

MEMORANDUM

**TO:** VTA Board of Directors

**FROM:** Michael T. Burns  
General Manager



**DATE:** December 8, 2005

**SUBJECT:** Withdrawal of the BART Project from the New Starts Process

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Attached is a letter that is being sent to Secretary Norman Y. Mineta of the U.S. Department of Transportation and acting Deputy Administrator David Horner of the Federal Transit Administration (FTA) formally requesting the temporary withdrawal of the Silicon Valley Rapid Transit Corridor Project (BART) from the preliminary engineering phase of the federal New Starts process. I believe VTA can work better with FTA to improve the competitiveness of the project across all New Starts evaluation criteria outside the formal New Starts preliminary engineering process. I also believe this approach will preserve the opportunity for us to return to the formal New Starts process to seek federal funding for final design and construction for the project when issues that have been raised by FTA related to the project's costs, ridership estimates and financial plan have been resolved.

This action is being taken at this time because the FTA has advised us that its continued review of our New Starts submittal will unlikely yield a positive result for the project.

Preliminary engineering and environmental work are fully funded with state and local dollars, and will continue to move forward as currently scheduled. However, in order for us to be able to secure the federal funding needed for final design and construction, we need to concentrate our efforts in the near term on working cooperatively with FTA to ensure that the project is in the best competitive position, given the limited amount of New Starts funding that is available for projects across the country.

I will continue to update you as details evolve.

Attachments: FAQs  
Letter to FTA

## **Withdrawal of the BART Project from New Starts Process Frequently Asked Questions**

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*What does it mean to withdraw?*

Work will continue, but VTA will temporarily remove itself from consideration in the New Starts funding process to provide additional time to address concerns raised by the FTA related to the project's cost and ridership estimates and financial plan.

*Why is VTA taking this action?*

Following a review of VTA's most recent Annual New Starts submittal, it is expected that the Federal Transit Administration will not feel the project is currently meeting certain threshold criteria for evaluation. As a result, it is likely the Annual New Starts Update due out in February 2006 will not yield a positive response for the project.

*Will this delay the timeline for the project?*

No. Preliminary engineering is well underway and environmental work also has been done. VTA has the local funding necessary to fund work at this stage of the project. In fact, most projects are now funded locally through preliminary engineering. The majority of New Starts funding is awarded in the final design and construction phase. VTA won't need an infusion of federal money for that phase until 2008.

*When will VTA reapply to the New Starts program?*

VTA will apply for funding to support final design and construction and once all of the FTA's concerns have been addressed to put the project in a more competitive light. Critical to that effort will be identifying funding for the financial operating plan through the passage of an additional, quarter-cent sales tax, reaching agreement on the ridership model with the FTA and improving the project's cost estimates.

*Why is the FTA concerned with the ridership model?*

The model used to develop ridership estimates also helps to generate a number the FTA uses to evaluate the project known as the Transportation System Users Benefit (TSUB) number. Ridership, combined with cost estimates result in a TSUB number for this project that is higher than the FTA deems acceptable for a project to move forward. There are a number of things VTA can do to improve this number. Currently, VTA is working with internationally recognized experts on modeling. We believe we will meet the prescribed threshold laid out by the FTA.

*What happens to the project if VTA fails to secure federal funding?*

We believe with the additional time this temporary withdrawal allows us, we have the opportunity to craft a highly competitive application for federal funding. But at the same time, we will work to identify additional funding opportunities such as joint-development efforts and benefit assessment districts surrounding BART facilities.



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Norman Y. Mineta  
Secretary of Transportation  
U.S. Department of Transportation  
400 7<sup>th</sup> Street, SW  
Washington, DC 20590

David Horner  
Acting Deputy Administrator  
Federal Transit Administration  
400 7<sup>th</sup> Street, SW  
Washington, DC 20590

Re: Withdrawal of the Silicon Valley Rapid Transit Corridor Project from the Preliminary Engineering Phase of the New Starts Process

Dear Secretary Mineta and Deputy Administrator Horner:

The Santa Clara Valley Transportation Authority (VTA) has worked very hard over the past year to address all of the issues that have been raised by the Federal Transit Administration (FTA) with regard to the federal New Starts evaluation criteria as it relates to the Silicon Valley Rapid Transit Corridor Project. Along these lines, VTA has made significant progress on the milestones that were outlined in the November 8, 2004, agreement letter with FTA. Relative to the first milestone contained in this letter, which pertained to the project's transportation system user benefits model, VTA has worked closely with FTA to "achieve acceptable ridership estimates by June 30, 2005." In fact, FTA staff acknowledged in July 2005 that the Silicon Valley Rapid Transit Corridor Project's preliminary engineering status for purposes of the New Starts Program was in good standing relative to the progress that had been made on the project's model.

In terms of the second milestone in the November 8, 2004, agreement letter, which pertained to the need for VTA to pursue a new operating revenue source to support not only the Silicon Valley Rapid Transit Corridor Project, but also our current bus and light rail system, VTA submitted a work plan and schedule to FTA outlining our process in this regard. Consistent with that plan, the VTA Board of Directors is diligently working to place a local transportation sales tax initiative on the November 2006 ballot.

As acknowledged by FTA in prior Annual New Starts Reports, the Silicon Valley Rapid Transit Corridor Project performs well as measured by several of the evaluation criteria, including

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environmental benefits, transit supportive land use and local financial commitment. Moreover, the project's transportation system user benefit (TSUB) number has improved from \$40.99 to \$31.62 as measured in terms of cost per hour of travel timesavings, which we believe represents significant progress. While the project's TSUB number is moving in the right direction and that positive trend should be noted, we do acknowledge that our efforts to date have not resulted in a TSUB number that meets Section 3011(f) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) and we do recognize that more work needs to be done in this regard. I would also point out that we have made good progress with our Board of Directors in developing an expenditure plan associated with a potential new sales tax initiative for the November 2006 ballot.

VTA is supportive of FTA's desire to streamline the New Starts process, as well as focusing the discussion on projects that demonstrate compliance across the full spectrum of congressionally established New Starts evaluation criteria. We also are well aware of the significant pressure that is being placed on FTA to bring the New Starts Program into alignment with anticipated available funding.

Therefore, recognizing that the Silicon Valley Rapid Transit Corridor Project continues to have issues that FTA deems as significant and recognizing that we desire to continue to work with FTA to seek resolution of these issues, VTA formally requests the temporary withdrawal of the project from the preliminary engineering phase of the New Starts process. We believe we can better work with FTA to improve the competitiveness of the project across all New Starts evaluation criteria outside of the formal New Starts preliminary engineering process. We also believe this approach will allow us to return to the formal New Starts process to seek federal funding for final design and construction for the project when FTA's issues have been resolved.

In order to ensure that the Silicon Valley Rapid Transit Corridor Project is able to make sufficient progress over the next year toward achieving a better state of project readiness in the eyes of FTA, we request that FTA enter into a Project Management Agreement with VTA. Attachment A to this letter contains a descriptive list of issues that we would like to see addressed in such an agreement.

In addition to the Project Management Agreement, I would like to reference several other matters related to the Silicon Valley Rapid Transit Corridor Project, as follows:

1. September 14, 2004, FTA Letter: In FTA's September 14, 2004, letter to VTA, it was noted that FTA would "cease federal action" on the Silicon Valley Rapid Transit Corridor Project. This vague language has been a source of confusion and has impacted our ability to make progress on the project. We believe this language should refer only to FTA's concern that it cannot issue a Record of Decision for the Silicon Valley Rapid

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Transit Corridor Project prior to the issuance of a Record of Decision for the BART Extension to Warm Springs. It should not limit our ability to work cooperatively with FTA on the issues that FTA has identified relative to the project.

2. Land Acquisition: We request that FTA work with VTA to develop a methodology to allow VTA to proceed with land acquisition for the Federally Funded Segment portion of the Silicon Valley Rapid Transit Corridor Project prior to the issuance of a Record of Decision. This will help VTA contain project costs associated with escalating land values along the corridor, as well as address the impact of the land acquisition schedules on the project cost estimates as evaluated in the project's Risk Assessment. VTA would agree to assume all responsibility for the property acquired should the project not proceed. In addition, we would not expect federal reimbursement for the acquisition of such property.

As you may know, the Silicon Valley Rapid Transit Corridor Project is the highest transportation priority for VTA because it would support the local economy; enhance regional connectivity; alleviate traffic congestion in key regional transportation corridors; accommodate future travel demand; improve access to employment, education, medical, recreational, and retail centers; and maximize public transit usage. It is important to point out that in November 2000, more than 70 percent of those who went to the polls voted to tax themselves to generate the revenues needed to cover more than 65 percent of the project's costs. Today, five years after the passage of this local transportation ballot measure, the project remains our highest transportation priority, as evidenced by the results of recent public opinion polls conducted by the Silicon Valley Leadership Group and other transportation stakeholders in our area.

It also is worth noting that there is a strong private sector commitment to the Silicon Valley Rapid Transit Corridor Project. For instance, the Silicon Valley Leadership Group, which represents more than 200 major employers in our area, has repeatedly led successful efforts to generate local revenues for investment in our transportation infrastructure. These efforts have resulted in a significant amount of local dollars being made available to support not only the Silicon Valley Rapid Transit Corridor Project, but also numerous other much-needed transportation improvements. In the case of the Silicon Valley Rapid Transit Corridor Project, more than 80 percent of the funding will come from local and state sources. New Starts dollars would account for less than 20 percent of the total funding required for the project.

In conclusion, VTA looks forward to continuing to work with FTA to advance the Silicon Valley Rapid Transit Project in a manner that ensures that the project will be in the best competitive position possible for obtaining future New Starts funding for final design and construction. We look forward to meeting with FTA in the near future not only to develop the Project Management Agreement, but also to establish the framework to ensure that a cooperative, comprehensive and

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productive working relationship continues to exist between our two organizations as we seek to advance this regionally significant project.

Sincerely,

Michael T. Burns  
General Manager

cc: VTA Board of Directors  
Leslie Rogers, FTA Regional Office  
Santa Clara County Congressional Delegation  
Santa Clara County State Legislative Delegation

Enclosure

## **ATTACHMENT A**

### **SILICON VALLEY RAPID TRANSIT CORRIDOR PROJECT: SUMMARY OF ELEMENTS FOR PROJECT MANAGEMENT AGREEMENT**

In order to ensure that the Silicon Valley Rapid Transit Corridor Project is able to make sufficient progress over the next year, we request that FTA enter into a Project Management Agreement with VTA. We envision that the purpose of this agreement would be to guide the process for resolving FTA's issues as they relate to the New Starts evaluation criteria. We propose that agreement cover the following subject areas:

- A clear enumeration of FTA's outstanding issues related to the transportation system user benefits model for the Silicon Valley Rapid Transit Corridor Project, and a work plan and schedule that will bring those issues to closure. It is extremely important that we work collaboratively and productively with FTA in order to achieve FTA's acceptance of the model in an expeditious manner, given that the model serves as the basis for generating the project's ridership forecasts and TSUB number. Without a resolution of these issues, it is difficult for VTA to know how close we are to meeting the \$27.99 (in 2005 dollars) TSUB benchmark.
- A list of any ongoing FTA concerns with regard to the Transportation System Management (TSM) Alternative as submitted by VTA for the FY 2007 Annual New Starts Report, and a work plan and schedule for their resolution.
- A clear definition of any other FTA issues associated with VTA's submittal for the Silicon Valley Rapid Transit Corridor Project for the FY 2007 Annual New Starts Report, and a work plan and schedule for resolving those issues.
- A review of the Silicon Valley Rapid Transit Corridor Project's 35 percent preliminary engineering cost estimate and other related elements by the Project Management Oversight (PMO) contractor in order to address their acceptability for use in the New Starts process, particularly in determining the project's TSUB number.
- A clearly defined process for the PMO contractor to work cooperatively with VTA to ensure that the Silicon Valley Rapid Transit Corridor's Risk Assessment meets FTA requirements. The Risk Assessment is directly related to obtaining FTA's acceptance of the project's overall cost estimate and, therefore, it must move forward in an expeditious manner.
- A clearly defined process for FTA to provide timely and responsive staff support relative to the completion of the Environmental Impact Statement (EIS) for the Silicon Valley Rapid Transit Corridor Project. We believe FTA should cooperate fully with VTA in terms of the development of the EIS according to a mutually agreed-upon schedule that

includes: (a) the release of the Notice of Intent (NOI); (b) the release of the Draft EIS for public review; and (c) the release and adoption of the Final EIS by the VTA Board of Directors. Although we acknowledge that the project would not be eligible for a Record of Decision prior to the issuance of a Record of Decision for the BART Warm Springs Extension EIS, we do not believe this should stand in the way of VTA and FTA working cooperatively to move the EIS process forward, so that the project does not get significantly delayed.

- A clarification that the project definition for the Silicon Valley Rapid Transit Corridor Project for purposes of compliance with the National Environmental Policy Act (NEPA) will include only the Federally Funded Segment (from Warm Springs to Berryessa). Since no federal funding would be used for the Locally Funded Segment, it would be subject only to California Environmental Quality Act (CEQA) clearance. As such, the restrictions on VTA related to the New Starts process would not apply to the Locally Funded Segment. At the time of a Full Funding Grant Agreement (FFGA) for the Federal Funded Segment, if VTA can demonstrate the ability to complete the entire project simultaneously, then the requirements to include end-of-line improvements and maintenance capacity for the Federally Funded Segment would be dropped. VTA would commit to expend federal dollars only on the portion of the project included in the NEPA document.
- A communications and meetings protocol for the Silicon Valley Rapid Transit Corridor Project. At a minimum, we propose bi-monthly teleconference meetings involving FTA's Washington and Region staff, appropriate Congressional staff representatives, and VTA project and management staff to: (a) review the project schedule as outlined in the Project Management Agreement; (b) discuss issues; and (c) resolve the details of work to be performed by both parties over the following two-month period, as well as over the full Project Management Agreement schedule. We also propose that submittals made by VTA to FTA include a cover letter specifically defining the Project Management Agreement issue the submittal is intended to address. Similarly, all direction from FTA relative to such submittals or issues included in the Project Management Agreement should be in writing.
- A mediation process in the event that VTA and FTA are unable to resolve an issue under the process defined in the Project Management Agreement. This process would involve elevating the issue to the VTA General Manager and the Secretary of Transportation's Chief of Staff for final mediation.