\$5.84	\$0.92	\$4.92
Denver Regional Transportation District	2,374,203	58.5	\$38.16	\$115.2	33.1%	\$145.09	31	24.6	\$4.67	\$1.55	\$3.12
San Francisco Municipal Railway	3,281,212	36.8	\$39.22	\$213.8	18.4%	\$368.95	88	50.9	\$4.19	\$0.77	\$3.42
Houston Metropolitan Transit Authority	4,944,332	22.7	\$5.97	\$65.2	9.2%	\$227.04	63	18.3	\$3.56	\$0.33	\$3.23
Portland Tri-County Metropolitan Transportation District	1,849,898	60	\$49.38	\$138.8	35.6%	\$222.51	63	39.7	\$3.49	\$1.24	\$2.25
Salt Lake City Utah Transit Authority	1,021,243	44.8	\$17.97	\$64.7	27.8%	\$180.35	52	18.8	\$3.44	\$0.95	\$2.49
Minneapolis Metro Transit	2,650,890	23	\$24.14	\$70.9	34.0%	\$166.23	55	23.8	\$2.98	\$1.01	\$1.97
San Diego Metropolitan Transit System	2,956,746	53.5	\$38.97	\$82.5	47.3%	\$168.24	76	37.6	\$2.19	\$1.04	\$1.15

Legend: Ms = value in millions

Worst in peer group

2nd worst in peer group

In light of the VTA LRT system's intrinsic design issues, unacceptably slow speeds in portions of its routes, extremely high operating costs and the lack of ridership and revenue to support those costs, a case can be made for dismantling or phasing out the light rail system altogether. At a meeting of the CPC on March 28, 2019, a member of the VTA staff responded to a question from a Board member by confirming that operating costs could be cut in half and farebox recovery doubled if a bus-only system were deployed. In fact, light rail operating expenses are closer to three times the cost of bus operations, but the point remains that a large reduction in the taxpayer subsidy of VTA operations could be achieved by focusing future investment in transit solutions other than light rail, as Phoenix has decided to do. One director noted at the March 28, 2019 CPC

meeting, “We have to really broaden our thought process with regard to light rail. The worst position that VTA can get into is being the last transit agency to be deploying an old technology.”

The Eastridge LRT Extension

Although operating statistics demonstrate the high cost and inefficiency of light rail as a mode of transportation, the VTA Board has continued to consider construction of two additional light rail extensions that would require additional capital outlays in the hundreds of millions of dollars.

These two extension projects, to Vasona Junction and the Eastridge Transit Center, have been in the planning stage for years, have been the subject of countless VTA staff studies and reports and have been considered by the Board and its committees, particularly the CPC, at numerous meetings. Finally, at its meeting on March 28, 2019, the CPC approved placing the Vasona project on an indefinite hold, based on its capital costs, high operating costs and projected ridership that failed to meet VTA’s minimum criteria for a new project. However, the Eastridge project remains alive.

The proposed Eastridge light rail extension is part of a two-phase project. Phase 1 of the project, which included conceptual design, pedestrian and bus improvements, and improvements of the Eastridge Transit Center, has been completed. Phase 2, which is now referred to as the Eastridge-BART Regional Connection, or EBRC, would add a 2.4-mile rail line and related infrastructure connecting the Alum Rock Station and the Eastridge Transit Center. In the original design, most of the rail extension was to have been constructed at street level on Capitol Expressway. The design was subsequently changed to an elevated track above the roadway for the entire 2.4 miles at an estimated additional cost of \$75 million, which would enable the trains to run at higher speeds. The total cost of the project, which was originally estimated at \$377 million, is now projected to be \$599 million, of which \$146 million has been spent on Phase 1, and \$453 million would be spent on Phase 2 (\$13 million has been spent to date on design and other preparatory work). If Phase 2 is continued, work is currently estimated to be completed in 2025.

Table 3 below outlines the cost and status of the Eastridge project*:

Table 3 - Eastridge (EBRC) Phases, Costs and Status

Project	Cost	Sub-total Cost	Status	Notes
Concept	\$11M		Completed	
Original Construction	\$56M		Completed	
Phase 1 – pedestrian improvements	\$19M		Completed	
Phase 1 – bus improvements	\$60M		Completed	Eastridge Transit Center
Phase 1 sub-total	-	\$146M		
Phase 2 – EBRC various studies/design	\$13M		Initial design work completed	
Phase 2 – EBRC completion (2023-25)	\$440M		Under review	Does not meet minimum operations criteria until well after 2025
Phase 2 sub-total	-	\$453M		Plus \$2-3M per year in new operational costs
Project total	-	\$599M		Costs almost \$250 million/mile

*Data from VTA CPC Agenda Packet item #7, pages 36 and 37, dated March 28, 2019 and updates presented in the Board of Directors meeting on April 4, 2019.

The VTA Board has considered various aspects of the Eastridge project more than 20 times since 2000. Each time, the Board has made a decision that allowed work on the project to continue, often kicking the ultimate decision on the fate of the project down the road by noting that its current decision was not the final word on the project and that there would be opportunity for further consideration of the project and final approval at a future date.

For example, at its meeting on May 3, 2018, the Board considered the viability of the light rail extension to Eastridge. After a lengthy discussion, the Board approved a funding strategy for proceeding with the project, but the Chairperson noted that there would be still more decision points at which the project could again be considered by both the CPC and the full Board. At the same time, the Board approved a resolution authorizing a staff study of alternatives to light rail for the Eastridge extension. VTA staff has confirmed that, a year later, this study still has not been completed.

At the March 28, 2019 meeting of the CPC (at which the Committee agreed that the Vasona Junction extension should be put on hold), Phase 2 of the Eastridge project was again considered. At the meeting, the Mayor of San José, serving as Chairperson of the Committee, asked the following question, “Is the current light rail system one we want to continue to invest in? Our ridership is challenged. Our cost-effectiveness system-wide is 10% on farebox return [it is actually less than 10%]. That 10% is already among the very lowest in the nation in terms of farebox

return, and light rail actually hurts us. The question is: what does the process look like for us to be re-evaluating the entire system to see if we want to start thinking differently about the entire light rail system? *I hate to think we are doubling down on a failed system.*” Another committee member echoed that sentiment, noting, “We have to choose our transportation modes in a cost-effective and efficient manner. *I support to do additional evaluation of what is needed for that corridor. The train has not left the station on Eastridge.*” Yet, after a lengthy discussion about an overall re-evaluation of light rail before proceeding with the Eastridge extension, no concrete action was taken in that direction, and both of these directors joined with a third to support a motion to move forward with the project and kick the ultimate decision down the road yet again. The vote was three to two in favor of the motion, but it failed for lack of the required four aye votes needed to pass.

The fate of the Eastridge extension project is now once again in the hands of the VTA Board, and its final resolution will be a test of the Board’s leadership. The issue will be considered by the Board again at its meeting on June 6, 2019. Although the subject of the extension was not on the agenda at the Board’s May meeting, the Mayor of San José signaled his intentions. Despite the comments he made at the March CPC meeting, the Mayor stated, “I will vote to proceed immediately with the construction of the Eastridge transit project when it comes before the VTA Board in June. I expect we will move forward without delay.” The investigation of the Grand Jury report was completed on May 29, 2019, and this report does not reflect any actions taken at the June 6, 2019 meeting.

As pointed out above, the remaining capital cost to complete the 2.4-mile extension is currently estimated at \$453 million, or almost \$189 million per mile. According to most recent staff projections included in the May 2019 EBRC Supplemental Environmental Impact Report (SEIR), the new light rail extension would attract approximately 611¹¹ new riders (net of a reduction in bus ridership on the existing bus lines that run parallel to the proposed rail extension) by 2025. Therefore, the additional capital cost would be equal to approximately \$720,000 for each new rider in the first year of service. Once completed, the Eastridge extension would become part of an outmoded light rail system that is one of the most expensive and heavily subsidized LRT systems in the country, with declining ridership and operating costs more than double the cost of bus operations. The extension, upon completion, is projected to have a miniscule impact on transit usage in the East San José/Milpitas corridor over the next 24 years (i.e., an increase of only 0.07% by 2043 and just over half that when service begins).¹² Moreover, the current design permanently *removes* two existing high occupancy vehicle (HOV) lanes from the Capitol Expressway, without any foreseeable commensurate reduction in automobile traffic, a fact that may not be widely

¹¹ EBRC SEIR, May 2019, page 71, Table 5.1-11. [http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/EBRC_Vol1_FSEIR-2%20\(1\).pdf](http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/EBRC_Vol1_FSEIR-2%20(1).pdf)

¹² EBRC SEIR, May 2019, page 72

understood in the East San José community. As noted in the SEIR, “[t]he proposed removal of the HOV lanes would result in higher average automobile delays and higher automobile travel times on Capitol Expressway.”¹³ Further, despite claims that the Eastridge Transit Center is among the busiest in the VTA system, there is an average of only seven riders per bus trip into and out of that center.

Based on our interviews, the Grand Jury has found virtually no support for the project among the VTA staff, although they continue to move the project forward in compliance with incremental policy decisions made by the VTA Board.

The argument supporting the Eastridge extension is essentially political. The extension was one of 13 transportation improvement projects envisioned by Measure A and passed by the voters in 2000. For various reasons, most related to budget challenges brought about by the dot com “bubble” in the early 2000s and the later economic recession, the implementation of the Eastridge project has been delayed, along with some of the other Measure A projects. In the interim, the once-promising LRT system has become technically outmoded and increasingly expensive.

Yet, proponents of the extension, including powerful political forces, contend that the periodic, incremental approvals of the project by the VTA Board that have kept the project alive over the years have reinforced a “promise” to complete it, even though the VTA Board has both the right and the duty to re-evaluate capital projects when they are no longer viable. Proponents also contend that completion of the project is a matter of “economic equity,” balancing the needs of a relatively low-income, transit-dependent area of Santa Clara County with the type of transit services provided elsewhere in the County (although, as noted above, the Vasona Junction project that was to have served the Los Gatos area was recently put on hold).

The challenge to the VTA Board, in the exercise of its fiduciary duties to the taxpayers and transit users of the County, is to address such questions as:

- Can *any* further investment in VTA’s present LRT system be justified, much less one that will cost \$720,000 for each prospective new rider?
- Does the proposed Eastridge extension meet VTA’s standards for new transit projects, including minimum projected ridership criteria?
- Before proceeding with the project, should the Board undertake a thorough review of the light rail system and its future as a mode of transportation in Silicon Valley, as suggested by members of the CPC?

¹³ Ibid, page 72

- Can the recognized needs of the residents of East San José for modern, efficient public transportation be better served by an alternative to the proposed Eastridge light rail extension?

VTA should aspire to take an industry-leading role in the future of public transportation, commensurate with the role of Silicon Valley as a worldwide leader in technology and innovation. Whether the VTA Board is able to put aside local political considerations and answer these questions based on the interests of all the taxpayers and residents of Silicon Valley will say much about its effectiveness as a policy-making body and whether VTA will be able to achieve such leadership aspirations.

Designing a More Effective Structure for the VTA

There are countless variations in models for governing a regional transit agency, and there is no perfect structure that fits all situations. Even when transit agencies set out to reorganize their own governance structure in response to acknowledged defects, they realize they must choose among alternative structures having both advantages and disadvantages.

Virtually all the individuals interviewed by the Grand Jury, including directors and senior staff, agreed that VTA could benefit from a more knowledgeable and engaged Board of Directors that is more sharply focused on VTA's role as a regional transit agency and less on local political interests. However, there is less consensus on how best to achieve that goal. Nevertheless, it is useful to examine some of the variable features of alternative governance structures, how they have been implemented by other transit agencies and how changes to the structure of VTA's governance might result in a more effective Board.

Number of Directors

The VTA Board has 12 voting members. As pointed out in the 2003-2004 Grand Jury's report, the VTA Board is larger than the boards of many regional transit agencies. Alameda County Transit (AC Transit) and BART, for example, have boards of seven and nine members, respectively, while two other transit agencies in California have five-person boards. However, transit agency boards across the country range widely in size, from as few as five to more than 20. The agency serving Dallas/Fort Worth, for example, has a 15-person board, while the Phoenix and Salt Lake City transit agencies each has a 16-member board. The 2003-2004 Grand Jury Report concluded that a smaller Board, of five to seven members, "would be more involved in and accountable for the financial and operational management of VTA." Some current members of the VTA Board agree that a smaller Board would be preferable, although others disagree. While the current Grand Jury agrees that reducing the size of the Board might result in more focused decision-making, a reduction in Board size, in and of itself, would not address fundamental issues of lack of experience, inadequate continuity, competing time commitments and conflicts of interest between VTA and local priorities. Accordingly, a reduction in the size of the VTA Board should only be considered in conjunction with other structural changes that directly address these key issues.

Term of Service

VTA directors serve for terms of two years. Although some directors serve more than one term (often consecutive), directors whose positions rotate among groups of smaller cities generally do not serve consecutive terms. Furthermore, a director's term can be cut short if the director ceases to serve in his or her elected position.

The term of service for directors of regional transit agencies in California and other larger metropolitan areas generally ranges between two and four years, with three and four-year terms being common. In California, for example, directors of BART, AC Transit and transit agencies serving Santa Barbara, Stockton and Bakersfield serve four-year terms. Directors of agencies serving Austin and Vancouver, B.C. serve for three years. In an independent review of the agency serving Vancouver, a Governance Review Panel concluded that “longer-term decision-making requires a minimum of three-year terms,” although the panel also recommended that members not be allowed to serve more than six consecutive years in order to vary the “mix of management, finance, legal and other skills to match [the agency’s] changing needs over time.”¹⁴

Among the individuals interviewed, there was substantial support for longer terms to provide additional time for directors to become knowledgeable about VTA’s operations and transit issues, to participate in more than one budget cycle and to participate more effectively in the Board’s long-term planning function. In addition, lengthening the term of service would mitigate the advantage currently enjoyed by representatives of San José and Santa Clara County, who typically serve substantially longer terms than the representatives of the smaller city groups and dominate the Board, in part, as a result of their greater experience. Not all interviewees agreed, however. One made the point that, if a director is unqualified in the first place, a four-year term would just mean that the Board would be burdened with an unqualified member for twice as long. Additionally, since under the current structure a director’s term ends when he or she leaves elected office, a four-year term is more likely than a two-year term to be cut short, lessening to some degree the impact of a change to a longer term. Nevertheless, extending the term of VTA directors to four years would increase the average term of Board service and, accordingly, would provide some valuable experience and continuity to the Board and enhance the influence of the smaller cities. Likewise, establishing term limits or limits on total years of service would mitigate the dominance of San José and the County and allow the Board to evolve over time to meet its changing needs.

As described above, the PUC specifies the annual election of the Board’s Chairperson and Vice Chairperson. The VTA Administrative Code provides that the election of the two officers shall be conducted at the last meeting of the calendar year, when practical, and that they shall serve for the ensuing calendar year.¹⁵ The Administrative Code also specifies that the two positions shall be rotated annually, according to a fixed schedule, among representatives of San José, Santa Clara County and the smaller city groups¹⁶.

There was considerable support among the persons interviewed for extending the Chairperson’s term from one to two years. As pointed out above, because VTA operates on a June 30 fiscal year,

¹⁴ “TransLink Governance Review”, TransLink Governance Review Panel, January 26, 2007, page 22

¹⁵ VTA Administrative Code Section 2-26

¹⁶ Ibid

the Chairperson's calendar year term of service straddles two fiscal years, disconnecting the Chairperson from the budget process and accountability for operating and financial results. He or she inherits one annual budget in mid-stream and serves only halfway through another. Lengthening the Chairperson's term would help address this problem by allowing the Chairperson to oversee VTA's financial performance for at least one full fiscal year. Coordinating the term of the Chairperson with the agency's June 30 fiscal year would further connect the Chairperson with VTA's budget process and the oversight of its financial performance. Similarly, reviewing the VTA General Manager's performance on a fiscal year rather than a calendar year basis would also improve direct accountability for the organization's performance to budget.

Direct Election of Directors

Under the current governance structure, members of the VTA Board are appointed to serve by the jurisdictions they represent, either through direct appointment by a mayor or city council or, in the case of the groups of smaller cities, by arrangement among the cities. As pointed out above, as originally proposed by the County Board of Supervisors, the VTA Board would have been composed of a combination of five directly elected members and 11 appointed members.

Although the direct election of directors of transit agencies is not common in California, there are exceptions, including BART and AC Transit, both of which have directly elected directors serving four-year terms. Other regional public bodies use a direct election model for some or all their directors. The Santa Clara Valley Water District (SCVWD), for example, has a board of seven directors, directly elected by supervisorial district.

Benefits of an elected board include direct accountability to the public and the directors' increased focus on the affairs of the agency as their primary, rather than secondary, public service responsibility. Direct election would also eliminate the possibility of directors' terms being shortened when they cease to serve in their elected position. In theory at least, candidates who serve on an elected board also would be more likely to have an interest in and commitment to public transportation issues than would appointed directors. On the other hand, directly elected VTA Board members, like other elected officials, may tend to have a parochial view if they are elected to represent specific districts or municipalities, so the goal of encouraging a regional view of strategic planning responsibilities might not be fully realized.

Some interviewees supported changing to a direct election model for the VTA Board, based on the potential benefits noted above. Others, however, did not favor such a change. Several pointed out what they perceived to be a lack of effectiveness of the BART Board of Directors as evidence that the change would not be worthwhile. Others noted that moving to a direct election model would be complicated, politically difficult and costly – again, not justifying the change. One interviewee observed that, at the end of the day, voters pay very little attention to the direct election of directors

of governmental agencies, noting that many voters do not even know that an agency like SCVWD, for example, even exists, much less who its directors are.

Appointed Directors Who Are Not Elected Officials

Like VTA, many regional transit districts have boards consisting exclusively of elected officials representing the constituent communities making up the district. In at least three California transit agencies (those serving Santa Barbara, San Francisco and Stockton), the appointed boards of directors include interested citizens who are not currently serving as elected officials, and the enabling legislation of another transit district, serving the Bakersfield area, specifically provides that elected officials are *not* eligible for appointment as members of the Board. Transit agencies whose directors are not current elected officials are not uncommon in other parts of the country. Examples of transit agencies with appointed boards that do not include elected public officials are those serving Houston, Austin, Vancouver, B.C. and Toronto.

The flexibility to appoint non-politicians to serve on the board of a transit agency allows the appointing authority to select directors having a wide range of business, financial and transportation-related experience with a mandate to serve non-politically and make evidence-driven policy decisions based on demonstrated need and financial feasibility. The Houston Metropolitan Transit Authority (HMTA), for example, has a board of nine members, five of whom are appointed by the Mayor of Houston, two by the Harris County Commissioners Court and two by the mayors of other cities in its service area. The Board of the HMTA currently includes a retired lawyer, a certified public accountant, a banker, executives of large companies and experts on infrastructure, construction and budget management.

Partially offsetting the benefits of removing elected public officials from a transit agency's governance structure are concerns of accountability. The level of commitment of non-elected directors to their local communities' views on transit policy and priorities, including land use and development, is uncertain. However, some senior VTA staff and directors feel that the staff gets little support from VTA Board members in connection with VTA's dealings with city governments on these issues.

Some transit districts have chosen to balance the benefits of a predominantly non-political governing board with some participation by elected officials. For example, the board structure of the transit agency serving the Austin area was revised in 2011 from 100% elected officials to a mix of two elected officials and five non-politicians, with the City of Austin, the largest participant and underwriter of the system, having a predominant say in the appointments. The enabling legislation went a step further and specified that one appointed member of the board must have at least 10 years of experience as a financial or accounting professional and another must have at

least 10 years of experience in an executive-level position in a public or private organization.¹⁷ As one commentator noted at the time the legislation was proposed, “What the board would lose in elected officials, it would presumably gain in knowledge.”¹⁸

In 2011, the Legislative Auditor of the State of Minnesota issued an evaluation report that analyzed various governance structures for the agency principally responsible for the Twin Cities’ transit system, as potential alternatives to the existing structure under which all members of the governing council are appointed by the governor. After analyzing and comparing various structures, including the existing appointment system and the direct election of council members, the Auditor concluded that the optimal model would be a combination of appointed and elected officials that “would provide the Council with an effective mix of regional and local perspectives.”¹⁹

Silicon Valley offers an unparalleled pool of talented individuals, including entrepreneurs who have introduced cutting-edge technologies, products and services, as well as countless experts with leadership experience in finance and executive management of large organizations. Current and retired leaders of Silicon Valley companies and organizations have made numerous contributions in support of a wide range of community activities, including the arts, healthcare, education and other civic and charitable endeavors. Surely, appointing authorities could identify qualified public sector leaders who would be willing to serve on the VTA Board, and VTA would benefit from their knowledge and experience.

¹⁷ Texas Transportation Code Section 451.5021(b)

¹⁸ "What's Wrong With Cap Metro...and What's Right", Lee Nichols, Austin Chronicle, April 24, 2009

¹⁹ "Governance of Transit in the Twin Cities Region", Office of the Legislative Auditor, January 2011, page 44

CONCLUSIONS

VTA is a complex, multi-billion-dollar enterprise. In addition to operating a large transit system, VTA has responsibility for county-wide transportation planning, including congestion management, the design and development of highway, pedestrian and bicycle improvement projects and the promotion of transit-oriented development.

VTA is governed by a part-time Board of Directors composed solely of elected public officials, each of whom is burdened by the obligations of his or her office and subject to local political interests. A few of the directors have served for many years, but others have served for less than two. Appointees to the VTA Board often have little or no previous experience with transportation, finance or leadership of a large organization, let alone one the size of VTA.

Today, VTA faces a series of challenges which, taken together, can be fairly characterized as a crisis. The following challenges, among others, must be addressed by the VTA Board:

- 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.
- VTA veers from one financial crisis to another. In June 2017, the VTA Board adopted the 2018-2019 biennial budget and consciously approved a built-in structural financial deficit of \$50 to \$60 million per year. In January 2018, an ad hoc committee of the VTA Board was formed to deal with the crisis caused by the budget deficit. In August 2018, VTA's Chief Financial Officer advised the committee that the agency was 18 to 24 months away from going "off a cliff." At the end of 2018, the ad hoc committee made weak and only partially effective recommendations to address VTA's structural financial deficit and didn't seriously consider such important but politically sensitive topics as reductions in employee headcount or the scrapping or deferral of large capital projects.
- Light rail ridership is declining steadily throughout the country. Experts have pronounced the early twentieth century concept of light rail transit obsolete, and other regional transit agencies are contemplating abandoning light rail system extensions. VTA, however, continues to move forward with an extension of its light rail system — one that currently has among the highest operating costs and lowest ridership in the country. The remaining capital cost of the proposed 2.4-mile Eastridge extension project is currently estimated at \$440 million, representing approximately *\$720,000 for each new rider* that the staff estimates will actually use the extension during the first year of its operation. The project

makes no financial sense and survives only because powerful political forces continue to support it. VTA needs to carefully consider whether the recognized needs of the residents of East San José for modern, efficient public transportation can be met without “doubling down on a failed system,” as one director put it, and worsening VTA’s precarious financial condition.

- Although a detailed review of the long-pending BART to Silicon Valley project was beyond the scope of the Grand Jury’s inquiry, a number of our interviewees, including senior VTA staff and members of the VTA Board, noted its importance to the future of VTA. VTA’s proposed fiscal years 2020-2021 capital budget calls for a staggering \$713.5 million in Measure A and Measure B tax funds for the BART Phase 2 project. The operating agreement between VTA and BART remains in negotiation, and several of our interviewees expressed concern that important issues regarding the sharing of system-wide capital and operating costs remain unresolved and that such costs could fall disproportionately on VTA. One director expressed the opinion that BART-related cost control issues are more significant for VTA than those related to the Eastridge light rail extension. A senior staff member stated unequivocally that “BART is going to bankrupt VTA.” An interested stakeholder similarly predicted that BART “will be the demise of VTA.” Whether or not these assessments are accurate, it is clear that the financial health of VTA is dependent on the success of BART in the South Bay Area. That success is dependent, in turn, on VTA effectively implementing BART Phase 2 and meeting its ridership and revenue goals.

VTA’s operating territory is the Silicon Valley – the world’s leading center of innovation and cutting-edge technology. Several of VTA’s key staff members have noted that they had joined VTA in the hope that VTA would take an industry-leading role in the future of transportation, commensurate with the role that companies and other institutions in the Silicon Valley have taken in the introduction of all manner of new products, technologies and services. Yet, little such innovation has been evident at VTA in recent years. In fact, as noted above, VTA seems to be “doubling down” on old technology. At the Board’s recent workshop on “The Future of Transportation in Silicon Valley,” the directors present (two-thirds of the voting members and half of the alternates) seemed to recognize this problem and unanimously agreed that VTA needs to make “radical changes” in the way it provides its services.

If VTA is going to meet the many challenges it faces, the VTA Board will have to make good on its commitment to radical change. So, the question becomes, is the Board capable of making the policy decisions and providing the strategic oversight necessary to accomplish such change? The Grand Jury has concluded that, as presently structured and operated, that level of capability does not appear to be present. Accordingly, the Grand Jury recommends a number of changes in the structure of the VTA Board and in the way directors are selected, trained and evaluated that it

believes will assist VTA in addressing its many challenges and achieving its aspiration of becoming a leader in the transportation industry.

FINDINGS AND RECOMMENDATIONS

Finding 1

The VTA Board, currently made up exclusively of elected officials from the Santa Clara County, Board of Supervisors, the City of San José and the other smaller cities in the County, suffers from:

- A lack of experience, continuity and leadership;
- Inadequate time for the directors to devote to their duties to the VTA Board due to their primary focus on the demands of their elected positions;
- A lack of engagement on the part of some directors, fostered in part by the committee system, resulting in VTA functioning largely as a staff-driven organization;
- Domination, in terms of numbers, seniority and influence, by representatives of the Santa Clara County Board of Supervisors and the City of San José; and
- Frequent tension between the director's fiduciary duties to VTA and its regional role, on the one hand, and the political demands of their local elected positions, on the other.

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.

Recommendation 1b

As the appointing entity with an interest in the transit needs of all County residents, the County of Santa Clara should commission its own study of transportation agency governance structures, focusing on the elements listed in Recommendation 1a. This study should be commissioned prior to December 31, 2019.

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.

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).

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.

Recommendation 1f

Prior to December 31, 2019 and pending changes contemplated by Recommendation 1e, VTA should adopt a policy of routinely reappointing an incumbent Chairperson for a second one-year term at the end of his or her initial term, absent unusual circumstances.

Recommendation 1g

In order to better connect the Chairperson with the budget process and accountability for operating and financial results, prior to December 31, 2019, VTA should amend Section 2-26 of the VTA Administrative Code to provide that the Chairperson and Vice Chairperson shall serve terms coinciding with VTA's fiscal year ending June 30, rather than the calendar year.

Finding 2

The California Public Utilities Code, the VTA Administrative Code and the Guidelines for Member Agency Appointments to the VTA Board of Directors adopted by the Governance and Audit Committee of the Board (Guidelines) all contain provisions requiring that, to the extent possible, the appointing agencies shall appoint individuals to the VTA Board who have expertise, experience or knowledge relative to transportation issues. Nevertheless, appointees to the VTA Board often lack a basic understanding of VTA's operations and transportation issues, generally.

Recommendation 2

In order to help assure that individuals appointed to serve on the VTA Board have the appropriate qualifications, prior to December 31, 2019, VTA should take vigorous action to enforce compliance by appointing agencies with the qualification and suitability requirements of: (i) Section 100060(c) of the California Public Utilities Code; (ii) Section 2-14 of the VTA Administrative Code; and (iii) the Guidelines.

Finding 3

The VTA Board lacks effective policies designed to assure productive participation by members of the VTA Board.

Recommendation 3a

In order to help make directors become and remain productive members of the VTA Board, prior to December 31, 2019, VTA should: (i) implement and enforce attendance at an intensive, multi-session onboarding bootcamp for incoming directors that would provide detailed information regarding VTA's operations, financial affairs and currently pending large-scale projects as well as the organization and operations of the Board and directors' duties and obligations; (ii) prepare and provide to each director a detailed handbook of directors' duties, similar to the "Transit Board Member Handbook" published by the American Public Transportation Association; (iii) enforce attendance at Board and committee meetings by providing Board attendance records to appointing agencies and removing directors from committees for repeated non-attendance; and (iv) implement a robust director evaluation process, with the participation of an experienced board consultant, that would include mandatory completion by each director of an annual self-evaluation questionnaire and Board review of a composite report summarizing the questionnaire responses.

Recommendation 3b

In order to further enhance the effectiveness of the directors, prior to December 31, 2019, VTA should develop a program to encourage continuing education of the Board members by: (i) scheduling and enforcing attendance at more frequent and intensive Board workshops on important issues regarding transit policy, developments in transportation technology, major capital projects and VTA's financial management; and (ii) requiring directors to attend, at VTA's expense, third-party sponsored industry conferences and educational seminars.

Finding 4

The Grand Jury commends the Chairperson of the VTA Board for recognizing the need to improve Board engagement and effectiveness by convening the Ad Hoc Board Enhancement Committee to review the Board's governance structure and practices.

Recommendation 4

None.

Finding 5

VTA continues to consider an extension of VTA's light rail system to the Eastridge Transit Center, at an additional capital cost of over \$450 million, although VTA's light rail system is one of the most expensive, heavily subsidized and least used light rail systems in the country, many transit experts consider light rail obsolete, and VTA is suffering from chronic structural deficits that would be exacerbated by the continuation of the project as currently defined.

Recommendation 5a

VTA should consider following recommendations made by several directors that it undertake a thorough review of VTA's light rail system and its future role as a mode of transportation in Silicon Valley before proceeding with the Eastridge extension project. This review, as it pertains specifically to the analysis of the viability of the Eastridge extension, should be undertaken with the participation of an independent consultant and should consider such issues as projected ridership estimates, project cost estimates including future operating and capital costs, and the projected impact on traffic congestion on Capitol Expressway with the removal of two HOV lanes.

Recommendation 5b

VTA should consider whether the recognized needs of the residents of East San José for modern, efficient public transportation can be better served by an alternative to the proposed light rail extension.

REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the Grand Jury requests responses as follows:

From the following governing bodies:

Responding Agency	Finding	Recommendation
Santa Clara Valley Transportation Authority	1, 2, 3, 4 and 5	1a, 1f, 1g, 2, 3a, 3b, 5a and 5b
County of Santa Clara	1	1b, 1d and 1e
City of Campbell	1	1c, 1d and 1e
City of Cupertino	1	1c, 1d and 1e
City of Gilroy	1	1c, 1d and 1e
City of Los Altos	1	1c, 1d and 1e
City of Milpitas	1	1c, 1d and 1e
City of Monte Sereno	1	1c, 1d and 1e
City of Morgan Hill	1	1c, 1d and 1e
City of Mountain View	1	1c, 1d and 1e
City of Palo Alto	1	1c, 1d and 1e
City of Santa Clara	1	1c, 1d and 1e
City of San José	1	1c, 1d and 1e
City of Saratoga	1	1c, 1d and 1e
City of Sunnyvale	1	1c, 1d and 1e
Town of Los Altos Hills	1	1c, 1d and 1e
Town of Los Gatos	1	1c, 1d and 1e

APPENDIX A – The Guidelines for Member Agency Appointments to the VTA Board of Directors



7.a

Santa Clara Valley Transportation Authority (VTA)

Guidelines for Member Agency Appointments to the VTA Board of Directors

The following information and suggestions are provided to assist local jurisdictions with appointing qualified, engaged and capable representatives to the VTA Board of Directors.

Overview of VTA

VTA is an independent special district responsible for bus, light rail and paratransit operations; congestion management; specific highway improvement projects; countywide transportation planning; and voter-approved local sales tax programs, including the 2000 Measure A Transit Improvement Program. As such, VTA is both an accessible transit provider and multi-modal transportation planning and implementing organization involved with transit, highways and roadways, bikeways, and pedestrian facilities.

VTA is governed by its own Board of Directors representing all jurisdictions within Santa Clara County. Eligible Board members are elected city councilmembers or county supervisors who may serve during their term of office.

The VTA Board of Directors consists of 12 voting members, 6 alternates, and 3 ex-officio members, and membership attempts to balance regional representation and population. Board members are appointed as follows:

- **GROUP 1: (San José)** – 5 voting members and 1 alternate
City of San José
- **GROUP 2: (Northwest)** – 1 voting member and 1 alternate
City of Los Altos; Town of Los Altos Hills; City of Mountain View; City of Palo Alto
- **GROUP 3: (West Valley)** – 1 voting member and 1 alternate
City of Campbell; City of Cupertino; Town of Los Gatos; City of Monte Sereno; City of Saratoga
- **GROUP 4 (South County)** – 1 voting member and 1 alternate
City of Gilroy; City of Morgan Hill
- **GROUP 5 (Northeast)** – 2 voting members and 1 alternate
City of Milpitas; City of Santa Clara ; City of Sunnyvale
- **GROUP 6 (County of Santa Clara)** – 2 voting members and 1 alternate
County of Santa Clara
- **Ex-Officio** - Santa Clara County's three Metropolitan Transportation Commission members

It is important to note that other than the Ex-Officio members, the above groups are responsible to appoint their representative(s) in a manner they themselves determine.

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Key information about the Board of Directors

- Generally meets the first Thursday of each month (July meeting is normally cancelled) at the County of Santa Clara Government Center (70 W. Hedding Street, San Jose)
- Meetings begin at 5:30 PM and normally last one to three hours, depending on the agenda.
- A small number of Board workshops or study sessions are typically held during the year. These are normally scheduled for a time other than the regular Board meeting.
- Directors serve on one or more Board standing committees. Most standing committees meet monthly, while others meet bi-monthly or quarterly. Standing committees meet at varying times during the normal work day, and most standing committee meetings are conducted at VTA's River Oaks Administrative Complex.
- Appointments are for two years, commencing on January 1 and ending on December 31 of the following year. Members and alternates may be appointed to successive terms.
- Members of the VTA Board of Directors are not eligible to concurrently serve on VTA's Policy Advisory Committee (PAC), although Board alternates may be appointed to the PAC.
- It is the responsibility of each member jurisdiction to seek agreement with the other members on any proposed appointment of an individual to represent that city/county group on the VTA Board of Directors.

Expectations**Board members:**

- Should be able to devote, on average, 5 - 10 hours per month, which includes Board and standing committee meetings as well as time to review agenda materials.
- Represent the interests of their city/county group while endeavoring to achieve regional consensus.
- Have a fiduciary responsibility to vote for the best interests of the region, not those of their city/county group or appointing jurisdiction.
- Should be able to work cooperatively in a multi-jurisdictional setting.
- Should be able to attend Board and standing committee meetings consistently.
- Are responsible for keeping their respective jurisdictions informed of key issues, facilitating communication between those entities and VTA, and helping build consensus.

Suggested Guidelines for Board of Director Appointments

The following is offered for Member Agency consideration when appointing representatives to the VTA Board of Directors. They are suggestions only, not requirements. It is each appointing jurisdiction's prerogative to appoint its representative of choice, provided that individual meets VTA's pre-established membership requirements for the position.

When evaluating prospective appointees to the Board of Directors, you are strongly encouraged to give consideration to the following factors and attributes in determining your appointee:

- Consideration should be given to appointing a member based on the value and expertise they can provide to improving transportation and mobility within the county.
- Individual should have experience or interest in transportation.
- Consideration should be given to appointing a member who has sufficient remaining time in their term to allow full completion of their term on the VTA Board of Directors.
- Consideration should be given to reappointing members to consecutive terms.
- Prior service on the VTA Board of Directors or Policy Advisory Committee is advantageous.
- Previous service on a planning or land use commission is beneficial.
- Due to the institutional learning curve and the complexity and long-term regional effects of the policy decisions, consideration should be given to appointing members who demonstrate strength in these areas.
- It is important that appointees have sufficient available time to appropriately discharge their VTA Board of Directors duties and responsibilities.
- Individuals should be able to facilitate communication by appropriately representing the positions and concerns of their governing body while keeping that same body apprised of key VTA initiatives and issues.

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APPENDIX B – VTA Operating Statistics and 2017 National Trends

This appendix presents operational metrics comparing VTA against national trends using an FTA annual summary.

Table B1 VTA Operating Statistics 2009 - 2018

Year	County Population ¹ (millions)	Bus Ridership ¹	Light Rail Ridership ¹	VTA Operations Full-Time Employees ¹	Fleet Size ^{1& 2}	VTA Operations Expense (\$) ¹	Vehicle Revenue Hours ^{3&4}	Total Unlinked Passenger Trips ^{3&4}
2009	1.77	34,510,273	10,754,161	1649	547	254,285,943	1,487,469	45,264,434
2010	1.79	31,983,494	9,749,882	1588	523	257,953,581	1,406,463	41,733,376
2011	1.814	31,395,126	10,014,504	1576	593	263,322,297	1,357,169	41,409,630
2012	1.841	32,053,755	10,373,042	1599	544	278,532,013	1,383,007	42,426,797
2013	1.87	32,432,354	10,742,292	1614	542	293,447,169	1,411,180	43,174,646
2014	1.894	32,475,527	10,952,965	1687	542	311,287,342	1,464,798	43,428,492
2015	1.92	32,623,599	11,320,497	1724	639	319,978,046	1,524,011	43,944,096
2016	1.934	32,195,504	10,722,932	1758	599	335,140,300	1,555,226	42,918,436
2017	1.946	29,057,047	9,132,084	1761	559	354,494,193	1,569,744	38,189,131
2018	1.957	28,048,405	8,507,095	1795	571	414,975,000	1,582,146	36,555,500

Notes:

1. From VTA report "Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018" listed in References, item number 15, and State Department of Finance

<http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-2/documents/PressReleaseJul2018.pdf>

2. Fleet size includes the total number of buses and light rail cars

3. Vehicle Revenue Hours (VHR) and Unlinked Passenger Trips (UPT) data from FTA NTD

<https://www.transit.dot.gov/ntd/data-product/ts22-service-data-and-operating-expenses-time-series-system-0>

4. Operating expense, UPTs and VHRs include only directly operated bus and light rail vehicles

For the charts below, the Grand Jury used data from the 'National Transit Summaries & Trends 2017'²⁰, "Santa Clara Valley Transit Authority Annual Agency Profile 2017"²¹, and "Service Data and Operating Expenses Time-Series by System"²² to examine VTA's operations and performance in the national arena.



²⁰ 2017 National Transit Summaries and Trends

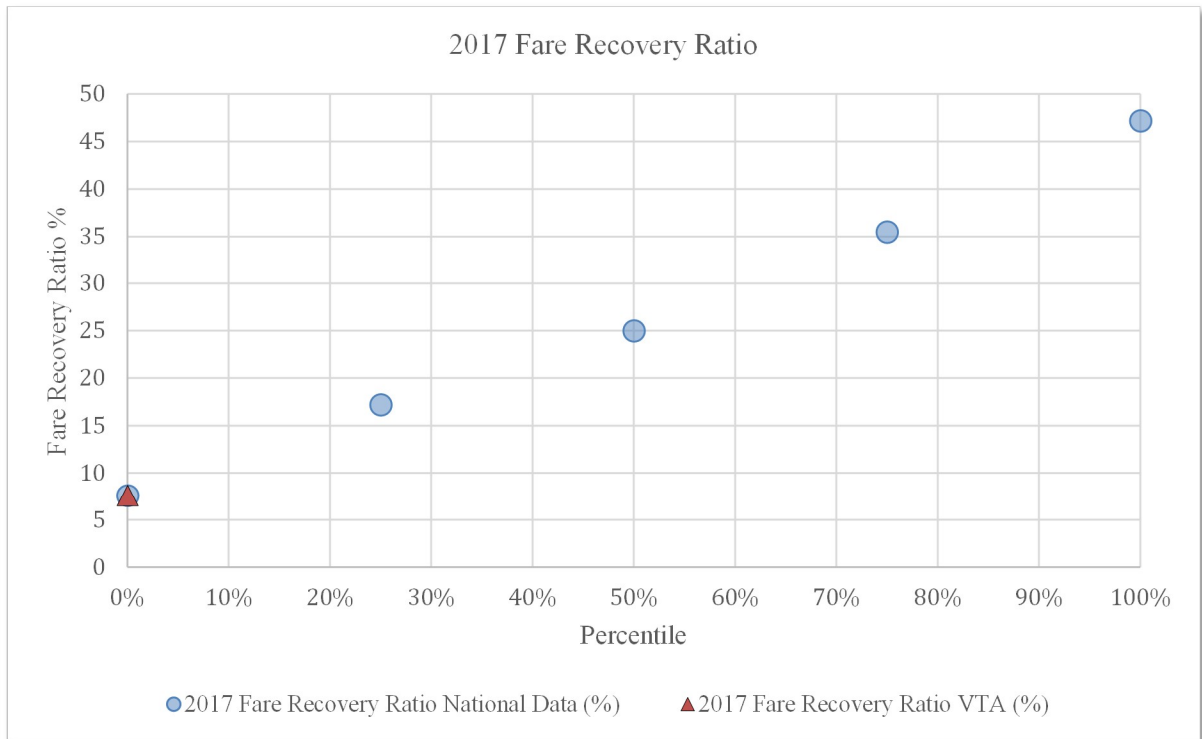
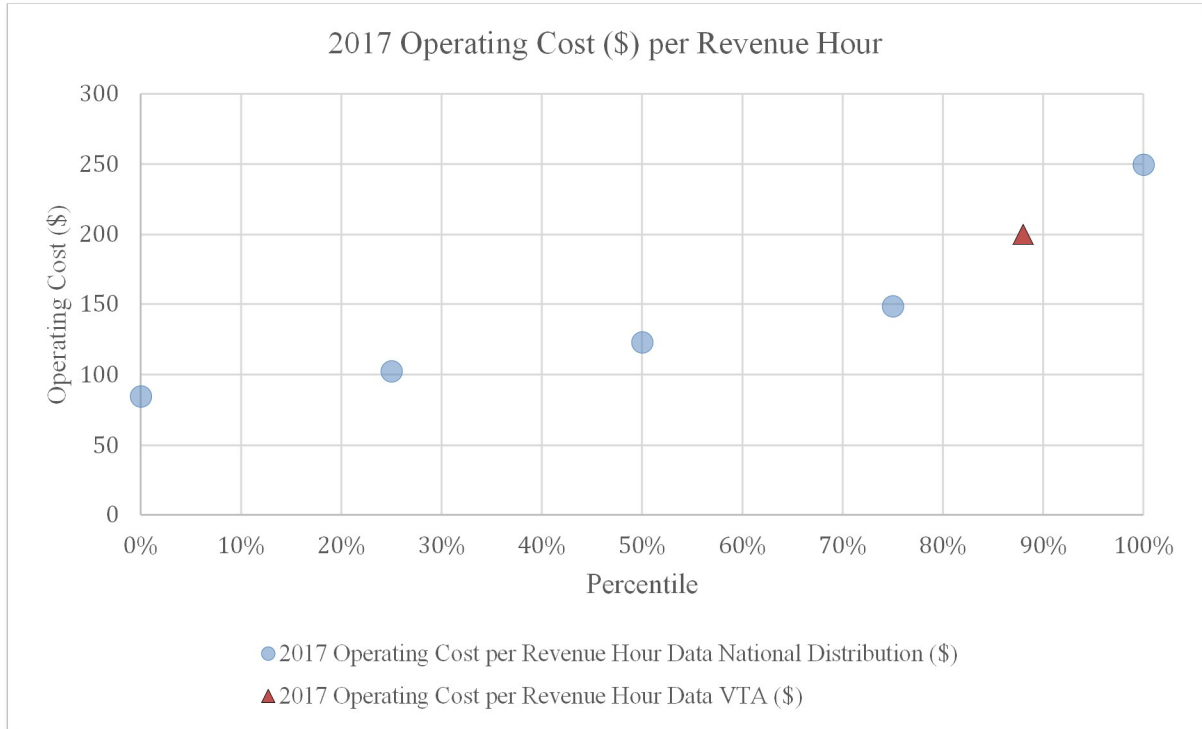
<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/ntd/130636/2017-national-transit-summaries-and-trends.pdf>

²¹ Santa Clara Valley Transit Authority Annual Agency Profile 2017

<https://www.transit.dot.gov/ntd/transit-agency-profiles/santa-clara-valley-transportation-authority>

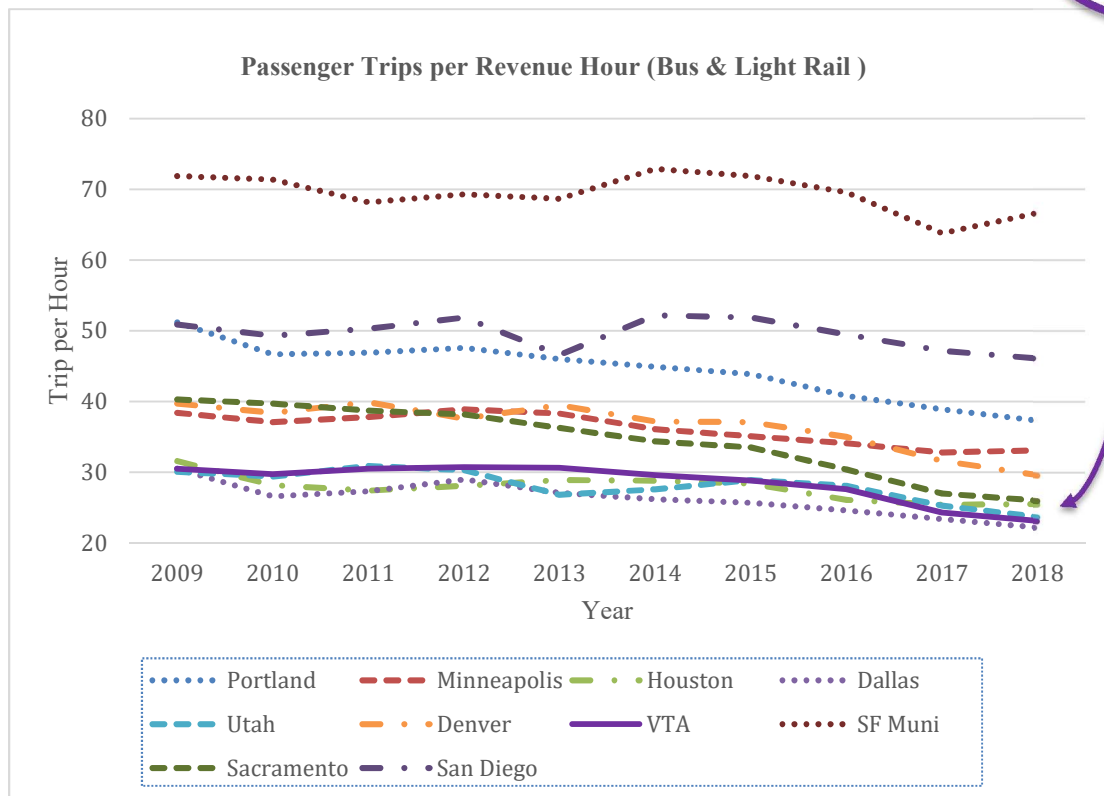
²² Service Data and Operating Expenses Time-Series by System

<https://www.transit.dot.gov/ntd/data-product/ts22-service-data-and-operating-expenses-time-series-system-0>

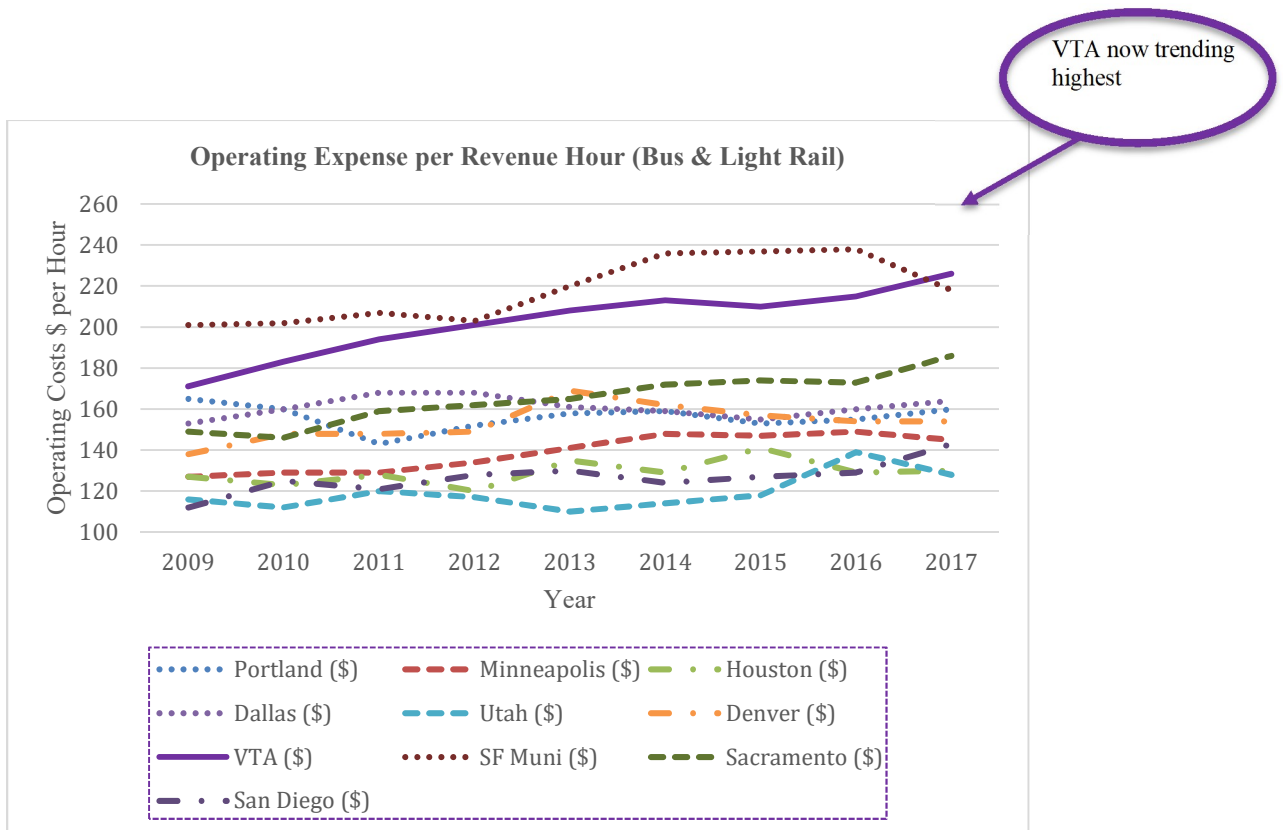


APPENDIX C – Peer Agency Comparisons

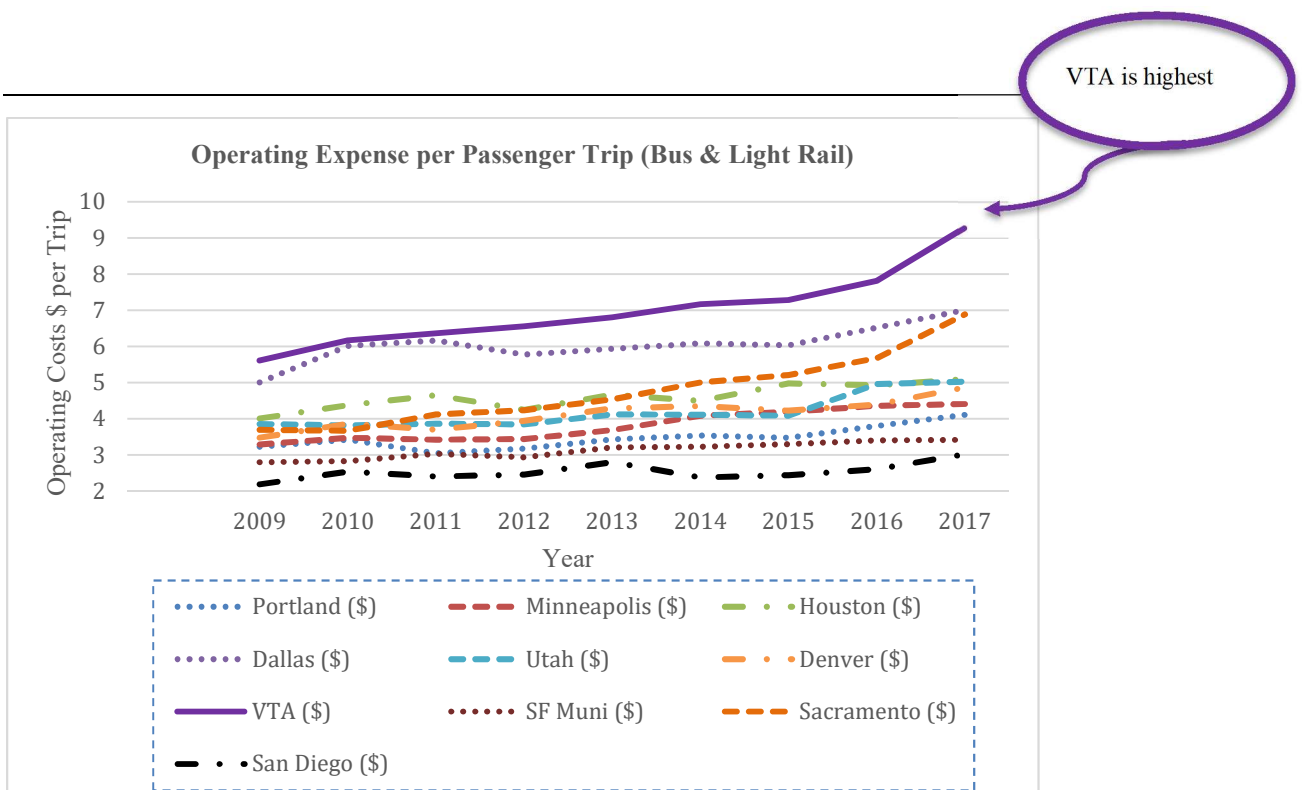
This appendix presents various operational metrics for VTA and nine peer agencies. Generally, VTA under-performs all or most of these agencies as noted.



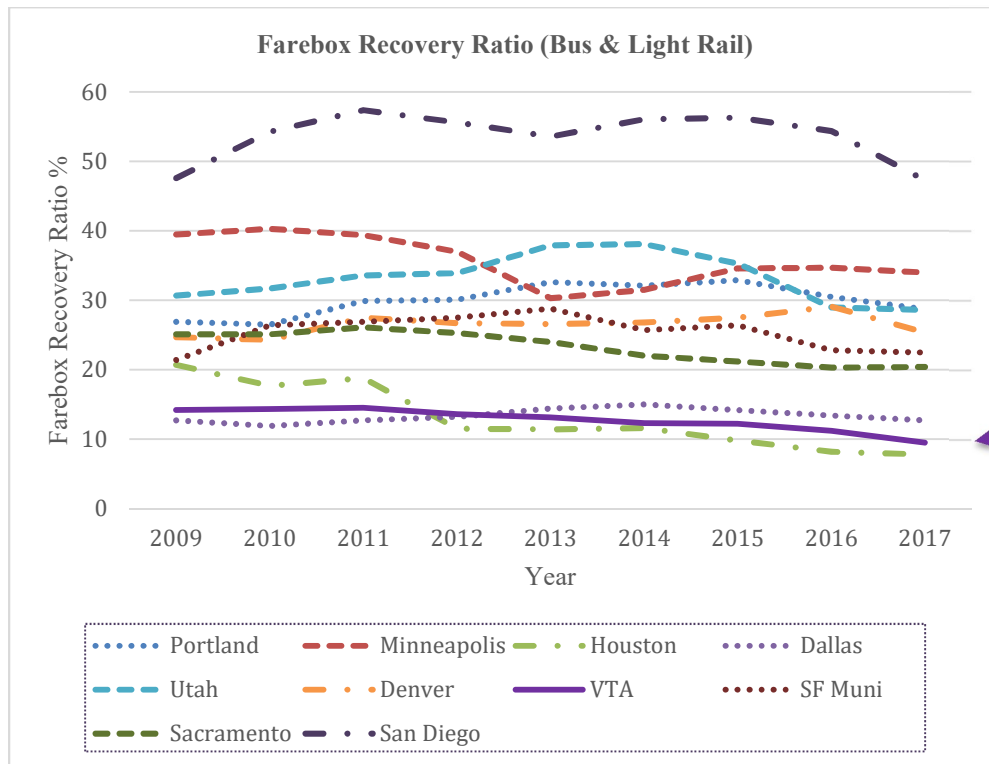
Source of data: <https://www.transit.dot.gov/sites/fta.dot.gov/files/February%202019%20Adjusted%20Database.xlsx>



Source of data <https://www.transit.dot.gov/ntd/data-product/ts21-service-data-and-operating-expenses-time-series-mode-2>

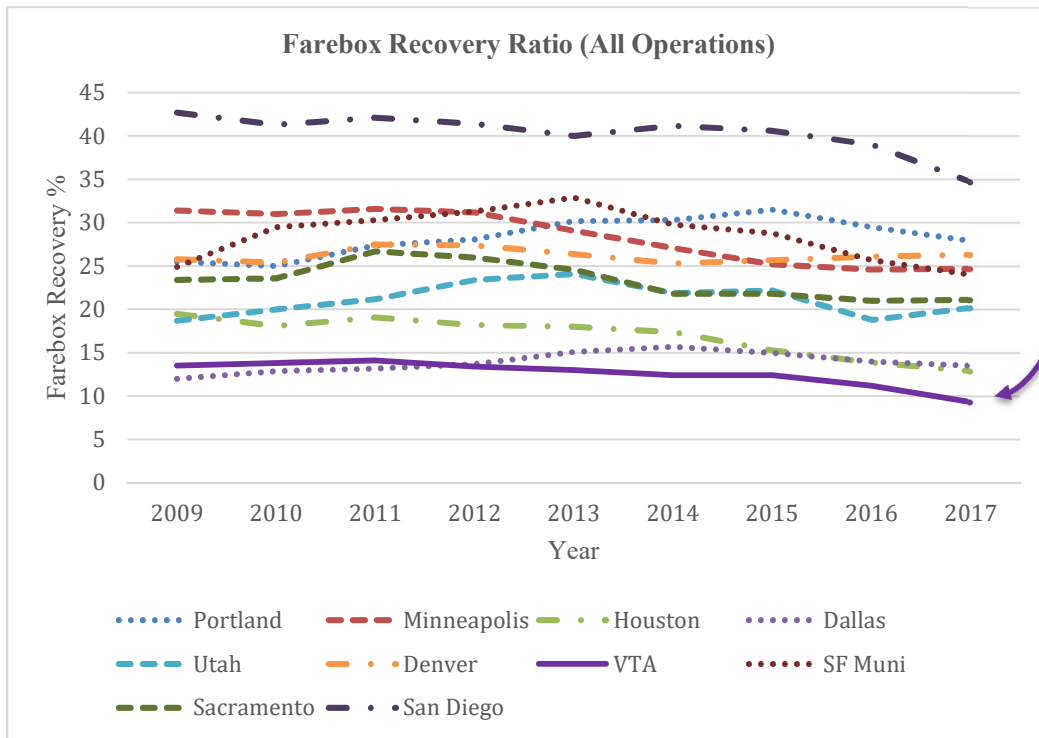


Source of data <https://www.transit.dot.gov/ntd/data-product/ts21-service-data-and-operating-expenses-time-series-mode-2>



VTA competes for lowest

Source of data <https://www.transit.dot.gov/ntd/data-product/ts21-service-data-and-operating-expenses-time-series-mode-2>



VTA is lowest

Source of data <https://www.transit.dot.gov/ntd/data-product/ts21-service-data-and-operating-expenses-time-series-mode-2>

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Note: All links verified June 9, 2019

This report was **ADOPTED** by the 2018-2019 Santa Clara County Civil Grand Jury on this _____ day of June 2019.

John Pedersen
Foreperson