

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: August 10-11, 2011

Reference No.: 2.2c.(3)
Action

From: BIMLA G. RHINEHART
Executive Director

Subject: **APPROVAL OF PROJECT FOR FUTURE CONSIDERATION OF FUNDING
FINAL ENVIRONMENTAL IMPACT REPORT FOR THE BART SILICON VALLEY PHASE
1 – BERRYESSA EXTENSION PROJECT (RESOLUTION E-11-58)**

ISSUE:

Should the Commission, as a Responsible Agency, accept the 2nd Supplemental Final Environmental Impact Report (SFEIR-2), Findings of Fact and Statement of Overriding Considerations for the BART Silicon Valley Phase 1 – Berryessa Extension Project (Project) in Santa Clara County for future consideration of funding?

RECOMMENDATION:

Staff recommends that the Commission accept the SFEIR-2, Findings of Fact and Statement of Overriding Considerations and approve the project for future consideration of funding.

BACKGROUND:

The Santa Clara Valley Transportation Authority (VTA) is the CEQA lead agency for the BART Silicon Valley Phase 1 – Berryessa Extension Project. The project will extend BART service 9.9 miles from Warm Springs in the City of Fremont to the Berryessa district in the City of San Jose, on former Union Pacific Railroad (UPRR) right-of-way, owned by Valley Transportation Authority. The project will also construct two stations. The BART Silicon Valley Phase 1 – Berryessa Extension project is programmed by the Commission in the TCRP program.

The BART Silicon Valley Phase 1 – Berryessa Extension Project for which the FEIR covers will result in significant unavoidable impacts to traffic, energy, air quality, and noise. Specifically, the Project would have a significant impact on 4 of the 24 directional freeway segments already operating at level of service F during peak hours; have long-term significant traffic impacts on 12 intersections already operating at level of service D, E, or F; increased demand on statewide electrical transmission grid during peak periods; exceed Bay Area Air Quality Management District (BAAQMD) thresholds for nitrogen oxides (NOx) during construction. Mitigation measures and/or

alternatives to the proposed project that would substantially reduce or avoid these significant unavoidable impacts are infeasible.

VTA adopted the SFEIR-2, Findings of Fact and a Statement of Overriding Considerations for the project on March 3, 2011. VTA found that there were several benefits that outweigh the unavoidable significant environmental impacts of the project. These benefits include, but are not limited to, improving public transit service and modal options; enhancing regional connectivity; reducing congestion on highways and supporting road networks; improving regional and sub-regional air quality; improving mobility options; maximizing transit usage and ridership; and supporting local economic and land use plans. VTA established a Mitigation Monitoring and Reporting Program to ensure that the mitigation measures specified for the project are implemented.

On June 20, 2011 VTA provided written confirmation that the preferred alternative set forth in the final environmental document is consistent with the project programmed by the Commission in the TCRP program. VTA also provided written confirmation of its commitment to all of the mitigation measures stipulated in the SFEIR-2 and Mitigation Monitoring and Reporting Program.

The project is estimated to cost \$2,576,500,000 and is funded with TCRP (\$302,899,000), STIP (\$50,440,000), Federal (\$900,000,000), and Local (\$1,323,161,000) funds. Construction is estimated to begin in fiscal year 2011/12.

Attachment

- Resolution E-11-58
- Findings of Fact & Statement of Overriding Considerations
- Project Location

CALIFORNIA TRANSPORTATION COMMISSION

Resolution for Future Consideration of Funding 04 – Santa Clara County Resolution E-11-58

- 1.1 **WHEREAS**, the Santa Clara Valley Transportation Authority (VTA) has completed a Final Environmental Impact Report pursuant to the California Environmental Quality Act (CEQA) and the CEQA Guidelines for the following project:
 - BART Silicon Valley Phase 1 – Berryessa Extension Project
- 1.2 **WHEREAS**, the VTA has certified that the 2nd Supplemental Final Environmental Impact Report has been completed pursuant to CEQA and the State CEQA Guidelines for its implementation; and
- 1.3 **WHEREAS**, the project will extend BART service 9.9 miles from Warm Springs to Berryessa and construct two stations in Santa Clara County; and
- 1.4 **WHEREAS**, the California Transportation Commission, as a Responsible Agency, has considered the information contained in the Final Environmental Impact Report; and
- 1.5 **WHEREAS**, Findings of Fact made pursuant to CEQA guidelines indicate that specific unavoidable significant impacts related to traffic, energy, air quality, and noise, make it infeasible to avoid or fully mitigate to a less than significant level the effects associated with the project; and
- 1.6 **WHEREAS**, the VTA adopted a Statement of Overriding Considerations for the project; and
- 1.7 **WHEREAS**, the VTA adopted a Mitigation Monitoring and Reporting Program for the project; and
- 1.8 **WHEREAS**, the above significant effects are acceptable when balanced against the facts as set forth in the Statement of Overriding Considerations.
- 2.1 **NOW, THEREFORE, BE IT RESOLVED** that the California Transportation Commission does hereby accept the 2nd Supplemental Final Environmental Impact Report, Findings of Fact and Statement of Overriding Considerations and approve the above referenced project to allow for future consideration of funding.

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 of 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 identifies 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”) less than significant.

3.2 Legal Effects of Findings

To the extent that these findings conclude that various proposed mitigation measures outlined in the SEIR-2 are feasible and have not been modified, superseded, or withdrawn, VTA hereby binds itself to implement these measures. These findings, in other words, are not merely informational, but rather constitute a binding set of obligations that will come into effect when the VTA Board adopts a resolution approving Phase 1.

The SEIR-1 and the FEIR identify mitigation measures that will reduce significant impacts of Phase 1 or mitigate other potential impacts that may not be, strictly speaking, environmental impacts under CEQA. These mitigation measures will be incorporated into the design of Phase 1. A Mitigation Monitoring and Reporting Program (MMRP) will also be adopted by the VTA Board to ensure that the mitigation measures identified in the SEIR-2, along with those that remain applicable in the FEIR and SEIR-1, and these findings will be implemented.

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

VTA Environmental Programs and Resources Management Department
3331 North First Street, Building B
San Jose, CA 95134-1927

3.3 Findings Regarding Independent Review and Judgment

Each member of the VTA Board was provided a complete copy of the FEIR, SEIR-1, and SEIR-2 for Phase 1. The VTA Board hereby finds that the FEIR, SEIR-1, and SEIR-2 reflect its independent review and analyzed the FEIR, SEIR-1, and SEIR-2 prior to taking final action with respect to Phase 1.

3.4 Findings Regarding the Project

The Findings presented in this document for Phase 1 are based on the substantial evidence contained in the SEIR-2 for Phase 1 and in relevant technical studies included as part of the administrative record. Having reviewed and considered the information contained in the SEIR-2; the following *Findings, Facts in Support of Findings, and Statement of Overriding Considerations*; the MMRP; the FEIR; and the SEIR-1, VTA Board finds that Phase 1, as described in the SEIR-2, is an appropriate transit mode and alignment.

As discussed in **Chapter 2, Project Background and Overview**, of these *Findings, Facts in Support of Findings, and Statement of Overriding Consideration*, the design changes to BART Silicon Valley and the phased construction approach made during the design phase resulted in changes to the environmental impacts that were described in the FEIR and SEIR-1. These findings identify new significant and unavoidable impacts as well as new less-than-significant impacts with mitigation from the proposed changes to Phase 1 identified in the SEIR-2.

3.4.1 FINDINGS REGARDING SIGNIFICANT AND UNAVOIDABLE IMPACTS

The VTA Board determines that for the following significant impacts, mitigation measures included in the FEIR, SEIR-1, and SEIR-2 will lessen the impacts but will not result in a complete reduction of the impact(s) to a less-than-significant level. The findings reflect the VTA Board's decision to adopt Phase 1.

Note that **subsection 3.4.2** of this document identifies those impacts for which mitigation measures have been adopted and are reduced below the level of significance.

New Significant and Unavoidable Impacts Identified in the SEIR-2

Transportation: Vehicular Traffic—Freeways

Significant Impact: Freeway Impacts.

In the vicinity of the Berryessa Station, the freeway segment analysis shows that 24 of the 32 directional freeway segments analyzed would operate at an unacceptable level of service (LOS) F during at least one peak hour under Phase 1.

Phase 1 is projected to have a significant impact on 4 of the 24 directional freeway segments identified to operate at LOS F, according to VTA's Congestion Management Program (CMP) definition of freeway significance criteria. The segments include:

- US 101, Mabury Road to McKee Road, southbound (PM peak hour)
- US 101, I-280 to Santa Clara Street, northbound (AM peak hour)
- US 101, Santa Clara Street to I-280, southbound (PM peak hour)
- US 101, McKee Road to Santa Clara Street, southbound (PM peak hour)

Findings: VTA hereby makes finding (a)(3) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation necessary to reduce significant impacts to these freeway segments is the widening of US 101. Due to the substantial cost, this measure is not considered feasible, resulting in a significant and unavoidable impact to freeways.

Transportation: Vehicular Traffic—Intersections

Milpitas Station Intersection Impacts

Significant Impact: Great Mall Parkway and Montague Expressway (AM peak hour only)

The intersection would function at an unacceptable LOS F during both the AM and PM peak hours under 2030 No Project Conditions with Improvements. During the AM peak hour, the intersection would experience an increase in critical-movement delay of four or more seconds and an increase in the demand-to-capacity ratio (V/C) of 0.01 or more under Phase 1 conditions. This increase in delay and V/C during the AM peak hour constitutes a significant impact by VTA's CMP standards.

Findings: The VTA hereby makes finding (a)(3) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: There are no other cost effective feasible improvements that can be made at this intersection beyond those already planned under the 2030 No Project conditions. The necessary improvement to mitigate the significant impact under Phase 1 at this intersection would require a grade separation of the intersection. It should be noted that a grade separation of this intersection is included in the Valley Transportation Plan 2030 (VTP 2030) project list. However, this improvement was not included as part of the year 2030 roadway network since it was not included in the VTA 2030 (SVRTC) traffic model used for this analysis. Thus, as a conservative approach and in order to analyze the worst case scenario, this improvement was not considered to be implemented by the year 2030. Although Phase 1 would significantly impact this intersection, a grade separation of this intersection was identified as the needed improvement under 2030 No Project conditions. Therefore, since Phase 1 would contribute to the need for a grade separation of the Great Mall/Montague intersection, it would contribute a 'fair share' amount toward the implementation of this improvement. Nonetheless, this impact remains significant and unavoidable.

Significant Impact: Milpitas Boulevard and Montague Expressway (PM peak hour only).

The intersection would operate at an unacceptable LOS F during both the AM and PM peak hours under 2030 No Project conditions with Improvements. During the PM peak hour, the intersection would experience an increase in critical-movement delay of four or more

seconds and an increase in the V/C ratio of 0.01 or more under Phase 1 conditions. This increase in delay and V/C during the PM peak hour constitutes a significant impact by CMP standards.

Findings: The VTA hereby makes finding (a)(3) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: Possible improvements include a second westbound left-turn lane. Though intersection operations would slightly improve with this improvement, the significant impact to this intersection under Phase 1 would not be mitigated. Due to the relatively high projected volumes, there are no feasible at grade improvements to mitigate significant impacts at this intersection. Because Phase 1 would contribute to traffic congestion at this intersection, it will contribute a 'fair share' amount toward the implementation of this traffic improvement. Should a feasible improvement be determined, a 'fair share' contribution would be evaluated at that time. This impact remains significant and unavoidable.

Significant Impact: Old Oakland/Main Street and Montague Expressway (AM peak hour only)

The intersection would operate an unacceptable LOS F under 2030 No Project conditions with Improvements and the intersection would experience an increase in the V/C ratio of 0.01 or more during the AM peak hour under Phase 1 conditions. This constitutes a significant impact by CMP standards.

Findings: The VTA hereby makes finding (a)(3) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: There are no further feasible improvements beyond the planned Montague widening assumed under the 2030 No Project conditions that can be implemented to improve intersection levels of service to acceptable levels. The North San Jose Development Plan (NSJDP) identified the impacts to the intersection associated with its development as significant and unavoidable due to the lack of feasible mitigation measures. A traffic impact fee has been

implemented as part of the NSJDP, but is only applicable to development within the NSJDP area. Development that impacts intersections within the NSJDP area is required to make a 'fair-share' contribution towards identified improvements.

Because the Project would contribute to traffic congestion at this intersection, the Project will contribute a 'fair share' amount toward the implementation of the identified traffic improvement under 2030 No Project conditions. Should a feasible improvement be determined, a 'fair share' contribution would be evaluated at that time. This impact remains significant and unavoidable.

Significant Impact: Trade Zone Boulevard and Montague Expressway (PM peak hour only)

The intersection would operate at an unacceptable LOS F under 2030 No Project conditions with Improvements and the intersection would experience an increase in the V/C ratio of 0.01 or more during the PM peak hour under Phase 1 conditions. This constitutes a significant impact by CMP standards.

Findings: The VTA hereby makes finding (a)(3) (as described in **Section 3.1** above), as required by Public Resource Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: There are no further feasible improvements beyond the planned Montague Expressway widening assumed under No Project conditions that can be implemented to improve intersection levels of service to acceptable levels. The NSJDP identified the impacts to the intersection associated with its development as significant and unavoidable due to the lack of feasible mitigation measures. A traffic impact fee has been implemented as part of the NSJDP, but is only applicable to development within the NSJDP area. Development that impacts intersections within the NSJDP area is required to make a fair-share contribution towards identified improvements.

Because the project would contribute to traffic congestion at this intersection, the project will contribute a 'fair share' amount toward the implementation of the identified traffic improvement under 2030 No

Project conditions. Should a feasible improvement be determined, a 'fair share' contribution would be evaluated at that time. This impact remains significant and unavoidable.

Berryessa Station Intersection Impacts

Significant Impact: Flickinger Avenue and Berryessa Road (AM & PM peak hours)

The intersection would operate at LOS D and F during the AM and PM peak hours, respectively, under 2030 No Project conditions with Improvements and the intersection would degrade to an unacceptable LOS E during the AM peak hour and it would experience an increase in critical-movement delay of four or more seconds and an increase in the V/C ratio of 0.01 or more during the PM peak hour under Phase 1 conditions. This constitutes a significant impact by City of San Jose standards.

Findings: The VTA hereby makes finding (a)(3) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: There are no other feasible improvements that can be made at this intersection beyond those described for 2030 No Project conditions to mitigate project impacts. Because Phase 1 would contribute to traffic congestion at this intersection, Phase 1 will contribute a 'fair share' amount toward the implementation of the identified traffic improvement under 2030 No Project conditions. Should a feasible improvement be determined, a 'fair share' contribution would be evaluated at that time. This impact remains significant and unavoidable.

Significant Impact: Lundy Avenue and Berryessa Road (AM peak hour only)

The intersection would operate at an acceptable LOS E under 2030 No Project conditions with Improvements and the intersection would degrade to an unacceptable LOS F during the AM peak hour under Phase 1 conditions. This constitutes a significant impact by CMP standards.

Findings: The VTA hereby makes finding (a)(3) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: There are no cost effective feasible improvements that can be made beyond those described for 2030 No Project conditions to mitigate significant impacts of Phase 1. The necessary improvement to mitigate the Phase 1 significant impact at this intersection to an acceptable level consists of the addition of a fourth westbound through lane on Berryessa Road. This improvement is not feasible due to ROW constraints. Because Phase 1 would contribute to traffic congestion at this intersection, it will contribute a 'fair share' amount toward the implementation of this traffic improvement. Should a feasible improvement be determined, a 'fair share' contribution would be evaluated at that time. This impact remains significant and unavoidable.

Significant Impact: US 101 and Julian Street (PM peak hour only)

The intersection would operate at an acceptable LOS D during the PM peak hour under 2030 No Project conditions with Improvements and the intersection would degrade to an unacceptable LOS E under Phase 1 conditions. This constitutes a significant impact by City of San Jose standards.

Findings: The VTA hereby makes finding (a)(3) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: There are no other feasible improvements that can be made at this intersection beyond those planned as part of the station development. VTA proposes that the intersection be added to the city's list of Protected Intersections and adhere to the Protected Intersection Policy. The LOS policy specifies that Protected Intersections consist of locations that have been built to their planned maximum capacity and where expansion of the intersection would have significant impact upon other transportation facilities (such as pedestrian, bicycle, and transit systems). If a development project has significant traffic impacts at a designated Protected Intersection, the project may be approved if offsetting Transportation System Improvements are provided that enhance pedestrian, bicycle and transit facilities to the

community near the Protected Intersection. As part of the development of the station, surrounding pedestrian, bicycle and transit facilities will be enhanced to serve the station and surrounding community. This impact remains significant and unavoidable.

Significant Impact: King Road and McKee Road (PM peak hour only)

The level of service would be LOS E during the PM peak hour under 2030 No Project conditions with Improvements and the intersection would experience an increase in critical-movement delay of four or more seconds and an increase in the V/C ratio of 0.01 or more under Phase 1 conditions. This constitutes a significant impact by City of San Jose standards.

Findings: The VTA hereby makes finding (a)(3) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: There are no cost effective feasible improvements that can be made beyond those described for 2030 No Project conditions to mitigate significant impacts from Phase 1. The necessary improvement to mitigate the significant impact resulting from Phase 1 at this intersection to an acceptable level consists of the addition of a third westbound through lane. However, this improvement would require the widening of McKee Road, which is not feasible due to ROW constraints. Because Phase 1 would contribute to traffic congestion at this intersection, it will contribute a 'fair share' amount toward the implementation of this traffic improvement. Should a feasible improvement be determined, a 'fair share' contribution would be evaluated at that time. This impact remains significant and unavoidable.

Significant Impact: Capitol Avenue and McKee Road (PM peak hour only)

The intersection would operate at an unacceptable LOS F during the PM peak hour under 2030 No Project conditions with Improvements and the intersection would experience an increase in critical-movement delay of four or more seconds and an increase in the V/C ratio of 0.01 or more under Phase 1 conditions. This constitutes a significant impact by City of San Jose standards.

Findings: The VTA hereby makes finding (a)(3) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: As described under the 2030 No Project conditions, there are no cost effective feasible improvements that can be made at this intersection to mitigate significant impacts from Phase 1. With the newly constructed Capitol light rail transit (LRT) line, Capitol Avenue has been upgraded to its extent to allow for the operation of the LRT in its median. Further improvement of the intersection would not be compatible with LRT operations. VTA will comply with the Protected Intersection Policy as required including providing fair-share funding (amount to be negotiated) towards the construction of identified offsetting improvements. This impact remains significant and unavoidable.

Significant Impact: McLaughlin Avenue and Story Road (PM peak hour only)

The intersection would operate at an unacceptable LOS E during the PM peak hour under 2030 No Project conditions with Improvements and the intersection would experience an increase in critical-movement delay of four or more seconds and an increase in the V/C ration of 0.01 or more under Phase 1 conditions. This constitutes a significant impact by City of San Jose standards.

Findings: The VTA hereby makes finding (a)(3) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: Possible improvements include the addition of a second northbound left-turn lane. Though significant impacts would be mitigated and intersection level of service would improve with this improvement, the level of service would remain an unacceptable LOS E during the PM peak hour. The necessary improvement to improve intersection level of service to an acceptable level consists of the addition of a third southbound left-turn lane and widening of Story Road from six to eight through lanes. This improvement would require the widening of both McLaughlin Avenue and Story Road, which is infeasible due to ROW constraints. This impact remains significant and unavoidable.

Significant Impact: King Road and Story Road (AM peak hour only)

The intersection would operate at an unacceptable LOS E under 2030 No Project conditions with Improvements and the intersection would experience an increase in critical-movement delay of four or more seconds and an increase in the V/C ratio of 0.01 or more during the AM peak hour under Phase 1 conditions. This constitutes a significant impact by City of San Jose standards.

Findings: The VTA hereby makes finding (a)(3) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: As described under the 2030 No Project conditions, there are no cost effective feasible improvements that can be made at this intersection to mitigate significant impacts from Phase 1. The necessary improvement to mitigate the impact from Phase 1 at this intersection to an acceptable level consists of the widening of King Road from four to six through lanes. The widening of King Road is not feasible due to ROW constraints. Because Phase 1 would contribute to traffic congestion at this intersection, it will contribute a 'fair share' amount toward the implementation of this traffic improvement. Should a feasible improvement be determined, a 'fair share' contribution would be evaluated at that time. This impact remains significant and unavoidable.

Significant Impact: Capitol Expressway and Capitol Avenue (PM peak hour only)

The intersection would operate at an unacceptable LOS F during the PM peak hour under 2030 No Project conditions with Improvements and the intersection would experience an increase in critical-movement delay of four or more seconds and an increase in the V/C ratio of 0.01 or more under Phase 1 conditions. This constitutes a significant impact by CMP standards.

Findings: The VTA hereby makes finding (a)(3) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: As described under the 2030 No Project conditions, there are no cost effective feasible improvements that can

be made at this intersection to mitigate significant impacts from Phase 1. With the newly constructed Capitol LRT line, Capitol Avenue has been upgraded to its extent to allow for the operation of the LRT in its median. Further improvement of the intersection would not be compatible with LRT operations. VTA proposes that the intersection be added to the City's list of Protected Intersections and adhere to the Protected Intersection Policy. The LOS policy specifies that Protected Intersections consist of locations that have been built to their planned maximum capacity and where expansion of the intersection would have a significant impact upon other transportation facilities (such as pedestrian, bicycle, and transit systems). If a project has significant traffic impacts at a designated Protected Intersection, the project should provide offsetting Transportation System Improvements that enhance pedestrian, bicycle and transit facilities to the community near the Protected Intersection. VTA will comply with the Protected Intersection Policy as required including providing fair-share funding (amount to be negotiated) towards the construction of identified offsetting improvements. This impact remains significant and unavoidable.

Energy

Significant Impact: Peak Energy Demand.

In general, Phase 1 would have a neutral impact on overall energy use, since it would reduce VMT slightly, but generate a small increase in total electricity demand. Information from the California Energy Commission (CEC) suggests that any project that will increase the demand for electricity will have a significant energy impact due to constraints on electricity supply, especially during peak periods.

Phase 1 would increase demand for electricity in California. Under the No Project conditions, BART would use a total of 1,992,533 direct British thermal units (BTUs). Under Phase 1, BART would use 2,142,908 direct BTUs, resulting in an increase of about 7.5 percent for electricity demand for BART. Because forecasts indicate that existing and planned resources will not meet demand, the importation of surplus energy from other generators will be required, particularly in the Southwest and Pacific Northwest. Due to the availability of imported energy from neighboring states, the impact of Phase 1 on the electrical power generation system would not be significant.

However, according to the 2005 Integrated Energy Policy Report, congestion and bottlenecks along the state's transmission lines have worsened, causing serious disruptions in service, especially on hot summer days. Until the recommended improvements in transmission infrastructure are implemented, reliability cannot be assured. Because Phase 1 would increase demand on the statewide electrical transmission grid, this impact is significant.

Findings: The VTA hereby makes finding (a)(3) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: The required mitigation would involve implementing improvements in the statewide transmission infrastructure. Because the project has no control over these improvements and there is no guarantee that these improvements will be implemented, the electricity demand as a result of Phase 1, especially during peak periods, is considered significant and unavoidable.

Construction: Air Quality

Significant Impact: Air Quality Construction Emissions

Construction of Phase 1 would exceed the Bay Area Air Quality Management District (BAAQMD) thresholds for nitrogen oxides (NOx).

Findings: The VTA hereby makes finding (a)(3) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: Construction contractors shall implement the BAAQMD *Basic Construction Mitigation Measures* listed below and the applicable measures in the *Additional Construction Mitigation Measures*, also listed below. This includes Measure 10 in the *Additional Construction Mitigation Measures*.

Basic Construction Mitigation Measures

The following controls should be implemented at all construction sites.

1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
4. All vehicle speeds on unpaved roads shall be limited to 15 mph.
5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
8. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

Additional Construction Mitigation Measures

The following measures will also be implemented as applicable.

1. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.

2. All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
3. Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
4. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
5. The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
6. All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
7. Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel.
8. Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.
9. Minimizing the idling time of diesel powered construction equipment to two minutes.
10. Phase 1 shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NO_x reduction and 45 percent particulate matter (PM) reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.
11. Use low volatile organic compounds (VOC) (i.e., reactive organic gases) coatings beyond the local requirements (i.e., Regulation 8, Rule 3: Architectural Coatings).

12. Requiring that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NO_x and PM.
13. Requiring all contractors use equipment that meets California Air Resources Board's (CARB) most recent certification standard for off-road heavy duty diesel engines.

Construction activity would result in a potentially significant impact without the utilization of applicable BAAQMD control measures. Even with implementation of the BAAQMD construction emission measures, NO_x emissions would still exceed the BAAQMD threshold. The impact therefore remains significant and unavoidable.

3.4.2 FINDINGS REGARDING SIGNIFICANT IMPACTS MITIGATED TO LESS-THAN-SIGNIFICANT LEVELS

Significant Impacts Mitigated to Less-than-Significant Levels Identified in the SEIR-2

VTA has determined that, for the following impacts, mitigation measures included in the SEIR-2 will mitigate the impacts of Phase 1 to a less-than-significant level.

Transportation: Vehicular Traffic—Intersections

Milpitas Station Intersection Impacts

Significant Impact: Park Victoria Drive and Yosemite Drive (AM peak hour only)

The intersection would operate at an unacceptable LOS F during the AM peak hour under 2030 No Project conditions with Improvements conditions and the intersection would experience an increase in critical-movement delay of four or more seconds and an increase in the V/C ratio of 0.01 or more under Phase 1 conditions. This constitutes a significant impact by City of Milpitas standards.

Findings: The VTA hereby makes finding (a)(1) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: The necessary improvement to mitigate the significant impacts under Phase 1 at this intersection consists of the addition of a second northbound left-turn lane. Implementing this improvement would improve intersection level of service to an acceptable LOS D during the AM peak hour. It should be noted that changes to the signal timing at this location to accommodate future traffic volumes may improve intersection levels of operation without physical improvements. This mitigation would reduce the impact to a less-than-significant level.

Berryessa Station Intersection Impacts

Significant Impact: King Road and Mabury Road (PM peak hour only)

The intersection would operate at an acceptable LOS D under 2030 No Project conditions with Improvements, and the intersection would degrade to an unacceptable LOS E during the PM peak hour under Phase 1 conditions. This constitutes a significant impact by City of San Jose standards.

Findings: The VTA hereby makes finding (a)(1) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: The necessary improvement to mitigate the significant impact resulting from Phase 1 at this intersection to an acceptable level consists of the addition of a second westbound left-turn lane. Implementing this improvement would improve intersection level of service to an acceptable LOS D reducing this impact to a less-than-significant level.

Biological Resources

Significant Impact: Berryessa Station – Impacts to Riparian Habitats along Upper Penitencia Creek and Coyote Creek

There would be significant impacts to riparian habitats along Upper Penitencia Creek and Coyote Creek. Precise impacts to these habitats will be determined during subsequent engineering phases and the resource agency permit process to be completed prior to construction.

Findings: The VTA hereby makes finding (a)(1) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and

stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: VTA will design all Phase 1 facilities to avoid temporary and permanent adverse impacts to riparian habitat to the maximum extent practicable. If avoidance is not feasible, permanent impacts to the riparian habitat will be mitigated at a ratio of 3:1.¹ Mitigation will be in-kind, except that non-native species will be replaced with native species common to the planting area and will be planted onsite to the maximum extent practicable. If mitigation cannot be accommodated entirely onsite, VTA will coordinate with the California Department of Fish and Game (CDFG) to identify other potential riparian mitigation sites within the affected watershed. A qualified biologist, in coordination with resource agency personnel, will prepare a mitigation and monitoring plan for adverse impacts to riparian habitat resulting from the project. This plan will provide for the replacement of lost acreage, as well as values and functions of riparian habitat, including shaded riverine aquatic cover vegetation. Temporary impacts will be mitigated by restoring the habitat onsite, reducing this impact to a less-than-significant level.

Noise and Vibration

Significant Impact: Noise Impact

Single-family and multi-family residences would experience increases in noise levels resulting in a *Severe Impact*.

Findings: The VTA hereby makes finding (a)(1) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: Noise mitigation includes sound walls, absorptive sound walls, absorptive acoustical materials for retaining walls, and track absorption. **Table 4.13-5** of the SEIR-2 indicates the location of the noise mitigation. At one location (STA 459+50 to STA 487+00), there is an option for either track-level-sound absorption panels or a middle sound barrier that would be placed between the two

¹ This mitigation ratio is derived from the USFWS, Informal Consultation on the Proposed Silicon Valley Rapid Transit Corridor Project, Santa Clara and Alameda Counties, California, letter to VTA dated January 29, 2010.

BART alignment tracks. Approximately 13,000 to 15,000 linear feet of sound walls would be needed, depending on the mitigation option selected. Typically, the location of a sound wall is either 10 or 13 feet from the track centerline, depending on the track profile (10 feet for the retained open cut track portions and the aerial guideway, and 13 feet for the at grade and embankment track portions of the Phase 1 alignment). In areas where a sound wall is recommended on both sides of the alignment, absorptive sound walls are the recommended noise mitigation. Installing the noise mitigation would reduce the Phase 1 rail alignment noise impacts to a less-than-significant level.

Significant Impact: Noise Impact (Hostetter Road to Sierra Road)

In the area of the alignment between Hostetter Road and Sierra Road, it was determined that a sound wall would not be a practical noise mitigation measure because receptors in this area have an existing sound wall at their backyard property line. It is estimated that the receptor's sound walls would provide shielding of wayside project noise of 15 dB, which is the maximum reduction of a sound wall recognized by the FTA for a single noise barrier. Receptors in this area are projected to encounter a noise level increase of *Moderate Impact*. This is primarily due to the 3 dBA increase in noise levels associated with Phase 1. Implementation of track-level acoustical absorption would eliminate the increased noise levels.

Findings: The VTA hereby makes finding (a)(1) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: Approximately 2,500 feet of slab track acoustical absorption at track level shall be used to reduce adverse noise effects in the area of the alignment between Hostetter Road and Sierra Road. This mitigation shall occur between STA 459+50 and 486+50.

Alternatively, a middle sound barrier could be installed between STA 459+50 and 486+50 and designed to achieve a similar reduction in noise levels. A two-sided, absorptive sound barrier in the middle of S1 and S2 tracks with a minimum height of 5 feet above the top of rail is an alternative to track level absorptive panels. In addition to the middle sound barrier, sound absorptive material would be required on both retaining walls of the retained cut. The sound absorptive material on

the retaining walls would be placed as low as possible and cover a minimum of four feet in vertical extent. The material should possess a minimum noise reduction coefficient of 0.65 and a minimum absorption coefficient of 0.60 at 500 Hz. Should an alternative noise mitigation measure be evaluated and selected, that mitigation measure would be required to provide a comparable noise reduction.

During the Phase 1 start-up phase and prior to revenue operations, VTA will carry out noise testing along the civil stations where slab track acoustical absorption is being used as a mitigation measure. The testing is to ensure that the sound absorber is adequately attenuating the increased noise from the slab track. VTA will deliver a technical memo to the Federal Transit Administration (FTA) on the results of the testing.

Significant Impact: Noise Impact (second floor and above)

Residences located on or at the second floor or higher would continue to experience noise levels that exceed the FTA criteria, even with the recommended sound wall mitigation discussed above, which is considered to be at the maximum feasible height. Approximately 425 residences (including single-family and individual units in multi-family residences) in 281 buildings would remain exposed to noise in excess of the FTA criteria for a *Severe Impact*. Where needed, these residences would be considered for improved building insulation as an additional mitigation. Individual residence-specific analysis of residual noise impacts would be conducted during final design to determine the noise attenuation provided by the existing windows and exterior walls of each affected residence and the specific upgrades required to achieve an interior noise level of 45 Ldn.

Findings: The VTA hereby makes finding (a)(1) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: Noise insulation and other measures shall be provided for residences with second floors or higher that are exposed to noise levels in excess of the FTA criteria. The mitigation will be designed to achieve an interior noise level of 45 Ldn where feasible.

In addition to the recommended sound walls and retrofitting of multi-story residences with improved exterior sound isolation, sound absorptive material on the trackway structure would be necessary. This

mitigation would primarily be needed in areas where the alignment runs in a retained cut. To further reduce noise impacts to multi-story residences, a sound wall would be constructed on both sides of the track where the corridor is narrow (50 feet or less). Installation of sound absorptive material on the inside face of retaining walls and sound walls would further reduce sound levels by as much as 2 dBA. Otherwise, potentially significant noise impacts could result in noise levels in excess of the FTA criteria. **Table 4.13-7** of the SEIR-2 identifies the location and length of recommended sound wall absorptive material that would be necessary in addition to the noise mitigation specified in **Table 4.13-5** of the SEIR-2.

Installation of track-level acoustical absorption, noise testing, and noise insulation and other measures described above would reduce the noise levels to an acceptable level and would reduce the impacts between Hostetter Road and Sierra Road to a less-than-significant level.

Significant Impact: Vibration Impacts

A total of 24 residences would be affected by the Dixon landing Road retained cut alignment design.

Findings: The VTA hereby makes finding (a)(1) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: Implementation of tire derived aggregate and floating track slab with a design frequency of 8 Hz would reduce vibration impacts at adjacent residences affected by Phase 1. **Table 4.13-9** of the SEIR-2 identifies the locations where these materials would be required.

Upon project start-up, VTA will perform further testing on tire derived aggregate underlayment at its Vasona LRT Line. The vibration testing should replicate the testing presented to the FTA in 2009. The technical evaluation will then be presented to the FTA for review and comment.

Implementation of tire derived aggregate and floating track slab, as well as vibration testing, would reduce the vibration associated with Phase 1 below FTA standards and impacts would be reduced to a less-than-significant level.

Visual Quality and Aesthetics

Significant Impact: Removal of Trees

Phase 1 would result in the removal of trees, especially near the station sites. Removal of trees could degrade the existing visual quality in each applicable visual analysis area.

Findings: The VTA hereby makes finding (a)(1) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: Removal of trees will be replaced at a 1:1 ratio within the relevant visual analysis area. This replacement ratio would reduce impacts to a less-than-significant level.

Construction

Significant Impact: Construction Impacts to Local Businesses and Residents

Prior to construction, a coordinated outreach effort would be implemented to address construction issues raised by local businesses and residents. Mitigation would be implemented by VTA to address issues and inform the public and other stakeholders of the construction schedule and associated activities.

Findings: The VTA hereby makes finding (a)(1) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: A Construction Education and Outreach Plan will be developed by VTA to foster communication between VTA, various municipalities, and the public during the construction phase. The plan will be implemented to coordinate construction activities with existing business operations and other development projects, and establish a process that will adequately address the concerns of businesses and their customers, property owners, residents, and commuters. Critical components of this plan will include but are not limited to the following public outreach strategies:

- Frequent updates to stakeholder groups, business organizations, and municipalities;

- Public workshops and meetings with community members;
- Distribution of project information and advanced construction notification via flyers, emails, mailers, and face-to-face visits;
- Continuous sharing of project information and contacts posted to the website;
- Media relations—i.e., news releases, news articles, and interviews; and
- Deployment of an onsite outreach coordinator and outreach personnel.

Throughout development and implementation, the education and outreach activities will be: (1) comprehensive, seeking widespread involvement; (2) proactive, with efforts geared toward obtaining input, as well as disseminating information; (3) responsive to various needs, including translations into multiple languages and alternative formats; and (4) timely, accurate, and results oriented. This Construction Education and Outreach Plan would reduce construction impacts to local businesses and residents to a less-than-significant level.

Construction: Biological Resources

Significant Impact: Temporary Construction Impacts to Sensitive Biological Resources

Temporary construction activities could impact sensitive habitat and special-status species, including swallows and other migratory birds, roosting bats, fish and other in-stream species, water quality, California red-legged frogs, western pond turtles, and California tiger salamanders.

Findings: The VTA hereby makes finding (a)(1) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: If construction activities are scheduled to occur during the nesting season of swallows and other migratory birds (generally March through August), a pre-construction survey for nesting activity will be conducted prior to commencement of construction. If no nesting swallows are found, then no further mitigation is warranted.

If active nests are identified close to construction work, a biological monitor will monitor the nests when work begins. If the biological monitor, in consultation with the CDFG, determines that construction activities are disturbing adults incubating eggs or young in the nest, then a no work zone buffer will be established by the biological monitor around the nest until the young have fledged and the nest is no longer active. If a biological monitor, in consultation with CDFG, determines that construction activities occurring in proximity to active cliff swallow nests are not disturbing adults or chicks in the nest, then construction activities can continue. Nests that have been determined to be inactive (with no eggs or young) can be removed with CDFG approval.

A qualified biologist will conduct preconstruction surveys in suitable habitat determine the presence of roosting bats. If no roosting bats are found, then no further mitigation is warranted.

If it is determined that bats are roosting beneath a bridge, in a building, or in adjacent riparian habitat, then appropriate modifications to construction time and method will be implemented in accordance with CDFG approval. Modifications may include timing construction activities to avoid breeding periods, establishment of buffers, or biological monitoring. In some cases, bats may be actively encouraged to avoid roosting in the area impacted prior to the onset of construction activities.

To the maximum extent practicable throughout the project site, construction activities and facilities, including pilings and bridge footings, will be placed outside of aquatic/riparian habitat to avoid impacts to riparian habitat and steelhead and Chinook salmon fisheries.

Installation of falsework and stream diversions required in the course of bridge construction will be consistent with VTA's Fish-Friendly Channel Design Guidelines to minimize impacts to migrating anadromous fish and other in-stream species. These guidelines address concerns related to a number of issues including high water velocities, jumps to channelized inlets or outlets, water depths, and resting pools.

The following recommendations by CDFG will be followed to address water quality impacts:

- No equipment will be operated in the live stream channel.
- When work in a flowing stream is unavoidable, any stream flow will be diverted around the work area by a barrier, temporary culvert, or

a new channel capable of permitting upstream and downstream fish movement.

- Construction of the barrier or the new channel normally will begin in the downstream area and continue upstream, and the flow will be diverted only when construction of the diversion is completed.
- Appropriate erosion control measures will be installed to prevent debris, soil, silt, sand, bark, slash, sawdust, cement, concrete, washings, petroleum products, or other organic or earthen material from being washed into waterways by rainfall or runoff.

The following mitigation measures will be followed to avoid or minimize take of California red-legged frogs or California tiger salamanders:

- A qualified biologist will conduct pre-construction surveys for California red-legged frog and California tiger salamanders within the vicinity of the project site no earlier than 2 days before ground-disturbing activities. The survey area will include 300 feet upstream and downstream from the project site.
- No activities will occur in suitable frog or salamander habitat after October 15 or the onset of the rainy season, whichever occurs first, until May 1 except for during periods greater than 72 hours without precipitation. Activities can only resume after the 72-hour period or after May 1 following a site inspection by a qualified biologist, in consultation with the US Fish and Wildlife Service (USFWS). The rainy season is defined as a frontal system that results in depositing 0.25 inches or more of precipitation in one event.
- Vehicles to and from the project site will be confined to existing roadways and defined access routes to minimize disturbance of California red-legged frog and California tiger salamander habitat.
- If a California red-legged frog or California tiger salamander is encountered during excavations, or any project activities, activities will cease until the frog or salamander is removed and relocated by a USFWS-permitted biologist. Exclusionary fencing will be installed to prevent red-legged frogs or tiger salamanders from re-entering the work area. Any incidental take will be reported to the USFWS immediately by telephone.
- If suitable red-legged frog habitat or tiger salamander is disturbed or removed, VTA will restore the suitable habitat back to its original

value by covering bare areas with mulch and re-vegetating all cleared areas with plant species that are currently found in the project site or as negotiated with USFWS.

- Any permanent loss of aquatic habitat in Upper Penitencia Creek or Lower Silver Creek will be compensated through protection or enhancement of degraded aquatic and riparian habitat at either an onsite or an offsite location. The location and total amount of the compensation habitat will be determined in consultation with USFWS. (Mitigation for impacts to wetland and aquatic habitats is included in **subsection 4.4.4** of the SEIR-1. Mitigation for impacts to riparian habitat has been revised and is included in **subsection 4.4.4** of the SEIR-2.)

A qualified biologist will conduct a preconstruction survey for western pond turtles in all suitable aquatic habitats. The survey area will include 300 feet upstream and downstream from the project site. This survey will be conducted no more than 24 hours prior to the onset of in water construction activities. If individual pond turtles are located, they will be captured by a qualified biologist and relocated to the nearest suitable habitat upstream or downstream of the project site. If individuals are relocated, then the contractor will install barrier fencing along each side of the work area to prevent individual turtles from re-entering the work area. In the event barrier fencing is installed, the qualified biologist will conduct relocation surveys for three consecutive days to ensure that all animals are removed from the disturbance area.

Implementation of these biological resources measures would reduce temporary construction impacts to sensitive biological resources to a less-than-significant level.

Construction: Greenhouse Gas Emissions

Significant Impact: Construction Greenhouse Gas Emissions

Construction activity would generate greenhouse gas (GHG) emissions from the operation of on- and off-road motor vehicles. While the GHG emissions associated with construction of Phase 1 would be localized and temporary in nature, construction of Phase 1 would span a period of about eight years, representing a significant impact.

Findings: The VTA hereby makes finding (a)(1) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and

stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: VTA shall ensure that construction waste and demolition materials are recycled and that 50 percent of the construction waste is diverted from landfill, in accordance with the BAAQMD recommended guidance for reducing GHG emissions during construction.

Construction: Hazardous Materials

Significant Impact: Construction Period Hazardous Material Impacts to Groundwater and Soils

Phase 1 construction activities could impact groundwater and soil quality.

Findings: The VTA hereby makes finding (a)(1) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: The *Contaminant Management Plan* dated and approved by the Regional Water Quality Control Board on October 21, 2008 and mitigation measures included in the *Contaminant Management Plan* shall be implemented during construction. The mitigation measures detail requirements for the management for soil and railroad ballast, groundwater as part of dewatering activities, and building materials, thereby reducing impacts to a less-than-significant level.

Significant Impact: Groundwater Impacts at the Great Mall Property

Phase 1 construction activities could impact hazardous materials contaminated groundwater and soils near the Great Mall Property.

Findings: The VTA hereby makes finding (a)(1) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: In addition to implementation of the *Contaminant Management Plan*, the measures included in the "Site Management Plan – Former Ford Automobile Assembly Plant Formerly 1100 South Main Street, Milpitas, California" (March 1997) and the

RWQCB's letter dated April 16, 2001 for this property will be implemented during construction of the Project at the Great Mall. These documents include measures for: review of historic environmental data and further investigation, if necessary; performance of a human health risk assessment; development of a project-specific site management plan and health and safety plan; and requirements for notification and disclosure, construction safety, soil management, and use of shallow groundwater. Implementation of these measures would reduce groundwater impacts at the Great Mall property to a less-than-significant level.

Significant Impact: Exposure of Hazardous Materials to Construction Workers

Phase 1 construction activities could expose hazardous materials to construction workers, the public, and the environment.

Findings: The VTA hereby makes finding (a)(1) (as described in **Section 3.1** above), as required by Public Resources Code section 21081 and stated in CEQA Guidelines section 15091, with respect to the above identified impact.

Facts in Support of Findings: To protect the health and safety of construction workers, the public, and the environment, and to ensure the proper management of hazardous materials, a Health and Safety Plan that meets Occupational Safety and Health Administration requirements will be prepared, CERCLA certified, and implemented during construction, thereby reducing impacts to a less-than-significant level.

3.5 Incorporation by Reference

The Final SEIR-2 is hereby incorporated into these Findings in its entirety. Without limitation, this incorporation is intended to elaborate on the comparative analysis of alternatives, the basis for determining the significance of impacts, the scope and nature of mitigation measures, and the reasons for approving Phase 1.

3.6 Record of Proceedings

Various documents and other materials constitute the record of proceedings upon which the VTA Board bases its findings and decisions contained herein, including, without limitation, the Draft SEIR-2 (text and appendices), the Final SEIR-2, the Findings, and the MMRP. All documents related to BART Silicon Valley 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 the VTA's decision on Phase 1 includes the following documents:

- The NOP and all other public notices issued by VTA in conjunction with Phase 1;
- All comments submitted by agencies or members of the public during the comment period on the NOP;
- The Draft SEIR-2 for Phase 1 (November 2010) and all appendices;
- All comments submitted by agencies or members of the public during the comment period on the Draft SEIR-2;
- The Final SEIR-2 for Phase 1, including comments received on the Draft SEIR-2, and responses to those comments and appendices;
- Documents cited or referenced in the SEIR-2;
- The MMRP for Phase 1;
- All findings and resolutions adopted by VTA in connection with Phase 1 and all documents cited or referred to therein;
- All reports, studies, memoranda, maps, staff reports, or other planning documents relating to Phase 1 prepared by VTA;
- Any minutes and/or verbatim transcripts of all information sessions, public meetings, and public hearings held by VTA in connection with Phase 1;
- Any documentary or other evidence submitted to VTA at such information sessions, public meetings, and public hearings;
- Any and all resolutions adopted by VTA regarding Phase 1, and all staff reports, analyses, and summaries related to the adoption of those resolutions;

- Matters of common knowledge to VTA, including, but not limited to federal, state, and local laws and regulations;
- Any documents expressly cited in these findings, in addition to those cited above; and
- Any other materials required for the record of proceedings by Public Resources Code section 21167.6, subdivision (e).

Chapter 4

Overriding Considerations

The SEIR-2 indicated that if Phase 1 is implemented, certain significant and unavoidable impacts would result. These include significant traffic impacts at the following intersections: Great Mall Parkway and Montague Expressway, Milpitas Boulevard and Montague Expressway, Old Oakland/Main Street and Montague Expressway, Trade Zone Boulevard and Montague Expressway, Flickinger Avenue and Berryessa Road, Lundy Avenue and Berryessa Road, US 101 and Julian Street, King Road and McKee Road, Capitol Avenue and McKee Road, McLaughlin Avenue and Story Road, King Road and Story Road, and Capitol Expressway and Capitol Avenue. Significant and unavoidable impacts would also result at the following four freeway intersections: US 101, Mabury Road to McKee Road, southbound; US 101, I-280 to Santa Clara Street, northbound; US 101, Santa Clara Street to I-280, southbound; and US 101, McKee Road to Santa Clara Street, southbound. Significant unavoidable energy impacts would result because the energy demand associated with Phase 1 cannot be accommodated during peak periods without potential disruptions recognizing deficiencies in the statewide transmission infrastructure. Significant unavoidable air quality pollutant emission impacts during construction would also result at construction sites within Phase 1.

As required by CEQA Guidelines section 15093, the VTA Board 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 Phase 1 outweigh its unavoidable environmental effects.

4.1 Statements of Fact in Support of Overriding Considerations

Phase 1, combined with other transportation projects, addresses the need for improved transportation choices and capacity in the SVRTC. Phase 1 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), which would have several benefits, including: (1) improving public transit service and modal options, (2) enhancing regional connectivity, (3) reducing congestion on highways and supporting road networks, (4) improving regional and sub-regional air quality, (5) improving mobility options, (6) maximizing transit usage and ridership, and (7) supporting local economic and land use plans. Specifically, Phase 1 would:

Improve public transit service and modal options

- Phase 1 provides expanded, interconnected rapid transit services within the SVRTC and adjacent areas, providing greater access to major activity and employment centers located throughout the corridor. Phase 1 also provides opportunities for transfers to destinations throughout the San Francisco Bay Area region and beyond. Intermodal connections would be available to existing and future services such as the VTA's light rail transit and buses, Caltrain commuter rail, Altamont Commuter Express, Capitol Corridor Intercity Rail, Amtrak, and a variety of bus operators and shuttle services.

Enhance regional connectivity

- Phase 1 provides significant travel time savings between Alameda County and San Jose. The average transit travel time savings for all 12 origins-destinations was projected to be about 17 minutes, with a maximum savings of 38 minutes from Alum Rock to downtown Oakland, followed by 37 minutes from south Fremont to downtown San Jose.

Reduce congestion on highways and supporting road networks

- Phase 1 has a beneficial effect on freeway traffic overall and will reduce severe and ever-increasing traffic congestion on I-880 and I-680 between Alameda and Santa Clara counties. Phase I would generate a considerable number of new linked transit trips which are primarily diverted from automobile trips. Approximately 27,000 average weekday new linked trips would result from Phase I. Many of these trips represent auto trips on congested I-880/I-680 that are diverted to BART.

Improve regional air quality by reducing auto emissions

- Phase 1 is estimated to result in reductions in air pollutant emissions compared to No Project conditions, due to the Phase 1 reduction in vehicle miles traveled. As discussed in the SEIR-2, in 2030 with Phase 1, emissions of air pollutants would be reduced by 39 pounds per day (ppd) for reactive organic gases, 32 ppd for nitrogen oxides, 11 ppd for particulate matter (less than 2.5 microns in diameter), and 12 ppd for particulate matter (less than 10 microns in diameter), when compared to No Project conditions.

Improve mobility options

- Phase 1 improves mobility options to employment, education, medical, and retail centers for corridor residents, in particular for low-income, youth, elderly, disabled, and ethnic minority populations. Phase 1 improves accessibility to community facilities in San Francisco, Oakland, and other regional activity centers along the existing BART system.
- Based on 2000 Census data, 11 percent of households in the SVRTC study area are without private transport. Likewise, 10 percent of households are below the poverty level. The study area population is only 28 percent Caucasian. These low income and minority groups represent a disproportionate percentage of the population, constituting an environmental justice community. Phase 1 increases the availability of service for these environmental justice populations by providing more convenient access to regional rapid transit and by improving connectivity to other transit services. The increased availability of service

improves access to employment, recreation, shopping, and public services and facilities.

Maximize transit usage and ridership

- Phase 1 would serve over 46,000 average weekday trips in 2030. This represents 27,135 new linked transit trips compared to No Project conditions.
- The two new BART stations under Phase 1 are located in areas that are or can be developed at high densities to maximize transit patronage. Phase 1 would stimulate the type of transit-oriented, higher density development that is encouraged in the Fremont, Milpitas, and San Jose general plans.

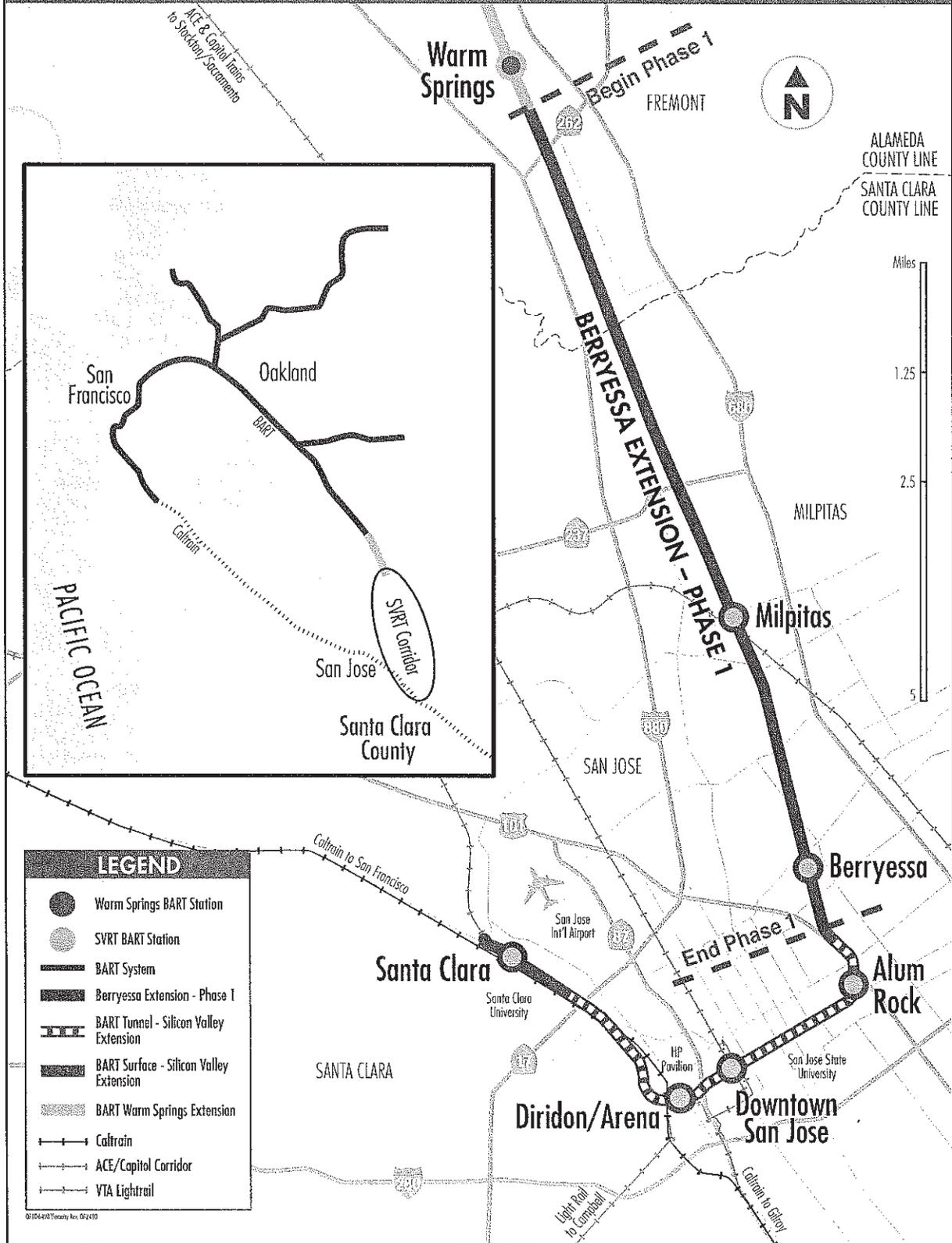
Support local economic and land use plans and goals

- Phase 1 is consistent with local and regional plans and policies to extend the BART system, creates a unified transit system that potentially will encircle the bay, and encourages higher-density, mixed-use development adjacent to proposed transit nodes.
- Phase 1 provides improved transit in the SVRTC and beyond and supports and enhances the south bay's high quality of life and economic vitality since the improved transit services could induce job creation and transit-oriented developments with office and employment centers.

Provide other benefits

- As discussed in the SEIR-2, Phase 1 is estimated to result in substantial reductions in transportation system vehicle energy requirements compared to No Project conditions. Transportation system vehicle operating energy would be reduced by approximately 30.8 billion BTUs annually in direct energy compared to No Project conditions.

BART Silicon Valley Extension



LEGEND

- Warm Springs BART Station
- SVRT BART Station
- BART System
- Berryessa Extension - Phase I
- BART Tunnel - Silicon Valley Extension
- BART Surface - Silicon Valley Extension
- BART Warm Springs Extension
- Caltrain
- ACE/Capitol Corridor
- VTA Lightrail