



**DEPARTMENT OF THE ARMY**  
 SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
 1455 MARKET STREET  
 SAN FRANCISCO, CALIFORNIA 94103-1398

FEB 16 2017

Regulatory Division

SUBJECT: File Number 2013-00413S

Mr. Tom Fitzwater  
 SVRT Environmental Planning Manager  
 VTA Environmental Programs & Resources Management, Building B-2  
 3331 North First Street  
 San Jose, California 95134

Dear Mr. Fitzwater:

This letter is written in response to your Notice of Availability of Draft Supplemental Environmental Impact Statement (DEIS) for public review of the VTA's BART Silicon Valley – Phase II Extension Project (SCH# 2002022004). An EIS was approved in 2010 for Phase I that would extend BART 16 miles from BART's Warm Springs Station in Alameda County to Santa Clara County, California. Phase II, the subject of this DEIS, would extend BART six (6) additional miles, from Berryessa to San Jose and would include four (4) additional stations and additional construction staging areas. This project would cross below Lower Silver Creek, Coyote Creek, Guadalupe River, and Los Gatos Creek via tunnel boring methodologies. Since this activity may involve grading, construction staging areas, new impervious surface and likely stormwater outfall structures, along six (6) linear miles, crossing numerous waters of the U.S., the potential to impact a water of the U.S. exists. The Corps of Engineers will need to review any portion of your project that would impact a water of the U.S.

F1-1

All proposed discharges of dredged or fill material into waters of the United States must be authorized by the Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. Section 1344). Waters of the United States generally include tidal waters, lakes, ponds, rivers, streams (including intermittent streams), and wetlands.

Although the reports included in the DEIS state that no work is to be conducted in waters of the U.S. (wetlands and other waters), it does not appear that a wetland delineation or investigation was conducted in all of the construction staging areas. It is recommended that jurisdictional delineations be conducted on these parcels if necessary, and the appropriate authorizations be obtained from the Corps of Engineers if necessary. Additionally, construction of the new stations likely involves additional impervious surface, which may lead to stormwater management facilities. If any new or modification of existing stormwater outfall structures are proposed within waters of the U.S., authorizations must be obtained from the Corps of Engineers.

F1-2

F1-3

Thank you for the opportunity to review the Draft Supplemental Environmental Impact Statement of the VTA's BART Silicon Valley – Phase II Extension Project (SCH# 2002022004). You may refer any questions on this matter to Danielle Mullen of my Regulatory staff by telephone at 415-503-6783 or by e-mail at [danielle.m.mullen@usace.army.mil](mailto:danielle.m.mullen@usace.army.mil). All correspondence should be addressed to the Regulatory Division, South Branch, referencing the file number at the head of this letter.

Sincerely,

  
Rick M. Bottoms, Ph.D.  
Chief, Regulatory Division

## Response to Comment Letter F1

### ***United States Army Corps of Engineers***

F1-1 The majority of the project alignment is subsurface, including 5 miles of subway tunnel. As noted in the comment, the tunnel alignment crosses beneath Lower Silver Creek, Coyote Creek, Guadalupe River, and Los Gatos Creek; therefore, there would be no effect on waters of the U.S. due to underground construction of the tunnel or operation of the project within the tunnel. See responses to comments S2-2 through S2-5 from the California Department of Fish and Wildlife. Refer to Sections 4.3.2.1, *Environmental Setting*, 4.3.4.2, *BART Extension Alternative*, 4.17.4.2, *BART Extension Alternative*, 6.4.2.3, *Jurisdictional Features*, 6.4.6.2, *BART Extension Alternative*, and 6.4.6.3, *BART Extension with TOJD Alternative*, for discussions of waters of the U.S.

The remainder of the project and construction staging areas (CSAs) are at-grade. With the exceptions of the Newhall Maintenance Facility site, Santa Clara Station site, and east of Coyote Creek site (described below), all of the CSAs are located on existing, developed, impervious surfaces. The Newhall Maintenance Facility site includes dirt lots and ruderal vegetation, and is surrounded by residential, transportation, and commercial development. The Santa Clara Station site includes two commercial buildings and associated parking lots with small, discontinuous areas of landscaped trees, shrubs, and grass in interior medians and along the building and site perimeters.

The project is subject to the NPDES permit requirements to address additional impervious surfaces, as summarized in Table 2-4, *Required Permits and Approvals*. Santa Clara Station area is substantially built out, and the project will not introduce significantly more impervious surface. The Newhall Yard will introduce substantially more impervious surface than the currently undeveloped dirt lots; however, the NPDES requirements for minimization of runoff and for treatment of flows will ensure that post-construction runoff does not adversely affect waters of the U.S. Flows will be discharged into an existing City storm drainage system and will not require an additional outfall be constructed within waters of the U.S. The CSAs within proximity to waters of the U.S. are located both east and west of Coyote Creek near Mabury Road (see Figure 5-2, *Proposed Mabury Road and U.S. 101 Construction Staging Areas (Revised)*), on the former railroad right-of-way at Lower Silver Creek (Figures 5-2 and 5-3, *Proposed Alum Rock Construction Staging Areas (Revised)*), within a paved parking lot under State Route (SR-) 87 at the Guadalupe River (Figures 5-7, *Proposed Diridon Station North Construction Staging Area (Revised)*, and 5-8, *Proposed Diridon Station South Option Construction Staging Areas*), and on a developed site near

Los Gatos Creek under the Diridon Station South Option (Figure 5-8). The CSA east of Coyote Creek is separated from the creek by a private road leading to the City of San Jose Corporation Yard, and is currently being used for construction purposes under the BART Phase I Project. The CSA west of Coyote Creek is paved and used for recreational vehicle storage. The CSA identified on the former railroad right-of-way, which crosses over Lower Silver, has been modified to reflect the removal of a trestle bridge over the creek due to fire (Corps File Number 2016-00268S). Figures 5-2 and 5-3 have been revised in the SEIS/ SEIR to reflect the new CSA, which includes a 100-foot setback from the top-of-banks. The CSAs near Coyote Creek, Lower Silver Creek, Guadalupe River, and Los Gatos Creek do not encroach upon or affect riparian habitat and/or the waters of the U.S. Mitigation Measure BIO-CNST-D, described in Chapter 5, Section 5.5.4, *Biological Resources and Wetlands*, requires protection of riparian habitat during construction to ensure that no encroachment occurs into sensitive habitat or associated waters of the U.S. This measure has been revised in the SEIS/ SEIR to include Coyote Creek and Lower Silver Creek, as follows:

#### **Mitigation Measure BIO-CNST-D: Protect Riparian Habitat**

VTA will design all BART Extension facilities to avoid temporary and permanent adverse effects on riparian habitat. Riparian forest areas identified along Coyote Creek, Lower Silver Creek, the Guadalupe River, and Los Gatos Creek will be identified on the plans as environmentally sensitive areas and marked with protective orange fencing or flagging during construction to avoid disturbance or accidental intrusion by workers or equipment. Night lighting from construction activities and staging will not occur in the riparian area.

VTA will implement short- and long-term NPDES permit requirements to protect water quality as summarized in Table 2-4, *Required Permits and Approvals*, for NPDES permit requirements. Please see Section 4.17, *Water Resources, Water Quality, and Floodplains*, related to operation of the project under NEPA, and Section 5.5.18, *Water Resources, Water Quality, and Floodplains*, related to construction of the project. Section 6.15, *Water Resources, Water Quality, and Floodplains* addresses water quality issues related to Transit-Oriented Joint Development under CEQA.

Given the CSAs' existing site conditions, the setback at Lower Silver Creek, and the mitigation measure to protect riparian habitat at the Guadalupe River and Los Gatos Creek, as well as permit requirements and measures to protect water quality, there would be no effect on waters of the U.S. due to construction or operation of the project.

No new or modified stormwater outfall structures are proposed as part of the project.

F1-2 A stated in Section 4.3, *Biological Resources and Wetlands*, a reconnaissance survey was conducted on November 4, 2015, to confirm existing biological resources and wetlands in the project area. Waters of the U.S. were identified at Lower Silver Creek, Coyote Creek, Guadalupe River, and Los Gatos Creek.

The CSAs in the vicinity of Lower Silver Creek, Guadalupe River, and Los Gatos Creek do not encroach upon or affect riparian habitat or waters of the U.S. See response to comment F1-1 for additional CSA information and protection measures. As these CSAs are restricted to existing, developed areas, there is no need for a jurisdictional delineation or Section 404 permit.

F1-3 No new or modified stormwater outfall structures are proposed as part of the project.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

FEB 21 2017

Ms. Dominique M. Paukowits  
U.S. Department of Transportation  
Federal Transit Administration, Region IX  
90 Seventh Street, Suite 15-300  
San Francisco, California 94103-6701

Subject: Draft Supplemental Environmental Impact Statement for the BART Silicon Valley Phase II Extension Project, Santa Clara County, California (CEQ #20160321)

Dear Ms. Paukowits:

The Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act.

EPA has reviewed and commented on the prior NEPA documents prepared for this project through the environmental review process and has participated in an interagency working group, formed under the HUD/DOT/EPA Partnership for Sustainable Communities. The Partnership coordinated with the City of San Jose and the Santa Clara Valley Transportation Authority (VTA) regarding the plan for mixed use development with a variety of housing options in the station areas in order to maximize the benefits of the federal and local transit investment and minimize environmental impacts. We commend the Federal Transit Administration (FTA) and VTA for seeking to improve public transportation options for residents of the Bay Area, and commend VTA and the Cities of San Jose and Santa Clara for encouraging transit-oriented development near proposed transit stations and facilities.

EPA provided comments on the first Draft Environmental Impact Statement (DEIS) for the overall BART extension from Warm Springs to San Jose in a May 21, 2004 letter. EPA then reviewed a revised March 2009 DEIS and provided comments on April 27, 2009. Some of our previous concerns were addressed in the 2009 DEIS and the remainder of our concerns were addressed in the 2010 Final Environmental Impact Statement (FEIS). EPA has rated this document LO, *Lack of Objections*. Please see the attached *Summary of EPA Rating Definitions* for a description of our rating system. Please consider the following recommendations as the planning and project development process continues.

F2-1

## Transit Access

In our comments on the original and revised DEISs, we expressed concerns that low-income and/or minority communities who may be transit-dependent could be impacted by changes in other transit services due to financial constraints and redirection of operations funding from local bus service to the BART extension. We commend VTA's previously stated commitment to maintaining service levels on other transportation modes when this project becomes operational and improving BART-to-bus connections in the corridor. We also support the recommendations of the operations analysis, noted in the previous FEIS, which calls for VTA to focus services in areas where ridership potential is highest, including low-income communities. We note that the Supplemental DEIS states that long-term closure of transit stops and route detours required during construction would decrease performance and affect local bus service.

F2-1,  
cont.

### *Recommendations:*

- EPA recommends that VTA continue to prioritize comprehensive multimodal transit service, including new BART service, as well as bus, light rail, and other transit services, in areas of high transit dependence, and commit to these measures in the Supplemental FEIS and ROD.
- EPA recommends that VTA identify measures to reduce the impacts to transit routes and stops during construction and include these measures, as well as a public information strategy for affected riders, in the Supplemental FEIS and ROD.

F2-2

F2-3

## Avoiding Environmental Justice Impacts

EPA previously expressed concerns about the project's impacts on low income and minority communities. We commend VTA on mitigation measures to minimize impacts to these communities and provide the following additional measures for consideration when preparing the Supplemental FEIS and ROD.

F2-4

### *Recommendations:*

- Since the document states that construction equipment and truck exhaust emissions would exceed the Bay Area Air Quality Management District significance threshold for nitrogen oxides, and this may result in impacts to sensitive receptors, EPA recommends that VTA commit to locating construction equipment and vehicles as far from sensitive receptor locations as possible, and implement all possible mitigation measures to lessen impacts to the community as a whole, and to low-income and minority community members in particular.
- The Supplemental DEIS states that construction of the Downtown San Jose Station East Option would displace nine businesses, including a discount grocery store and other neighborhood-serving uses. Since these businesses may serve local transit-dependent residents, EPA recommends that VTA work with the affected businesses to find relocation sites as close as practicable to their existing locations
- EPA recommends that VTA continue to encourage involvement of low income and minority communities in the planning process so that they may help inform mitigation measures to reduce impacts.

F2-5

F2-6

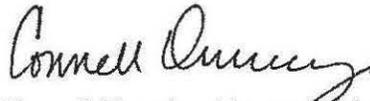
## Coordination with California High Speed Rail

Due to the ongoing planning and environmental review process for the segment of the proposed California High Speed Rail system that is proposed to be located in the Silicon Valley Phase II Extension Project area, we recommend that FTA and VTA continue regular coordination with the Federal Railroad Administration and the California High Speed Rail Authority to ensure compatibility of the two projects. In particular, we encourage FTA and VTA to identify in the Supplemental FEIS and ROD opportunities for operational connections between the two planned systems (as well as other transit modes) at Diridon Station to improve system efficiencies and maximize reducing environmental impacts.

F2-7

We appreciate the opportunity to review this Supplemental DEIS. When the Supplemental FEIS or combined Supplemental FEIS/ROD is released, please alert EPA. If you have any questions, please contact Carolyn Mulvihill, the lead reviewer for this project, at 415-947-3554 or [mulvihill.carolyn@epa.gov](mailto:mulvihill.carolyn@epa.gov).

Sincerely,



Connell Dunning, Transportation Team Supervisor  
Environmental Review Section

Enclosures:  
Summary of EPA Rating Definitions

cc: Tom Fitzwater, Santa Clara Valley Transportation Authority

## SUMMARY OF EPA RATING DEFINITIONS\*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

### ENVIRONMENTAL IMPACT OF THE ACTION

#### *"LO" (Lack of Objections)*

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

#### *"EC" (Environmental Concerns)*

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

#### *"EO" (Environmental Objections)*

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

#### *"EU" (Environmentally Unsatisfactory)*

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

### ADEQUACY OF THE IMPACT STATEMENT

#### *"Category 1" (Adequate)*

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

#### *"Category 2" (Insufficient Information)*

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

#### *"Category 3" (Inadequate)*

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

\*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.

## Response to Comment Letter F2

### ***United States Environmental Protection Agency (EPA)***

F2-1 EPA's rating of Lack of Objections (LO) for this environmental document is noted. VTA is committed to maintaining and improving the transit opportunities for its riders across all transit modes. VTA continues to remain committed to improving BART-to-bus connections in the corridor. VTA will work to minimize disruptions to transit stops and bus and LRT lines during construction to the maximum extent feasible. BART operations are being funded through a Santa Clara County voter-approved sales tax ballot measure. On November 4, 2008, voters approved Measure B, which added a 1/8-cent increment to the local sales tax effective March 2012 and continuing until March 2042. The sales tax is dedicated solely to the operation, maintenance, and infrastructure renewal costs of BART extensions into the County. Therefore, bus and light rail operations funding would not be affected by the BART service.

F2-2 VTA will continue to look for opportunities to strengthen ridership along the corridor, which will include multimodal access planning and station designs that support multiple transit connections as further described in Volume I, Chapter 2, Section 2.2.2.1, *Alignment and Station Features by City*. As shown in Tables 3-9, *2015 Existing and 2035 Forecast Year No Build Alternative Average Weekday Boardings by Transit Operator*, and 3-11, *2015 Existing and 2035 Forecast Year No Build Alternative Average Weekday Boardings by Transit Operator*, VTA is planning to carry at least twice as many light rail and bus riders in 2035 when compared to 2015.

VTA applied for and received a grant from FTA for the Pilot Program for Transit-Oriented Development Planning to support the *VTA BART Phase II – TOD and Access Planning Study*. The plan will lay out the groundwork for sustainable redevelopment along the Phase II corridor to the benefit of increased transit ridership, economic development, and increased vibrancy of station areas. The plan will also identify ways to enhance multimodal access to BART station areas from surrounding existing and proposed development. Overall, the *VTA BART Phase II – TOD and Access Planning Study* will develop strategies for development that is well-integrated into the transportation network and provide improved transportation options for local residents and business. The plan will concentrate on connecting the station areas to regional bike facilities, existing sidewalk network, and local bus system resulting in reduced need for vehicle ownership along the corridor. The study will span from early 2018 through 2019, and will include public and stakeholder engagement throughout the process.

F2-3 VTA has identified impacts on transit routes during construction in Chapter 5, Section 5.5.2, *Transportation*. However, as final designs are completed and prior to start of construction, VTA would implement the Construction Outreach Management Plan (see Section 5.5.1), which drives the effort to keep the public (including transit riders) informed of all construction activities and potential impacts as outlined in Chapters 5, *NEPA Alternatives Analysis of Construction*, and 6, *CEQA Alternatives Analysis of Construction and Operation*. The plan will include Mitigation Measures TRA-CNST-A: Develop and Implement a Construction Education and Outreach Plan, TRA-CNST-B: Develop and Implement a Construction Transportation Management Plan, and TRA-CNST-D: Provide Temporary Replacement Parking at Diridon Station, described in Chapter 5, Section 5.5.1, *Construction Outreach Management Program*.

Because VTA operates the light rail service and a majority of the bus service in the area, coordination of transit service is primarily under the purview of one organization, helping to make it a seamless and well-coordinated transit-rider notification effort. Temporary or permanent closures of bus stops, along with alternative locations for passenger boarding and alighting, are communicated along the affected routes and on location through signage, flyers, and email subscription services, among other communication methods. In major transit hubs (i.e. Diridon Station), where other transit operators are present, VTA will coordinate with those agencies, as it does now, to make sure they are aware of alternative routing and stop locations.

F2-4 See response to comment F2-3. In addition, the SEIS/SEIR includes Mitigation Measure AQ-CNST-H: Locate Construction Areas Away from Sensitive Receptors, described in Chapter 5, Section 5.5.3, *Air Quality*, which requires that construction equipment be located away from sensitive receptors and fresh-intake air vents of existing buildings and air conditioners. Sensitive receptors are identified in Section 4.2, *Air Quality*, subsection 4.2.2.1, *Environmental Setting*, under the subheading, *Sensitive Receptors*. Mitigation Measure AQ-CNST-H will be implemented to minimize impacts on these sensitive receptors. Therefore, this recommendation is already included in the SEIS/SEIR.

F2-5 Section 4.14, *Socioeconomics*, subsection 4.14.4.2, *BART Extension Alternative*, under the subheading, *Displacements and Acquisitions and Relocation Programs/Requirements*, addresses business displacements and federal, state, and VTA requirements. This includes preparing both a Real Estate Acquisition Management Plan and Relocation Assistance Plan as required by the FTA, along with VTA's Relocation Program. Assistance varies on a case-by-case basis and can be both financial (e.g., moving costs, rent subsidies, relocation costs, personal property losses, reestablishment expenses, etc.) and technical (e.g., providing information regarding suitable replacement sites, providing referrals, assisting with lease negotiations, assisting with moving logistics, etc.).

- F2-6 VTA has implemented three Community Working Groups (CWGs) that represent minority and low income communities whose purpose is to provide community leaders with information regarding planning and construction of the build alternatives. The CWGs have met for a number of years and will continue to meet throughout the construction period. Also, the membership will change and evolve as the concerns of local businesses and residents are raised and need to be addressed. The meetings are detailed in Section 10.6, *Chronology of Coordination* of the SEIS/SEIR. In addition, VTA will complete a Title VI analysis that will provide outreach for disadvantaged communities along the corridor. VTA will also implement a Construction Outreach Management Plan that drives the effort to keep the public informed of all construction activities and potential impacts as outlined in Chapters 5 and 6 of the SEIS/SEIR.
- F2-7 VTA and the California High-Speed Rail meet monthly regarding interface points along the BART Extension, including at Diridon Station, Newhall Yard, and Santa Clara Station. In addition, VTA is completing the Diridon Transportation Facilities Master Plan project, which is funded by California High-Speed Rail and VTA. This project will ensure that all modes of travel at Diridon will be considered, programmed, and coordinated. The coordination meetings are detailed in Section 10.6 of the SEIS/SEIR.