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Agenda Item 5

June 13, 2018

VIA EMAIL & HAND DELIVERY

Chair Ikezi and Planning Commissioners
Planning Commission
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Jennifer Yamaguma
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**Re: Comments on the Addendum to the Mission Town Center
Final Environmental Impact Report for the 575 Benton Street
Project by Prometheus Real Estate Group (No. 18-252)**

Dear Chair Ikezi, Planning Commissioners, Ms. Sciara and Ms. Yamaguma:

On behalf of Santa Clara Residents for Responsible Development ("Santa Clara Residents"), we submit these comments on the City of Santa Clara's ("City") Addendum ("Addendum") to the Mission Town Center Final Environmental Impact Report ("FEIR") prepared pursuant to the California Environmental Quality Act

(“CEQA”)¹ and its implementing Guidelines,² for the 575 Benton Street Project (“Project”) proposed by Prometheus Real Estate Group. On May 23, 2018, the Planning Commission continued the public hearing to June 13, 2018 where it will consider the following, collectively “Resolutions”:

1. Adopt a resolution recommending to the City Council adoption of an Addendum#1 to the Mission Town Center Final Environmental Impact Report (FEIR).
2. Adopt a resolution recommending to the City Council approval of the General Plan Amendment (GPA) from Santa Clara Station High Density Residential to Santa Clara Station Very High Density Residential.
3. Adopt a resolution recommending to the City Council approval of the rezoning from Light Industrial (ML), Single-Family (R1-6L), Duplex (R2-7L) and Thoroughfare Commercial (CT) to Planned Development (PD) to allow the development of 355 apartment units, 24,000 to 27,000 square feet of retail space including retail in proximity at the northeast corner of The Alameda and Benton Street, and approximately 6,000 square feet of amenity and leasing space, and thereby increasing the amount of retail space from 19,985 square feet.
4. Adopt a resolution recommending to the City Council adoption of an Ordinance to approve the Development Agreement.
5. Adopt a resolution recommending to the City Council that the proposed vacation of portions of Fremont Street and Sherman Street would be consistent with the General Plan.

For the reasons discussed in further detail below, the Planning Commission must not adopt any Resolution until the Project fully complies with CEQA by disclosing, analyzing, and mitigating the Project’s direct, indirect, and cumulatively significant

¹ California Environmental Quality Act, Pub. Resources Code (hereinafter “PRC”) § 21000 *et seq.*

² CEQA Guidelines, 14 Cal. Code Regs. (hereinafter “CCR”) § 15000 *et seq.*

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effects.³

We reviewed these comments with the assistance of air quality engineer, Phyllis Fox, Ph.D., PE and traffic and transportation expert, Dan Smith, PE of Smith Engineering & Management. Dr. Fox's and Mr. Smith's comments and curriculum vitae are incorporated by reference as if fully set forth herein and are attached as **Exhibit A**⁴ and **Exhibit B**⁵, respectively.

I. STATEMENT OF INTEREST

Santa Clara Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety standards and environmental impacts associated with Project development. Santa Clara Residents includes the International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, and their members and families, and other individuals that live and/or work in the City of Santa Clara and Santa Clara County.

Individual members of Santa Clara Residents and the affiliated labor organizations live, work, recreate and raise their families in the City of Santa Clara and Santa Clara County. They would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Santa Clara Residents have a strong interest in enforcing the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

³ Santa Clara Residents reserves the right to supplement these comments at later hearings and proceedings on this Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

⁴ **Exhibit A.** Letter from Phyllis Fox to Linda Sobczynski (June 13, 2018) RE: Addendum to Mission Town Center Project FEIR (hereinafter "Fox Comments").

⁵ **Exhibit B.** Letter from Dan Smith to Linda Sobczynski (June 13, 2018) Subject: Mission Town Center FEIR Addendum (575 Benton Project) (hereinafter "Smith Comments").

II. THE CITY MUST PREPARE A SUBSEQUENT OR SUPPLEMENTAL EIR FOR THIS PROJECT.

CEQA has two basic purposes, neither of which is satisfied by the Project's Addendum. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the environment.⁶ The EIR is the "heart" of this requirement.⁷ The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."⁸

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."⁹ An adequate EIR must contain facts and analysis, not just an agency's conclusions.¹⁰ CEQA requires an EIR to disclose all potential direct, indirect, and cumulative significant environmental impacts of a project.¹¹

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.¹² If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.¹³ CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.¹⁴ Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

⁶ 14 CCR § 15002(a)(1) ("CEQA Guidelines"); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1354 ("Berkeley Jets"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁷ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

⁸ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁹ 14 CCR, § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

¹⁰ *See Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

¹¹ PRC, § 21100(b)(1); 14 CCR, § 15126.2(a).

¹² 14 CCR, § 15002(a)(2) and (3); *Berkeley Jets*, 91 Cal.App.4th at 1354; *Laurel Heights Improvement Ass'n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.

¹³ PRC, §§ 21002.1(a), 21100(b)(3).

¹⁴ *Id.*, §§ 21002-21002.1.

Under CEQA, an EIR must not only discuss measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements or other legally binding instruments.¹⁵ A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.¹⁶ This approach helps “insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.”¹⁷

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Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to determine whether to prepare an EIR or negative declaration, identify whether a program EIR, tiering, or other appropriate process can be used for analysis of the project’s environmental effects, or determine whether a previously prepared EIR could be used with the project, among other purposes.¹⁸ CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.¹⁹ A negative declaration may be prepared instead of an EIR when, after preparing an initial study, a lead agency determines that a project “would not have a significant effect on the environment.”²⁰

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When an EIR has previously been prepared that could apply to the Project, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occur:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major

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¹⁵ 14 CCR, § 15126.4(a)(2).

¹⁶ *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).

¹⁷ *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

¹⁸ 14 CCR, §§ 15060, 15063(c).

¹⁹ *See, e.g.*, PRC, § 21100.

²⁰ *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597; Pub. Resources Code § 21080(c).

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revisions in the environmental impact report; or

(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.²¹

The CEQA Guidelines explain that the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events occur:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or

²¹ PRC, § 21166.
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alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.²²

Only where **none** of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an Addendum or no further documentation.²³ For Addendums specifically, CEQA allows Addendums to a previously certified EIR if minor changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.²⁴ The City's decision not prepare a subsequent EIR must be supported by substantial evidence.²⁵

Here, the City lacks substantial evidence for its decision not to prepare a subsequent EIR because at least one of the triggering conditions in Section 15162 has occurred. There is new information of substantial importance that has become available since the certification of the Mission Town Center EIR that shows the Project will have new or more severe impacts than shown in the previous EIR. Specifically, the City failed to include a relevant, reasonably foreseeable (and now approved) project in its cumulative impact analysis. Omitting this project from the cumulative impacts analysis has rendered the Addendum's air quality, public health and transportation conclusions underestimated, unreliable and not supported by substantial evidence.

Whereas the City lacks substantial evidence to support its conclusion that there are no new or more severely significant air quality, public health and transportation impacts than previously analyzed in the Mission Town Center EIR, Dr. Fox and Mr. Smith provide substantial evidence, based on expert opinion, that the Project will result in new significant or more severely significant air quality,

²² 14 CCR, § 15162(a)(1)-(3).

²³ 14 CCR, § 15162(b).

²⁴ 14 CCR, § 15164.

²⁵ *Id.* §§ 15162 (a), 15164(e), and 15168(c)(4).

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public health, and transportation impacts than previously analyzed in the Mission Town Center EIR.

Accordingly, Dr. Fox's and Mr. Smith's substantial evidence, and the City's lack thereof, requires that the City prepare a subsequent or supplemental EIR to adequately address the Project's cumulatively significant air quality, public health and transportation impacts.²⁶

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a. New information has become available since the certification of the Mission Town Center EIR.

The Addendum asserts that there are "no changes in circumstances in which the proposed project would be undertaken. No new information has become available....since the certification of the Mission Town Center EIR that would alter the previous analysis and change the conclusions..."²⁷ The Addendum lacks substantial evidence to make this assertion. In fact, there is new information that has become available since the certification of the Mission Town Center EIR.

The Mission Town Center FEIR was certified in February 2016. Since that time, a new project, Phase II of the BART Extension Project ("Phase II Project"), has undergone CEQA review and has been approved. In April 2018, the Santa Clara Valley Transportation Authority ("VTA") Board of Directors certified the Final Subsequent Environmental Impact Report ("SEIR") and approved VTA's BART Silicon Valley Phase II Extension Project.²⁸ As a result of the Phase II Project's extensive construction and ongoing operational impacts, the VTA made findings that the Phase II Project would have significant and unavoidable transportation, air quality, greenhouse gas, and noise impacts.²⁹ The VTA's findings, facts in support of findings, and statement of overriding considerations for the Phase II Project's significant impacts are included as **Exhibit C**. Part of the Phase II Project involves

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²⁶ 14 CCR, § 15162 ("no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one of more of the following [triggering actions has occurred]"); § 15164 ("The [agency's] explanation [to not prepare a subsequent EIR pursuant to Section 15162] must be supported by substantial evidence.").

²⁷ See, e.g., Addendum, pp. 37, 48, 53, 65, 68, 72 103.

²⁸ VTA Phase II Environmental, <http://www.vta.org/bart/environmentalphaseII>.

²⁹ **Exhibit C**. VTA's BART Silicon Valley – Phase II Extension Project: Findings, Facts in Support of Findings, and Statement Overriding Considerations (Mar. 2018) http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/bod_040518_Findings.pdf

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construction at the Santa Clara Station, a mere 400 feet from this Project site

Additionally, it was not until just last week, on June 4, 2018, that the Federal Transit Authority issued its Record of Decision which “puts [the VTA] in a strong position to secure the final federal funding necessary to extend BART all the way to Downtown San Jose and Santa Clara.”³⁰

As shown above, the Phase II Project postdated the Mission Town Center EIR and the Phase II Project’s contributions to air quality, public health, and transportation were not included in the Mission Town Center EIR. The list of past, present and reasonable foreseeable future projects that were used to evaluate cumulative impacts are in section 4.0.3.5 of the Mission Town Center DEIR.³¹ There is no mention of the Phase II Project. Upon certifying the FEIR, the City did not revise the list or the analysis.³² The Addendum also does not provide any analysis of the Phase II Project.³³

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Thus, contrary to the statement in the Addendum, the Phase II Project is new information that has become available since the certification of the Mission Town Center EIR. Furthermore, as described below, the inclusion of the Phase II Project in the cumulative impacts analysis changes the previous analysis, because impacts are newly significant or more severely significant than previously analyzed. The City is therefore required to prepare a subsequent EIR to disclose, analyze and mitigate significant cumulative air quality, public health, and transportation impacts from constructing this Project at the same time the Phase II Project is planned to be constructed.³⁴

³⁰ VTA Receives Federal Record of Decision for BART Silicon Valley Phase II Extension Project (June 4, 2018) <http://www.vta.org/News-and-Media/Connect-with-VTA/VTA-Receives-Federal-Record-of-Decision-for-BART-Silicon-Valley-Phase-II-Extension-Project#.WyA7Se4vxhG>

³¹ Mission Town Center Draft EIR, p. 4.0-3.

³² Mission Town Center Final EIR, pp. 3.0-1-8 (revisions to DEIR); *see also* Fox Comments, p. 2, Smith Comments, p. 2.

³³ Fox Comments, p. 2, Smith Comments, p. 2.

³⁴ Construction of the Phase II Projects is set to begin around 2020 and proceed through 2024. <http://www.vta.org/bart/timeline#phaseIItimeline>. The Addendum states that “Site demolition work is expected to begin in mid-summer 2018, followed by site grading and utility infrastructure work in mid-fall 2018. Construction of residential units is expected to commence in winter 2019 with full occupancy by the early spring 2021.” See Addendum, p. 30.

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b. In omitting the Phase II Project from its cumulative impact analysis, the City lacks substantial evidence to support the Addendum's cumulative impacts conclusions.

The Addendum does not contain an adequate cumulative air quality, health risk, or transportation impact analysis.³⁵ Instead the Addendum relies on the Mission Town Center EIR, which did not include the contribution to air quality, public health, or transportation impacts from the Phase II Project. Thus, the City lacks substantial evidence to support its conclusions regarding cumulative air quality, public health, and transportation impact.

CEQA requires a cumulative impacts analysis to assess whether the project's incremental effect combined with the effects of other projects is cumulatively considerable.³⁶ The City must support its conclusions about the significance of cumulative impacts with substantial evidence. An adequate cumulative impacts analysis is necessary for a legally adequate environmental review document. In *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 168 the Court invalidated an environmental review document for its failure to consider cumulative impacts. The Court directed the lead agency to redo its cumulative impact analysis:

“In formulating its list of probable future projects for review as to cumulative effects the lead agency should reasonably interpret the guidelines to afford the fullest possible protection of the environment. (See *Friends of Mammoth v. Board of Supervisors, supra.*, 8 Cal.3d at p. 259; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 74 [198 Cal.Rptr. 634].) There is a “... need for regional environmental consideration at the earliest stage of a planned development before it gains irreversible momentum.” (*Bozung v. Local Agency Formation Com., supra.*, 13 Cal.3d at p. 284, fn. 28.)”

By omitting the Phase II Project from the City's cumulative impacts analysis, the Addendum lacks support for its assertion that air quality, public health and transportation impacts were all adequately analyzed in the Mission Town Center EIR.³⁷ Moreover, the City lacks substantial evidence to support its conclusion that

³⁵ Fox Comments, p. 3.

³⁶ 14 CCR, § 15130(a).

³⁷ See Fox Comments, p. 2; Smith Comments, p. 2.

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cumulative air quality and public health impacts are less than significant and that some cumulative transportation impacts could be mitigated to less than significant.³⁸ The Addendum is not supported by substantial evidence, legally inadequate and cannot be used to adopt the resolutions and approve the Project.

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c. The City cannot rely on the Addendum for Project approval because the Project will result in new or more severe significant air quality and public health impacts that were not identified in the Mission Town Center EIR.

The Addendum's conclusion that cumulative air quality impacts were fully analyzed in the Mission Town Center EIR and are less than significant is unsupported.³⁹ Dr. Fox provides substantial evidence that there are new or more severe cumulatively significant impacts than were not previously analyzed in the Mission Town Center EIR. She comments that the "increase in criteria pollutants and hazardous air pollutants from the construction and operation of the [Phase II Project] adjacent to the Project site would be sufficient to result in significant cumulative air quality and public health risk impacts during both construction and operation of the project."⁴⁰

More specifically, Dr. Fox explains that the oxides of Nitrogen ("NO_x") impacts from constructing components of the Phase II Project, a mere 400 feet from this Project site, are *significant and unavoidable*. And, since construction of the Project and the Phase II Project may overlap, the cumulative NO_x impacts for this Project would be potentially significant. Dr. Fox's comment provides substantial evidence that "[t]his is a new significant air quality impact not disclosed in the Addendum."⁴¹

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Accordingly the City must prepare a subsequent EIR pursuant to Public Resources Code Section 15162. As indicated above, the City lacks substantial evidence to support the Addendum's cumulative air quality and public health impact conclusion.⁴² The Phase II Project constitutes new information of substantial importance that was made available after the Mission Town Center EIR was

³⁸ Addendum, p. 108; Smith Comments, p. 2; Fox Comments, p. 4.

³⁹ Mission Town Center Final EIR, at p. 1.0-7.

⁴⁰ Fox Comments, p. 4.

⁴¹ Fox Comments, p. 4.

⁴² Addendum, pp. 48-49.

certified. And, Dr. Fox provides substantial evidence that the cumulative air quality and public health impacts are new significant and more severely significant impacts than previously analyzed.

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d. The City cannot rely on the Addendum for Project approval because the Project will result in new, significant traffic impacts that were not identified in the Mission Town Center EIR.

Mr. Smith also provides expert comments about the City's failure to consider the BART Phase II Extension Project.⁴³ The Mission Town Center EIR concluded that some cumulative transportation impacts would be less than significant with mitigation.⁴⁴ In turn, the Addendum found that all transportation impacts were adequately analyzed in the Mission Town Center EIR.⁴⁵

Mr. Smith comments that if the contribution to transportation impacts from the Phase II Project are included in the cumulative impacts analysis for this Project, "it is in my expert opinion that the transportation impacts would be more severely significant than previously analyzed in the Mission Town Center EIR."⁴⁶

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Thus, the City must prepare a subsequent EIR pursuant to Public Resources Code Section 15162. As noted above, the Phase II Project constitutes new information of substantial importance that was made available after the Mission Town Center EIR was certified. Mr. Smith provides substantial evidence that the cumulative transportation impacts are more severely significant impacts than previously analyzed.

In addition to the flaws in the cumulative impact analysis, Mr. Smith comments that the City lacks substantial evidence to support its traffic analysis. Mr. Smith identifies two flaws in the Addendum's trip generation analysis that result in underestimated transportation impacts.⁴⁷ Mr. Smith explains that the lower number of net new trips is a result of inconsistent analysis methodology.⁴⁸

⁴³ Smith Comments, p. 1.

⁴⁴ Smith Comments, p. 2.

⁴⁵ Smith Comments, p. 2.

⁴⁶ Smith Comments, p. 2.

⁴⁷ Smith Comments, p. 2.

⁴⁸ Smith Comments, p. 2.

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The Addendum also fails to adequately support its shopping centers trip generation rates because it fails to account for the fact that shopping centers trip generation rates vary substantially with center size.⁴⁹ Mr. Smith indicates that the trip generation of the proposed Project are understated, “masking the significance of impacts.”⁵⁰

III. CONCLUSION

The City may not rely on the Addendum to adopt the Resolutions and approve the Project. Substantial evidence shows that there is new information of substantial importance showing that the Project will result in new and more severe significant impacts. As a result, CEQA mandates that the City prepare a subsequent EIR that adequately discloses, analyzes and mitigates the cumulative impacts of this Project in relation with the Phase II Project. The Resolutions cannot be adopted and the Project cannot be approved until a subsequent EIR is prepared and circulated for public review.

Thank you for your consideration.

Sincerely,



Linda Sobczynski

LTS:acp

Exhibits

⁴⁹ Smith Comments, p .3.

⁵⁰ Smith Comments, p .3.

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Phyllis Fox, Ph.D, PE
745 White Pine Ave.
Rockledge, FL 32955
321-626-6885

June 13, 2018

Linda Sobczynski
Adams Broadwell Joseph & Cardozo
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RE: Addendum to Mission Town Center Project FEIR

Dear Ms. Sobczynski:

As you requested, I have reviewed the air quality section of the Addendum to the Final Environmental Impact Report (FEIR) for the Mission Town Center Project. In my opinion, the Addendum has failed to identify and evaluate the significant cumulative air quality, public health impacts, and other impacts of the Project.

The City of Santa Clara approved a Final Environmental Impact Report (FEIR) for the Mission Town Center Project located at 575 Benton Street, Santa Clara on February 23, 2016.¹ Since then, a new applicant has submitted an application to the City of Santa Clara to develop the project site with a similar mixed-use development that includes minor modifications including a reduction in the number of residential units, amount of retail space, and number of parking spaces.²

The revised Project includes the demolition of existing buildings on a 5.75 acre parcel, located at the intersection of Benton Street and El Camino Real in the southeastern portion of the City of Santa Clara and the construction of a mixed-use residential development project including 385 apartments, three open space area, about 27,000 square feet of ground floor retain, 6,000 square feet of amenity space, three courtyards, 4,000 square feet of leasing space and 839 parking spaces (Project).³

The Project site is located in the southeastern portion of the City at the corner of Benton Street and El Camino Real. The site is bounded by Benton Street to the south, commercial and residential development along Harrison Street to the north, The Alameda to the west, and El

¹ City of Santa Clara, Mission Town Center Final Environmental Impact Report, February 2016 (FEIR); available at: <http://santaclaraca.gov/home/showdocument?id=17474>.

² City of Santa Clara, 575 Benton-Viso Project, Santa Clara, California, Addendum to Mission Town Center Final Environmental Impact Report (FEIR), October 2017 (Addendum), p. 1; available at: <http://santaclaraca.gov/Home/Components/BusinessDirectory/BusinessDirectory/190/3649>.

³ Addendum, p. 1 and Table 2-1.

Camino Real to the east. Regional access is provided by I-880 to the southeast via the Alameda and El Camino Real. Direct access is provided by Benton Street and El Camino Real. Secondary access is provided by The Alameda and Harrison Street.⁴ Figure 1.

Figure 1: Project Location Showing Residential Receptors⁵



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CUMULATIVE AIR QUALITY IMPACTS ARE SIGNIFICANT

The Addendum asserts that there are “no changes in circumstances or substantial new information that would alter the conclusions of the FEIR with respect to air quality impacts such that additional environmental review would be triggered.”⁶ Further, the air quality appendix of the FEIR⁷ asserted that⁸

A review of cumulative construction projects that are planned and approved in Santa Clara did not reveal any close enough to the project site to result in a potentially significant cumulative construction health risk impact.

However, these conclusions are incomplete and incorrect for several reasons, discussed below. In fact, there is a new cumulative project located nearby which would result in

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⁴ DEIR, p. 2.0-1.

⁵ DEIR, Volume II, Figure 1.

⁶ Addendum, pdf 51.

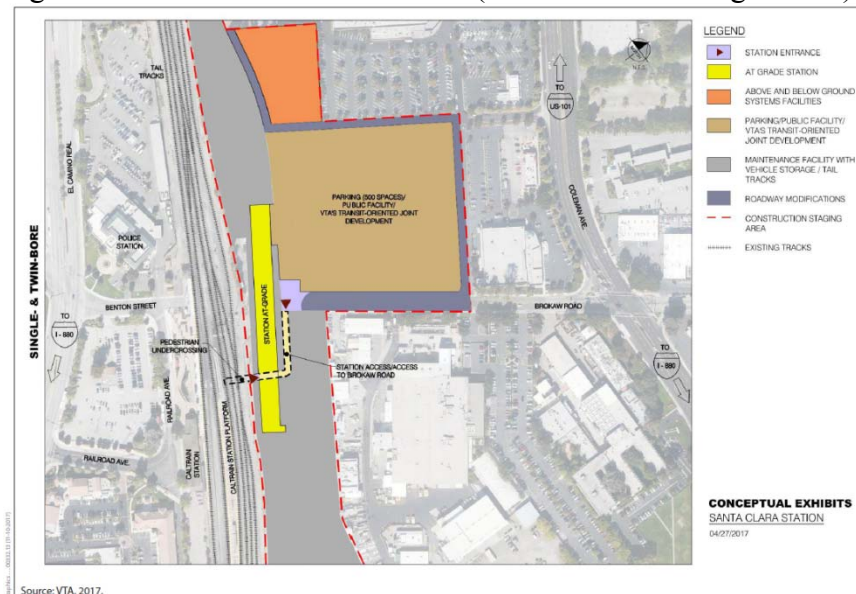
⁷ City of Santa Clara, Mission Town Center Final Environmental Impact Report, February 2016 (FEIR); available at: <http://santaclaraca.gov/home/showdocument?id=17474>.

⁸ FEIR, Volume II, pdf 36.

significant cumulative air quality, traffic, and other impacts that were not considered in either the FEIR or the Addendum.⁹ Thus, the Addendum fails as an informational document under CEQA.

The DEIR¹⁰ and FEIR¹¹ included a list of projects that were considered for cumulative impacts. Since the FEIR was certified in February 2016, a new project was approved about 400 feet from the project evaluated in the Addendum,¹² the new Santa Clara BART station (Figure 2). In April 2018, the Valley Transportation Authority (VTA) Board of Directors certified the Final Subsequent Environmental Impact Report (BART SEIR) and approved VTA's BART Silicon Valley Phase II Extension Project.^{13,14}

Figure 2. Santa Clara BART Station (Twin-Bore and Single-Bore).¹⁵



There is no evidence in the record that the Santa Clara BART station and associated tracks, parking garage, etc. were considered in the Mission Town Center DEIR, FEIR, or the Addendum. If construction of the two projects overlapped, existing nearby sensitive receptors (Figure 1) could be adversely affected, resulting in significant cumulative air quality, public health, odor, noise, vibration, and traffic impacts. Further, operational emissions from this

⁹ See VTA's BART Silicon Valley Phase II Extension Project Findings, Facts in Support of Findings, and Statement of Overriding Considerations (listing significant and unavoidable transportation, air quality, greenhouse gas emissions and noise impacts), pdf 18-23.

¹⁰ DEIR, p. 4.0-3.

¹¹ FEIR, p. 3.0-1/8.

¹² Compare Figure 4-2, Addendum EIR (Figure 1) with Figure ES-F, BART Final SEIS/SEIR (Figure 2).

¹³ VTA's BART Silicon Valley Phase II Extension Project, Final Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report and Section 4(f) Evaluation, Volume I: Final SEIS/SEIR (BART Final SEIS/SEIR) Feb. 20 2018; available at: <http://www.vta.org/bart/final2018seis-seir/volumeI>.

¹⁴ BART Final SEIS/SEIR, Figure ES-F and ES-3.

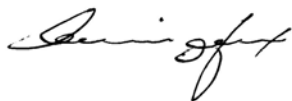
¹⁵ BART Final SEIS/SEIR, Figure ES-F.

BART station could adversely affect residents and other users of the Project evaluated in the Addendum, resulting in significant operational air quality, public health, odor, noise, vibration, and traffic impacts. These potential impacts were not considered in the Addendum. They must be included in the Addendum's analyses because the BART station is a new Project that was not considered in the FEIR.

For example, the NOx impacts from the construction of the BART station are significant and unavoidable.¹⁶ Construction of the Project and the Santa Clara BART station may overlap. As construction of the two projects would occur within about 400 feet of each other, well within the BAAQMD's 1,000 foot cumulative impact radius, cumulative construction NOx impacts of the Project would be potentially significant. This is a new significant air quality impact not disclosed in the Addendum. Instead, the Addendum relies on the FEIR, which did not include the contribution to air quality and health impacts from the Santa Clara BART station.

In sum, in my opinion, based on my experience analyzing air quality, public health, noise and other impacts of hundreds of similar projects, the increase in criteria pollutants, hazardous air pollutants, noise, and traffic from the construction and operation of the Santa Clara BART station adjacent to the Project site may be sufficient to result in significant cumulative air quality, public health, and other impacts during both construction and operation of the Project. The Addendum has failed to identify the new BART station and to analyze its impacts on the Project.

Sincerely,



Phyllis Fox, Ph.D., PE

¹⁶ BART Final SEIS/SEIR, Table ES-3 and Table 6.3-3, p. 6.3-15 (mitigated construction NOx emissions of 130 lb/day exceed CEQA significance threshold of 54 lb/day). The 54 lb/day threshold is defined in the BAAQMD CEQA Guidelines as a cumulative impact threshold. See Section 2, p. 2-1 ("If a project exceeds the identified significance thresholds, its emissions would be cumulatively considerable...").

EXHIBIT B



June 13, 2018

Ms. Linda T. Sobczynski
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Subject: Mission Town Center FEIR Addendum (575 Benton Project)

Dear Ms. Sobczynski:

Per your request, I reviewed Final Environmental Impact Report Addendum (the "Addendum") for the Mission Town Center Project now called the 575 Benton Project (the "Project") in the City of Santa Clara (the "City"). My review is with respect to transportation and circulation considerations

My qualifications to perform this review include registration as a Civil and Traffic Engineer in California and 48 years professional consulting practice in these fields. I have both prepared and reviewed the Transportation and Traffic sections of environmental documents pursuant to the California Environmental Quality Act ("CEQA") including ones for projects involving mixed use developments. My professional resume is attached thereto.

Technical comments on the FEIR follow:

The Addendum Failed to Consider the BART Phase II Extension Project

Neither the original Mission Town Center FEIR nor the Addendum consider effects of development of the Santa Clara BART station with 500 space parking garage on Brokaw Road less than 700 feet from the subject Project site. At the time the Mission Town Center was certified (February 23, 2016), the Phase II BART extension was uncertain and details about traffic activity at the Santa Clara Station had not been released. However, the Draft SEIR/SEIR for VTA's Phase

II BART Extension (the “BART SEIR”) was circulated for public review, certainly in time for the Addendum to have taken it into consideration. Support documentation associated with the BART SEIR¹ discloses that the Santa Clara Station will, by 2025 generate 565 daily, 85 AM peak, and 80 PM peak hour trips private motor vehicle trips onto the same local street network as is affected by the Addendum’s subject Project. By 2035, the BART Station’s private motor vehicle trip generation becomes 1064 daily, 158 AM peak hour and 148 PM peak hour trips.

Clearly, the fact that there will be these volumes of net new trips on the same nearby roadway network affected by the Addendum Project is significant new information as is the BART SEIR’s disclosure that it will have significant and unavoidable construction traffic impacts in the area. As significant new information that was not able to be considered in the FEIR, it should have been considered in this Project’s traffic analysis.

The Addendum, at page 108, states that all transportation impacts were adequately analyzed in the Mission Town Center EIR. The Mission Town Center EIR found that some cumulative transportation impacts would be less than significant with mitigation. If the contribution to transportation impacts from Phase II BART Extension Project are included in the cumulative impacts analysis for this Project, it is in my expert opinion that the transportation impacts would be more severely significant than previously analyzed in the Mission Town Center EIR.

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The Addendum’s Trip Generation Analysis Is Flawed

In the analysis of the current project, the Addendum analysts assume that the trips to the retail component would be reduced for passerby attraction by 17 percent daily and by 16 percent in the AM and PM peak hours. They also assume that overall trip generation would be reduced by 34 percent daily, 45 percent in the AM peak hour and 42 percent in the PM peak hour due to mixed use development and proximity to transit. In the analysis for the Town Center Project FEIR, the reductions in trip generation for mixed use and proximity to transit were applied in the same way as the current project. However, the earlier analysis made no passer-by deduction on the trip generation of the retail component.

Hence, the lower number of net new trips that the current Addendum claims results from the revised project having fewer DUs and reduced retail area, is actually in part the result of inconsistent analysis methodology that favors the revised project.

¹ See VTA’S BART SILICON VALLEY— PHASE II EXTENSION PROJECT TRANSPORTATION IMPACT ANALYSIS OF THE BART EXTENSION ONLY, Hexagon Transportation Consultants, November 2016, available at www.vta.org/bart.

The other area of concern is that both studies treat the trip generation of the relatively small amount of retail space involved at average trip generation rate for shopping centers. The problem with this is that shopping centers trip generation rates vary substantially with Center size, with small centers having high trip rates and large centers having low trip rates. A shopping center having about average trip generation rate would have a size of several hundred thousand square feet. This is why ITE recommends using the fitted curve based on retail center square footage rather than the average trip generation rate. Retail space of neither 22,000 square feet (current project) nor 27000 square feet (prior project) is a shopping center. What happens in retail spaces of such small size is perhaps a convenience market, fast food service, maybe a high-turnover/sit-down restaurant, hair and nail salons or perhaps a boutique grocery. All these kinds of uses have much higher trip generation than average shopping center rates. As a consequence of this, the trip generation of the current project are understated, masking the significance of impacts.

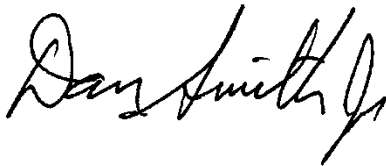
12

Conclusion

This completes my current comments on the Addendum. For the reasons stated above, the traffic analysis in the Addendum is inadequate and it is unsuitable for certification.

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President



SMITH ENGINEERING & MANAGEMENT

DANIEL T. SMITH, Jr. **President**

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil) Nevada No. 7969 (Civil) Washington No. 29337 (Civil)
California No. 938 (Traffic) Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present, President.
DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
Personal specialties and project experience include:

Litigation Consulting. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.) Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

Transportation Centers. Project manager for Daly City Intermodal Study which developed a \$7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking .

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al.* Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard *et al.*, U.S. Department of Transportation, 1979.

Strategic Concepts in Residential Neighborhood Traffic Control, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.

EXHIBIT C

VTA's BART SILICON VALLEY— PHASE II EXTENSION PROJECT

FINDINGS, FACTS IN SUPPORT OF FINDINGS, AND STATEMENT OF OVERRIDING CONSIDERATIONS

PREPARED BY:

Santa Clara Valley Transportation Authority



March 2018

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Chapter 1

Introduction

A lead agency must prepare written findings of fact (Findings) for each significant effect on the environment identified in the Environmental Impact Report (EIR) (Section 21081 of the Public Resources Code) to support a decision on a project for which the EIR is certified.

The Santa Clara Valley Transportation Authority (VTA), as the California Environmental Quality Act (CEQA) lead agency, prepared these Findings for VTA's BART Silicon Valley Phase II Extension Project (Phase II Project). VTA prepared a Draft Supplemental Environmental Impact Statement /Subsequent Environmental Impact Report (SEIS/SEIR) in 2016 in accordance with CEQA, Public Resources Code 21000 et seq.; and the State CEQA Guidelines, California Code of Regulations, 15000 et seq. for the Phase II Project. The 2016 Draft SEIS/SEIR updated information presented in the previous environmental documents prepared for the Phase II Project, including the 2004 Environmental Impact Report, the 2007 Supplemental Environmental Impact Report, and the 2011 2nd Supplemental Environmental Impact Report. The 2018 Final SEIS/SEIR considered project changes proposed since certification of these previous CEQA documents. The Phase II Project was addressed in the 2016 Draft and 2018 Final SEIS/SEIR as the BART Extension with Transit-Oriented Joint Development (TOJD) Alternative.

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Chapter 2

Project Background and Overview

2.1 Project Background

The extension of BART into Santa Clara County is the outcome of prior decisions that have evaluated transportation needs in the BART Silicon Valley corridor and major capital improvements intended to expand transit service. Prior studies hereby incorporated by reference include, but are not limited to, the following:

- *Fremont-South Bay Corridor Final Report* (VTA 1994)
- *Commuter Rail Study, Fremont-South Bay Corridor, Final Report* (VTA 1999)
- *Major Investment Study (MIS) Final Report* (VTA 2001)
- *Silicon Valley Rapid Transit Corridor – BART Extension to Milpitas, San Jose and Santa Clara, Draft Environmental Impact Statement/Environmental Impact Report and Draft 4(f) Evaluation (including supporting appendices and technical reports)* (VTA 2004)
- *Silicon Valley Rapid Transit Corridor – BART Extension to Milpitas, San Jose and Santa Clara, Final Environmental Impact Report (including supporting appendices and technical reports)* (VTA 2004)
- *Silicon Valley Rapid Transit Corridor – BART Extension to Milpitas, San Jose and Santa Clara, Draft Supplemental Environmental Impact Report (including supporting appendices and technical reports)* (VTA 2007)
- *Silicon Valley Rapid Transit Corridor – BART Extension to Milpitas, San Jose and Santa Clara, Final Supplemental Environmental Impact Report (including supporting appendices and technical reports)* (VTA 2007)
- *Silicon Valley Rapid Transit Corridor – Draft Environmental Impact Statement and Draft Section 4(f) Evaluation (including supporting appendices and technical reports)* (VTA 2009)
- *Silicon Valley Rapid Transit Corridor – Final Environmental Impact Statement and Final Section 4(f) Evaluation (including supporting appendices and technical reports)* (VTA 2010)
- *BART Silicon Valley Phase I – Berryessa Extension Draft 2nd Supplemental Environmental Impact Report* (VTA 2010)
- *BART Silicon Valley Phase I – Berryessa Extension Final 2nd Supplemental Environmental Impact Report* (VTA 2011)

These studies constitute a comprehensive, systematic study of transportation conditions in the BART Silicon Valley corridor, including existing and future needs. They also established transportation goals and objectives that guide the development of transportation solutions that address identified needs.

The 2001 MIS served as a federal alternatives analysis of the various transportation investment options for the Silicon Valley Rapid Transit Corridor (now called BART Silicon Valley). Eleven alternatives were identified in the 2001 MIS that addressed project goals and corridor needs. The alternatives were analyzed for consistency in meeting goals and needs, capital and operating costs, possible environmental effects, and eight performance measures. Results of the MIS were reviewed by VTA's Board of Directors, which on November 9, 2001, approved a locally preferred alternative that would extend BART service from Fremont through Milpitas, San Jose, and into Santa Clara. The alternative came to be designated the Silicon Valley Rapid Transit Corridor Project (SVRTC Project), now called VTA's BART Silicon Valley Program.

A combined Draft Environmental Impact Statement/Environmental Impact Report (Draft EIS/EIR) and Draft 4(f) Evaluation for the 16-mile SVRTC Project was prepared in accordance with the requirements of NEPA and CEQA and released for public comment in March 2004. Subsequent to the start of the public review period for the Draft EIS/EIR, the NEPA Notice of Intent to prepare an EIS was published for the BART Warm Springs Extension, a 5.4-mile project extending from the existing end-of-the-line Fremont BART Station to south Fremont, terminating at the then-proposed Warm Springs Station. The Warm Springs Extension was a required precursor project to the SVRTC Project.

Once BART decided to pursue federal funding for in the Warm Springs Extension, the SVRTC Project was determined not ripe for NEPA review because it was in the early stages of planning, and the BART Warm Springs Project was now a critical link between the existing BART system and the SVRTC Project. Funding for the operation and construction of the SVRTC Project was still being explored at that time. Consequently, VTA withdrew the SVRTC Project from FTA's New Starts project qualification and funding program. This included formal withdrawal from the FTA preliminary engineering phase of project development. VTA continued with the environmental process under CEQA in order to advance planning.

A Final EIR was prepared and certified by the VTA's Board of Directors in December 2004. A Final Supplemental EIR updating the 2004 EIR to address project design refinements was certified by the VTA's Board of Directors in June 2007.

In mid-2007, VTA requested FTA approval to begin the NEPA process again, and FTA concurred. On September 21, 2007, FTA published in the Federal Register a Notice of Intent to Prepare an EIS on the SVRTC Project. VTA and FTA held public scoping meetings in October 2007 to solicit comment on the scope of project improvements and issues for evaluation as part of the environmental studies.

A Draft EIS was released for public comment in March 2009, and a Final EIS was published in March 2010. On June 24, 2010, the FTA issued a Record of Decision (ROD) on the first phase of the SVRTC Project, an approximately 10-mile segment from Warm Springs to Berryessa—designated the Phase I Project. This formally approved the Phase I Project to move forward into detailed design and construction. The decision reflected the fact that VTA had funding committed or in the pipeline for an initial 10-mile segment of the full 16-mile SVRTC Project. Funding for the full 16-mile project was, at the time, not committed or in the immediate pipeline. VTA proceeded to complete design and initiated construction on this initial segment (the Phase I Project).

A Draft 2nd Supplemental EIR was prepared and issued for public review in November 2010 to make the CEQA analysis consistent with the NEPA analysis for the 10-mile Phase I Project. The Final 2nd Supplemental EIR was certified and the Phase I Project approved by VTA's Board of Directors in March 2011.

The remaining approximately 6 miles of the SVRTC Project is referred to as the Phase II Project. The 2016 Draft and 2018 Final SEIS/SEIR analyzed alternatives described in Chapter 2. Because it has been over 6 years since preparation and publication of the 2010 Final EIS on the SVRTC Project, now called VTA's BART Silicon Valley Program, and because VTA is now focused on the remaining approximately 6 miles for completion, a Supplemental Environmental Impact Statement to the 2010 FEIS was prepared pursuant to NEPA.

The CEQA EIR and NEPA EIS processes have been brought up to date since the Phase II Project was last addressed under CEQA in the 2007 Supplemental EIR and under NEPA in the 2010 EIS. Since the prior documents were adopted, background conditions had changed, regulatory settings had changed, and there was a new alternative to be evaluated. Therefore, VTA, with FTA concurrence, elected to prepare a combined Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report (SEIS/SEIR) on the remaining approximately 6-mile Phase II Project. A Subsequent EIR was prepared instead of a Supplemental EIR because substantial changes were required, such as the addition of the CEQA BART Extension with TOJD (Transit-Oriented Joint Development) Alternative. This new alternative required major revisions to the previous EIRs due to new significant environmental impacts. VTA decided to add a land use development component, the CEQA BART Extension with TOJD Alternative, in order to maximize transit-oriented development potential, to increase ridership, to fulfill the local and regional goals to integrate transit-oriented development at transit stations, and to integrate the planning, design, and construction of both the land use development and the BART Extension.

2.2 Project Overview

The Phase II Project that VTA staff is recommending for approval, the BART Extension with TOJD Alternative, consists of the 6-mile BART Extension, including four BART stations

(Alum Rock/28th Street, Downtown San Jose, Diridon, and Santa Clara) along with transit-oriented joint development (TOJD) at the four BART stations and at the two mid-tunnel ventilation structure sites. VTA staff is recommending the selection of the Downtown San Jose Station West, Diridon Station North, and Single-Bore Options. While analyzed in the 2016 draft and 2018 final joint documents, no decision is being made on the location of the Stockton Avenue ventilation structure and tunnel-boring machine options as this time. The TOJD consists of retail, office, and residential uses. The Alum Rock/28th Street and Santa Clara Stations would include retail, office, and residential uses; the Downtown San Jose and Diridon Stations would incorporate retail and office uses; and the two ventilation structures would have retail uses on the street frontage.

2.3 CEQA Process

On January 30, 2015, VTA issued the Notice of Preparation for the Draft SEIS/SEIR. VTA conducted three formal environmental scoping meetings to gather input and comments prior to the development of the SEIS/SEIR. Meetings were held on February 12, 17, and 19, 2015, in downtown San Jose, east San Jose, and Santa Clara.

The Draft SEIS/SEIR was circulated for public comment from December 28, 2016 through March 6, 2017. Public hearings were held January 25, 26, and 30, 2017 in downtown San Jose, east San Jose, and Santa Clara to take comments from interested parties and the public regarding the alternatives, impacts, and proposed mitigation measures. The times and locations of the public hearings were announced in direct mailings, on VTA's website, in display advertisements in local newspapers of general circulation in the area, and in the *Federal Register*. Responses were provided in the 2018 Final SEIS/SEIR for all substantive comments received in writing prior to the close of the public comment period or entered into the public record at the public hearings.

2.4 Permits and Approvals

Table 1 identifies the required permits and approvals for the Phase II Project as evaluated in the SEIS/SEIR.

Table 1: Required Permits and Approvals

Agency	Permits and Approvals
Federal Railroad Administration	Coordination regarding common corridor and crossing under Caltrain/UPRR ROW.
Federal Aviation Administration	FAR Part 77 construction height limitations for cranes operating in the Diridon Station area.
Federal Highway Administration	Approval of plans for crossings under U.S. 101 and I-880.
California Department of Transportation	Approval of plans for crossings under U.S. 101, SR 82, SR 87, and I-880. Encroachment permit for any work or traffic control within the state right-of-way.
State Office of Historic Preservation	Approval and execution of Programmatic Agreement and Treatment Plan describing procedures for protection and mitigation of impacts on historic and cultural resources pursuant to Section 106 of the National Historic Preservation Act and Code of Federal Regulations, Title 36, Part 800.
California Public Utilities Commission	Coordination regarding common corridor and responsibility for all safety and security certification of the system.
San Francisco Bay Area Rapid Transit District	Approval of Phase II Project pursuant to VTA/BART Comprehensive Agreement.
Peninsula Corridor Joint Powers Board (Caltrain)	Encroachment permit for crossing under railroad tracks at Diridon.
State Water Resources Control Board and San Francisco Bay Regional Water Quality Control Board	Approval of Section 402 General Construction Activity National Pollutant Discharge Elimination System Permit for construction phase impacts and project-specific construction compliance measures. Incorporation of Section 402 Phase II Small Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System General Permit project-specific control measures to reduce the discharge of stormwater pollutants to the Maximum Extent Practicable. Waste discharge requirements for discharges of stormwater associated with industrial activities, excluding construction activities (Industrial General Permit) for Newhall Maintenance Facilities.
Bay Area Air Quality Management District	Various permits for operating the Newhall Maintenance Facility.
Santa Clara Valley Water District	Issuance of encroachment permit if construction comes within specified limits of any Santa Clara County stream. Well permits for geotechnical and chemical investigations or groundwater monitoring. Permits for monitoring and dewatering well installations and destructions per District Ordinance 90-1.
City of San Jose	Encroachment permit for construction in the City ROW. Master Cooperative Agreement and Mutual Aid Agreements. Responsible Agency in accordance with CEQA. General Plan conformance, Historic Preservation Permits, Public Improvement Permits, and Subdivision Map as applicable Approval of rezoning. Site and Architectural Review Issuance of site development, grading, and building permits.
City of Santa Clara	Encroachment permit for construction in the City ROW. Master Cooperative Agreement and Mutual Aid Agreements. Responsible Agency in accordance with CEQA. Approval of rezoning. Site and Architectural Review. Issuance of grading, building, and occupancy permits.

2.5 Alternatives Rejected

2.5.1 No Build Alternative

The No Build Alternative would avoid the significant unavoidable impacts associated with construction and operation of the BART Extension with TOJD Alternative. This includes the significant and unavoidable impacts discussed in Section 3.4.1. However, the No Build Alternative would not achieve the overall project goal to improve transit services and increase intermodal connectivity, thereby improving mobility and accessibility. The No Build Alternative, by not providing a BART extension and not ensuring TOJD development, would not achieve VTA's primary objective of encouraging transit ridership and supporting land use development patterns that make the most efficient and feasible use of the existing infrastructure and public services while promoting a sense of community as envisioned by the San Jose and Santa Clara General Plans and relevant adopted specific plans. More specifically, the No Build Alternative would not improve public transit service in the corridor, enhance regional connectivity, support transportation solutions, improve mobility options, or support local and regional land use plans. Therefore, the No Build Alternative was rejected.

2.5.2 BART Extension Alternative

The BART Extension Alternative would involve VTA proceeding with construction and operation of the BART Extension to Santa Clara, but VTA would not proceed with TOJD on the identified sites.

The BART Extension Alternative would result in the following significant unavoidable impacts: construction-related transportation impacts to vehicular traffic, bicyclists, and pedestrians at all stations, the West Tunnel Portal, and Newhall Maintenance Facility; construction-related transportation impacts to transit bus operations at the Downtown San Jose and Diridon Stations; construction-related air quality impacts (nitrogen oxides emissions) at all facilities; and construction-related noise impacts at Downtown San Jose and Diridon Stations. However, these impacts would be less than those that would occur under the BART Extension with TOJD Alternative, which includes land use developments. Compared to the BART Extension Alternative, the BART Extension with TOJD Alternative would have the following additional significant and unavoidable operational impacts: vehicular traffic impacts (at the De La Cruz Boulevard and Central Expressway intersection under 2035 Forecast Year), air quality impacts (reactive organic gases emissions), and greenhouse gas emissions (generate indirect and direct emissions during operations). In addition, out of an abundance of caution, the BART Extension with TOJD Alternative is conservatively assumed to have emissions that would be inconsistent with the goals in Executive Orders S-3-05 and B-30-15, whereas the BART Extension Alternative would not be inconsistent with the goals in these Executive Orders.

While the BART Extension Alternative would have fewer/lesser significant unavoidable environmental impacts than the BART Extension with TOJD Alternative, the BART Extension Alternative would not support local and regional land use plans and facilitate efforts of the Cities of San Jose and Santa Clara to direct business and residential investments in the Alum Rock neighborhood of east-central San Jose, downtown San Jose, Diridon Station, in the vicinity of the existing Santa Clara Caltrain Station, and elsewhere in the BART Extension alignment to the extent of the BART Extension with TOJD Alternative. For example, unless TOJD is integrated into the planning for the Diridon Station, future development may be constrained and/or not promote ridership to the extent possible. As a result, the BART Extension Alternative would not achieve VTA's primary objective of encouraging transit ridership and supporting land use development patterns that make the most efficient and feasible use of the existing infrastructure and public services while promoting a sense of community as envisioned by the San Jose and Santa Clara General Plans and relevant adopted specific plans.

By approving the BART Extension with TOJD Alternative, VTA will be able to prioritize the objective of encouraging transit ridership in the development of the TOJD more efficiently than if developed by a private party that would not be as involved in the success of existing and future transit infrastructure as VTA. VTA is committed to developing the TOJD with the types of land uses, densities, and layouts of the developments to facilitate connections to existing and future transit infrastructure. This will maximize transit ridership and supporting land use patterns that promote the most efficient use of existing infrastructure. VTA's approval of the BART Extension with TOJD Alternative will ensure that the TOJD is designed to facilitate multi-modal access to encourage the use of transit to a much greater extent than the BART Extension Alternative. Therefore, the BART Extension Alternative has been rejected.

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Chapter 3 Findings

3.1 CEQA Requirements

CEQA, Public Resources Code section 21002 provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” The same statute states that the procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.” Section 21002 goes on to state that “in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects.”

Regarding these Findings, section 15091 of the CEQA Guidelines (14 California Code of Regulations) states:

- (a) No public agency shall approve or carry out a project for which an [environmental impact report] EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
 - (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
 - (2) Such changes or alternations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
 - (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.
- (b) The findings required by subsection (a) shall be supported by substantial evidence in the record.

The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417 [183 Cal.Rptr. 898].)

‘[F]easibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (Id.; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715 [29 Cal.Rptr.2d 182].)

The CEQA Guidelines do not define the difference between “avoiding” a significant environmental effect and merely “substantially lessening” such an effect. VTA must therefore glean the meaning of these terms from the other contexts in which the terms are used. Public Resources Code section 21081, on which CEQA Guidelines section 15091 is based, uses the term “mitigate” rather than “substantially lessen.” The CEQA Guidelines therefore equate “mitigating” with “substantially lessening.” Such an understanding of the statutory term is consistent with the policies underlying CEQA, which include the policy that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” (Public Resources Code section 21002, emphasis added.)

For purposes of these Findings, the term “avoid” refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less-than-significant level. In contrast, the term “substantially lessen” refers to the effectiveness of such measure or measures to substantially reduce the severity of a significant effect, but not to reduce that impact to a less-than-significant level. These interpretations appear to be mandated by the holding in *Laurel Hills Homeowners Association v. City Council* (1978) 83 Cal.App.3d 515, 519–527 [147 Cal.Rptr. 842], in which the Court of Appeal held that an agency had satisfied its obligation to substantially lessen or avoid significant impacts by adopting numerous mitigation measures, not all of which rendered the significant impacts in question (e.g., the “regional traffic problem”) to less than significant.

3.2 Legal Effects of Findings

To the extent that these Findings conclude that various proposed mitigation measures outlined in the Final SEIS/SEIR are feasible and have not been modified, superseded, or withdrawn, VTA’s Board of Directors hereby binds itself to implement these measures with the adoption of the Mitigation Monitoring and Reporting Program (MMRP). The MMRP will ensure that the mitigation measures identified in the Final SEIS/SEIR are implemented. These Findings, in other words, are not merely informational, but rather constitute a binding set of obligations.

The documents and other materials that constitute the record upon which VTA’s Board of Directors’ decision and these Findings are based can be reviewed at the following location:

VTA Environmental Programs
3331 North First Street, Building B2
San Jose, CA 95134-1927

3.3 Findings Regarding Independent Review and Judgment

Each member of VTA's Board of Directors was provided a complete copy of the Final SEIS/SEIR. VTA's Board of Directors hereby finds that the Phase II Project Final SEIS/SEIR meets the requirements of CEQA, reflects its independent judgment on the potential environmental impacts of the Phase II Project, and that it reviewed and considered the Final SEIS/SEIR prior to taking final action with respect to the Phase II Project.

3.4 Findings Regarding the Project

The Findings presented in this document for the Phase II Project are based on the substantial evidence contained in the Final SEIS/SEIR for the Phase II Project and in relevant technical studies included as part of the administrative record. The Findings do not attempt to describe the full analysis of each significant environmental impact contained in the Final SEIS/SEIR. Instead, each Finding provides a summary description of each impact, describes the applicable mitigation measures identified in the Final SEIS/SEIR and adopted by VTA's Board of Directors, and states the Findings on the significance of each impact after imposition of the adopted mitigation measures. A full explanation of these environmental Findings and conclusions can be found in the Final SEIS/SEIR and the administrative record.

In making these Findings, VTA's Board of Directors ratifies, adopts, and incorporates into these Findings the analysis and explanation in the Final SEIS/SEIR and supporting documents in the administrative record, and ratifies, adopts, and incorporates in these Findings, the determinations and conclusions of the Final SEIS/SEIR relating to environmental impacts and mitigation measures, except to the extent any such determinations and conclusions are specifically and expressly modified by these Findings.

With regard to the mitigation measures referenced in the Findings, the full text of the mitigation measures are contained in the MMRP adopted in conjunction with approval of these Findings and incorporated herein by reference.

3.4.1 Findings Regarding Significant and Unavoidable Impacts

VTA's Board of Directors determines that, for the following impacts, mitigation measures included in the Final SEIS/SEIR and required as part of the Phase II Project's approval will reduce the impacts, but not to a less-than-significant level.

Significant and Unavoidable Impacts Identified in the Final SEIS/SEIR

Transportation: Vehicular Traffic, Bicyclists, and Pedestrians

Significant Impact (Project and Cumulative): Construction Traffic (vehicular, bicyclists, and pedestrians)

Construction has the potential to affect vehicular traffic, bicyclists, and pedestrians due to lane and street closures, and detours at Alum Rock/28th Street Station, Downtown San Jose Station, Diridon Station, West Tunnel Portal, Newhall Maintenance Facility, and Santa Clara Station. In addition to lane and street closures, there would also be the presence of construction vehicles and haul truck traffic on the local roads. The construction activities would last for up to 8 years along the 6-mile corridor resulting in lane and road closures lasting several years.

Findings: VTA's Board of Directors hereby makes Finding (a)(3) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure TRA-CNST-A: Develop and Implement a Construction Education and Outreach Plan, Mitigation Measure TRA-CNST-B: Develop and Implement a Construction Transportation Management Plan, and Mitigation Measure TRA-CNST-C: Prepare and Implement an Emergency Services Coordination Plan) would lessen the impacts by managing transportation in the vicinity of construction activities to reduce conflicts between such activities, vehicular traffic, bicyclists, and pedestrians, and by providing the traveling public advance notice of construction activities and planned roadway and lane closures to adjust travel patterns, but not reduce them to a less-than-significant level. No other feasible mitigation measures are available which would substantially lessen this impact.

Given that the construction disruptions would last for up to 8 years along the approximately 6-mile corridor, the impact would remain significant and unavoidable.

Transportation: Transit – Bus

Significant Impact (Project and Cumulative): Construction-period Bus Transit Disruption

For the Downtown San Jose Station and Diridon Station only, closure and relocation of bus stops in the vicinity of these stations would be required. This would lead to route detours during construction which would decrease performance and affect local bus service. BRT service and schedules would also be affected.

Findings: VTA's Board of Directors hereby makes Finding (a)(3) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure TRA-CNST-A: Develop and Implement a Construction Education and Outreach Plan, and Mitigation Measure TRA-CNST-B: Develop and Implement a Construction Transportation Management Plan) would lessen the impacts by managing bus and BRT transit in the vicinity of construction activities to reduce conflict between such activities and bus and BRT service, but would not reduce them to a less-than-significant level. No other feasible mitigation measures are available which would substantially lessen this impact. Given that the Downtown San Jose and Diridon Station areas have high levels of transit-dependent populations and that the construction-related bus detours (and related service impingements) could last for several years, the impact would remain significant and unavoidable.

Transportation: Intersection Impact and Conflict with Congestion Management Program

Significant Impact: City of Santa Clara Intersection Impact (De La Cruz Boulevard and Central Expressway intersection) during operation

Traffic impacts would occur at the De La Cruz Boulevard and Central Expressway intersection (City of Santa Clara and Congestion Management Plan [CMP] intersection) near the Santa Clara Station in 2035 due to the TOJD element of the Phase II Project.

Findings: VTA's Board of Directors hereby makes Finding (a)(2) and (a)(3) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The Santa Clara County Department of Roads and Airports plans to convert the existing Central Expressway eastbound High Occupancy Vehicle (HOV) lane to a mixed-use lane at this intersection. This modification was included as a change to the roadway network under both the 2025 Background Plus Project Conditions and 2035 Cumulative Plus Project Conditions. In addition, Caltrans and the City of San Jose are also planning improvements to the nearby U.S. 101 and De La Cruz Boulevard-Trimble Road interchange that are scheduled to be completed in 2022, assuming funding is available. Other improvements at this intersection would require right-of way from both the City of San Jose's San Jose Mineta International Airport and private landowners. The City of Santa Clara's City Place EIR determined that a significant and unavoidable impact would occur at this intersection even with a mitigation measure at this intersection that included a second southbound right-turn lane from Central Expressway to De La Cruz Boulevard and a third northbound left-turn lane from Trimble Road to Central Expressway. The City of Santa Clara is in the process of preparing a Multimodal Improvement Plan that will address this intersection. No other feasible mitigation measures are available to substantially lessen the impact identified for this intersection. VTA is committed to preparing a Multimodal Improvement Plan for the identified impact and to coordinate with the City of Santa Clara and the County of Santa Clara in its preparation as described in Volume I, Section 3.5.3.4 of the Final SEIS/SEIR and hereby incorporated by reference. However, this plan is designed to implement innovative comprehensive strategies for improving systemwide multimodal

transportation as a tradeoff to increased congestion at this CMP facility. Therefore, the impact at this intersection would be significant and unavoidable.

Air Quality – Exceedance of Thresholds during Construction

Significant Impact (Project and Cumulative): Construction-period exceedance of thresholds for ROG and NO_x and cumulative net increase in criteria pollutants

Combined construction emissions (assuming overlapping construction for TOJD sites and BART Extension for worst-case analysis) for nitrogen oxides (NO_x) and reactive organic gas (ROG) emissions (from use of architectural coating at TOJDs with a low volatile organic compound) would exceed Bay Area Air Quality Management District (BAAQMD) thresholds.

Findings: VTA's Board of Directors hereby makes Finding (a)(3) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure AQ-CNST-A: Implement Dust Control Measures, Mitigation Measure AQ-CNST-B: Use U.S. Environmental Protection Agency (EPA) Tier 4 or Cleaner Engines, Mitigation Measure AQ-CNST-C: Maintain Construction Equipment, Mitigation Measure AQ-CNST-D: Minimize Idling Times, Mitigation Measure AQ-CNST-E: Use Equipment Meeting ARB Certification Standards, Mitigation Measure AQ-CNST-F: Ensure Heavy-Duty Diesel Trucks Will Comply with EPA Emissions Standards, Mitigation Measure AQ-CNST-G: Use Low-Sulfur Fuel, Mitigation Measure AQ-CNST-H: Locate Construction Areas Away from Sensitive Receptors, and Mitigation Measure AQ-CNST-I: Use Low-Volatile Organic Compound (VOC) Coatings) are consistent with BAAQMD recommendations for reduction of NO_x and ROG. Despite application of these measures, the size of the Phase II Project, concurrent construction activities on multiple construction sites and the array of machinery necessary for its implementation would still result in ROG and NO_x emissions that exceed the BAAQMD's 54 pounds per day threshold. No other feasible mitigation measures are available which would substantially lessen this impact. Therefore, the impact would remain significant and unavoidable for ROG and NO_x.

Air Quality – Exceedance of Thresholds during Operations

Significant Impact (Project and Cumulative): Operations exceedance of threshold for ROG and cumulative net increase in criteria pollutant

Combined operational BART and TOJD emissions for reactive organic gas (ROG) emissions would exceed Bay Area Air Quality Management District (BAAQMD) thresholds.

Findings: VTA's Board of Directors hereby makes Finding (a)(3) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: Significant emissions would be related to residential consumer product use (i.e. aerosol sprays) at the Alum Rock/28th Street, Downtown San Jose, and Santa Clara Stations. There is no feasible mitigation measure to reduce or control the use of consumer products within private residences. Therefore, the impact would remain significant and unavoidable for ROG during operations.

Greenhouse Gas Emissions – Net Increase in Emissions and Conflict with Plan, Policy, or Regulation to Reduce Greenhouse Gas Emissions

Significant Impact: Exceed threshold for GHG emissions during 2035 long-term conditions

Increased BART electricity consumption and the operation of TOJDs would result in a net increase in long-term (2035) GHG emissions, and TOJD emissions would exceed the conservative net zero threshold adopted for the Phase II Project. Emissions would also exceed the “Substantial Progress Indicator,” which was developed to analyze the efficiency (emissions per service population) of the TOJDs, consistent with long-term statewide climate change reduction targets. The indicator is based on the long-term goals of State Executive Order (EO) S-03-05 and Senate Bill (SB) 32. EO S-03-05 established the state GHG emission target of 80 percent below 1990 levels by 2050. SB 32 supports EO S-3-05 and legislatively established a medium-term goal for 2030 of reducing GHG emissions by 40 percent below 1990 levels. A 2035 Substantial Progress Indicator was calculated for the Phase II Project based on the statewide 1990 emissions inventory and the projected 2035 statewide population and employment levels, and a linear interpolation of the 2030 and 2050 statewide GHG reduction targets.

While the mode shift benefit achieved by the BART Extension would reduce GHG emissions, the emissions benefit would not be sufficient to offset GHG emissions from increased BART electricity consumption and the TOJDs. Accordingly, the BART Extension with TOJD Alternative would result in a net increase in long-term (2035) GHG emissions. Therefore, the BART Extension with TOJDs would not meet the substantial progress indicator, based on the goals of EO S-03-05 and SB 32 and the net zero threshold adopted for the Phase II Project.

Findings: VTA’s Board of Directors hereby makes Findings (a)(2) and (a)(3) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure GHG-A: Implement Energy Efficiency Measures, Mitigation Measure GHG-B: Participate in Food Waste Programs, Mitigation Measure GHG-C: Utilize Electrical Landscaping Equipment, Mitigation Measure GHG-D: Provide Preferential Parking for Electric Vehicles, and Mitigation Measure AQ-CNST-I: Use Low-VOC Coatings), Mitigation Measure AQ-CNST-E: Use Equipment Meeting ARB Certification Standards, Mitigation Measure AQ-CNST-F: Ensure Heavy-Duty Diesel Trucks Will Comply with EPA Emissions Standards, and Mitigation Measure AQ-CNST-G: Use Low-Sulfur Fuel would lessen the impact but not

reduce it to a less-than-significant level. Large reductions will need to be made through state (and, most likely, federal) action to achieve the deep cuts in GHG emissions outlined in EO S-03-05 and SB 32. Such actions include, but are not limited to electrification of the transportation sector, net zero buildings, increased penetration of renewable energy in the electric power sector, and implementation of a long-term cap and trade program. The specific project-level benefits of future state (or federal) action cannot be presumed at this time, although it is likely that the Phase II Project's actual emissions in 2035 would be lower than the levels presented in the Final SEIS/SEIR. No other feasible mitigation measures are available which would substantially lessen this impact. Although it is possible that future state and federal actions will reduce BART Extension emissions to net negative and TOJD emissions to a level below the substantial progress indicator, this cannot be presumed at this time. Therefore, even with the implementation of the above mitigation measures, the impact would remain significant and unavoidable.

Noise

Significant Impact (Project and Cumulative): Exceed noise criterion for residences during construction

Construction activities at Downtown San Jose Station and Diridon Station would exceed noise criterion for residences.

For the Downtown San Jose Station, buildings on Santa Clara Street are approximately 40 feet from the centerline of the closest construction activity. For the residences in the area, nighttime construction could exceed the 8-hour L_{eq} limit of 70 dBA.

The area surrounding the Diridon Station is primarily characterized by a mix of commercial buildings (the closest would be 140 feet from the staging area), a church (255 feet away), and residences (the closest multi-family residence would be 200 feet away). For the residences in the area, nighttime construction could exceed the 8-hour L_{eq} limit of 70 dBA.

Findings: VTA's Board of Directors hereby makes Finding (a)(3) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure NV-CNST-A: Incorporate FTA Criteria Compliant Construction Noise and Vibration Specifications, Mitigation Measure NV-CNST-B: Locate Equipment as Far as Feasible from Sensitive Sites, Mitigation Measure NV-CNST-C: Construct Temporary Noise Barriers, Mitigation Measure NV-CNST-D: Operate Equipment to Minimize Annoying Noise and Vibration, Mitigation Measure NV-CNST-E: Route Construction Trucks along Truck Routes Least Disturbing to Residents, Mitigation Measure NV-CNST-F: Secure Steel and Concrete Plates over Excavated Holes and Trenches, Mitigation Measure NV-CNST-G: Use Best Available Practices to Reduce Excess Noise and Vibration, Mitigation Measure NV-CNST-H: Adhere to Local Jurisdiction Construction Time Periods, to the Extent Feasible,

Mitigation Measure NV-CNST-I: Perform Preconstruction Ambient Noise Measurements at All CSAs, Mitigation Measure NV-CNST-J: Implement a Construction Noise Control and Monitoring Plan, Mitigation Measure NV-CNST-K: Require Minimum Qualifications for the Acoustical Engineer, Mitigation Measure NV-CNST-L: Prohibit Operation of Noise-Generating Equipment Prior to Acceptance of Noise Control and Monitoring Plan, Mitigation Measure NV-CNST-M: Install Long-Term Noise Monitors at CSAs during all Construction Phases, Mitigation Measure NV-CNST-N: Ensure Equipment is Pre-certified to Meet Noise Limits, and Mitigation Measure NV-CNST-O: Implement a Complaint Resolution Procedure) would lessen the noise impacts, but not reduce them to a less-than-significant level. No other feasible mitigation measures are available which would substantially lessen nighttime impacts. Nighttime construction activities cannot be restricted because certain construction activities, such as utility relocations to minimize service disruptions, materials and heavy equipment transport on local roadways to minimize traffic impacts, and concentrating various construction activities over shorter time periods to minimize morning and afternoon peak hour traffic delays would result in other environmental impacts if not permitted at night. Therefore, the impact would remain *significant and unavoidable*.

3.4.2 Findings Regarding Significant Impacts Mitigated to Less-than-Significant Levels

VTA's Board of Directors has determined that, for the following impacts, mitigation measures included in the Final SEIS/SEIR and adopted as part of the Phase II Project's approval will mitigate the impacts of the Phase II Project to a less-than-significant level.

Significant Impacts Mitigated to Less-than-Significant Levels Identified in the Final SEIS/SEIR

Transportation: Vehicular Traffic, Bicyclists, and Pedestrians

Significant Impact: Construction Traffic (vehicular, bicyclists, and pedestrians)

Construction has the potential to affect vehicular traffic, bicyclists, and pedestrians due to lane and street closures and detours at the 13th Street and Stockton Avenue Ventilation Structures. For construction of the 13th Street Ventilation Structure on Santa Clara and 13th Street, one lane in each direction on Santa Clara would be maintained as open during construction. Similarly for Stockton Avenue Ventilation Structure, one lane in each direction on Stockton Avenue would be maintained as open during construction. The 13th Street and Stockton Avenue Ventilation Structures involve construction of aboveground structures outside the road ROW; therefore, disruptions to adjoining streets would not last more than a few days at a time.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure TRA-CNST-A: Develop and Implement a Construction Education and Outreach Plan, Mitigation Measure TRA-CNST-B: Develop and Implement a Construction Transportation Management Plan, and Mitigation Measure TRA-CNST-C: Prepare and Implement an Emergency Services Coordination Plan) would reduce impacts to a less-than-significant level by managing traffic conflicts such that through traffic will be able to continue to travel on Santa Clara Street and Stockton Avenue.

Transportation: Emergency Access

Significant Impact: Inadequate emergency access during construction

Construction activities have the potential to impede movement of emergency service providers during construction along the corridor.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure TRA-CNST-C: Prepare and Implement an Emergency Services Coordination Plan) would ensure that VTA works with local emergency providers regarding closures and detours to implement a plan to ensure adequate emergency access is maintained during construction.

Transportation: Intersection Operations and Conflict with Congestion Management Program

Significant Impact: Cities of Santa Clara and San Jose intersection impacts during operation

Traffic impacts would occur during project operations at three intersections near the Santa Clara Station in 2035: Coleman Avenue and Brokaw Road (City of Santa Clara intersection), Lafayette Street and Lewis Street (City of Santa Clara intersection), Coleman Avenue and I-880 Southbound Ramps (City of San Jose and CMP intersection).

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure TRA-A: Implement Intersection Improvements at Coleman Avenue and Brokaw Road, Mitigation Measure TRA-B: Implement Intersection Improvements at Lafayette Street and Lewis Street, and Mitigation Measure TRA-C: Implement Intersection Improvements to Coleman Avenue and I-880 Southbound Ramps) would ensure that the intersections operate at an acceptable level of service. Therefore, the impacts are reduced to a less-than-significant level.

Air Quality – Exceedance of Thresholds – Expose Sensitive Receptors to Pollutants

Significant Impact: Construction-period exceedance of thresholds for particulate matter and cancer risk for sensitive receptors

During construction of BART stations and TOJD, the annual increase in concentrations of particulate matter less than or equal to 2.5 microns in diameter (PM_{2.5}) and cancer risk would exceed the BAAQMD significance thresholds for nearby sensitive receptors.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided and based on BAAQMD recommendations (Mitigation Measure AQ-CNST-B: Use U.S. Environmental Protection Agency (EPA) Tier 4 or Cleaner Engines) would ensure that emissions do not exceed BAAQMD thresholds. Therefore, this mitigation measure will reduce the impact to a less-than-significant level

Greenhouse Gas Emissions – Increase in Emissions and Conflict with Plan, Policy, or Regulation to Reduce Greenhouse Gas Emissions

Significant Impact: Construction activities would result in substantial greenhouse gas emissions

Construction activities would generate direct emissions of carbon dioxide, methane, and nitrous oxide from mobile and stationary construction equipment exhaust as well as employee and haul truck vehicle exhaust. Indirect emissions would be generated from water use for fugitive dust control. BAAQMD's CEQA Guidelines do not identify a quantitative GHG emission threshold for construction emissions. Instead, BAAQMD recommends that GHG emissions from construction be quantified and disclosed and that a determination regarding the significance of the GHG emissions be made.

Findings: VTA's Board of Directors hereby makes Findings (a)(1) and (a)(3) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided Mitigation Measure GHG-B: Participate in Food Waste Programs, Mitigation Measure GHG-C: Utilize Electrical Landscaping Equipment, Mitigation Measure GHG-D: Provide Preferential Parking for Electric Vehicles, Mitigation Measure AQ-CNST-E: Use Equipment Meeting ARB Certification Standards, Mitigation Measure AQ-CNST-F: Ensure Heavy-Duty Diesel Trucks Will Comply with EPA Emissions Standards, and Mitigation Measure AQ-CNST-G: Use Low-Sulfur Fuel would reduce the impact to a less-than-significant level.

Biological Resources and Wetlands – Nesting Birds

Significant Impact: Construction-period impacts to nesting birds during tree removal and pruning

If tree removal and pruning occurs during nesting season, they have the potential to affect nesting birds. The Phase II Project would result in the removal of on-street or urban trees throughout the project alignment and at the stations.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure BIO-CNST-A: Avoid Nesting Bird Season and Mitigation Measure BIO-CNST-B: Conduct Preconstruction/Predisturbance Surveys for Nesting Birds) would lessen the impact to a less-than-significant level by timing construction to avoid the nesting season or conducting surveys for nesting birds prior to disturbance activities and implementing protective measures accordingly.

Biological Resources and Wetlands – Roosting Bats

Significant Impact: Construction-period impacts to roosting bats during tree removal and demolition activities

Tree removal and demolition of existing structures to clear construction staging areas have the potential to affect roosting bats.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure BIO-CNST-C: Conduct Preconstruction Surveys for Roosting Bat and Implement Protective Measures) would lessen the impact to a less-than-significant level by identifying roosting bat colonies prior to construction and protecting those colonies during construction.

Biological Resources and Wetlands – Tricolored Blackbirds

Significant Impact: Construction-period impacts to tricolored blackbirds, a special-status species, during vegetation removal

There is a potential for tricolored blackbirds to occur along the Guadalupe River and Los Gatos Creek. Along the Guadalupe River and Los Gatos Creek, tricolored blackbird surveys are required under the Santa Clara Valley Habitat Plan.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure BIO-CNST-E: Conduct Preconstruction Tricolored Blackbird Nesting Surveys and Determine Appropriate Action) would lessen the impact to a less-than-significant level by identifying tricolored blackbird nesting habitat prior to construction, monitoring for active colonies during the breeding season, and protecting this habitat during construction.

Biological Resources and Wetlands – Burrowing Owls

Significant Impact: Construction-period impacts to burrowing owls, a special statuses species, during vegetation removal

The Santa Clara Valley Habitat Plan has designated the area surrounding the Newhall Maintenance Facility as a western burrowing owl survey area, and vegetation removal in that area has the potential to affect burrowing owls.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure BIO-CNST-F: Conduct Preconstruction/Predisturbance Western Burrowing Owl Surveys and Determine Appropriate Action) would lessen the impact to a less-than-significant level by identifying burrowing owl nests prior to construction and protecting owls through the avoidance, minimization of impacts, monitoring and mitigation of impacts (if required) during construction.

Biological Resources and Wetlands – Riparian Habitat

Significant Impact: Construction-period impacts to riparian habitat

Construction activities at the construction staging area near Lower Silver Creek, the State Route (SR) 87 CSA near the Guadalupe River, and construction of the systems facilities at Diridon Station near Los Gatos Creek may result in a significant impact on riparian habitat adjacent to these facilities.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure BIO-CNST-D: Protect Riparian Habitat) would lessen the impact to a less-than-significant level by marking environmentally sensitive areas on plans including all riparian areas identified along the Guadalupe River and Los Gatos Creek ensuring such habitat is marked with

protective orange fencing or flagging during construction to avoid disturbance or accidental intrusion by workers or equipment. In addition, contractors will not use night lighting for construction activities and staging near the riparian area.

Biological Resources and Wetlands – Wildlife Movement and Nurseries

Significant Impact: Construction-period impacts may interfere with wildlife movement or impede use of wildlife nursery sites

If tree removal and pruning occurs during nesting season, they have the potential to impede the use of nursery sites. The Phase II Project would result in the removal of on-street or urban trees throughout the project alignment and stations.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure BIO-CNST-A: Avoid Nesting Bird Season and Mitigation Measure BIO-CNST-B: Conduct Preconstruction/Predisturbance Surveys for Nesting Birds) would lessen the impact to a less-than-significant level by timing construction to avoid the nesting season or conducting surveys for nesting birds prior to disturbance activities and implementing protective measures accordingly.

Biological Resources and Wetlands – Tree Removal

Significant Impact: Conflict with local tree ordinance or policy

The Phase II Project would require removal of street and urban trees which are predominantly landscaping trees. Removal of these trees would conflict with local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure AES-CNST-A: Replace Trees) would replace trees that would need to be removed along the alignment and/or pay in lieu fees to be used for tree replacement; thereby, lessening the impact to a less-than-significant level.

Biological Resources and Wetlands – Protection of Biological Resources

Significant Impact: Construction-period impacts may conflict with plans, policies, or ordinances related to tricolored blackbirds and burrowing owls

There is a potential for tricolored blackbirds to occur along the Guadalupe River and Los Gatos Creek. Along the Guadalupe River and Los Gatos Creek, tricolored blackbird surveys are required under the Santa Clara Valley Habitat Plan. The Santa Clara Valley Habitat Plan has designated the area surrounding the Newhall Maintenance Facility as a western burrowing owl survey area, and vegetation removal in that area has the potential to affect burrowing owls.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure BIO-CNST-E: Conduct Preconstruction Tricolored Blackbird Nesting Surveys and Determine Appropriate Action) would lessen the impact to a less-than-significant level by identifying tricolored blackbird nesting habitat prior to construction, monitoring for active colonies during the breeding season, and protecting this habitat during construction. The mitigation measure provided (Mitigation Measure BIO-CNST-F: Conduct Preconstruction/Predisturbance Western Burrowing Owl Surveys and Determine Appropriate Action) would lessen the impact to a less-than-significant level by identifying burrowing owl nests prior to construction and protecting owls through the avoidance, minimization of impacts, monitoring and mitigation of impacts (if required) during construction.

Cultural Resources – Archaeological Resources

Significant Impact: Construction activities could cause a substantial adverse change in the significance of unknown archaeological resources or disturb undiscovered human remains, including those interred outside of formal cemeteries

The Archaeological Resources Technical Report (2016 and 2017 Addenda) identified numerous locations where unknown or previously undiscovered archaeological resources (including human remains) may be discovered. Many of the sensitive areas are located under existing buildings or infrastructure. Therefore, it is not feasible to test all sensitive areas at this time. Consequently, a Programmatic Agreement and Archaeological Resources Treatment Plan has been prepared for the identification and evaluation of archaeological resources in phases, prior to construction, and treatment of archaeological resources and burials in the event that such resources are discovered during construction activities. No impacts to any known archaeological resources (1 identified within the APE) would occur.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure CUL-CNST-A: Implement Programmatic Agreement and Archaeological Resources Treatment Plan) would lessen the potential impact to a less-than-significant level by implementing the

procedures to be used to comply with Section 106 in the field and determining standards of evaluation for cultural properties. Methods included are pre-testing where possible (i.e., on open lots or undeveloped lands); testing after demolition of extant structures but before new ground-disturbing construction begins; construction-phase monitoring where appropriate; and standards for data recovery. Areas within the Area of Potential Effects (APE) where potential resources have been identified, or that are designated as highly sensitive for buried resources, will be field investigated, concentrating on, but not confined to, the area of direct effect.

Cultural Resources – Increase in Noise for Historic Properties that have an Inherent Quiet Quality

Significant Impact: Construction-related noise has the potential to result in an indirect impact on Five Wounds Portuguese National Church located near Alum Rock/28th Street Station

Construction noise has the potential to cause indirect noise impact on historic properties that have an inherent quiet quality that is part of a property's historic character and significance (i.e., churches, parks, and National Historic landmarks with significant outdoor use). Only one of the 32 historic properties within the Area, Five Wounds Portuguese National Church near Alum Rock/28th Street Station, is considered to have an inherent quiet quality. Impacts from construction of the underground station box would exceed noise levels above the FTA threshold of 85 dBA.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure NV-CNST-C: Construct Temporary Noise Barriers) and restriction on noise-generating construction activity hours in coordination with the owners and operators of the Five Wounds Portuguese National Church would lessen the potential impact to a less-than-significant level by reducing noise levels at the church site by 5 to 15 dBA.

Cultural Resources – Increase in Vibration for Historic Buildings

Significant Impact: Construction-related vibration in the vicinity of historic buildings has the potential to result in an indirect impact on historic buildings

Historic buildings in the vicinity of cut-and-cover station excavation activities may be exposed to excessive vibration at Alum Rock/28th Street Station, Downtown San Jose Station, and Diridon Station. Depending on the condition and construction of the historic buildings, excessive vibration has the potential to result in impacts ranging from minor architectural cosmetic damage to structural damage. The appropriate vibration threshold for each historic building near the construction sites depends on the individual structure, its material and condition, and the type of soils under the building. The thresholds will be

determined based on preconstruction building surveys, geotechnical investigations, and recommendations of a qualified structural engineer and architectural historian or historic architect.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure NV-CNST-P: Implement Construction Vibration Control and Monitoring Plan, Mitigation Measure NV-CNST-Q: Perform Vertical Direction Vibration Monitoring, and Mitigation Measure NV-CNST-R: Implement Preconstruction and Post-Construction Building Condition Surveys for Vibration) would lessen the potential impact to a less-than-significant level by ensuring that vibration levels are kept below the threshold for structural damage. In the event of inadvertent, construction-related damage to historic buildings, repairs will be conducted in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and consistent with 36 CFR 800.13(b).

Cultural Resources – Surface Settlement for Historic Buildings

Significant Impact: Construction-related surface settlement in the vicinity of historic buildings has the potential to result in an impact on historic buildings

Construction activities for the BART Extension have the potential to result in surface settlement and lateral ground movements during tunneling and cut-and-cover construction activities. Surface settlement and ground movements have the potential to damage structures including historic buildings. For historic buildings, a Conditions Assessment Report will be prepared in accordance with Section 106 of the NRHP. The appropriate vibration threshold for each historic building near the construction sites depends on the individual structure, its material and condition, and the type of soils under the building. The thresholds will be determined based on preconstruction building surveys, geotechnical investigations, and recommendations of a qualified structural engineer and architectural historian or historic architect.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure GEO-CNST-B: Implement Preconstruction Condition Surveys along the Tunnel Alignment, Mitigation Measure GEO-CNST-C: Monitor Ground Surface during Tunneling Activities, and Mitigation Measure GEO-CNST-D: Monitor Settlement Effects around Cut-and-Cover Excavations) would thereby lessen the potential impact to a less-than-significant level. These measures would reduce the impact by conducting preconstruction building condition surveys, identifying settlement thresholds for each historic structure, ensuring thresholds are not

exceeded, and implementing ground treatment technologies if anticipated maximum settlement would cause more than cosmetic damage. Ground surface monitoring during tunneling and cut-and-cover excavations will also lessen impacts. In the event of inadvertent, construction-related damage to historic buildings, repairs will be conducted in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and consistent with 36 CFR 800.13(b)

Geology, Soils, and Seismicity – Liquefaction

Significant Impact (Construction and Operation): During construction and operation, the alignment and stations would be located in areas of moderate to high potential for liquefaction which could damage project facilities

Liquefaction potential along the alignment is moderate to high and may damage project facilities. All of the stations and the Newhall Maintenance Facility would be in areas with moderate liquefaction potential. Approximately 700 feet northeast of Diridon Station, the alignment would cross two approximately 100-foot-wide stream channels (Los Gatos Creek and Guadalupe River, respectively), where the liquefaction potential is characterized as being very high. The approximately 500-foot-long segment of the alignment near Diridon Station between the two stream channels is rated as having moderate liquefaction potential.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure GEO-CNST-A: Incorporate Design Specifications to Minimize Effects from Liquefaction Hazards) would lessen the potential impact to a less-than-significant level by ensuring that the Phase II Project's engineering design incorporates features to reduce the impact from liquefaction, such as using pile foundations, parking garages on piles, additional reinforcement, subgrade improvements, or anchors.

Geology, Soils, and Seismicity – Surface Settlement

Significant Impact: During construction, tunnel boring and cut-and-cover construction could result in potential settlement or ground movement

Construction activities for the BART Extension have the potential to result in surface settlement of 0.5 inch to 1 inch as well as lateral ground movements during tunneling and cut-and-cover construction activities. The surface settlement and ground movements have the potential to damage structures. Along the tunnel alignment, the maximum surface settlement damage induced during tunnel boring is predicted to be in a range categorized as between negligible and slight. For cut-and-cover construction, surface settlement varies with distance from the excavation, with a maximum being at the face of the excavation wall to zero at the *limit of influence*, a horizontal distance around the excavation equal to twice the depth of excavation.

Depending on the predicted settlement and structural sensitivity to movement, the BART Extension would include ground treatment measures, strengthening of structures, and underpinning of structures on a case-by-case basis prior to tunnel boring or cut-and-cover construction. The BART Extension also would utilize Tunnel Boring Machines to minimize the risk of surface settlements and lateral ground movements.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure GEO-CNST-B: Implement Preconstruction Condition Surveys along the Tunnel Alignment, Mitigation Measure GEO-CNST-C: Monitor Ground Surface during Tunneling Activities, Mitigation Measure GEO-CNST-D: Monitor Settlement Effects around Cut-and-Cover Excavations, Mitigation Measure GEO-CNST-E: Implement Preconstruction Condition Surveys for Utilities, and Mitigation Measure GEO-CNST-F: Minimize Excavation Bottom Failure Impact) would be implemented in addition to engineering design measures to reduce impacts. Monitoring will enable VTA to undertake corrective actions to avoid significant surface settlement or ground movements and address settlement before building damage occurs. These provisions would lessen the potential impact to a less-than-significant level.

Geology, Soils, and Seismicity – Excavation Bottom Stability or Disturbance

Significant Impact: During construction, excavation for stations in soft clays could result in disturbance of sensitive deposits at excavation subgrade

Soft and loose, saturated native soil deposits could be encountered at the excavation bottom. If clay and saturated sand deposits are sufficiently disturbed during construction activities at the bottom of an excavation, the deposits could become soft and loose. Consequently, working conditions at the bottom of the excavation may become difficult and cause the loss of equipment mobility. Adequate measures will be taken to minimize the disturbance of the sensitive deposits at the excavation subgrade.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure GEO-CNST-F: Minimize Excavation Bottom Failure Impacts and Mitigation Measure GEO-CNST-G: Minimize Disturbance of Sensitive Deposits at the Excavation Subgrade), in addition to standard geotechnical engineering design, would lessen the potential impact to a less-than-significant level.

Geology, Soils, and Seismicity – Expansive Soils

Significant Impact: Portions of the alignment would be in areas with soils having moderate to high expansion potential, creating risks to life or property

Expansive soils are a concern for the proposed structures for system facilities, parking, and vehicular and pedestrian access at the stations. Some of the soils at station locations and the Newhall Maintenance Facility have high plasticity indices of between 21 and 40, meaning that the soils have moderate to high expansion potential.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure GEO-CNST-H: Incorporate Design Specifications to Minimize Effects from Expansive Soils), in conjunction with standard geotechnical engineering design, would lessen the potential impact to a less-than-significant level.

Geology, Soils, and Seismicity – Paleontological Resources

Significant Impact: Construction activities involving deep excavation have the potential to destroy a unique paleontological resource or unique geologic feature

The BART Extension would be constructed in areas of San Jose and Santa Clara that have been previously developed. Consequently, any paleontological resource or site or unique geologic feature in these areas would likely have been discovered during previous development. Excavation depths involved during construction throughout the alignment may result in the discovery of previously unknown paleontological resources.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure GEO-CNST-I: Stop Construction if Paleontological Resources are Discovered and Determine Appropriate Action) would lessen the potential impact to a less-than-significant level by providing the opportunity to assess the significance of any potential resource and, if necessary, incorporate measures to protect any significant paleontological resources that may be encountered during construction.

Hazards and Hazardous Materials – Hazardous Materials Release

Significant Impact: Construction activities such as demolition activities could accidentally release hazardous materials such as asbestos and lead-paint

Construction activities for the BART Extension would include demolition of buildings that may contain hazardous materials, such as asbestos-containing materials (ACM) and

lead-based paint (LBP). Improper removal and/or disposal of hazardous building materials during demolition activities could potentially result in an accidental release of hazardous materials into the environment.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure HAZ-CNST-A: Prepare and Implement Remedial Action Plans) would lessen the potential impact to a less-than-significant level by ensuring that plans are in place and remedial measures implemented to handle any hazardous materials that may be encountered during construction in accordance with regulatory requirements.

Hazards and Hazardous Materials – Hazardous Materials Sites

Significant Impact (Construction and Maintenance): Construction and maintenance activities could be located on a site that is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, create a significant hazard to the public or the environment

Hazardous materials may be present in soil, ballast, and groundwater beneath the alignment. Petroleum hydrocarbons, chlorinated solvents, and metals are the primary contaminants of concern in soil and groundwater from the 43 known hazardous materials release sites. Arsenic and lead are the primary contaminants of concern in shallow soil and ballast along existing railroad corridors. The disturbance of contaminated materials during construction activities, such as excavation and dewatering, could pose a potential threat to human health and the environment. The disturbance of contaminated soil and/or ballast during maintenance activities (e.g., trenching for utilities) could pose a direct exposure hazard to maintenance workers. Vapor intrusion of groundwater contaminants (e.g., chlorinated solvents) into future BART Extension buildings, such as the stations, system facilities, and maintenance facilities, could pose an inhalation hazard to indoor workers and residents. BART passengers at the above-grade Santa Clara Station could be exposed to hazardous materials in soil and/or ballast (if any) by direct contact and/or inhalation of dust.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure HAZ-CNST-A: Prepare and Implement Remedial Action Plans), in conjunction with standard safety procedures, would lessen the potential impact to a less-than-significant level by ensuring that plans are in place and remedial measures implemented to handle any hazardous materials that may be encountered during construction and maintenance activities in accordance with regulatory requirements.

Land Use – Habitat Conservation Plan or Natural Community Conservation Plan

Significant Impact: Construction and operation would conflict with an applicable habitat conservation plan or natural community conservation plan, the *Santa Clara Valley Habitat Plan* (SCVHP)

The majority of the alignment would be within the boundaries of the SCVHP. However, except for the Newhall Maintenance Facility, all of the BART Extension area has already been disturbed by urban development and not subject to the SCVHP. The portion of the Newhall Maintenance Facility within the City of San Jose would be within the western burrowing owl (*Athene cunicularia hypogea*) survey area, and Diridon Station and the State Route 87 Construction Staging Areas are near the tricolored blackbird (*Agelaius tricolor*) survey area along Guadalupe River and Los Gatos Creek, both covered by the SCVHP.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure BIO-CNST-E: Conduct Preconstruction Tricolored Blackbird Nesting Surveys and Determine Appropriate Action and Mitigation Measure BIO-CNST-F: Conduct Preconstruction Burrowing Owl Surveys and Determine Appropriate Action) would lessen the potential impact to a less-than-significant level by identifying tricolored blackbird nesting habitat and all suitable habitat for burrowing owl prior to construction, monitoring for active nest sites during the breeding season, protecting this habitat during construction, and providing mitigation for any impacts.

Noise and Vibration – Construction Noise

Significant Impact: Construction activities would expose persons to or generate noise in excess of local or FTA standards

Construction noise would exceed noise criteria for residences at Alum Rock/28th Street Station, 13th Street Ventilation Structure, Downtown San Jose Station, Diridon Station, Stockton Avenue Ventilation Structure, West Portal Tunnel Structure, and Newhall Maintenance Facility. Noise from the slurry batch plant at the West Portal is projected to result in a minor noise impact on residences located on the west side of the alignment.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure NV-CNST-A: Incorporate FTA Criteria Compliant Construction Noise and Vibration Specifications, Mitigation Measure NV-CNST-B: Locate Equipment as Far as Feasible from Sensitive Sites, Mitigation Measure NV-CNST-C: Construct Temporary Noise Barriers,

Mitigation Measure NV-CNST-D: Operate Equipment to Minimize Annoying Noise and Vibration, Mitigation Measure NV-CNST-E: Route Construction Trucks along Truck Routes Least Disturbing to Residents, Mitigation Measure NV-CNST-F: Secure Steel and Concrete Plates over Excavated Holes and Trenches, Mitigation Measure NV-CNST-G: Use Best Available Practices to Reduce Excess Noise and Vibration, Mitigation Measure NV-CNST-H: Adhere to Local Jurisdiction Construction Time Periods, to the Extent Feasible, Mitigation Measure NV-CNST-I: Perform Preconstruction Ambient Noise Measurements at All CSAs, Mitigation Measure NV-CNST-J: Implement a Construction Noise Control and Monitoring Plan, Mitigation Measure NV-CNST-K: Require Minimum Qualifications for the Acoustical Engineer, Mitigation Measure NV-CNST-L: Prohibit Operation of Noise-Generating Equipment Prior to Acceptance of Noise Control and Monitoring Plan and Noise Control Plan, Mitigation Measure NV-CNST-M: Install Long-Term Noise Monitors at CSAs during all Construction Phases, Mitigation Measure NV-CNST-N: Ensure Equipment is Pre-certified to Meet Noise Limits, and Mitigation Measure NV-CNST-O: Implement a Complaint Resolution Procedure) would lessen the potential impact to a less-than-significant level by reducing noise at the source, reducing noise between the source and receiver and restricting the hours of operation. Noise levels would be monitored and public complaints addressed in a timely fashion.

Noise and Vibration – Construction Groundborne Noise and Vibration from Tunnel Boring Machines

Significant Impact: Construction activities would expose persons to or generate excessive groundborne noise and vibration

Soils excavated by the tunnel boring machines would be removed by a muck train or conveyor system that may cause groundborne noise impacts during tunnel construction. Vibration from station and ventilation shaft excavation would be caused by excavation of shoring and installation of tiebacks where necessary; structures close to station excavation could be exposed to excessive vibration and noise.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure NV-CNST-P: Implement a Construction Vibration Control and Monitoring Plan, Mitigation Measure NV-CNST-Q: Perform Vertical Direction Vibration Monitoring, Mitigation Measure NV-CNST-R: Implement Preconstruction and Post-Construction Building Condition Surveys for Vibration, and Mitigation Measure NV-CNST-S: Implement Measures to Reduce Vibration from Muck Extraction and Supply Trains would reduce groundborne noise and vibration. Monitoring during construction will enable VTA to undertake corrective actions when groundborne noise and vibration levels approach or exceed standards. These measures would lessen the potential impact to a less-than-significant level.

Noise and Vibration – Operational Noise from Ancillary Facility

Significant Impact: BART ancillary facilities operations would expose persons to or generate noise in excess of local or FTA criteria

Untreated ventilation facilities, traction power substations, and at the systems facilities may exceed the applicable Cities of San Jose's or Santa Clara's residential noise limits.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure NV-A: Implement Noise Reduction Treatments at Ancillary Facilities) would lessen the potential impact to a less-than-significant level by including sound attenuating features and reducing noise between the source and receiver. The mitigation measure would reduce noise levels below the applicable City of San Jose's or Santa Clara's residential noise limits.

Noise and Vibration – Operational Groundborne Noise from Trains

Significant Impact: BART operations would expose persons to or generate excessive groundborne noise

During operations, groundborne noise levels are projected to exceed the FTA criteria for receptors at several locations.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure NV-B: Reduce Groundborne Noise Levels) would require VTA to undertake corrective actions before groundborne noise levels can approach or exceed the FTA criteria. Where groundborne noise levels during operations are predicted to exceed the FTA criteria, mitigation includes installation of isolated slab track or comparable mitigation strategies that achieve similar reductions. These measures would lessen the potential impact to a less-than-significant level.

Utilities and Service Systems – Water and Wastewater Supply – Operations

Significant Impact: Operation of the Phase II Project could require or result in the construction of new water treatment facilities or expansion of existing facilities, the construction of which may cause significant environmental effects

SJWC would be responsible for providing onsite water infrastructure and sewer infrastructure to connect BART facilities and TOJD to the existing water supply system and existing sewer system. In Santa Clara, it would be the TOJD applicant's responsibility to

provide onsite infrastructure to connect to SCWSU mains in the public right-of-way. Water suppliers would also evaluate the need for offsite water infrastructure improvements prior to the issuance of a building permit. New sewer infrastructure would be designed in accordance with applicable Level of Service guidelines and installed during construction. Water supply and wastewater generated at the BART stations and facilities may contribute to capacity deficiencies within offsite supply networks and sewer systems, which represents a potential impact to utility systems.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure UTIL-E: Prepare a San Jose Water Supply Infrastructure Capacity Assessment and Participate in the Improvements, Mitigation Measure UTIL-F: Prepare a Santa Clara Water Supply Infrastructure Capacity Assessment and Participate in the Improvements, Mitigation Measure UTIL-G: Prepare a San Jose Sewer Capacity Assessment and Participate in the Improvements, and Mitigation Measure UTIL-H: Prepare a Santa Clara Sewer Capacity Assessment and Participate in the Improvements) would lessen the potential impact to a less-than-significant level by sizing improvements for water and sewer appropriately and financing the Phase II Project's share of needed improvements.

Visual Quality and Aesthetics – Tree Removal

Significant Impact: Construction activities would result in tree removal

Construction activities would require removal of trees along the entire alignment. Trees may be removed or trimmed at construction staging sites to allow for construction laydown and activities. Trees would be removed as needed to accommodate station boxes, entrance portals, ventilation facilities, and system facilities.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure AES-CNST-A: Replace Trees) would lessen the potential impact to a less-than-significant level by replacing trees that need to be removed along the alignment and/or pay in lieu fees to be used for tree replacement.

Visual Quality and Aesthetics – Light or Glare

Significant Impact: Operation of the TOJDs would create a new source of substantial light or glare that would adversely affect daytime or nighttime views in the area

Several of the TOJD buildings would be taller than the surrounding built environment, particularly at the Alum Rock/28th Street, Diridon, and Santa Clara Station areas where

TOJD would range between 4 and 11 stories high and include reflective surfaces, such as windows, that may create glare. The introduction of light and glare from the TOJDs, in combination with the station areas and parking structures, would be greater than existing conditions.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure provided (Mitigation Measure AES-A: Minimize Light and Glare) would lessen the potential impact to a less-than-significant level by requiring that the building design include provisions that minimize off-site light spillage and glare.

Water Resources, Water Quality, and Floodplains – Surface Water/Water Quality Standards

Significant Impact: Construction and operation would degrade water quality or violate water quality standards

Construction activities may result in temporary increases in sediment loads and potential stormwater contamination, accidental spills of hazardous materials, and surface and groundwater impacts. Operation of new facilities may increase existing pollutants in storm drains and introduce new pollutants.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided (Mitigation Measure BIO-CNST-D: Protect Riparian Habitat (for construction) and WQ-A: Design and Implement Stormwater Control Measures (for construction and operation)), in conjunction with best management practices required by the Regional Water Quality Control Board for construction projects, would lessen the potential impact to a less-than-significant level.

Water Resources, Water Quality, and Floodplains – Groundwater Depletion

Significant Impact: Construction activities could deplete groundwater supplies or interfere with groundwater recharge

Groundwater is anticipated to be encountered during excavation for the underground stations and tunnel structures. At the stations, temporary shoring walls would be installed to support the sides of deep cut-and-cover excavations and prevent groundwater intrusion. Several methods can be used for the temporary shoring of excavation walls, including soil-cement mix wall, secant pile wall, and slurry diaphragm wall. Still, some dewatering of the shallow groundwater zone would be required. The methods for dewatering could include installing a

well-based dewatering system and/or pumping water from low spots at the excavation site. The tunnel would be constructed below the water table, at an average depth of 70 feet below ground at the crown (i.e., top of the tunnel). The tunnel would be constructed using a pressurized closed-faced tunnel boring machine. This would keep out groundwater, stabilize the tunnel face, and minimize settlement. Precast concrete segmental lining units would be installed as the tunnel progresses forward to reduce groundwater intrusion. As a result, a low potential exists for reducing the volume of water in the local aquifer table.

Findings: VTA's Board of Directors hereby makes Finding (a)(1) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The proposed construction techniques would reduce the potential for groundwater depletion. In addition, Mitigation Measure HAZ-CNST-A: Prepare and Implement Remedial Action Plans would ensure that site-specific Remedial Action Plans are prepared and implemented to reduce impacts on the environment, including groundwater contamination that could result from the disturbance of hazardous materials in soil and ballast materials during construction, thus avoiding the potential for reducing the volume of water in the local aquifer table. This will lessen the potential impact to a less-than-significant level.

3.4.3 Findings Regarding Recirculation

CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR but before certification of the Final EIR. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the Phase II Project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement. The CEQA Guidelines provide the following examples of significant new information under this standard:

- A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- A substantial increase in the severity of an environmental impact would result unless mitigation is adopted that reduces the impact to a level of insignificance.
- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
- The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043).

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. The above standard is “not intend[ed] to promote endless rounds of revision and recirculation of EIRs.” (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal. 4th 1112, 1132). “Recirculation was intended to be an exception, rather than the general rule.” (*Ibid.*)

The Final SEIS/SEIR incorporates information since the Draft SEIS/SEIR was completed and contains additions, clarifications, modifications, and other changes to the Phase II Project. Where changes or additions have been made to information in the Draft SEIS/SEIR, these revisions do not change any conclusions on the significance of impacts presented in the Draft SEIS/SEIR and do not meet any of the standards for recirculation under CEQA Guidelines section 15088.5.

CEQA case law emphasizes that “[t]he CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736-737; see also *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 168, fn. 11.) “‘CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process.’ [Citation.] In short, a project must be open for public discussion and subject to agency modification during the CEQA process.” (*Concerned Citizens of Costa Mesa, Inc. v. 33rd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 936).

The Final SEIS/SEIR also includes minor edits made in response to various comments on the Draft SEIS/SEIR. These revisions were made for accuracy or providing additional supplemental information to that contained in the Draft SEIS/SEIR and did not change any conclusions of the Draft SEIS/SEIR regarding the Phase II Project’s impacts. The revisions only constituted minor revisions or augmentations to information in the Draft SEIS/SEIR that did not change any of the determinations regarding the significance of the Phase II Project’s impacts.

The VTA Board of Directors finds that none of the changes in the Final SEIS/SEIR involves “significant new information” triggering recirculation because neither the additional information nor changes to any mitigation measure resulted in any new significant environmental effects, any substantial increase in the severity of any previously identified significant effects, or otherwise trigger recirculation under CEQA standards. Note that some of the modifications were either environmentally beneficial or environmentally neutral and represent the kind of changes that commonly occur as the environmental review process works towards its conclusion.

3.5 Incorporation by Reference

The 2018 Final SEIS/SEIR is hereby incorporated into these Findings in its entirety. Without limitation, this incorporation is intended to elaborate on the regulatory requirements applicable to the Phase II Project, comparative analysis of alternatives, the basis for determining the significance of impacts, the scope and nature of mitigation measures, and the reasons for approving the Phase II Project.

3.6 Record of Proceedings

Various documents and other materials constitute the record of proceedings upon which the VTA's Board of Directors bases its Findings and decisions contained herein, including, without limitation, the Final SEIS/SEIR (text, appendices and supporting technical reports), the Findings, and the MMRP. All documents related to VTA's BART Silicon Valley Phase II Extension Project are available upon request at the VTA offices at 3331 North First Street, Building B in San Jose. In accordance with Public Resources Code Section 21167.6, subdivision (e), the record of proceedings for VTA's Board of Directors' decision on the Phase II Project held by VTA's Board Secretary include but is not limited to the following documents along with the associated VTA's Board of Directors' actions:

- 2018 Final SEIS/SEIR
- 2016 Draft SEIS/SEIR
- 2011 Final 2nd SEIR
- 2010 Draft 2nd SEIR
- 2010 Final EIS
- 2009 Draft EIS
- 2007 Final SEIR
- 2007 Draft SEIR
- 2004 Final EIR
- 2004 Draft EIS/EIR

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Chapter 4

Overriding Considerations

The Final SEIS/SEIR indicated that if the Phase II Project is implemented, certain significant and unavoidable impacts would result. These impacts would also be cumulatively significant.

- **Transportation:** Disruption to vehicular traffic, bicyclists, and pedestrians during construction near Alum Rock/28th Street Station, Downtown San Jose Station, Diridon Station, Newhall Maintenance Facility, West Portal, Santa Clara Station, and TOJDs
- **Transportation:** Intersection of De La Cruz Boulevard and Central Expressway—under 2035 Forecast Year Plus BART Extension with TOJD Conditions.
- **Transit – Bus:** Construction of Downtown San Jose Station and Diridon Station would temporarily affect local bus service.
- **Air Quality:** Exceed the ROG and NO_x emissions thresholds during construction
- **Air Quality:** Exceed the ROG emissions threshold during operation.
- **Greenhouse Gas Emissions:** Generate GHG emissions, either directly or indirectly; conflict with a plan, policy, or regulation intended to reduce GHG emissions in 2035.
- **Noise:** Exceed noise thresholds during construction near Downtown San Jose and Diridon Stations

As required by CEQA Guidelines section 15093, VTA's Board of Directors finds that the unavoidable significant effects described in **Chapter 3, Findings**, of this document are acceptable because of the overriding considerations described below. These benefits of implementing the Phase II Project outweigh its unavoidable environmental effects.

4.1 Statements of Fact in Support of Overriding Considerations

The Phase II Project addresses the need for improved transportation choices and capacity in Silicon Valley and the region. The Phase II Project would lead to an increased number of transit trips from origins and destinations in Alameda and Santa Clara Counties, as well as Contra Costa County and portions of the Central Valley (San Joaquin and Sacramento valleys) that are linked to the Santa Clara Valley by rail. Benefits of the Phase II Project include: (1) improving public transit service and modal options, (2) enhancing regional transit connectivity, (3) providing transit options to traveling on congested highways and supporting road networks, (4) improving transportation options that will maintain continuing economic vitality of the Silicon Valley, (5) improving mobility options for transit-dependent populations, (6) maximizing transit usage and ridership which reduces automobile traffic and

related air quality emissions, and (7) supporting local and regional economic and land use plans and transit investments.

Specifically, the Phase II Project would:

Improve public transit service and modal options

- The Phase II Project would improve public transit service in this corridor by providing increased transit capacity and faster, convenient access to and from major Santa Clara County employment and activity centers for corridor residents and populations throughout the Bay Area and from communities that can access the BART regional rail network. Santa Clara County residents would be provided improved access to employment and activity centers in Alameda, Contra Costa, and San Francisco Counties, including the Bay Area's major employment concentration in downtown San Francisco.

Enhance regional transit connectivity

- The Phase II Project would enhance regional connectivity by expanding and interconnecting BART rapid transit service with VTA light rail, Amtrak, ACE, Caltrain, and VTA bus services in Santa Clara County and improve intermodal transit hubs where rail, bus, auto, bicycle, and pedestrian links meet. The Phase II Project would also provide travel time savings between Alameda County and San Jose. For example, the Phase II Project would reduce the morning peak hour transit travel from Oakland to Santa Clara by 21 minutes and from Newark to downtown San Jose by 16 minutes. The Phase II Project would close transit connection gaps by connecting to Caltrain at the Diridon Station in downtown San Jose and at the Santa Clara Station in Santa Clara and to VTA's main north-south light rail spine along North First Street in central San Jose at the Downtown San Jose Station.

Transit options to traveling on congested freeways and supporting road networks

- The Phase II Project would have a beneficial effect by removing some freeway and supporting road network traffic from the ever-increasing traffic congestion in and between Alameda and Santa Clara Counties. The Phase II Project would generate a considerable number of new linked transit trips which are primarily diverted from automobile trips. In 2035, approximately 14,600 average weekday new linked trips would result from the Phase II Project.

Improve transportation options in the Silicon Valley

- The Phase II Project would support transportation solutions that would maintain the economic vitality and continuing development of Silicon Valley by expanding multimodal options and reducing reliance on single auto commute trips. Increasing the use of transit is critical to moving workers through highly-congested travel corridors that serve major employment centers. Substantial job growth is projected with almost 200,000 new jobs in Santa Clara County by 2035. The San Jose Business District has the most concentrated, as well as the highest number of, employment opportunities of the

communities along the alignment of the Phase II Project: 44,579 jobs currently and projected to reach 70,310 jobs by 2035. The San Jose Business District has a projected 58 percent increase in jobs from 2015 to 2035. And, over 50 percent of these jobs would be within ½ mile of the Phase II Project stations.

Improve mobility options for transit-dependent populations

- The Phase II Project would improve mobility options to employment, education, medical, and retail centers for corridor residents, in particular for low-income, youth, elderly, disabled, and ethnic minority populations. The Phase II Project would improve accessibility to community facilities in San Jose and Santa Clara. These are areas with concentrated low-income, low-mobility populations, and have more affordable housing. The Phase II Project would be accessible from central and east San Jose. Central San Jose, including downtown, has the highest proportion of legally binding affordable housing, relative to total housing stock, in the county.

Maximize transit usage and ridership which reduces automobile traffic and related air quality emissions

- The Phase II Project would greatly improve the transit service between downtown San Jose and Santa Clara and the primarily residential communities in the East Bay. Commuters would no longer have to transfer to a bus at the Berryessa BART Station once this station is opened, to get to downtown San Jose. Instead, the Phase II Project would provide a one-seat ride for many commuters between Alameda County and job-rich destinations along the BART corridor in Santa Clara County, thereby maximizing transit usage and ridership. Specifically, the Phase II Project would serve over 52,011 average weekday trips in 2035. This represents about 15,000 new linked transit trips compared to No Build conditions.

Support local economic and land use plans and goals and transit investments

- The Phase II Project would be consistent with local and regional plans and policies to extend the BART system, would create a unified transit system that potentially would encircle the bay, and would encourage higher-density, mixed-use development adjacent to proposed transit nodes. Santa Clara County residents have continually expressed their support for transportation improvements by passing local funding measures, such as the Measure A Transit Improvement Program, which was approved by 70.3 percent of voters in 2000. In 2008, county voters approved by 66.8 percent a 1/8-cent sales tax referred to as Measure B to fund the operating costs of BART extensions in Santa Clara County. In 2016, voters passed an additional ½-cent 30-year sales tax measure for previously approved Measure B projects including the Phase II Project.

Provide other benefits

- As discussed in the Final SEIS/SEIR, the Phase II Project is estimated to result in substantial reductions in transportation system vehicle energy requirements compared to

No Build conditions. The Phase II Project would also reduce the total vehicle miles traveled and result in lower related air quality emissions.