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

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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 NOx 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 NOx and ROGs. 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 NOx 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 NOx.

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 (PM2.5) 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 statues 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 accidently 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 NOx 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.