HLC Agenda: 3-7-07
Item No.: 5.b

LETTER L-1

VTA
ENV. ANALYSIS
2007 MAR -7 P 2:30

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: Historic Landmarks Commission **FROM:** Sally Zarnowitz, AIA

SUBJECT: DSEIR BART Extension to Milpitas, San Jose and Santa Clara **DATE:** February 22, 2007

The Historic Landmarks Commission members requested the opportunity to review and comment on the Draft Environmental Impact Statement/Environmental Impact Report & Draft the Proposed BART Extension to Milpitas, San Jose and Santa Clara at the April 7, 2004 meeting. The Commission reviewed the document at their May 2004 meeting, and authorized the Chair to sign and submit a DEIS/EIR comment letter, dated May 10, 2004 (see attached).

The VTA Board of Directors certified the Final Environmental Impact Report (FEIR) in December of 2004. Analysis of the BART Extension Project presented in the FEIR was based on 10 percent design plans prepared during the Conceptual Engineering design phase of the Project. Following approval of the BART Extension Project by the VTA Board, the Preliminary Engineering design phase began, taking design plans to the 35 percent level. A Supplemental Environmental Impact Report (SEIR); updating information presented in the previous FEIR, and evaluating the potential environmental impacts resulting from proposed design modifications to the project; is currently circulating. Proposed design modifications include Design Change 40: Add Downtown San Jose Station (see attached Legend); as described in Chapter 4.6 *Cultural and Historic Resources* of the DSEIR. The document accompanies this memorandum in compact disc (CD) format, and is available on the VTA website at: http://www.vtabart-vta.org/whatsnew.asp. The comment deadline ends March 16, 2007. L-1.1

The Historic Landmarks Commission may review the document and provide comments on the DSEIR at the February 7, 2007 Landmarks Commission meeting. Should Commissioners wish to forward comments to the Santa Clara Valley Transportation Authority, they may authorize the Chair to sign a comment letter on their behalf.

Sally Notthoff Zarnowitz, AIA
Historic Preservation Officer

PBCE002/Historic/3-7-07/item 5c BART DSEIR

May 10, 2004

Mr. Tom Fitzwater
Environmental Planning Manager
VTA – Environmental Planning
Building B
3331 North First Street
San Jose, CA 95134-1927
Fax: (408) 321-5787

RE: Draft Environmental Impact Statement/Environmental Impact Report & Draft 4(f) Evaluation for the Proposed BART Extension to Milpitas, San Jose and Santa Clara

Dear Mr. Fitzwater:

The San Jose Historic Landmarks Commission is a seven-member body appointed by the City Council to advise and make recommendations to the City Council and City Manager on the designation, acquisition and preservation of historic landmarks and sites, artifacts and other property of historic significance and value to the City of San Jose. In that capacity, the Historic Landmarks Commission has reviewed the BART EIS/EIR and voted (6-0-1, Youmans absent) to provide these comments regarding the document.

The Historic Landmarks Commission is very concerned about the potential impacts from the proposed BART extension to both recognized and unidentified historic and cultural resources in San Jose. Given these concerns, the Commission wished to emphasize the importance of a well drafted Memorandum of Agreement (MOA) that is the result of a substantial community effort. The Commission felt that the current draft MOA in Appendix F was inadequate due to its lack of content and detail. The Commission suggested a Programmatic Agreement (PA) approach rather than an MOA which may provide greater specificity on the process and methodology for dealing with potential historic resource impacts. The Commission recommended consideration of design standards for all BART construction and infrastructure where historic resources are at issue as well as a Citizen Committee to be convened to assist in the drafting and review of the standards.

In addition, members of the Commission noted several places in the document that are in apparent conflict. For example, there are instances where a significant adverse impact such as demolition or substantial alteration of an historic resource is identified, and the Secretary of the Interior's Standards are referenced as a method for avoiding adverse impacts. The Commission points out that demolition of historic resources cannot be mitigated.

In conclusion, the Historic Landmarks Commission is charged with stewardship responsibilities for San Jose's historic and cultural resources and is concerned about the potentially substantial impacts to such resources from the BART Extension. The Commission looks forward to participating in the MOA or PA drafting process. Thank you for the opportunity to comment on the EIS/EIR.

Sincerely,

Gloria Sciara
Chair
San Jose Historic Landmarks Commission

cc: Mr. Jerome Wiggins, United States Department of Transportation, Federal Transit Administration
Wayne Donaldson, State Historic Preservation Officer, California Office of Historic Preservation

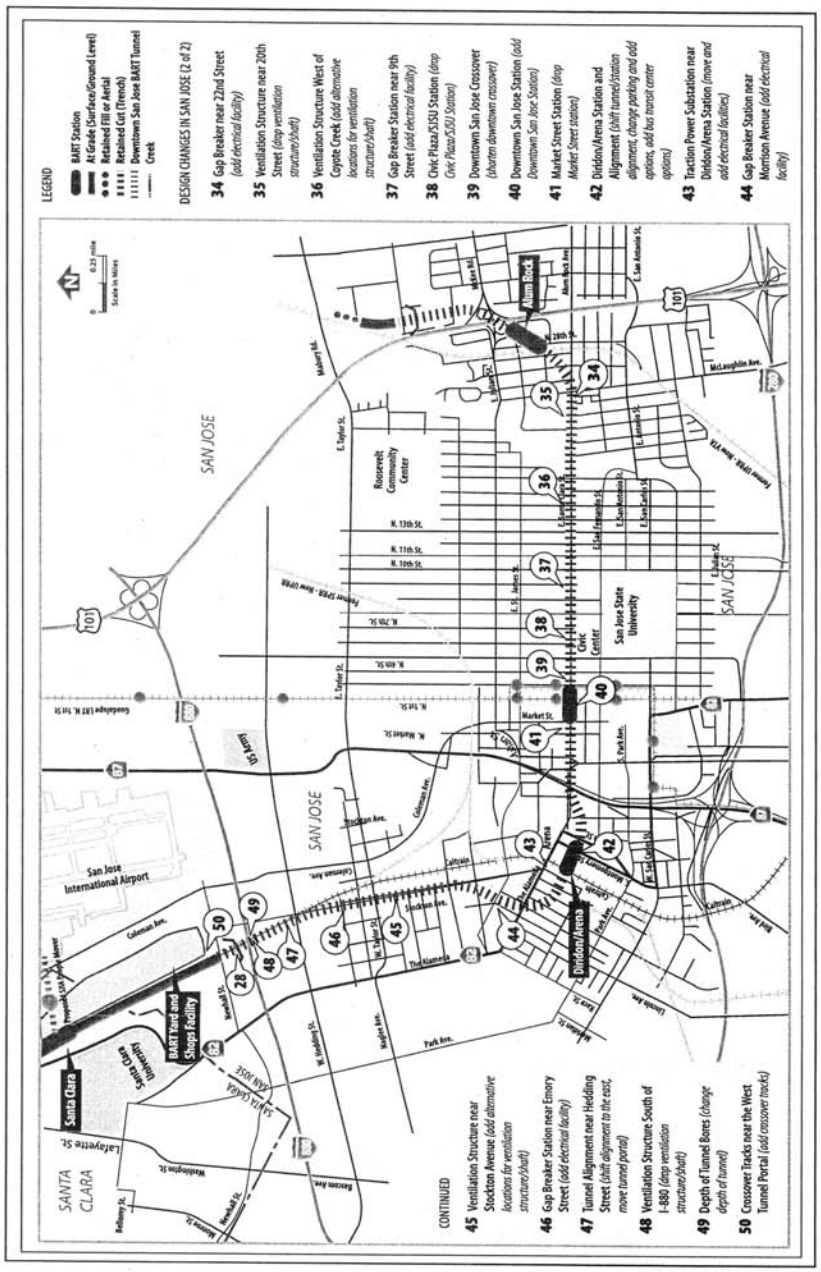

Figure 3.2-4: Design Changes in San Jose

RESPONSE TO COMMENT LETTER L-1

City of San Jose Historic Preservaton Officer

L-1.1 *The City of San Jose notes that the document has been distributed to the Historic Landmarks Commission and that the commission may provide comments to VTA through their Chair. No response is required.*

MAR-14-2007 08:55 HOUSING & NEIGHBORHOOD PR 408 586 4100 P.02

CITY OF MILPITAS

Mailing Address: 455 East Calaveras Boulevard, Milpitas, California 95035-5479 . www.ci.milpitas.ca.gov

LETTER L-2

March 13, 2007

Mr. Tom Fitzwater
VTA – Environmental Planning Department
3331 North First Street, Bldg B
San Jose, CA 95134

VTA
ENV. ANALYSIS
2007 MAR 14 A 9:41

RE Draft Supplemental Environmental Impact Report
BART Extension to Milpitas, San Jose, and Santa Clara

Dear Mr. Fitzwater,

Thank you for the opportunity to comment on the Draft Supplemental Environmental Impact Report (DSEIR) dated January 2007 for the Bay Area Rapid Transit (BART) Extension Project to Milpitas, San Jose, and Santa Clara.

This letter focuses on comments to the eleven design changes that impact the City of Milpitas identified in the DSEIR as Design Changes #8 thru #18. Where appropriate, comments on additional design impacts specific to the Federal Environmental Impact Statement (FEIS) that is currently under development by the VTA are made. Comments are organized by Design Change with specific chapters of the DSEIR referenced where appropriate.

- **Design Change #8 – Dixon Landing Road Alignment**

  The Milpitas City Council previously directed VTA staff to continue development of the BART At-Grade option as its preferred design alternative pending the development of 1) improvement plans that allows for the construction without the need to close Dixon Landing Rd and/or Milmont Drive, and 2) a Business Preservation Plan that minimizes impacts to existing businesses both at, and adjacent to, the project site.

  Section 4.12 Noise
  Pages 175 -178 - The proposed at-grade BART crossing at Dixon Landing Road will result in a significant increase in the number of residences affected by noise and vibration impacts. The number of affected residents will increase from 51 to 114. The DSEIR should discuss ways to reduce the number of residents affected by noise during construction and operation, and include other mitigations in addition to sound walls and insulation. L-2.1

  Section 4.18 Construction Impacts
  The recommended closure of Dixon Landing Rd in the DSEIR is unacceptable to the City and inconsistent with previous direction from the Milpitas City Council and good faith negotiations between the City and the VTA to develop improvement plans that support the maintenance of vehicle, bicycle, and pedestrian activities on Dixon Landing Rd and Milmont Drive during all phases of construction. L-2.2

Pages 240 & 242, discusses the use of the existing commercial property located at 1770 Milmont Dr for construction staging activities. During the Scoping Phase of the DSEIR in August/September 2006, the VTA did not clearly identify the use of this property for construction staging activities. Milpitas, in its Scoping Phase Comment Letter dated September 07, 2006, discussed impacts to this property and suggested that the VTA consider property acquisition of the site due to significant impacts related to the construction of BART At-Grade option at Dixon Landing Rd and to allow for construction staging as suggested in the DSEIR. The DSEIR should clarify whether acquisition of the property at 1770 Milmont Dr is being recommended. L-2.3

Page 248 discusses an 18-month construction period for either of the two options and the need for a full closure of Dixon Landing Rd for approximately 6 months in the area near the BART alignment. Milpitas requests removal of any reference in the DSEIR to close Dixon Landing Rd through construction of the BART project. The DSEIR should analyze alternative construction plans to avoid road closure of Dixon Landing Rd. L-2.4

Page 248 needs to address modifications to the City's existing storm and sanitary systems for "At Grade" alternative. The document should address the impact of Dixon Landing Road closure on landfill access. L-2.5

Pages 239 – 246 & 282 - 283 - The proposed construction staging areas will result in the displacement of thirteen commercial businesses at Dixon Landing Road and two businesses at Capitol Avenue. The DSEIR's conclusion that the impacts to these businesses will be less than significant is not supported by sufficient facts and analysis. The sole reference to the VTA Relocation Assistance Program. without any explanation of the specific actions under the Program for the affected businesses is insufficient to support a less than significant conclusion. The permanent displacement of these businesses is a significant concern to the City. The DSEIR should analyze alternative locations, configurations or reductions in size of the construction staging areas to reduce or eliminate the impact on City businesses. L-2.6

- **Design Change #9 – Berryessa Creek**

Section 4.4 Biological Resources and Wetlands
Page 76 - This design change will result in an additional permanent loss of 1 acre of wetlands in Berryessa Creek. The City supports design alternatives that would minimize the impact on wetlands. L-2.7

Section 4.17 Water Resources, Water Quantity and Floodplain
Page 216 - The DSEIR assumes that both portions of Berryessa Creek (lower and upper) will be improved by Santa Clara Valley Water District (SCVWD) and US Army Corps prior to completion of the BART extension. It is our understanding that these improvements are to be completed by the year 2017. The DSEIR needs to discuss, and include mitigations for scenarios which include potential delays in the construction of Berryessa Creek as well as the possibility of blockage and/or backwater affect of 100-year flood on surrounding and upstream properties by the proposed retained-cut crossing Montague Expressway, L-2.8

substantially reducing the Montague Expressway capacity to convey flood waters northerly and westerly. L-2.8 con't.

Also, the 100-year flood entering the City of Milpitas at Capitol Avenue is caused by Upper Penitencia Creek. This is in addition to flooding caused by Berryessa Creek. DSEIR should discuss the impact of the project on 100-year flood due to Upper Penitencia Creek and include necessary mitigations. L-2.9

Section 4.18 Construction Impacts
Although not discussed in Sections 4.18 of the DSEIR, Milpitas has previously expressed concerns with potential construction impacts to the Abel St Bridge. The preliminary improvement plans for the creek realignment impact three (3) of the existing Abel St bridge columns by redirecting the creek towards the columns. In order to properly maintain the structural integrity of the Abel St Bridge, extension of the columns and reconstruction of the bridge foundations is required. Shoring to support the existing columns while they are being reconstructed may result in impacts to the bridge structures this should be discussed and analyzed in the DSEIR. DSEIR should include mitigation measures for any identified impacts during construction. L-2.10

- **Design Change #10 – Crossover Tracks between Berryessa Creek and Railroad Ct**

  The City of Milpitas has no comments for this design change

- **Design Change #11 – Electrical & Communications Facilities near Railroad Ct**

  Document needs to describe the visual impacts of the 60 foot high tower will have on the surrounding area. The DSEIR should include further facts and analysis to support conclusion that impact is less than significant. L-2.11

- **Design Change #12 – High Rail Vehicle Access**

  The City of Milpitas has no comments for this design change.

- **Design Change #13 – Locomotive Wye (Milpitas)**

  Milpitas requests that the VTA continue to pursue the purchase of railroad shipping rights to business north of the Montague Exp so that the railroad wye can be removed. Removal of the wye also provides for the construction of denser residential development around the BART station, which in turn provides for increased ridership potential and enhanced quality of life. L-2.12

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- **Design Change # 14 – Curtis Avenue to Trade Zone Boulevard**

Section 4.12 Noise and Vibration
Pages 179-180 - This design change will result in a substantial increase in the number of residents experiencing significant adverse noise impacts. The number of affected residents increases from 19 under the Retained Cut to 70 under the Aerial Option. This increase in impacts to City residents is unacceptable given the reduced impacts of the Retained Cut Option which the City supports. Therefore, the City does not support the aerial options described in this design change. L-2.13

Section 4.14 Socioeconomics
Page 192 - 194 - This design change will result in the displacement of City business; whereas, the Retained Cut Option does not. The City does not support the Aerial Option since the Retained Cut is a viable and preferred option that results in fewer impacts. Further, the DSEIR's statement that the VTA Relocation Assistance Program will result in a reduction in this impact to less than significant. The document does not contain any information about the program and how it will be implemented to reduce this impact. L-2.14

The following items are in need of clarification:
- Page 192 - The length of time for the construction staging period; is the "displacement" of the 13 businesses at Dixon Landing Road short-term or permanent. L-2.15
- Page 193 - Impacts and/or mitigations to the City's Curtis Well. L-2.16

Section 4.18 Construction Impacts
Page 250 – Please address modifications to the City's existing storm and sanitary system for all four alignment options. L-2.17

Page 250 - The aerial option at Capitol Avenue crossing would result in a significant unavoidable impact to traffic on Capitol Avenue for at least 9 months. The Retained Cut Option does not have this impact. Since the Retained City Option is a feasible alternative that would avoid this significant unavoidable impact, the Aerial Option at Capitol Avenue should not be adopted. The City does not support the Aerial Option due to this and other adverse impacts identified in the DSEIR. L-2.18

- **Design Change # 15 – Crossover tracks north of Montague Expressway**

Section 4.12 Noise & Vibration
Page 180 With similar issues to Design Change # 14, the crossover tracks north of Montague Expressway will experience the same noise and vibration impacts and require the appropriate mitigations such as the retained cut options and floating slab track, as there will be future development northeast of Montague Expressway. The document should provide analysis on planned future development of this area. L-2.19

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- **Design Change # 16 – Electrical facilities north of Montague Expressway**

The City requests additional information on the size and level of light & noise generated by the facilities to determine if there are additional impacts to existing and future development projects near the facilities. L-2.20

- **Design Change # 17 – Montague Capitol Station**

Chapter 4.2 Transportation and Transit
Section 4.2.3 Parking
Due to the substantial increase in estimated daily boardings in the DSEIR, the parking impact for the Montague/Capital station should be identified as potentially significant and the DSEIR should specifically analyze whether the proposed park-and-ride (PNR) spaces will meet demand. The DSEIR shows a substantial increase in estimated boardings for the Montague/Capital station – about 12,000 more than the estimate in the FEIR (p. 13). The FEIR estimate is 19,245 with seven stations. The DSEIR estimate is 27,757 with seven stations and 31,010 with six stations (without South Calaveras station). The DSEIR states that 38% of the station users will use PNR spaces. However, the DSEIR does not explain how the 2,030 PNR spaces for the Montague/Capitol station under the 6 station 2030 build-out will meet this demand (Table 4.2-12, p. 17). The DSEIR also should analyze any impacts of spillover parking. L-2.21

The DSEIR should project near-term mitigation for the federally funded segment which includes the Montague/Capitol through the Alum Rock Stations. This should also address traffic and circulation impacts. L-2.22

The higher number of boardings and parking demand demonstrates that the Surface Parking Option under Design Change #17 should not be adopted because it uses more land to provide less parking than the structured parking option, which the City supports. At the January 16, 2007, the Milpitas City Council reviewed the 2030 Parking requirements in relation to the station layout for the Montague/Capitol Station. Per unanimous vote of the City Council, an interim surface parking station layout should not be carried forth to the Final SEIR. The project should utilize garage parking as well as seek joint development shared parking. L-2.23

The DSEIR should project near-term mitigation for the federally funded segment which includes the Montague/Capitol through the Alum Rock Stations. This should also address traffic and circulation impacts. A mitigation that the VTA pursue property acquisition of sites on the North of Montague Exp for both parking and enhanced pedestrian accessibility to the Montague/Capitol Station is recommended. This option is also planned for discussion in the FEIS. L-2.24

Section 4.2.4 Pedestrians
Page 20 - Milpitas believes that the use of Surface Parking Only options around the Montague/Capitol Station provides for hazardous conditions for pedestrians as the distance between a BART patrons vehicle to the station is increased and the pedestrians must traverse L-2-25

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across both parked and moving vehicles placing the pedestrians in a more hazardous environment. The document should reevaluate pedestrian impacts more thoroughly as they relate to traversing across parking lots. L-2.25, cont.

Section 4.2.5 Traffic

Page 33-38 - This design change results in nine new significant unavoidable impacts on main City thoroughfares. The extent of these impacts is unacceptable to the City. Further, the DSEIR does not and should consider all feasible mitigations to reduce these impacts to less than significant as required under CEQA. The DSEIR repeatedly dismisses all mitigation by stating "no other cost-effective feasible improvements beyond 2030 without Project" are available. However, "cost-effective" is not the only standard for feasibility. The DSEIR should identify all possible improvements and mitigations available, and then discuss feasibility as appropriate. Suggested mitigations are:

Milpitas Boulevard Corridor

The intersections of Milpitas Boulevard & Montague Exp, Milpitas Blvd & Yosemite Dr, Milpitas Blvd & Los Coches St, Milpitas Blvd & Calaveras Blvd, and Milpitas Blvd & Escuela Dr have significant impacts as a result of the BART project but the DSEIR states that no cost effective feasible improvements are available. L-2.26

Milpitas requests that the VTA consider the implementation of Traffic Management Improvements on the Milpitas Blvd Corridor including traffic signal interconnection and traffic surveillance equipment as feasible mitigations so that impacts to the corridor can be more easily monitored and addressed by signal-timing solutions. In addition, Milpitas requests that the VTA identify the construction of Milpitas Blvd Extension between Montague Exp and Capitol Av as a feasible mitigation to the BART project since it is identified as a planned improvement within the existing 35% Improvement Plans.

Landess Ave Corridor

The DSEIR identifies the intersections of Landess Ave & Dempsey Rd and Landess Ave & Park Victoria as having significant impacts as a result of the BART project but that no cost effective feasible improvements are available.

Milpitas requests that contributions towards the widening of Landess Ave be considered as feasible improvements to off-set the impacts as it will provide consistency with planned widening improvements along Montague Exp planned by the County of Santa Clara.

Montague Expressway Corridor

For the intersection of Montague Exp & Great Mall Pkwy-Capitol Av, the DSEIR discusses providing a "Fair Share" contribution towards the Grade Separation of the intersection as recommended in the VTA's Valley Transportation Plan 2030 but also identifies the location as "No Cost-Effective Feasible Mitigation Measure Available". Montague Exp & Milpitas Blvd is also identified as having "No Cost-Effective Feasible Mitigations Measures Available."

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The existing 35% improvement plans for the BART project used to prepare the DSEIR identify the construction of a new road, Milpitas Blvd Extension, between Montague Exp & Milpitas Blvd and Capitol Av. This new road will provide an alternative option for motorists to bypass Montague Exp & Great Mall Pkwy-Capitol Av and is already identified for funding by the BART project as it is a necessary improvement to allow the Montague/Capitol BART Station to function. Milpitas requests the DSEIR identify the construction of Milpitas Blvd Extension as a feasible mitigation to impacts at both Montague Exp & Great Mall Pkwy-Capitol Av and Montague Exp & Milpitas Blvd. Furthermore, the construction of the road should be identified as fully funded within the DSEIR to be consistent with the 35% BART Improvement Plans. L-2.26 con't

Section 4.11 Land Use

The Land Use assumptions in the DSEIR should be consistent with the Milpitas City Council adopted Preferred Land Use Plan for the Transit Area Plan on December 4, 2006. The Transit Area Plan EIR will be completed in the Summer 2007 and so it should be assumed that its proposed Land Use's are in place. As such, traffic, noise, vibration and socioeconomic impacts from the Montague/Capitol Station should be evaluated with these land use assumptions. The Aerial Option, Surface Parking, and relocation of the transit center are all inconsistent with the Transit Area Plan. L-2.27

At the January 16, 2007 City Council meeting, the City Council rejected any aerial alignment option for the Montague/Capitol Station and requests the VTA to study the retained cut option only for the BART alignment.

Section 4.14 Socioeconomics

Pages 194-195, Design Change # 17 – Montague/Capitol Station Redesign – will result in the displacement and relocation of 7 more industrial businesses as compared to the station design evaluated in the FEIR. As stated above, these increased impacts on City businesses are unacceptable when there is an alternative – Retained Cut Option – which results in fewer impacts. Also, as stated above, the Relocation Assistance Program relied on for mitigation must be described in more detail in order to support the conclusion that it will reduce the impacts on City businesses to less than significant L-2.28

- **Design Change # 18 – Depth of Retained South of East Penitencia**

  The City of Milpitas has no comments at this time for this design change

- **General Comments**

  In addition to comments by Milpitas Design Change, below are comments listed by sections as arranged in Chapter 4, Environmental Analysis.

Impacted Businesses and Residences

The VTA should make extensive outreach & communication efforts to the residences and businesses directly affected as listed in the DSEIR. L-2.29

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Section 4.2 Transportation and Transit

Page 54 - Intersection traffic volumes and levels of services for 2004 existing conditions, 2030 without project, and 2030 BART extension project conditions should be provided to expand on the number of 2030 intersections with possible mitigation as well as the 3 of the 4 intersections in Milpitas from the FEIR that will no longer result in significant unavoidable impacts: L-2.30

- Calaveras Blvd and Abel Street
- Milpitas Blvd and Jackie Street
- Great Mall Parkway and Abel Street

Section 4.5 Community Services and Facilities

Describe impacts to the community services and facilities typically served by the intersections proposed to be closed or highly constrained for several months. L-2.31

Section 4.11 Land Use

As mentioned in the comments for Design Change # 17, the City of Milpitas requests the reevaluation of the environmental impacts surrounding the Montague/Capitol station incorporating the City of Milpitas Draft Preferred Transit Area Specific Plan adopted by Council on December 4, 2006. The VTA used the plan to project ridership numbers, however did not incorporate any potential impacts with the area zone change from industrial to transit-oriented commercial and residential. L-2.32

Further analysis should be conducted on the Montague/Capitol Station split-platform versus a center platform. With the anticipated average weekday boardings of 34,000, a split-platform station may not be able to support the passenger capacity. L-2.33

Section 4.12 Noise

Page 141 - The impacts with mitigation for Spinnaker Point Apartments have numbers of 67 and 72. The Noise Element of the MGP has 65 dBA as being normally acceptable (after mitigation). Likewise, the impacts for Friendly Village Mobile Homes are 71-72 dBA and normally acceptable is 60 dBA. Terrace Gardens comes in at 73 dBA and the acceptable limit is 70dBA. These numbers are too high. This is a significant impact and mitigations should be discussed. L-2.34

Section 4.15 Utilities

Table 4.15-1 shows additional utilities not included in original document. The following items should be added: SCVWD 42-inch Milpitas water pipeline, San Francisco - Public Utility Commission (SV-PUC) Hetch-Hetchy Bay Division Pipelines #3 and #4. L-2.35

Section 4.14 Socioeconomics

Page 195 - The DSEIR must contain facts and evidence to support its conclusion that the loss of parking spaces for existing businesses under Design Change #19 is a less than significant impact. L-2.36

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Section 4.16 Visual Quality and Aesthetics

Pages 204-205 - The DSEIR's analysis of the visual impacts of the Aerial Option and increased sound wall construction under Design Changes # 14, 16 & 17 is inadequate under CEQA. The DSEIR needs further facts and analysis to support the less than significant conclusion. The DSEIR does not properly analyze the impact of the Aerial Option on views of the hills. The DSEIR also does not analyze the impacts of the Aerial Option on views from various scenic vistas in City. L-2.37

Visual: Pages 204/205. The Aerial option would impact views of the hills but would have unacceptable visual impacts on nearby high-density residential uses. If VTA wants to maintain ridership in the long run it should minimize visual and therefore economic impacts on residential development in the vicinity of the station where Very High Density Residential is most necessary. The impacts should be considered significant on the residents of the housing with significant environmental side effects. L-2.38

Section 4.17 Water Resources, Water Quality, and Floodplains

Milpitas requests adding text stating that project will meet environmental regulatory requirements, including the City's Floodplain regulations and NPDES storm water discharge permit, throughout all phases of construction and operations. L-2.39

Section 4.18 Construction

Pages 240 & 282. The Calaveras Blvd staging area has been increased. The DSEIR needs to include in discussion that the southern tip s is located on the SFPUC Hetch-Hetchy right-of-way (see Fig 4.18-29). The DSEIR also needs to discuss the proposed Trumark residential project adjacent to this staging area and the potential for permanent displacement. In addition, a discussion for the Railroad Ave permanent displacement should also be addressed in this section. L-2.40

The DSEIR should provide facts and evidence to support the estimated length of the construction periods. Construction periods vary from 6 to 18 months. Given the adverse impacts that occur during the construction period, it is critical that the time frame for construction be accurately estimated. Given experience from other BART construction projects, the time frames in the DSEIR seem short, and, therefore, may understate the potential impacts. The DSEIR should disclose, in detail, the information upon which the estimates of construction periods are based. L-2.41

The DSEIR should expand its discussion of the plans and measures BART will undertake to address erosion and run-off issues during and after construction. A generalized reference to compliance with storm water run-off regulations is insufficient. L-2.42

In order for the Fire department to maintain responses to fire and emergency medical calls, separate and independent access that does not increase response times shall be provided while the Dixon Landing Road and Capitol Avenue roadways are under construction. An alternative to this may be a temporary fire station or other means provided by the project to L-2.43

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ensure fire and emergency medical services are not interrupted nor extended in time due to traffic issues caused by construction of the project. L-2.43 con't.

Additionally, building/structure fire suppression services that are impacted as a result of the project should be replaced and meet the requirements of the fire department. Similarly, fire department vehicle access routes to buildings/structures altered as a result of the project shall be replaced or repaired as required by the fire department. L-2.44

The Milpitas Fire department requests that the appropriate disclosures be made to project personnel at the Calaveras Boulevard construction staging area due to its location being in close proximity to facilities using toxic gases. L-2.45

Section 4.19 Cumulative Impacts
Page 285 - The Centria development at the top of the right column is 464 units, not 480. It is currently under construction. L-2.46

Page 285 Cumulative Impacts - The DSEIR text needs to be updated to read from "private developer is proposing to construct on 480 apts. on 8.2 acres bounded by Great Mall Parkway, Abel Street, Main Street, and Penitencia Creek" to read "construction began in 2006 on 480 apts . . . ." L-2.47

The Milpitas City Council reviewed and approved the previous comments on the DSEIR. The City looks forward to continuing to work on the BART extension project and is committed to supporting the project through appropriate land use planning and capital project endeavors.

If you have any questions or concerns regarding our comments, please contact Greg Armendariz at 408-586-3317.

Sincerely,

Tom Williams
City Manager

cc: Milpitas City Council
Milpitas BART Team

TOTAL P.11

RESPONSE TO COMMENT LETTER L-2

City of Milpitas

L-2.1 *A sound wall is a widely accepted and proven method of noise reduction used for mitigating noise impacts, in particular rail transit vehicle operational noise. Where sound walls can not practically be high enough to mitigate noise exposure to upper stories of residences, improved noise insulation of building facades (e.g., acoustically rated windows) is an accepted practice. In some areas, sound absorptive material applied to the inside face of sound walls has been identified to reduce impacts to a level that is less than significant. These three approaches are the proposed mitigation measures for BART operational noise impacts. For construction noise mitigation, limits applied to individual pieces of equipment, equipment-specific noise control measures, and temporary noise barriers around construction sites where feasible are the accepted means of noise control.*

L-2.2 *The Project will continue to develop traffic management strategies for construction phasing at Dixon Landing Road. The analysis will include traffic analysis as well as impact to the construction schedule. This analysis will be coordinated with the City of Milpitas.*

L-2.3 *The concerns regarding the construction related displacements at the Dixon Landing Road Crossing are noted. Due to the concerns of construction related impacts, the construction staging area (CSA) located at Dixon Landing Road and Milmont Drive has been dropped from further consideration. Therefore, no short-term displacements of these businesses would result from this CSA.*

L-2.4 *The VTA staff recommendation for Dixon Landing Road is for the BART At Grade Option. An 18-month construction duration, involving closing Dixon Landing Road, would be as follows:*

- *First six months – partial lane closure for utility relocation, cut off walls, sumps with pumps, etc. VTA will complete as much construction as possible prior to closing Dixon Landing Road.*
- *Second six months – close Dixon Landing Road to install the railroad structure, complete all earth excavation, install retaining walls, complete street drainage, final paving, etc. If extending work hours were allowed, VTA could complete the work faster.*
- *Last six months – partial lane closure for installation of sidewalks, street lighting, etc.*

At the request of the City, VTA is now also looking at grade separating Dixon Landing Road while also keeping a minimum of one lane of traffic operational in each direction. The preliminary analysis shows a construction duration of about 30 months as follows:

- *First six months – partial lane closure for utility relocation, cut off walls, sumps with pumps, plus a cutoff wall on the centerline of Dixon Landing Road.*
- *Next nine months – close Dixon Landing Road, west bound only. Keep one lane of traffic in both directions on the eastbound lanes – this will include modifying the*

gated crossing. In the west bound traffic lanes only, install railroad structure, earth excavation, retaining walls with tie backs, partial street drainage, temporary paving, etc.

- *Next nine months – switch traffic to the west bound lanes and close the eastbound lanes. Repeat the same construction activities as for the second nine months.*
- *Last six months - partial lane closure for installation of sidewalks, street lighting, etc.*

VTA anticipates a longer duration and increased cost for the above construction activities as compared to completely closing Dixon Landing Road due to the following:

- *Limited access to the site.*
- *Working close to motorized traffic.*
- *Confined work site.*

The estimated construction cost increase is about $5M greater as compared to completely closing Dixon Landing Road for 6 months.

Also, refer to Response to Comment L-2.2.

L-2.5 *With regards to the existing storm drain and sanitary sewer systems on Dixon Landing Road, the At Grade Option would require modifications to that system. VTA has planned for modifications to those systems around the outside of the depressed roadway. Modifications to the storm drain system include a pump station. Those plans assume construction with full closure of Dixon Landing Road. However, the City of Milpitas has requested that Dixon Landing Road remain open during construction. This will require further reconfiguration of the planned sewer system modifications in order to accommodate the construction staging requirements and additional structural wall requirements due to restrictions caused by the additional staging work. Details of the storm and sanitary system configurations will be developed during final design. City of Milpitas requirements will be coordinated through the engineering drawing review process. VTA will coordinate with the City of Milpitas to address modifications to the City's existing storm and sanitary system.*

The landfill is to the west of I-880, so the proposed closure of Dixon Landing Road only affects access to Dixon Landing Road east of I-880. During the closure, traffic will be detoured off of Dixon Landing Road to the north onto Kato Road and Milmont Drive. There is also potential for traffic to shift to other routes such as Calaveras Boulevard or a combination of Calaveras Boulevard, Abel Street, and Jacklin Road. VTA will coordinate with City of Milpitas on this issue during final design phase of the Project.

L-2.6 *The concerns regarding the construction related displacements at the Dixon Landing Road Crossing and Capitol Avenue within the City of Milpitas are noted. Due to the concerns of construction related impacts, the CSA located at Dixon Landing Road and Milmont Drive has been dropped from further consideration. Therefore, the businesses at this location would not be displaced.*

Near Capitol Avenue, the staff and SVRT PAB recommendation to the VTA Board of Directors is to approve the Retained Cut Long Option. The Retained Cut Long Option does not displace this business.

VTA will provide financial assistance and relocation services to owners of businesses and tenants displaced by the Project as part of VTA's Relocation Assistance Program. VTA's Relocation Assistance Program complies with all federal and State laws applicable to the

displacement of businesses or residences, including the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended. The VTA programs are further explained in the following documents; "Your Property…Your Transportation Project, December 2006, Residential Relocation Benefits, August 2006, and Business Relocation Benefits, August 2006. These documents are incorporated by reference and available upon request. Therefore, the Project through compensation would result in less-than-significant socioeconomic impacts due to business and residential displacements.

L-2.7 *The design change from a 100-foot clear span bridge to a multi-cell box culvert accommodates planned flood control improvements along Berryessa Creek by the Santa Clara Valley Water District and Army Corps of Engineers. VTA will continue to work closely with the District on the design of the box culvert, which is the only feasible alternative. (Please refer to Response to Comment S-1.1 for an explanation as to why the clear-span bridge is not feasible.)*

VTA acknowledges that this design would cause greater impacts to "waters of the U.S.", but the design will not result in any impacts to jurisdictional wetlands. Based on the current design for the multi-cell box culvert, VTA has calculated that there will be no permanent impacts (as no wetlands or waters of the U.S. will be permanently filled) and 1.02 acres of temporary impacts to waters of the U.S. Mitigation for impacts to wetlands and waters of the U.S. are included in the Draft SEIR, Section 4.4.4. It should be noted that the new design removes some of the existing concrete in the channel and replaces it with earth, and increases the width of the channel to create more waters of the U.S.

L-2.8 *VTA has been working closely with the Santa Clara Valley Water District regarding the BART improvements on Berryessa Creek, and is constructing the multi-cell box culvert at the Berryessa Creek crossing of the BART alignment to accommodate the flood protection projects by the District and Army Corp of Engineers. The current schedule shows the Berryessa Creek multi-cell box culvert to be constructed in 2009, with portions of the District/Corps flood protection projects expected to be under construction at the same time. The Berryessa Creek multi-cell box culvert includes widening the channel at the BART crossing and removing the existing 90 degree angles both upstream and downstream of the crossing. The culvert includes a total of five cells. Current plans include opening only three of the five cells to water flow in 2009, with the remaining two cells subsequently opened by the flood protection projects. The intermediate three-cell condition may reduce flooding upstream, due to removal of blockage and backwater, but may increase flooding downstream. If portions of the District/Corps flood protection projects were not under construction by the time the multi-cell box culvert is complete, this would be known in advance. VTA or the District would conduct additional modeling to determine the most appropriate hydraulic device, such as infill walls or weir devices, to be installed to maintain existing conditions upstream and downstream of the BART crossing. These structures would then be removed during construction of the flood protection projects.*

For the BART trackway itself, if the flood protection projects were not under construction by the time the Project is complete in 2016, additional piping, retaining walls, or other means would be constructed as part of the Project to allow the historic flooding surface flows to continue. As with the multi-cell box culvert, this would be known in advance if the flood protection projects would not be under construction by 2016. VTA would conduct additional modeling to determine the most appropriate means to ensure piping,

retaining walls, or other means would be constructed as part of the Project to allow the historic flooding surface flows to continue.

L-2.9 *The Upper Penitencia Creek floodplain is described in the FEIR, Section 4.18.2.4 and graphically shown in the FEIR, Figure 4.18-3. This floodplain does not include the BART crossing or Montague/Capitol Station near Capitol Avenue in the City of Milpitas. We assume, however, that the comment refers to [East] Penitencia Channel and Lower Penitencia Creek.*

As stated in the FEIR, Section 4.18.2.4, "Between Montague Expressway and Cropley Avenue, the BART alignment would be within the 100-year floodplain of Berryessa and Lower Penitencia creeks for a distance of approximately 1.0 mile. This area includes the Montague/Capitol Station between Montague Expressway and Capitol Avenue. The floodplain elevation around the station area is 51.76 feet, and depths are shallow (1 foot)." Section 4.18.4.3, states that with implementation of the Santa Clara Valley Water District's flood protection projects, "no adverse impacts are anticipated" between Montague Expressway and Cropley Avenue."

Also in the FEIR, Table 4.18-2 includes project design features to mitigate for potential floodplain impacts. For the East Penitencia Channel area applicable to the BART retained cut and the Montague/Capital Station area, mitigation includes flood-proofing structures; designing U-walls, ground-level structures, and other structural elements to minimize obstruction of floodwaters; and providing a minimum freeboard above base flood elevation at all access points to underground structures. It should be noted that during the Preliminary Engineering phase, analysis shows that a 6-inch freeboard is sufficient.

The planned flood protection projects along Berryessa Creek will address flood issues not only associated with Berryessa Creek but also with Penitencia Channel and Lower Penitencia Creek. Please refer to Response to Comment A-L-2 regarding the timing of the flood protection projects related to the construction of the Project.

L-2.10 *VTA acknowledges the concerns of City staff regarding modifications to the Abel Street Bridge. Modifications to the Abel Street Bridge will occur as part of a separate project that includes the relocation of the freight tracks from the VTA ROW to the UPRR ROW and construction of a multi-cell box culvert at Berryessa Creek (note that the Berryessa Creek improvements are also discussed in this SEIR). This separate project is currently undergoing environmental review, with public circulation of the environmental document anticipated in the fall of 2007. Any construction impacts identified and mitigation measures proposed applicable to modifications to the Abel Street Bridge will be included in that document. VTA will continue to coordinate with the City to address concerns regarding modifications to this structure.*

L-2.11 *The tower would be located in the existing Wrigley Creek industrial park. This area is currently used for industrial storage and is planned to accommodate other Project support facilities (traction power and switching station, high voltage substation, and a train control building.)*

L-2.12 *The purchase of railroad shipping rights to businesses north of Montague Expressway and deleting the railroad wye are two separate issues.*

VTA is no longer pursuing the purchase of railroad shipping rights to businesses north of Montague Expressway. VTA studies show that the cost of purchasing shipping rights exceeds potential project savings.

VTA's purchase agreement with UPRR for the railroad corridor included VTA relocating the existing railroad wye. VTA recognizes the City's concern that this railroad wye may impact future development. VTA is in negotiations with UPRR regarding the potential for deletion of this wye. However, a final decision will be based on cost savings to the Project.

L-2.13 *The lack of support for the aerial options is noted. The VTA staff and SVRT PAB recommendation to the VTA Board of Directors is to select the Retained Cut Long Option.*

L-2.14 *Refer to Response to Comment L-2.13. Also, refer to Response to Comment L-2.6 regarding VTA's Relocation Assistance Program.*

L-2.15 *Refer to Response to Comment L-2.4 regarding construction periods at Dixon Landing Road. Due to the concerns of construction related impacts and a reassessment of construction staging area needs, the CSA located at Dixon Landing Road and Milmont Drive has been dropped from further consideration and there would be no short-term or permanent business displacements at this location.*

L-2.16 *The City of Milpitas staff has coordinated with VTA design staff during 35 percent Preliminary Engineering. The placement of the well would not interfere with the SVRT Project.*

Additionally, the environmental review of a separate VTA project is underway to construct freight railroad tracks in this area and to relocate freight railroad operations onto those new tracks. The location of the Curtis Well facility will not interfere with this freight railroad work. This freight relocation project is currently in the design phase and VTA will continue to coordinate with City of Milpitas staff regarding any mitigation if required. The review cycles for the relocation project are anticipated to start early summer 2007, and again in early fall of 2008. Any impacted wells located within the rail corridor would be plugged and abandoned, in accordance with ACWD and SCVWD well abandonment procedures. Wells outside the ROW that may be impacted will be handled on a site-specific basis as design is finalized. SVRT will continue to coordinate with the City of Milpitas throughout final design to ensure well concerns are addressed.

L-2.17 *The Project's modifications to the City sewer systems will be constructed in accordance with City standards and permits, or to standards and permits of the appropriate local jurisdiction, for the four alignment options. VTA will undertake detailed engineering design for modifications to the City sanitary and storm sewer systems for the selected option. These modifications will be coordinated with the City, or appropriate local jurisdiction.*

L-2.18 *Refer to Response to Comment L-2.13.*

L-2.19 *As stated in the Draft SEIR text, the crossover was considered in the Aerial and Retained Cut Options' noise and vibration analysis. This comment appears to be directed at the Milpitas Transit Area Specific Plan that is underway. As of April 30, 2006, the City had not yet released a Draft Specific Plan and Draft EIR. In addition, there are no site plans to review to determine specific impacts such as noise and vibration. Therefore, no analysis based on setbacks and specific development is possible. Also, refer to Response to Comment P-26.2.*

L-2.20 *A traction power substation is sited north of Montague Expressway. Traction power substations are described in the Draft SEIR, Chapter 3, pages 39 and 40. They are approximately 60 by 200 feet and 15 feet in height. As discussed in Chapter 4, pages 180 and 181, this design change does not result in noise impacts due to the lack of existing noise-sensitive receptors in the area. The noise criteria vary depending on the type of land use. Since a specific land use and site plan have not been approved by the City nor is there an application on file with the City for the project, noise impacts cannot be determined nor is there a requirement to mitigate for a development that has yet to be defined. As the City prepares environmental studies for future developments in the area, they should consider the BART facilities as existing conditions in determining what mitigation to impose on proposed developments.*

L-2.21 *The Montague/Capitol Station is projected to function primarily as a "destination" station during the AM peak hour. Therefore, most of the AM peak hour station activity will be alightings. A significant portion will also transfer to access jobs in the "golden triangle" district. It is projected that 38 percent of the AM peak hour arrivals will attempt to use park-n-ride spaces. The 2,030 parking spaces meet the projected parking demand and therefore, no spillover parking is projected.*

L-2.22 *The Project addressed in the Draft SEIR is the BART Extension to Milpitas, San Jose and Santa Clara**.** The federally funded segment will be addressed in an Environmental Impact Statement (EIS) yet to be prepared. The City of Milpitas would have an opportunity to comment on the Draft EIS scheduled to be available in 2008. Near-term mitigation of project-related traffic impacts implies an analysis of existing, background, and project conditions in the year the Project would open. The 2030 cumulative impact assessment represents the likely worst case scenario because it would include approximately 15 years worth of additional background growth in the vicinity of the station. Therefore, the mitigation measures proposed for the 2030 alternatives provide the best basis for disclosing project-related impacts.*

L-2.23 *The City of Milpitas' opposition to surface parking is noted. The use of surface parking provides a cost-effective way to meet the initial parking demand and preserves the opportunity for conversion to structured parking in the future.*

L-2.24 *Refer to Response to Comment L-2.22. VTA is not pursuing property acquisition on the north side of Montague Expressway for parking or future transit facility use.*

L-2.25 *If VTA determines that surface parking lots should be a solution to parking demand, VTA will ensure that the parking lots are designed to all current standards, including those related to pedestrian travel and safety.*

L-2.26 *Most of the mentioned intersections in the Milpitas Boulevard Corridor are projected to operate below current level of service standards by the year 2030 under the No Project Alternative. This means that the degradation in intersection levels of service will be initially attributable to other urban development projects and would occur before the Project further added traffic to these intersections. Consequently, the inclusion of Traffic Management Improvements along this corridor seems like an inappropriate addition to the Project. A "fair share" contribution is mentioned as mitigation for Project traffic impacts. At the City's discretion, these funds could be used to partially support Traffic Management Improvements on the Milpitas Boulevard Corridor.*

The extension of Milpitas Boulevard is an element of the Montague/Capitol Station and is therefore not mitigation. The projected 2030 No Project Alternative conditions show the level of service at the two intersections along Landess Avenue being worse than the current level of service standard. This means that the degradation in intersection levels of service will be initially attributable to other urban development projects and would occur before the Project further added traffic to these intersections. Through the mitigation measure, VTA has committed to contribute a "fair share" towards traffic improvements.

The Milpitas Boulevard extension is being planned as a station access road and would not eliminate the future need to grade separate the intersection of Montague Expressway and Great Mall Parkway/Capitol Avenue. The Milpitas Boulevard extension would be constructed and fully funded as an element of the Project.

L-2.27 *VTA recorded the NOP for the SVRT SEIR in August 2006. The Milpitas City Council adopted the Preferred Land Use Plan for the Transit Area Plan in December 2006. According to CEQA Guidelines, Section 15125(a), the environmental setting, including a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The Preferred Land Use Plan for the Transit Area Plan was adopted four months after the SVRT SEIR's NOP was published, and is therefore not considered as part of the baseline conditions. Further, the Draft Transit Area Plan and Draft EIR have not yet been circulated to the public as of April 30, 2006.*

The transportation and transit section analysis of the SVRT SEIR was based on the VTA County-wide Model that takes into account the General Plan density information gathered during the update of the model in 2005. Therefore, cumulative traffic impacts from increased densities in the Transit Area Specific Plan area were considered. The noise, vibration, and socioeconomic sections' analyses used existing land uses and projects that had been granted entitlement up to the date the NOP was recorded in August 2006. Noise and vibration impacts cannot be evaluated unless a site plan or tentative map with setbacks has been approved by the City Council. Without specific information regarding building setbacks and outdoor areas, VTA cannot evaluate the impacts of project level versus background level decibel levels within noise sensitive areas. Developers proposing residential uses along the Project alignment must provide noise and vibration mitigation for their projects if project entitlement is granted after the VTA Board certifies the SVRT FSEIR.

In addition, the Milpitas City Council adopted a Preferred Land Use Plan for the Transit Area Plan on December 4, 2006 that was inconsistent with the SVRTC BART Extension Project approved in December 2004. The plan is inconsistent with an approved regional plan by not recognizing transit facilities east of the proposed BART line.

As stated previously, the VTA staff and SVRT PAB recommendation to the VTA Board of Directors is to approve the Retained Cut Long Option.

L-2.28 *The additional seven industrial businesses displaced by Design Change 17 Montague/Capitol Station would be displaced by the station design, not by either the aerial or the retained cut alignment configuration options. Refer to Response to Comment L-2.6 regarding the VTA Relocation Assistance Program.*

L-2.29 *The Project intends to implement a community involvement/community outreach program, which will include advance notification to community members, including residences and businesses, regarding construction and expected traffic impacts. In addition, a project website with construction information will be updated on a regular basis, and there will be a construction hotline for community members to call to ask questions, to voice concerns or to make comments. Community meetings will also be held, as appropriate.*

Public outreach representative(s) will coordinate closely with the Contractor to ensure there are responses to comments, concerns, and to make sure that the Contractor is following contract and regulatory requirements to mitigate and/or abate construction impacts. The Contractor will be required to implement abatement procedures and to work closely with the community to minimize disturbance.

L-2.30 *The City of Milpitas traffic analysis in the Draft SEIR is based on the Milpitas BART Stations Traffic Impact Analysis, Draft, September 20, 2006. The Administrative Draft dated June 2006 was provided to the City for review and comment and revisions were made. The latest TIA will be provided to the City of Milpitas along with the Final SEIR.*

L-2.31 *For Dixon Landing Road, VTA, City of Milpitas Engineering, City of Milpitas Fire Department, Union Pacific Railroad, and CPUC reviewed conceptual plans for use of an additional fire truck railroad crossing and all parties have provided positive feedback. This fire truck access would be placed prior to closing Dixon Landing Road if this is the decision.*

A similar exercise was conducted with the City of Fremont and a temporary fire truck access will be placed prior to Kato Road and Warren Avenue improvements. Positive feedback was received from the same parties as mentioned above. Both temporary fire truck crossings would be accessible by both City of Fremont and City of Milpitas Fire Departments. VTA will work with adjacent fire jurisdictions when developing a fire department mutual aid plan.

Dependent on design development, the Project may identify additional access issues for City personnel, vehicle traffic, or pedestrians, which would be heavily constrained by construction activities. These issues will be identified during final design, and VTA will work with City of Milpitas staff to develop appropriate plans to address those issues, should they arise.

Additional streets impacted by construction within Milpitas city limits include Montague Expressway and Capitol Avenue.

During the time when a particular street is restricted with either lane closure or complete street closure, adjacent streets crossing the corridor will be operational.

L-2.32 *Refer to Response to Comment L-2.27.*

L-2.33 *Side platforms are recommended at the Montague/Capitol Station for the following reasons:*

- *A center platform will have additional ROW impact.*
- *The increases in ridership convenience offered by a center platform has a minor incremental benefit.*
- *Capital cost increase ($2M to $6M) for center platform vs. side platform.*

L-2.34 *The levels to which the comment refers are for groundborne vibration, not airborne noise. The vibration levels have been evaluated using the FTA criterion. For airborne noise levels with mitigation, please refer to Draft SEIR, Table 4.12-1 and page 114 for the Spinnaker Point Apartments. Projected noise levels of 63-64 Ldn required a sound wall for mitigation at this site. Noise mitigation was not required at the other two locations.*

L-2.35 *These utilities are listed in Table 4.15-1 of the FEIR. The owner of the Hetch-Hetchy Bay Division Pipelines is identified as the San Francisco Water District.*

L-2.36 *Design Change 19, Electrical Facilities South of Trade Zone Boulevard, is located within the City of San Jose. Sufficient parking appears to be available. The City of San Jose would be responsible for determining if the remaining parking is sufficient.*

L-2.37 *Refer to Response to Comment L-2.13.*

L-2.38 *Refer to Response to Comment L-2.13.*

L-2.39 *The 2004 FEIR includes the vast majority of information on potential floodplain and water quality impacts and associated design requirements, best management practices, and mitigation measures to address such impacts, as applicable. This information may be found in Sections 4.4 (water quality related to biological resources), 4.4, (water quality related to discharge of potentially contaminated water), 4.18, (the main section discussing floodplains and water quality), and 4.19 (water quality impacts during construction related to biological resources, hazardous materials, and water resources). Specifically related to compliance with the City's floodplain regulations, the design of drainage structures would conform to the criteria of the Milpitas Public Works Department and would be subject to approval by this agency (Section 4.18.4.3). Specifically related to National Pollutant Discharge Elimination System (NPDES)*

compliance, the project would include stormwater treatment best management practices that are consistent with the Santa Clara Valley Urban Runoff Pollution Prevention Program and the NPDES permit that the City of Milpitas and other program participants share in order to reduce stormwater-borne pollutants at their source (Sections 4.18.4.4, 4.19.5.2, 4.19.10.2). VTA would obtain and adhere to the requirements of the statewide general NPDES permit for "Waste Discharge Requirements (WDRs) for Discharges of Storm Water Runoff Associated with Construction Activity (General Permit)" (Order No. 99-08-DWQ, NPDES No. CAS000002) and would prepare a Storm Water Pollution Prevention Plan (SWPPP), which includes best management practices to minimize pollution (Sections 4.19.10.2, 4.19.10.3). For contaminated groundwater, a site-specific NPDES permit would be obtained, as required (see Sections 4.19.10.3 and 4.19.15.4).

As stated in this SEIR, Section 4.17.4, "The FEIR did not include a discussion of pump stations and the collection of groundwater seepage/rainwater during the operation of the Project." Pump stations are located within the Long Retained Cut Option in Milpitas, which is the staff and PAB recommended option. Discharge of the water collected by pump stations would be to either the storm sewer system or sanitary sewer system and would comply with NPDES and/or MS4 permit requirements and/or publicly owned treatment works pretreatment requirements to reduce pollutants.

As stated in the 2004 FEIR and restated in the SEIR, VTA has coordinated and will continue to coordinate with the Milpitas Department of Public Works and other regulatory agencies to ensure the proper design of drainage facilities, to include appropriate measures for flood protection, and to minimize impacts to pipelines and supporting facilities.

L-2.40 *Impacts to the SFPUC Hetch Hetchy ROW would be analyzed and mitigated, if mitigation is deemed necessary, in a future environmental document before the South Calaveras Future Station is constructed.*

According to City of Milpitas staff on Tuesday, April 23, 2007, the Trumark site in question is "located near the corner of Los Coches and Milpitas Boulevard. It is an abandoned Read-Rite building, near the proposed Future South Calaveras Station. There are no formal plans submitted to the City and recently Trumark was sold to another developer that is currently doing preliminary feasibility studies on residential development. An EIR and general plan amendment would be required, but there is no submittal to this date." VTA can neither discuss nor analyze the displacement impacts of the Project upon a residential project for which no application has been submitted to the City of Milpitas.

The displacement of the business located at Railroad Drive would be caused by the need to locate permanent facilities that support the operation of BART at this location. Impacts associated with permanent facilities are discussed in the Socioeconomics section, whereas impacts associated with the use of sites only during construction, not for permanent facilities, are discussed in the construction section.

L-2.41 *Refer to Responses to Comments L.2-4, L-2.15 and L-2-31.*

L-2.42 *Refer to Response to Comment L-2.39 for information regarding stormwater run-off and NPDES compliance during construction and operation.*

The following information regarding erosion control is from the 2004 FEIR and SEIR. The Project will include appropriate erosion control measures 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. (2004 FEIR, Section 4.4.3.5). Sandbags or other erosion control measures will be used during construction to prevent silt runoff to public roadways (FEIR, Section 4.19.4.2). An erosion and sediment control plan will be prepared and submitted to the Regional Water Quality Control Board, Alameda County Flood Control and Water Conservation District, and Santa Clara Valley Water District for review and comment. The erosion and sediment control plan will identify the location and design of sediment retention structures. Sediment traps will be placed at the drainage outlet of each earthwork construction area. Drainage outlets from sediment traps will be protected with energy dissipation techniques, such as riprap, to reduce erosion potential. Sediment barriers will be placed along the toe of embankments. Erosion control structures will be inspected by VTA prior to the beginning of the rainy season and after major rainstorms, or as required by regulatory agencies. Problems identified by these inspections will be remediated. Exposed ground on cut or fill slopes will be planted with vegetative cover designed to reduce erosion (FEIR, Section 4.19.15.4). Finally, best management practices for erosion control will be implemented to prevent migration of sediment into the storm drain system or surface waters (SEIR, Section 4.18.5.5).

VTA will also adhere to encroachment permit conditions, which will include conditions applicable to erosion control. During subsequent engineering phases, VTA will coordinate with local jurisdictions in the development of construction specifications, which will cover erosion control in considerable detail.

L-2.43 *Refer to Response to Comment L-2.31.*

L-2.44 *Building and structure fire suppression services that are impacted by the Project will be replaced to meet City of Milpitas Fire Department requirements. Access to buildings and structures impacted by the Project will also be replaced to meet City of Milpitas Fire Department requirements.*

L-2.45 *Provisions to notify construction personnel of the proximity to facilities using toxic gases will be included in the construction documents.*

L-2.46 *VTA acknowledges the correction to the number of units in the Centria development. Please see Chapter 4 Changes to the Draft SEIR for the revised text.*

L-2.47 *VTA acknowledges the correction to text regarding the status of construction. Please see Chapter 4, Changes to the Draft SEIR, for the revised text.*

CITY OF Fremont

Transportation and Operations Department
39550 Liberty Street, P.O. Box 5006, Fremont, CA 94537-5006
42551 Osgood Road, Fremont, CA 94539 (Maintenance Center)
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VTA ENV. ANALYSIS
2007 MAR 14 P 2:46

LETTER L-3

March 12, 2007

Mr. Tom Fitzwater
VTA Environmental Planning, Building B
3331 North First Street
San Jose, CA 95134-1906
Via email: vtabartseircomments@vta.org

Re: Scoping Comments, Bart Extension to Milpitas, San Jose and Santa Clara Supplemental EIR

Dear Mr. Fitzwater:

This letter is in response to the January 2007 report regarding the Valley Transportation Agency's BART extension Supplemental EIR, Chapter 4.11.1 to 4.11.4. The SEIR included a discussion of the City of Fremont's Union Pacific Railroad Corridor Trail Feasibility Study currently ongoing. The proposed Union Pacific Rail (UPRR) Trail alignment would follow current and future abandoned Union Pacific Railroad corridors between Clarke Drive in the north and south of Warren Avenue to the Fremont City limits, a distance of approximately nine miles.

The discussion in Chapter 4.11.4 of the study concluded that "The design changes made since the certification of the FEIR result in no new significant impacts related to land use. Therefore, no new mitigation measures are necessary."

Based on this report conclusion the City of Fremont would like the VTA to consider the following mitigations regarding the UPRR Trail project: L-3.1

1. Work cooperatively with the City of Fremont (Rene Dalton, rdalton@ci.fremont.ca.us or 510.494.4535) to provide a trail parallel to the BART alignment, to connect planned portions of the trail within Fremont, especially where opportunities exist within adjacent utility easements.

2. Provide connections to local bicycle and pedestrian facilities from BART access points (as shown on the City of Fremont Bicycle Master Plan). L-3.2

It is anticipated that the City's UPRR trail study will be completed within the next year, and we would like to include any analysis completed as part of the SEIR into the study if the schedule permits. L-3.3

We look forward to working with your agency to develop feasible options for trail implementation. Please do not hesitate to contact me at (510) 494-4535 or by e-mail at

Environmental Services 510 494-4570 | 510 494-4571 *fax* | *Transportation Engineering* 510 494-4700 | 510 494-4751 *fax* | *Maintenance Center* 510 979-5700 | 510 979-5708 *fax*

rdalton@ci.fremont.ca.us if you have any questions, or need additional information regarding the project.

Sincerely,

Rene Dalton

Rene Dalton
Associate Transportation Engineer

Cc: Jeff Peters, Questa Engineering Corp.

RESPONSE TO COMMENT LETTER L-3

City of Fremont – Transportation and Operations Department

L-3.1 *VTA acknowledges a commitment to work cooperatively with the City of Fremont in its plans to implement a trail parallel to the BART alignment. However, since the BART Extension Project does not result in a significant trail impact, this would not be considered mitigation as referenced in the comment but a cooperative planning project.*

There may be portions of VTA's ROW that could accommodate a trail parallel to the alignment. However, there is not sufficient ROW to accommodate a trail on the full length of VTA's property. VTA staff will work with City of Fremont staff to discuss opportunities regarding unused portions of VTA ROW.

L-3.2 *VTA will work cooperatively with the City of Fremont to provide connections to local bicycle and pedestrian facilities from BART access points if possible.*

L-3.3 *City of Fremont staff should contact VTA staff regarding what portions of the VTA ROW may be available for trail improvements.*

LETTER L-4

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

VTA
ENV. ANALYSIS
2007 MAR 16 P 2:11

Department of Planning, Building and Code Enforcement
JOSEPH HORWEDEL, ACTING DIRECTOR

March 15, 2007

Mr. Thomas W. Fitzwater, Environmental Resources Planning Manager
Santa Clara Valley Transportation Authority
Environmental Planning
3331 N. First Street, Building B
San Jose, CA 95134-1927

SUBJECT: DRAFT SUPPLEMENTAL EIR FOR BART EXTENSION TO MILPITAS, SAN JOSE AND SANTA CLARA (FILE NO. OA07-003)

Dear Mr. Fitzwater:

The City of San Jose has reviewed the Draft Supplemental Environmental Impact Report (SEIR) for the project to extend BART to Milpitas, San Jose and Santa Clara. We appreciate the leadership of the Santa Clara Valley Transportation Authority (VTA) in developing the BART project in order to provide the following significant benefits to the Silicon Valley region: L-4.1

- improved transit access throughout the Bay Area region
- traffic congestion relief in the I-880 and I-680 corridors between Alameda County and Silicon Valley
- Improved air quality by reducing auto emissions
- Support of "smart growth" land use planning and economic development goals.

The City of San Jose is a strong supporter of the BART project and we encourage continuation of current efforts to complete the project by 2016.

Based upon our review of the SEIR, we have comment to share with the VTA that are intended to identify opportunities to reduce environmental impacts, enhance the project benefits, address area of potential community concern, and/or present current information. Our comments in this regard are as follows:

Significant Environmental Issues

1. Temporary Parking Impacts at Diridon Station – The SEIR discloses a parking impact of approximately 474 parking spaces used by HP Pavilion, Caltrain, and other local businesses as a significant unavoidable impact. This impact is expected to occur for L-4.2

200 East Santa Clara Street San José, CA 95113 **tel** (408)535-3555 **fax** (408) 292-6055 www.sanjoseca.gov

approximately 5 years. We believe there are reasonable opportunities (such as tighter construction footprints, reduction of construction impact areas, selection of alternative construction parking sites, etc.) to reduce the temporary parking impact and provide parking mitigation that can reduce the impact to a less that significant level. We encourage the VTA's continued efforts to work with the City and key stakeholders to address this issue. L-4.2 con't.

2. Temporary Parking Impact in Downtown Core – The SEIR discloses a parking impact of approximately 400 off-street parking spaces due to the Downtown construction staging area as a significant unavoidable impact. These spaces are used by Downtown customers and office employees. This impact is expected to occur for approximately 5 years. We believe there are reasonable opportunities (such reduction of construction impact areas, selection of alternative construction parking sites, etc.) to provide parking mitigation that can reduce the impact to a less that significant level. We encourage the VTA's continued efforts to work with the City and key stakeholders to address this issue. L-4.3

3. Parking at Diridon Station – The SEIR identifies two options for parking at Diridon Station – a 1300 space parking structure or "no parking". It is acknowledged that the parking structure has significant cost and feasibility issues. However, the "no parking" option is disclosed in the SEIR to have significant and unavoidable traffic circulation impacts due to the diversion of BART patrons to other parking locations. The "no parking" option also has potential parking intrusion impacts to Caltrain, and nearby businesses and residential areas. We believe there are reasonable opportunities to provide some parking in the order of 500 spaces that can reduce or avoid significant environmental impacts. We encourage the VTA's continued efforts to work with the City and key stakeholders to address this issue. L-4.4

4. Historic Property Impacts at Downtown San Jose Station – The SEIR identifies that station entrance options for the Downtown San Jose Station would require substantial alterations to buildings in the San Jose Downtown Commercial Historic District. The options for a station entrance include the Bank of America Building, the Moderne Drug building, and the Firato Delicatessen/Ravioli Building. We encourage the VTA's consideration of the Bank of America Building as a preferred alternative and subject to the development of an agreement with appropriate federal, state and local historic preservation bodies addressing mitigation measures for historic architectural resources. We understand that project features affecting historic buildings will have compatible architectural features in terms of scale, massing, color and materials and will be designed in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*. L-4.5

Additionally, the San Jose Redevelopment Agency is opposed to the consideration of the Ravioli (Kotansky) building as a BART portal. This building is undergoing a historic renovation financed in part by the Redevelopment Agency. Creating a portal from this building could destroy the interior restoration work currently in progress and could also result in a negative impact on the exterior of the building, thus affecting both the building's historic character and the historic value of the historic district that encompasses the site. L-4.6

5. Construction Noise Mitigation. There is no standard applied to noise mitigation or noise measurement goals applied to the project construction. The SEIR should identify that standard to determine if construction will be properly mitigated. Once a standard is developed, specific mitigation measures would then need to be developed to determine the adequacy of the mitigation. L-4.7

Issues Requiring Further Study or Design Refinement

6. Downtown Construction Impact Mitigation Plan – The SEIR describes the VTA's commitment to preparing a Downtown San Jose Construction Impact Mitigation Plan (CIMP). We encourage the VTA to continue efforts to develop the plan during the 65% and Final Design phase of the project, working in close coordination with the City, Downtown businesses, and other stakeholders. The CIMP should include discussion of possible physical and economic impacts on downtown businesses. L-4.8

7. Potential Guadalupe River Trail Construction Impacts at Santa Clara Street – The SEIR identifies a construction staging area at Santa Clara Street and Route 87. This location includes part of the Guadalupe River Trail system. The trail system is actively under development and within a few years is expected to be continuous between Willow Glen and Alviso, providing a major recreation and bicycle transportation link for the greater Downtown and North San Jose areas. The SEIR indicates a future blockage of the Guadalupe River Park east bank upper trail, which should be discussed in the traffic portion of the EIR. Alternatives to blockage should be identified. L-4.9

   It should be noted that the City of San Jose requires development to provide alternative routes before the consideration of any closure can be granted. VTA will have to submit compelling evidence that there is no alternative to this closure. We encourage the VTA to work with the City to avoid impacts to the Guadalupe River Trail as part of the BART project construction.

8. Comprehensive BART Parking Assessment and Station Parking Strategies – We understand the VTA is currently evaluating the scope of parking supply at each of the planned BART stations. We support efforts to consider reduce parking, parking pricing, and a further shift of parking from Alum Rock Station to Berryessa Station, as measures L-4.10

to reduce project costs and encourage access to BART station by non-auto modes. We encourage the VTA to continue working with the City and key community stakeholders to address this issue. L-4.10 con't.

9. The SEIR should include an analysis of the lost development potential associated with developing the Diridon Station on lands owned by the Redevelopment Agency. The proposed station alignment severely restricts the potential for development, may lower the size and density of future development and could lessen the Agency's ability to provide for future office, retail or residential development potential, thus reducing potential ridership on the BART system. L-4.11

10. Refinements of 35% Design Plans – The SEIR includes conceptual design plans addressing plans for BART stations (Berryessa, Alum Rock, Downtown, Diridon, and Santa Clara), the BART vehicle maintenance and storage yard, and construction staging areas. The City has previously provided comments to the VTA during our regularly scheduled meetings with VTA on recommended design refinements. We encourage the VTA to continue working with the City to refine the project design to address local interests and if necessary initiate future updates the BART EIR. L-4.12

    The text indicates an emergency generator would be located either above or below ground. A particular concern to the City is the text description for the Downtown San Jose Station (Chapter 3, page 22). Station emergency exits should not be designed with hatches opening at street level within the sidewalk area. In addition, emergency generators, vent shafts and other related infrastructure should be located so as to avoid impacting street frontage areas that would affect the retail orientation of the street. Generators should be located below ground. L-4.13

11. Community Compatibility of Power Substations, Vent Structures, Gap Breakers, and Soundwalls – The SEIR identifies various ancillary facilities along the BART line that are necessary for BART operations and environmental mitigation. These facilities include power substations, ventilation structures, gap breakers, and soundwalls. These facilities will have a visual impact on the community. The SEIR states that the "VTA will continue to work with the city, community, and business groups in developing Project facilities compatible with the urban setting and streetscape". We encourage the VTA to prepare architectural design drawings of the planned facilities and provide outreach with the affected community as part of the 65% design process. With regard to facilities that generate noise, we encourage the VTA to provide noise attenuation to the maximum extent practicable, and not limited to minimum environmental standards. L-4.14 L-4.15

12. Technical Corrections or Updates: the City of San Jose has provided a separate transmittal of technical edits to the VTA addressing the preferred terminology for historic buildings in Downtown San Jose, eight updates to discussion of planned development in L-4.16

the vicinity of BART stations, and other miscellaneous minor text edits. We would appreciate the VTA's incorporation of these edits in the Final SEIR. L-4.16 con't.

The City appreciates the opportunity to provide comments on the Draft SEIR and looks forward to reviewing the Final SEIR for this important project when it becomes available for review. When available, please provide Janis Moore of my staff with a hard copy and a CD version of the complete Final SEIR, including all technical reports/volumes of the document. You may send the document directly to her attention, since she has been coordinating with other City departments in the review of the Draft SEIR. L-4.17

Thank you again for the opportunity to comment on the Draft SEIR for this project. If you need to discuss these comments, you may contact Janis Moore of my staff at (408) 535-7815.

Sincerely,

Joseph Horwedel, Director
Planning, Building & Code Enforcement

Cc:

Hans Larsen
Henry Servin
Dennis Korabiak
Janis Moore

OA07-003 DSEIR VTA BART Pjct Ltr.doc/JAM

RESPONSE TO COMMENT LETTER L-4

City of San Jose – Department of Planning, Building and Code Enforcement

L-4.1 *The City's support for the project is noted.*

L-4.2 *VTA has refined the temporary construction staging areas to reduce parking impacts where possible. VTA will continue to work with the City of San Jose and other stakeholders to reduce temporary parking impacts.*

L-4.3 *VTA is continuing to explore opportunities to reduce Downtown construction parking impacts. In fact, the primary construction staging area for the Downtown San Jose Station (located north of Santa Clara Street and between Market Street and North 1st Street) has now been reduced in size from 2.88 acres as shown in the Draft SEIR, Figure 4.18-35 to 2.53 acres. This results in approximately 40 fewer parking spaces impacted. VTA will continue to work with the City and other stakeholders to address the temporary impact to the existing parking supply in the vicinity of the Downtown San Jose Station.*

L-4.4 *VTA will continue to work with the City and other stakeholders to address the temporary construction impact to the existing parking supply in the vicinity of the Diridon/Arena Station.*

L-4.5 *The City of San Jose's support for Station Entrance Option M-1B, the station entrance option that would affect the historic property at 8-14 South First Street, (the Bank of America/Bank of Italy Building), is noted.*

L-4.6 *The City of San Jose's comment that the San Jose Redevelopment Agency is opposed to Station Entrance Option M-1A, the station entrance option that would affect the historic property at 28 East Santa Clara Street (the Firato Delicatessen/Ravioli Building and other adjacent historic properties), is noted and provided to the VTA Board of Directors for their consideration. If this were to be the preferred entrance location, the changes to the historic buildings would be consistent with the Secretary of the Interior's Standards and therefore would be considered less than significant.*

L-4.7 *Chapter 4, page 263, Table 4.18-4 provides FTA construction noise guidelines that have been applied to the Project. These guidelines were used in the assessment of construction noise impacts.*

L-4.8 *VTA will work closely with the City in the development of the Downtown Construction Impact Mitigation Plan. Preparation of the Plan will begin at the end of 65 percent design phase and will be finalized during the Final Design phase.*

L-4.9 *The construction staging area shown in the Draft SEIR, Figure 4.18-36 was intended to show the area as underneath State Route 87 and outside the park. Therefore, the Guadalupe River Trail will not be impacted during construction.*

L-4.10 *VTA is continuing to assess parking demand and parking supply strategies. As such, VTA will continue to work with the City of San Jose and key community stakeholders to develop effective strategies.*

L-4.11 *According to Title 14, California Code of Regulations, Chapter 3, Guidelines for Implementation of the CEQA, 15126.2 (a), "An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published…". Therefore, an EIR is not required to address lost development potential associated with developing the Diridon/Arena Station on lands owned by the Redevelopment Agency.*

L-4.12 *VTA is committed to continuing to work with the City of San Jose at partnership meetings and other opportunities to refine the project design. If design changes are proposed for the project description, subsequent environmental documentation may be required.*

L-4.13 *VTA will continue to work with the City of San Jose to refine the locations of the station support facilities in an effort to support retail on street frontages while still enabling the facilities to function effectively.*

L-4.14 *While these facilities may have a visual impact, the Draft SEIR has determined that these impacts are less than significant. Architectural design drawings will be developed during the 65 percent design phase and shared with the City of San Jose and the local community.*

L-4.15 *The Project has committed to mitigating significant noise impacts from facilities to a level that is less than significant. For example, under Design Change 45, which proposes various alternative locations for the ventilation structure near Stockton Avenue, mitigation consists of inline silencers between the emergency fan and the ground surface and a noise wall.*

L-4.16 *The technical edits have been incorporated into the Final Supplemental EIR. Please refer to Chapter 4, Changes to the Draft SEIR, for the revised text.*

L-4.17 *Following the VTA Board of Director's hearing on June 7, 2007, VTA will provide the documentation as requested.*

MAR-16-2007 15:52 CITY OF SAN JOSE-PLANNING 408 292 6055 P.01/02
FROM : JANKE AND ASSOCIATES FAX NO. : 4082440345 Mar. 17 2007 03:35AM P2

LETTER L-5

March 16, 2007

Mr. Tom Fitzwater
Environmental Planning Manager
VTA – Environmental Planning
3331 North First Street, Building B
San Jose, CA 95134-1927
Fax: (408) 321-5787

RE: Draft Supplemental Environmental Impact Report for the Proposed BART Extension to Milpitas, San Jose and Santa Clara

Dear Mr. Fitzwater:

The San Jose Historic Landmarks Commission is a seven-member body appointed by the City Council to advise and make recommendations to the City Council and City Manager on the designation, acquisition and preservation of historic landmarks and sites, artifacts and other property of historic significance and value to the City of San Jose. In that capacity, the Historic Landmarks Commission has reviewed the BART SEIR and voted (6-0-1, Peak absent) to provide these comments regarding the document.

The Commission has several concerns regarding the adequacy of the document's examination of potential BART impacts on historic resources in San Jose. In general, those concerns are:

- The SEIR analysis of potential impacts on historic resources in San Jose is substantially incomplete. While it is admittedly difficult to project some impacts from 35% complete plans, that difficulty does not alone explain the absence of critical historic information. L-5.1
- The SEIR refers to 94 historic structures that were analyzed but provides no information about most of them. There is apparently a Historic Resource Evaluation Report but it was not included in the Appendices, nor posted on the web page for review. Access to that document is necessary for the Historic Landmarks Commission to adequately comment on this SEIR. L-5.2
- While there is very little information in the SEIR regarding potential impacts on historic structures, there is virtually no information about possible mitigations, only a general statement that mitigations would be developed through a MOA between the city and VTA. L-5.3
- While the SEIR addresses historic impacts in the downtown to some minimal extent, it says virtually nothing about such impacts outside of downtown. The SEIR needs to address historic resources along the entire planned BART alignment, particularly near stations, identified Landmarks and Historic Neighborhoods. The SEIR may conclude that, and explain how, impacts are not significant in each case, or may identify mitigations, but it should go through that exercise. Particular concerns are the Diridon Station and instances where impacts are hinted at but not defined such as in 4.6.4.2, where Design Change 37- Gap Breaker Station – "would not require demolition". But what would the impacts be? L-5.4
- The SEIR also needs to clearly state that any changes to or other impacts on historic structures would be completely consistent with the accepted historic preservation principals and practices: the Secretary of the Interior's Standards for the Treatment of Historic Properties. L-5.5

- In the opinion of the Commission, there does not appear to be sufficient rational for eliminating "sidewalk" portals from consideration at this time. Lack of space within sidewalk rights of way was cited as the reason for discarding this solution. While the Commission understands that portals could not be satisfactorily placed entirely within existing sidewalks, we wonder if adequate consideration was given to partial use of sidewalk areas, e.g., sidewalk plus private property or sidewalk plus parking or loading lane. The current position seems to be based on the assumption that portals will need to be 60 or 70 feet long and that parking or loading lanes may need to be saved for future expansions of travel lanes or other traffic needs. Are those assumptions accurate? We have observed that portals in other cities are frequently much shorter and adding travel lanes in a mass transit served downtown might seem to be a dubious endeavor.

L-5.6

The Commission is particularly concerned about the proposed use of the first floor of the Bank of America Building, a City Landmark that is listed on the National Register, and downtown's signature building, as a portal. Specific concerns are:

- What exterior changes to the B of A building might be required if a portal were to be installed in the building?
- What interior changes might be required to accommodate a portal? This issue is of particular importance since the portal is proposed to be located in the interior.
- What complications, if any, does the current condominium ownership of the building pose? Has any work with the owners been initiated?
- This Commission suggests that options for a portal, other than the B of A Building, remain open at this time.

L-5.7

In conclusion, the Historic Landmarks Commission is charged with stewardship responsibilities for San Jose's historic and cultural resources and is concerned that the potentially substantial impacts to such resources from the BART Extension have not been adequately addressed. The Commission looks forward to participating in the MOA or PA drafting process. Thank you for the opportunity to comment on the SEIR.

Sincerely,

Edward Janke, AIA
Chair, San Jose Historic Landmarks Commission

cc: Mr. Jerome Wiggins, United States Department of Transportation, Federal Transit Administration
Wayne Donaldson, State Historic Preservation Officer, California Office of Historic Preservation

TOTAL P.02

MAR-16-2007 15:59 CITY OF SAN JOSE-PLANNING 408 292 6055 P.01/02
FROM : JANKE AND ASSOCIATES FAX NO. : 4082440345 Mar. 17 2007 03:35AM P2

March 16, 2007

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Environmental Planning Manager
VTA – Environmental Planning
3331 North First Street, Building B
San Jose, CA 95134-1927
Fax: (408) 321-5787

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- The SEIR analysis of potential impacts on historic resources in San Jose is substantially incomplete. While it is admittedly difficult to project some impacts from 35% complete plans, that difficulty does not alone explain the absence of critical historic information.
- The SEIR refers to 94 historic structures that were analyzed but provides no information about most of them. There is apparently a Historic Resource Evaluation Report but it was not included in the Appendices, nor posted on the web page for review. Access to that document is necessary for the Historic Landmarks Commission to adequately comment on this SEIR.
- While there is very little information in the SEIR regarding potential impacts on historic structures, there is virtually no information about possible mitigations, only a general statement that mitigations would be developed through a MOA between the city and VTA.
- While the SEIR addresses historic impacts in the downtown to some minimal extent, it says virtually nothing about such impacts outside of downtown. The SEIR needs to address historic resources along the entire planned BART alignment, particularly near stations, identified Landmarks and Historic Neighborhoods. The SEIR may conclude that, and explain how, impacts are not significant in each case, or may identify mitigations, but it should go through that exercise. Particular concerns are the Diridon Station and instances where impacts are hinted at but not defined such as in 4.6.4.2, where Design Change 37- Gap Breaker Station – "would not require demolition". But what would the impacts be?
- The SEIR also needs to clearly state that any changes to or other impacts on historic structures would be completely consistent with the accepted historic preservation principals and practices: the Secretary of the Interior's Standards for the Treatment of Historic Properties.

MAR-16-2007 16:00 CITY OF SAN JOSE-PLANNING 408 292 6055 P.02/02
FROM : JANKE AND ASSOCIATES FAX NO. : 4082440345 Mar. 17 2007 03:36AM P3

- In the opinion of the Commission, there does not appear to be sufficient rational for eliminating "sidewalk" portals from consideration at this time. Lack of space within sidewalk rights of way was cited as the reason for discarding this solution. While the Commission understands that portals could not be satisfactorily placed entirely within existing sidewalks, we wonder if adequate consideration was given to partial use of sidewalk areas, e.g., sidewalk plus private property or sidewalk plus parking or loading lane. The current position seems to be based on the assumption that portals will need to be 60 or 70 feet long and that parking or loading lanes may need to be saved for future expansions of travel lanes or other traffic needs. Are those assumptions accurate? We have observed that portals in other cities are frequently much shorter and adding travel lanes in a mass transit served downtown might seem to be a dubious endeavor.

The Commission is particularly concerned about the proposed use of the first floor of the Bank of America Building, a City Landmark that is listed on the National Register, and downtown's signature building, as a portal. Specific concerns are:

- What exterior changes to the B of A building might be required if a portal were to be installed in the building?
- What interior changes might be required to accommodate a portal? This issue is of particular importance since the portal is proposed to be located in the interior.
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- This Commission suggests that options for a portal, other than the B of A Building, remain open at this time.

In conclusion, the Historic Landmarks Commission is charged with stewardship responsibilities for San Jose's historic and cultural resources and is concerned that the potentially substantial impacts to such resources from the BART Extension have not been adequately addressed. The Commission looks forward to participating in the MOA or PA drafting process. Thank you for the opportunity to comment on the SEIR.

Sincerely,

Edward Janke, AIA
Chair, San Jose Historic Landmarks Commission

cc: Mr. Jerome Wiggins, United States Department of Transportation, Federal Transit Administration
Wayne Donaldson, State Historic Preservation Officer, California Office of Historic Preservation

TOTAL P.02

RESPONSE TO COMMENT LETTER L-5

San Jose Historic Landmarks Commission

L-5.1 *The Draft SEIR for the SVRTC BART Extension to Milpitas, San Jose and Santa Clara is a supplement to the 2004 FEIR that was certified by the VTA Board of Directors in December 2004. The SEIR evaluates the potential environmental impacts, including impacts to historical resources that result from design modifications to the Project evaluated in the 2004 FEIR and covers any new information available since certification of the 2004 FEIR. The 2004 FEIR included an extensive evaluation of historical resources that is not repeated in the Draft SEIR. For the 2004 FEIR and Draft SEIR, VTA and its consultants have prepared various technical reports concerning historical resources. These reports identified the architectural area of potential effects or study area and the specific historic resources within the study area and evaluated the effects of the Project on these resources. These reports are listed in the bibliographies of the 2004 FEIR and Draft SEIR and are available to the public upon request.*

L-5.2 *The Draft SEIR explains that there are 94 properties, buildings, structures, and objects within the study area that were not previously analyzed in the 2004 FEIR (see Draft SEIR, Chapter 4, page 81, Table 4.6-3). Sixty-three of these resources did not require survey because they would be less than 50 years old at Project completion, now estimated to be 2016. They are also excluded from listing in the National Register of Historic Places (NRHP) or California Register of Historical Resources (CRHR) unless they can be shown to be exceptionally important (and none are); or the properties were vacant at the time of the field survey. The remaining 31 resources were surveyed and evaluated in a technical report prepared by JRP Historical Consulting, LLC (JRP), entitled Addendum Draft Technical Memorandum to the Historical Resources Inventory and Evaluation Report (November 2006). Of these 31 resources, three are listed in or appear eligible for listing in the NRHP and CRHR. There are no other resources evaluated in the November 2006 report that are eligible to be considered historic resources under CEQA.*

The evaluations of the 31 surveyed resources are recorded on State of California, Department of Parks and Recreation (DPR 523) forms and included in the November 2006 JRP report. Two hundred fifty other resources were evaluated and recorded on DPR 523 forms as part of the previous technical report, prepared in conjunction with the 2004 FEIR, entitled Draft Technical Memorandum Historical Resources Evaluation Report (January 2003), also prepared by JRP. These technical reports are listed in the bibliographies of the 2004 FEIR or Draft SEIR and are available to the public upon request.

L-5.3 *In addition to the technical report prepared in November 2006, JRP prepared a Draft Technical Memorandum CEQA Impacts Analysis for the SVRTC EIS and Supplemental EIR Alternatives in January 2007 to evaluate the impacts on historic architectural resources of the design changes to the Project that are the subject of the SEIR. The findings of this impacts evaluation report were summarized in the Draft SEIR. This report is listed in the bibliography of the SEIR and is also available to the public upon request.*

With respect to the impacts identified in the Draft SEIR, in accordance with the CEQA Guidelines, section 15064.5(b)(3), if impacts cannot be avoided, VTA will commit to the

performance standards for historical resources mitigation as set forth in The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings (U.S. Department of the Interior, National Park Service, 1995) (Standards & Guidelines), or to equivalent mitigation measures that will provide an equivalent level of protection for historic resources.

The Standards & Guidelines acknowledge the need to alter or add to a historic building to meet continuing or new uses but notes that it is most important that such alterations do not radically change, obscure, or destroy character-defining spaces, materials, features, or finishes. Standards set forth in the Standards & Guidelines for the rehabilitation of a historic building include, but are not limited to, the following: 1) A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships; 2) The historic character of property will be retained and preserved; 3) Each property will be recognized as a physical record of its time, place, and use; 4) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved; and 5) New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. In addition, as recommended by the Standards & Guidelines, the advice of qualified historic preservation professionals, such as architects, architectural historians, and others who have experience in working with historic buildings, has been and will continue to be obtained as the design of the station entrance progresses beyond the 35 percent level. This will ensure that any potentially significant impacts to historical resources will be mitigated to a level of less than significant. In accordance with the CEQA Guidelines, section 15064.5(b)(4), this mitigation will be made enforceable through conditions of Project approval.

VTA will execute a Memorandum of Agreement (MOA)[1] with the appropriate government and historic preservation bodies to ensure the most effective approach to mitigation of impacts to historical resources and will continue consultations with the City of San Jose and San Jose Historic Landmarks Commission.

L-5.4 *VTA has analyzed potential impacts to historic resources along the entire length of the 16.1-mile long Project. As noted above, the technical reports referenced in the 2004 FEIR and Draft SEIR bibliographies are available upon request.*

Draft SEIR, Section 4.6, Table 4.6-3 presents a summary of the identification and evaluation of potential historical resources within the Project's study area. Combining the analyses prepared for the 2004 FEIR and the current SEIR, there are 861 properties, buildings, structures, and objects within the study area. Of this total, 281 properties were surveyed or evaluated because they contained buildings, structures, or objects that would be 50 years or older at Project completion, estimated to be 2016, and 580 properties were not evaluated because they were vacant (i.e. there was no structure, building, or object on the property) or because the properties contained buildings, structures, or objects that would be less than 50 years old by 2016.

[1] In their May 10, 2004 letter commenting on the Draft Environmental Impact Statement/EIR & Draft 4(f) Evaluation for the Project, the San Jose Historic Landmarks Commission (SJHLC) suggested that a Programmatic Agreement (PA) rather than an MOA be used to address potential historical resource impacts. This suggestion is still under consideration and will be resolved as consultations with appropriate government and historic preservation bodies continue.

At this time, there are 23[2] properties containing 35 individual structures that are listed, eligible, or appear to be eligible for listing in the NRHP and the CRHR and 7 [3] additional properties that are considered historical resources for the purposes of CEQA.

All of these historical resources, except the historic Santa Clara Caltrain Station in Santa Clara, are within the City of San Jose where the project alignment is in a tunnel configuration (the two downtown stations and supporting facilities require above ground construction). Most of the resources, therefore, are not within view of, nor will they be directly impacted by, the subterranean portions of the Project. Project impacts, as described in the 2004 FEIR and with changes described in the Draft SEIR, Chapter 3 are discussed and summarized in the 2004 FEIR, Table 4.6-5 and in the Draft SEIR, Section 4.6.4.2. Project impacts are further described in JRP's 2007 Impacts Analysis which is available upon request. The technical documents have taken into account all historical resources within the Project study area and have analyzed potential impacts for both above- and below-ground Project features.

Design Change 42. This design change (Diridon/Arena Station and Alignment) is described in the Draft SEIR, Chapter 1, page 19. This design change does not include any activities that would cause adverse impacts to historical resources. It does not require the demolition or alteration of contributing elements of the historic Cahill Station and Santa Clara Underpass, would not diminish the linkage of resources at this property, and would not result in a substantial adverse change to the historic property.

Design Change 37. This design change (Gap Breaker Station near 9th Street) is described in the Draft SEIR, Chapter 1, page 21. Gap Breaker Stations, as described in the 2004 FEIR, page 3.4-32 consist of indoor type 1,000 V DC switchgear circuit breakers housed in a pre-fabricated building. Approximate dimensional requirements of gap breaker stations are 30 by 40 feet. The Gap Breaker Station near 9th Street would be visible from the property at 389 East Santa Clara Street/51 North 9th Street, APN 467-18-101, which contains four buildings, including the St. Patrick's Catholic Grammar School building, a building determined eligible for listing on the NRHP and CRHR. This design change, however, would not have a significant impact on this historical resource because it would not require the demolition of the resource, would not physically change the resource, and would not impair the historical significance of the resource. This design change would result in no substantial adverse change to the historical resource (see the Draft SEIR, Chapter 4, pages 82 and 83.

L-5.5 *If significant impacts to historic architectural resources cannot be avoided, the project features that impact historical resources will be designed to adhere to The Secretary of the Interior's Standards & Guidelines or in accordance with equivalent mitigation measures providing an equivalent level of protection for historic resources to ensure that*

[2] Draft SEIR, Table 4.6-3 notes that there are a total of 22 properties "Listed in or appears eligible for Listing in the NRHP/CRHR." This total includes 1 property at the Santa Clara Station comprised of 2 individual structures, the Santa Clara Station Depot and the Santa Clara Tower. The total is revised to 23 to count the Depot and Tower as individual properties. See Final SEIR, Chapter 4 for the text change. Also, two historical properties evaluated in the 2004 FEIR, the Fox Building at 40 North Fourth Street (APN 467-20-016) and the Murison Label and Carton Company building at 421-435 Stockton Avenue (APN 261-03-051) in San Jose (see FEIR, Table 4.6-3: Historic Properties listed in the NRHP, Eligible for Listing in the NRHP, or Appearing Eligible for Listing in the NRHP) have been demolished and are not included in the 23 total NRHP/CRHR properties.

[3] Draft SEIR, Table 4.6-3 also notes that there are a total of 8 properties "Eligible or appears eligible to be considered historic resources under CEQA." This total is revised to 7 to account for the one property – 884 East Santa Clara Street (APN 467-30-005), which was included in the 2004 FEIR, Table 4.6-4 as a historical resource—that is no longer within the Project study area due to the deletion of the Railroad/28th Street optional alignment. The table heading "Eligible or appears eligible to be considered historic resources under CEQA" is also revised to "Historic Properties that do not Appear Eligible for Listing in the NRHP, But Appear Eligible to be Considered Historic Resources under CEQA" for accuracy and consistency with the 2004 FEIR. See the Final SEIR, Chapter 4 for the text change.

the alterations do not radically change, obscure, or destroy character-defining spaces, materials, features, or finishes. See the Final SEIR, Chapter 4 for revised mitigation text. Also, refer to Response to Comment L-5.3.

L-5.6 *Sidewalk portals were considered for the Project. However, due to the conflicts and concerns voiced by the City of San Jose, the downtown San Jose community, and the San Jose Downtown Association, they were eliminated from consideration. These conflicts and concerns include:*

- *The existing sidewalks are relatively narrow;*
- *The City of San Jose does not want permanent impacts to narrow sidewalks;*
- *The City of San Jose has indicated that sidewalk portals would impede the City's objective to maintain or provide for three zones in the downtown sidewalks along building frontages:*
  - *the landscape/street furniture zone;*
  - *the walking zone; and*
  - *the commercial zone, to allow for activities like sidewalk cafes.*
- *The downtown San Jose community and San Jose Downtown Association have expressed their position that entrances and BART facilities in sidewalks are not advised due to the following factors:*
  - *sidewalk facilities would result in sizable permanent loss of loading zones, on-street parking, sidewalk space, bus stops, and street trees/landscaping; and*
  - *downtown station portals should be located within buildings to avoid street and sidewalk impacts.*

L-5.7 *The Bank of America/Bank of Italy building would be impacted if station entrance option M-1B, one of three station entrance options being considered for the Downtown San Jose Station, was selected. The Project is currently at the 35 percent design level and, although physical changes to all or portions of the building would be required, it is not possible at this juncture to define the precise modifications to the interior and exterior of the building that would occur if option M-1B is ultimately selected. As VTA proceeds with the selection of a final option for this entrance at this station, specific design issues and property ownership issues will be addressed.*

All of the three options for this station entrance are still under consideration. As noted above, VTA will commit to the Secretary of Interior's Standards & Guidelines or to equivalent measures that provide an equivalent level of protection to ensure that any impacts to historical resources are mitigated to a less-than-significant level. The Commission's concern about station entrance option M-1B will be taken into account and will be provided to the VTA Board of Directors for their consideration.

CITY OF Fremont
Community Development
39550 Liberty Street, P.O. Box 5006, Fremont, CA 94537-5006
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LETTER L-6

March 15, 2007

Tom Fitzwater
VTA Environmental Planning, Building B
3331 North First Street
San Jose, CA 95134-1906

SUBJECT: Draft SEIR Bart Extension
162-180

Dear Mr. Fitzwater

After reviewing the Draft SEIR, the City of Fremont has additional comments on the proposed BART Extension. We do support a number of the changes and believe appropriate mitigation can be implemented for the changes affecting Fremont, such as the removal of the wye option from Fremont. A number of our comments relate to the presentation of the new information. We believe a number of labeling and identification inconsistencies occurred in the tables and figures for noise and vibration impacts to areas of Fremont making the Draft SEIR difficult to understand. If the response to comments indicates this is not the case, we believe that the convention chosen for providing information to the public is deficient in meeting the document's primary purpose of public disclosure. We would ask the Final SEIR format be altered to simplify the correlation of text to tables and associated figures. Indicating relationships of tables to figures that illustrate their findings and recommendations would be valuable. Consolidation of figures of identical geographic area with all mitigations may be valuable for easy reference. Figures with larger headings of the subject option and use of all symbology indicated in the legend would provide a clearer understanding of the actual impacts of all proposed options and mitigations and relieve concerns that related options or conditions are not factored into the figures. L-6.1

The update to the setting acknowledges the approved residential development from January 2006 of Castilleja and Warm Springs. It is unclear that the tables and figures are updated accordingly. We ask that the figures be updated with appropriate labels and that the existing label near civil station 181 of "Proposed Apartments" be changed to Mayfield for clarification. L-6.2 Tables do not always include civil stations reflecting the location and setting condition for the new developments; e.g.. Table 4.12-1 and 4.12-2 where the assumed coordinating Figures 4.12-1a and 4.12-1b show intermittent soundwalls as mitigation. L-6.3 We did not find an explanation of the lack of a wall from civil station 173 to 176 and why there is no wall from 168 to 170. City of Fremont asks for soundwall mitigation measures to have a constant profile and height along all of the residential development from Kato Road to the City boundary. L-6.4 A uniform height provides the public assurance that mitigation is equitable for all uses that are situated similarly along the rail line.

The Castilleja project has additional exposure to noise than just its east boundary interface with BART. There is no discussion of potential impacts to units situated along Kato Road and their exposure to noise from trains north of the site as they approach or pass by the site. L-6.5

For vibration analysis the track type assumption and mitigation of baseline Table 4.12.4 does not correspond to the FST track type assumption of baseline Table 4.12.1. Table 4.12.5 identifies baseline vibration mitigation with FST for 181+50 which does not correspond to Table 4.12.4 mitigation listing. Please clarify the track type assumption and mitigations for areas 168 to 182. L-6.6

The issue becomes further confused when reviewing the crossover figures. Most figures indicated the crossover at civil station 171 with a leader box on the diagram whether showing the crossover is the intended purpose of the figure or not. This is confusing if the mitigation depicted for noise or vibration is not related to the crossover option. Compare Figures 4.12.2f, 4.12.2e, and Figure 4.12.2a, they seem to reach different conclusions on vibration mitigation needs and it is unclear what is proposed. L-6.7

For the Dixon Road options a difficulty with Table 4.12-8 and Table 4.12-9 is the column of preliminary mitigation of TDA, this seems to indicate no additional mitigation is needed, yet 4.12-9 indicates the need for FST as mitigation. Use of FST should change noise analysis. The noise analysis of 4.12-10 track assumption does not correspond to Table 4.12-13 recommended mitigations for the option. Please clarify the proposed track type and that the noise analysis considers the appropriate mitigation of track vibration in its noise analysis. L-6.8

The Executive Summary indicates that for *Section 4.12 Noise Design Change 4* that a 14-foot wall would be incorporated as mitigation. The text discussion indicates that 14-feet may not be feasible and Table 4.12-7 includes an eight-foot wall. Please clarify the significance and mitigation. L-6.9

Overall we believe there are a number of inconsistencies in the information presented. It is difficult to discern from the combination of tables and figures the true nature of options reviewed in the Draft SEIR. We look forward to reviewing the response to comments for a better understanding of the project proposal.

Please feel free to contact us with any questions and we look forward to continue working with you on the project.

Sincerely,

Kelly Diekmann,
Senior Planner
City of Fremont
kdiekmann@ci.fremont.ca.us
510-494-4540

cc: Fred Diaz, City Manager, City of Fremont
Jill Keimach, Community Development Department Director
James E. Pierson, Transportation and Operations Director
Norm Hughes, City Engineer, City of Fremont
Jeff Schwob, Planning Director, City of Fremont
Kathleen Chu, Senior Civil Engineer
Kunle Odumade, City of Fremont, City Transportation Engineer

RESPONSE TO COMMENT LETTER L-6

City of Fremont – Community Development

L-6.1 *The purpose of a Draft SEIR is to highlight the changes since the adoption of the 2004 FEIR. The SEIR has highlighted these changes by documenting 57 distinct design changes that are addressed by topical area in Chapter 4. Since this is the only comment received addressing the format of the Draft SEIR, VTA believes the Draft SEIR adequately conveyed information to the public. See Responses to Comments L-6.2 through L-6.4 for responses to specific concerns.*

L-6.2 *The comment is noted that the label "Proposed Apartments" should be changed to "Mayfield". This change will be made for Final Design drawings.*

L-6.3 *Tables 4.12-1 and 4.12-2 and the figures represent approximate locations of developments and mitigation for purposes of the SEIR. During Final Design, exact locations will be determined. Figure 4.12-1a is associated with Design Change 4 and not the Baseline and therefore is incorrectly labeled. The increase in noise level with BART operation did not exceed the FTA threshold criterion for Severe Impact for either of the two civil station number locations mentioned. Therefore, the noise impacts were less than significant and no mitigation is necessary.*

L-6.4 *The heights of the sound walls are determined such that the noise levels with mitigation would be less than significant. The height of a specific sound wall is a function of the distance between source and receiver as well as the relative elevations of both. The speed of the BART train also affects noise levels and consequently can affect the sound wall height necessary to achieve adequate mitigation at a specific location. Therefore, a uniform height for all sound walls for the entire City of Fremont is not justified from a noise mitigation standpoint, nor can VTA provide greater mitigation than supported by the technical analysis.*

L-6.5 *The City of Fremont provided information to the Project on 7 March 2006 in the form of details from the "Tentative Map Plan" for the Castilleja residential development. The information provided indicated a 10-foot-high wall to be built by the developer on the property line for the Castilleja development to mitigate noise from the existing railroad activities and BART. A wall extending eastward along Kato Road will be needed as the City indicates. The extent of that "return" on the wall along Kato Road is the developer's responsibility. During Final Engineering for the Project, the final details of the developer provided wall would be reviewed to ascertain that operational noise impacts from the Project will be adequately mitigated.*

L-6.6 *The noise analysis correctly accounts for the type of track structure (i.e., ballasted track or FST) anticipated for the vibration mitigation design. The station numbering presented in the noise impact tables is for general grouping of sensitive receptors only. Vibration mitigation extends beyond the ends of impacted buildings in order to achieve the level of mitigation necessary. Consequently, mitigation may overlap adjacent receivers even though mitigation may not be needed for these receivers (e.g., they are farther away).*

The overlap of vibration mitigation has been properly accounted for in the noise analysis. The actual extents of vibration mitigation are those indicated in Table 4.12-5.

L-6.7 *The labeling of the figures at the crossover were not correct. Figure 4.12-1a is not baseline but includes noise mitigation for Design Change 4, Crossover Tracks near Kato. Figure 4.12-1b is the baseline for Kato Road without the crossover but with mitigation for Design Change 8 Dixon Landing Road Retained Cut Alignment. The text on this figure saying "BART crossover" should have been deleted. Figure 4.12-2e depicts the vibration mitigation for Kato Road area without the Kato crossover. Figure 4.12-2f depicts the vibration mitigation for Kato Road area with the Kato crossover. Figures are only provided for area that require either noise or vibration mitigation. These changes are included in Chapter 4* Revisions to the Draft DSEIR*.*

L-6.8 *The comment refers to Tables 4.12-8 and 4.12-9, which are for Design Change 4 Kato Road Crossover as clearly indicated in the table headings and not Dixon Landing Road options as the comment claims. Table 4.12-8 misstates the mitigation between 170+00 and 172+40, which is FST instead of TDA. The noise analysis assumed and accounts for FST. This change is included in Chapter 4* Revisions to the Draft DSEIR*.*

L-6.9 *A 14-foot-high sound wall at the property line would mitigate significant noise impacts except for some second story and higher impacts. However, other factors may warrant providing a lower property line wall (constructed by the developer) with the BART Project constructing a second noise wall closer to the BART tracks where a lower wall provides similar benefits to a higher wall at the property line. The decision to implement an alternative to a single 14-foot-high sound wall will be made during Final Engineering based on a weighing of the factors involved. Regardless, the mitigation implemented by the Project would reduce the impact to a less than significant level.*

SANTA CLARA CALIFORNIA

LETTER L-7

Santa Clara
All-America City

Planning Division

VTA
ENV. ANALYSIS
2007 MAR 19 P 3:21

March 16, 2007

Mr. Tom Fitzwater
Environmental Resources Panning Manager
Santa Clara Valley Transportation Authority
Environmental Planning Department
3331 North First Street, Building B-2
San Jose, CA 95134

RE: City of Santa Clara comments on the BART Draft SEIR

Dear Mr. Fitzwater:

The City of Santa Clara has completed review of the Draft SEIR for the BART Extension Project to Milpitas, San Jose and Santa Clara and is forwarding comments in accordance with the procedures for making public comment. That is, the comments are directed to the adequacy of analysis of potential environmental impacts that result from 35 percent conceptual engineering design phase modifications to the project, following the 10 percent conceptual engineering design phase evaluated in the FEIR.

Section 3.2.4
The document refers to Federal Express as the property owner of 355 Brokaw Road. Federal Express leases the property from KJL Associates, LP. Therefore, acquisition of the property within the trail track alignment would be from KJL Associates, LP. L-7.1

Access to the Brokaw Substation and the impact of the proposed station to steel casings that Silicon Valley Power has located under the tracks between Brokaw Road and Railroad Avenue are not identified, nor resolved and require evaluation. L-7.2

An evaluation and discussion of the impacts to the existing storm drain mains at the Santa Clara Station is absent in the document. Storm drain facilities should be identified on the project plans and avoided (protected in place) or relocated, depending on the project design. The existing 30" storm drain crossing under the railroad tracks from Benton Street to West Brokaw road does not have sufficient conveyance capacity to convey the 100-year event. This causes localized flooding in the railroad right-of-way and Santa Clara Station. L-7.3

A discussion of stormwater flow and volume measures for C3 compliance is not provided in the document. C3 measures need to be identified, evaluated and incorporated into the project design and discussed in the environmental document. Reference to the construction of two detention basins for retention and release of stormwater into the storm drain system is provided; however reference of stormwater treatment measures are not identified and are to be included prior to release into the storm drain system. L-7.4

Section 4.2
The SEIR does not assess traffic impacts from BART bound travel on Lafayette Street to access the De La Cruz/Coleman Avenue ramp overcrossing to the station with the No L-7.5

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Parking Option at Diridon/Arena Station. Mitigation measures to divert traffic off Lafayette Street onto El Camino Real and Coleman Avenue needs to be identified and evaluated. Consistent with the Santa Clara Station Area Plan currently underway, the establishment of a through street that connects El Camino Real to Coleman Avenue should be identified, evaluated and discussed in the SEIR; to divert traffic off of Lafayette Street to an from the BART Station. As presented in the Santa Clara Station Area Plan, this through street is located underground existing Caltrain tracks and the BART rail alignment. L-7.5 con't.

Section 4.16

The SEIR identifies a No Parking Option at Diridon/Arena Station that would increase the height of the proposed parking structure at the Santa Clara Station from 3-5 to 4-6 stories to provide offset parking at the Diridon/Arena Station. The SEIR states that the increase in building height and mass with the addition of two extra parking levels would not block a scenic vista or degrade the visual character of the surrounding area. There is a scenic vista of the Valley's east mountain range within the project area of the Santa Clara Station. View corridors of the mountain range may be obstructed with an increase in the height of the parking structure and is not adequately assessed. Additional photo simulations are needed along view corridors at Benton Street and El Camino Real, Franklin Street and El Camino Real and Railroad Avenue at the Caltrain Station to assess the visual impacts of a No Parking Option at Diridon/Arean Station. L-7.6

Thank you for providing us the opportunity to comment on this project. We look forward to VTA response to these comments and considerations submitted by the City of Santa Clara.

Sincerely,

Kevin L. Riley
Director of Planning and Inspection

I:\PLANNING\Subject\BART\SEIR comments 031607.doc

RESPONSE TO COMMENT LETTER L-7

City of Santa Clara, Planning Division

L-7.1 *The property ownership is noted. VTA has been aware of the ownership, but has used the Federal Express reference since they are more readily associated with the property because of the vehicles accessing and parking on the property.*

L-7.2 *Existing Silicon Valley Power (SVP) facilities EMH 986; EMH 1475 and EMH V-417 & transformer will be relocated outside the Project area. Existing SVP lines crossing under the station will be relocated and enclosed in new concrete/steel ductbanks/casings. VTA will seek review from SVP on the design of the protection to be provided.*

L-7.3 *As described in the FEIR, Section 4.18.4.3, the project "would provide for adequate transport of 100-year flood flows. All culverts crossing beneath BART at grade trackbeds would be designed for the 100-year flood in accordance with BART Design Criteria, which require that 'all designs shall consider ultimate development trends in the area.' The design of Project drainage structures would conform to the criteria of the ACFCWCD, SCVWD, Alameda County Public Works Agency (ACPWA), Milpitas Public Works Department (MDPW), City of San Jose Public Works Department (SJDPW), and/or the Department of Public Works for the City of Santa Clara (SCDPW), as appropriate, and would be subject to approval by these agencies. Where inundation of, or damage to, at grade track beds could occur due to the inability of any storm drain to pass the peak run-off from a 100-year storm, the storm drain would be redesigned for the 100-year flood." This information was not restated in the SEIR, which focuses only on design changes to the Project.*

L-7.4 *As stated in the Draft SEIR, Section 4.17.1, "During the Preliminary Engineering phase, additional hydrologic and hydraulic analysis studies for water resources were conducted and corresponding reports prepared (see Chapter 13, Bibliography)." Analysis of stormwater flow and volume measurements for the Project is included in various reports that support the SEIR. However, these reports were inadvertently not referenced from the Bibliography. The following reports have been added:*

HMH Engineers and HNTB Corporation, Silicon Valley Rapid Transit Project Hydrology Study – Yard and Shops, November 2005.

HNTB Corporation and Earth Tech, Inc., Hydrologic and Hydraulic Analysis for Wayside (Critical) Facilities, Alameda and Santa Clara Counties, December 2005.

HNTB Corporation and Earth Tech, Inc., Silicon Valley Rapid Transit Project Line Segment Technical Report – Hydrologic and Hydraulic Analysis, Santa Clara County, Volumes I and II, 2005.

HNTB Corporation and Earth Tech, Inc., Silicon Valley Rapid Transit Project Line Segment Technical Report – Hydrologic and Hydraulic Analysis, Alameda County, Volumes I and II, 2005.

Information specific to the facility in Santa Clara is included in the Silicon Valley Rapid Transit Project Hydrology Study – Yard and Shops. This report is available upon request from VTA.

As stated in the FEIR, Section 4.18.4.4, the project will include stormwater treatment best management practices that are consistent with the Santa Clara Valley Urban Runoff Pollution Prevention Program and the NPDES permit that the City of Santa Clara and other program participants share in order to reduce stormwater-borne pollutants at their source. The C.3 measures are included in this NPDES permit.

Specifically, stormwater treatment units would be provided prior to the majority of stormwater entering the detention ponds at the yard and shops facility. All inlets onsite would have inlet filters. There would be a small amount of water that would go directly to the stormwater system in Santa Clara, but would be either filtered through under drains or through inlets filters.

L-7.5 *Figure 30 in the Santa Clara BART Station Traffic Impact Analysis (TIA) report shows a projection of 291 AM peak hour vehicles using the De La Cruz/Coleman Avenue ramp overcrossing. The two nearest study intersections were Lafayette/Benton and Benton/El Camino Real, and the traffic study found no significant impacts at the Lafayette/Benton intersection and a significant level of service impact at the Benton/El Camino Real intersection. However, the impact could potentially be mitigated with a relatively minor improvement involving the addition of an exclusive southbound right-turn lane. VTA understands that the Santa Clara Station area plan currently being developed proposes a through street that potentially connects El Camino Real to Coleman Avenue. However, this improvement is not necessary to mitigate Project impacts.*

L-7.6 *The Draft SEIR, Chapter 4, pages 213-214 address the visual impacts from 3-5 and 4-6 story garages at the Santa Clara Station. The visual simulation is from El Camino Real and just south of Benton Street. This location was selected because of the 3-story Police Department building that partially obstructs the view of the garage from a location on Brokaw but west of El Camino Real. As demonstrated in the visual simulation, there is not a dramatic or substantial visual distinction between the two simulations. A view from El Camino Real and Franklin Street was not selected since it would be more distant and the pedestrian overcrossing and elevator would partially obstruct the parking garage. While a view from Railroad Avenue would be closer, again, the pedestrian overcrossing and elevator would at least partially obstruct views of the garage.*

It should be noted that subsequent discussions with the City of Santa Clara have lead to consideration of a parking structure with up to 6-levels to accommodate the Santa Clara Station's 2030 parking demand of 1,730 spaces. The option of having up to 6-levels of parking provides flexibility to reduce the size of the structure footprint as compared to a 3- to 4-level parking structure.

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LETTER L-8

CHAD J. GRAFF
ATTORNEY AT LAW
cgraff@mbdlaw.com

SAN FRANCISCO

MILLER BROWN DANNIS
ATTORNEYS

March 16, 2007

VIA E-MAIL AND U.S. MAIL

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Re: Supplemental Environmental Impact Report, Final Environmental Impact Report, Silicon Valley Rapid Transit Corridor – BART Extension to Milpitas, San Jose and Santa Clara; Comments by Alum Rock Union Elementary School District; Our File 1105.10106

Dear Mr. Fitzwater:

The Alum Rock Union Elementary School District ("District") appreciates this opportunity to submit comments on the Supplemental Environmental Impact Report ("SEIR") prepared for the proposed development of the Silicon Valley Rapid Transit Corridor ("SVRTC") -- BART Extension to Milpitas, San Jose and Santa Clara ("Project"). As you may know, the District did not receive an opportunity to comment on the original Final EIR for this Project and so these are the first comments submitted on behalf of the District for this Project.

The District is extremely concerned about the extensive impacts of the proposed Project and corresponding General Plan Amendments and residential developments that are already proceeding in the area of the proposed transit corridor. The proposed Berryessa BART station most directly affects the District.

The District was alerted to this SEIR and upon review the District was startled to find that it was never consulted during the development of the initial EIR. The California Environmental Quality Act ("CEQA") provides for early public consultation in the development of an EIR. In part, the regulations provide that

L-8.1

> [p]rior to completing the draft EIR, the lead agency may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that

> early consultation solves many potential problems that would arise in more serious forms later in the review process.
>
> (Cal. Code Regs., tit. 14, § 15083.)

L-8.1 con't.

The regulation cited above also provides that "[s]coping has been helpful to agencies in identifying the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR. . . and [s]coping has been found to be an effective way to bring together and resolve the concerns of affected federal, state, and local agencies. . . ." Section 4.5.2.4 of the Final EIR identifies public school districts in the SVRTC but omits the District. This omission is not consistent with the lead agency's duty under CEQA to consult with affected agencies or, in fact, with the extensive transit corridor residential development that will impact the District because of the proposed BART extension.

For an example of the extensive short and long-term unmitigated impacts on the District due to the Project, attached please find formal comments submitted on behalf of the District for the scoping and review of an EIR for the Dobbin Drive Residential General Plan Amendment. These comments identify District concerns which focus on the generation of more than one thousand new students to be served by the District as a result of proposed transit corridor developments. Currently, the District does not have adequate school facilities for these students. Developer fees available under state law will be far from sufficient to fund development of adequate school facilities for these students. Thus, the District has been working steadfastly to raise community concern regarding unmitigated harms that will arise – inadequate school facilities, extensive busing, overcrowded classrooms, insufficient educational resources – so that remedies may be found.

L-8.2

In the process undertaken thus far, the District has been extremely disappointed to find that proposed developers and the City of San Jose have sought refuge in statutory limits on developer fees and have been reluctant to begin discussions of voluntary mitigation measures to address the impacts on the District and create appropriate educational opportunities for the incoming children. State law does not in any way prohibit discussion, identification, and implementation of voluntary mitigation measures.

L-8.3

Moreover, developer fee limitations on private residential and commercial developments would not preclude the SCVTA, as another public agency, from identifying impacts on the District from the Project and discussing adequate mitigation of those impacts as CEQA directs.

The District asserts that the SEIR and Final EIR for the Project should discuss the short-term and long-term impacts on the District and ways that they may be mitigated. The CEQA regulations provide in part on the Significant Environmental Effects of the Proposed Project that

> [a]n EIR shall identify and focus on the significant environmental effects of the proposed project. . . . Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, the physical changes, alterations to ecological systems, and changes

L-8.4

induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. *The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected.* For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

L-8.4 con't.

(Cal. Code Regs., tit. 14, § 15126.2, emphasis added.)

The District asserts that the forthcoming extensive impacts on the District were not considered in the development of the Final EIR or the SEIR and that the analysis included in these documents on the impacts on schools is cursory. It does not address students who will be brought into the relevant school districts through employees of the BART system and it does not begin to address the extensive residential developments that are short and long-term effects of the Project.

L-8.5

Accordingly, the District respectfully requests that SCVTA reopen the environmental review process for the Project to address the District's concerns, the impacts on the District, and ways in which those impacts may be mitigated.

Thank you for your consideration of these comments. If you have any questions, please do not hesitate to contact us.

Sincerely,

MILLER BROWN & DANNIS

Chad J. Graff

CJG/psg

Attachments

cc: Linda Latasa, Assistant Superintendent

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ATTACHMENTS

000870

CHAD J. GRAFF
ATTORNEY AT LAW
cgraff@mbdlaw.com

SAN FRANCISCO

MILLER BROWN DANNIS
ATTORNEYS

November 16, 2006

City of San Jose
Planning, Building and Code Enforcement
Attn: Joseph Horwedel, Darren McBain
200 East Santa Clara Street
San Jose, CA 95113-1905

Re: Alum Rock Union Elementary School District Appeal of Certification of Environmental Impact Report, Dobbin Drive Residential General Plan Amendment, GP06-03-01;
Our File 1105.10106

Dear Mr. Horwedel and Mr. McBain:

The Alum Rock Union Elementary School District ("District") hereby appeals the Planning Commission's Certification of the Environmental Impact Report ("EIR") for the proposed Dobbin Drive Residential General Plan Amendment, GP06-03-01 ("Project").

As set forth in the attached written comments filed with the City on behalf of the District on July 7, 2006, and October 2, 2006, and in the follow-up comments provided at the Planning Commission Meeting on November 13, 2006, the District contends that the Draft EIR and First Amendment to the Draft EIR have failed to meet the requirements of the California Environmental Quality Act ("CEQA") in that: 1) they have not properly considered the impacts of the Project on the District's school facilities; 2) they have not properly considered what mitigation measures would be necessary to address those impacts; and 3) they have failed to provide for adoption of a statement of overriding considerations for the City's approval of the Project despite significant unmitigated effects. (See Pub. Resources Code, §§ 21002.1, 21100; Cal. Code Regs., tit. 14, §§ 15091, 15093, 15126, 15126.2, 15126.4, 15126.6 "CEQA Guidelines.")

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000871

City of San Jose
Planning, Building and Code Enforcement
Attn: Joseph Horwedel, Darren McBain
November 16, 2006
Page 2

Attached please find a completed Notice of EIR Appeal and filing fee. The District further requests that the filing fee for this appeal be waived pursuant to Government Code section 6103. Please do not hesitate to contact us with any questions. Thank you.

Very truly yours,

MILLER BROWN & DANNIS

Chad J. Graff
CJG/psg

Attachments

cc: Norma Martinez, Superintendent
Linda S. Latasa, Assistant Superintendent of Business Services

SF 241484v1

000872

COPY

CHAD J. GRAFF
ATTORNEY AT LAW
cgraff@mbdlaw.com

SAN FRANCISCO

MILLER BROWN DANNIS
ATTORNEYS

October 2, 2006

VIA E-MAIL AND U.S. MAIL

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Department of Planning, Building & Code Enforcement
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Re: Draft Environmental Impact Report, Dobbin Drive Residential General Plan Amendment (GP06-03-01); Comments by Alum Rock Union Elementary School District; Our File 1105.10106

Dear Mr. McBain:

The Alum Rock Union Elementary School District ("District") appreciates the opportunity to submit comments on the Draft Environmental Impact Report ("EIR") prepared for the proposed Dobbin Drive Residential General Plan Amendment (GP06-03-01). As you know, the District and your office exchanged preliminary information on the preparation of the Draft EIR on this matter during the summer, including written comments provided on July 7, 2006. (See attached.) For the District's comments on the Draft EIR, the District resubmits its written comments of July 7, 2006, and provides the additional comments included herein.

The District remains extremely concerned about the potential severe impacts of the General Plan Amendment and proposed project, and the cumulative impacts of other projects referenced in the Draft EIR, on the District. The District found that the draft EIR was cursory in its analysis of potential impacts on the District and mitigation thereof, that it contained misleading and/or incorrect statements regarding District information and the potential impacts, and that it did not meet statutory requirements for environmental review under the California Environmental Quality Act ("CEQA").

As discussed in the District's July 7, 2006 letter, the student generation rate identified by the City of .60 students appears to be low in relation to a study obtained by the District prior to this process. Nonetheless, the .60 student generation rate provides that the General Plan Amendment and proposed project would generate 818 additional students for which the District has inadequate facilities. These students would include approximately 578 new elementary school students, a number which

exceeds the current student population of a District elementary school, and 240 new middle school students.

When the General Plan Amendment and proposed project are combined with other forthcoming projects, the cumulative impacts are even more severe. In its review of the cumulative impacts (again using the .60 student generation rate), the Draft EIR finds that 2009 additional residential units will be created within District boundaries with approximately 1205 new students to be served by the District. Assuming that 29 percent of these students attend middle school, this low estimate means that the cumulative projects would result in 976 new elementary school students and 229 new middle school students. The number of new elementary school students is nearly double the average size of a current District elementary school and will require new facilities. As discussed in the District's July 7, 2006 letter, statutory developer fees will be inadequate to fund necessary new facilities.

Student Generation Rate

The Draft EIR incorrectly asserted that "[t]he [District] has identified a rate of .60 students per dwelling unit for attached residences." (Draft EIR, p. 128.) As the attached letter of July 7, 2006, provides, the District obtained a demographic study for student generation rates for the District for areas west of Capitol Avenue/Expressway before this General Plan Amendment and proposed project were introduced. A table with the results of this study is provided on page two of the District's July 7, 2006 letter, and it identifies student generation rates for particular types of housing, including .75 students for Intermediate Attached: Market Rate units and .65 students for Intermediate Attached: Section 8 units. The rates identified in this study exceed the rate of .6 used in the preparation of the Draft EIR and indicate that the actual impacts will exceed what has been projected in the Draft EIR. The District requests that the City use the rates identified in the District's study as it provides the best source of information for estimating what the actual number of students generated will be.

The Draft EIR also used student generation rates of the San Jose Unified School District ("SJUSD") as a basis for comparison without identifying any appropriate basis for doing so. SJUSD differs remarkably from the District with regard to the demographics of its population and the range and diversity of its territory. In no way is a student generation rate of SJUSD an appropriate basis for comparison with the District. It presents misleading information and conflicts with the public purposes of the EIR. The study referenced above and in the District's July 7, 2006 letter was prepared with particular attention to the District's territory and in advance of the introduction of the General Plan Amendment and proposed project. It represents the best source of available information for the number of students that would be generated by the proposed project and cumulative projects.

Methods for Accommodating Students

The Draft EIR lists methods for accommodating increased numbers of students that apparently "would not require the building of new schools." (Draft EIR, p. 128.) The methods identified, however, are listed with little regard for the District's jurisdiction over its educational program and for the quality of facilities and educational opportunities for existing and incoming District

students. Methods such as "the provision of portable or relocatable classrooms" and "the busing of students to schools with surplus capacity" potentially sacrifice the quality of educational programs and facilities for existing and incoming District students and also require significant funding and other resources to be available. A method such as "the conversion to year-round schools with a four-track schedule," like other identified measures, requires the District to make significant program determinations and to consider the input of District families and staff members. Moreover, none of the methods listed would be fully funded by developer fees.

Review of Mitigation Measures

The Draft EIR references California Government Code sections 65995-65998 and sets forth "payment of school fees by new development as the exclusive means of 'considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to the planning, use, or development of real property." (Draft EIR, p. 128.) If, however, payment of developer fees will not fully mitigate the environmental impacts of the General Plan Amendment and potential project on the District, as the District provided in its July 7, 2006 letter and as the City recognized in stating that "school impact fees. . . would partially offset project-related increases in student enrollment," then CEQA requires additional action by the City.

First, CEQA requires a full discussion of mitigation measures. Section 21002.1 of the Public Resources Code provides in part that "[t]he purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided. Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." (See also Pub. Resources Code, § 21100; Cal Code Regs., tit. 14, §§ 15126, 15126.2, 15126.6.) Certainly, measures in addition to the payment of developer fees are available to mitigate the impacts of the proposed General Plan Amendment and the project on the District. Possible measures include dedication of land for a new school site, a developer-built school, and additional funding mechanisms for school facilities that may include cooperation by the developer in the formation of a community facilities district. These measures, or combinations thereof, can result in the full mitigation of impacts on the District and create a situation that benefits the developer, the City, the District, and new and existing District families and students by providing adequate school facilities and educational programs. Such measures would help avoid a disastrous situation where the District has inadequate or no facilities for large numbers of new students. Accordingly, the EIR should include discussion of other available mitigation measures that are available to fully offset the impacts on the District.

Second, if the City may not <u>legally</u> require adoption of mitigation measures in addition to the payment of developer fees, then CEQA provides additional requirements for adoption of the EIR. CEQA provides in part that "[i]f economic, social or other conditions make it infeasible to mitigate one or more significant effects on the environment of a project, the project may nonetheless be carried out or approved at the discretion of the a public agency if the project is otherwise permissible under applicable laws and regulations." (Pub. Resources Code, § 21002.1.) If mitigation measures are infeasible, the lead agency is required to make findings and

adopt a statement of overriding considerations if the lead agency proceeds with approval of such a project. Applicable regulations provide that:

> [n]o public agency shall approve or carry out a project for which an 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: . . . (3) Specific economic, legal, social, technological, or other considerations . . . make infeasible the mitigation measures or project alternatives identified in the final EIR.
>
> (Cal Code Regs., tit. 14, § 15091.)

Additional applicable regulations provide that:

> CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable.' When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.
>
> (Cal Code Regs., tit. 14, § 15093.)

Accordingly, if the City finds that it may not legally require measures to mitigate fully the impacts on the District but that benefits of the project outweigh environmental risks, then CEQA provides for adoption of a statement of overriding considerations.

Conclusion

The District faces overwhelming impacts from the General Plan Amendment, proposed project, and other forthcoming projects considered in the Draft EIR. Using a low student generation rate, these projects will result in approximately 1205 new students to be served by the District, including approximately 976 new elementary school students and 229 new middle school students. The District does not have adequate educational facilities for these students. The

number of new elementary school students is nearly double the average size of a District elementary school and current elementary schools are already at 85 percent capacity. Statutory developer fees will be inadequate to fund necessary new facilities for the students generated.

The District finds the Draft EIR to be inadequate in its review and analysis of project impacts on the District. The District believes that the Draft EIR must use the best available information on student generation rates previously provided by the District. Further, the EIR must contain a full discussion of mitigation measures to address the impacts on the District. If the City finds that it is restricted in the mitigation measures that it may legally require, then CEQA requires adoption of a statement of overriding considerations for project approval.

The District appreciates the City's consideration of these comments. Please do not hesitate to contact the District directly or us if you have any questions regarding these comments.

Sincerely,

MILLER BROWN & DANNIS

Chad J. Graff

CJG/psg

Attachment

cc: Linda Latasa, Assistant Superintendent

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000877

FILE COPY

CHAD J. GRAFF
ATTORNEY AT LAW
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SAN FRANCISCO

MILLER BROWN DANNIS
ATTORNEYS

July 7, 2006

VIA E-MAIL AND U.S. MAIL

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Re: Preparation of Draft Environmental Impact Report;
Dobbin Drive Residential General Plan Amendment Project;
Comments by Alum Rock Union Elementary School District;
Our file: 1105.10106

Dear Mr. McBain:

The Alum Rock Union Elementary School District ("District") and your office have exchanged preliminary information on the preparation of a Draft Environmental Impact Report ("DEIR") for the Dobbin Drive Residential General Plan Amendment Project ("Project"). This Project foresees high-density residential development. Because of the overwhelming potential impacts of this Project on the District, the District asked this office to provide preliminary comments on behalf of the District for the preparation of the DEIR.

The District is primarily concerned with the following issues raised by the Project:

- The DEIR must adequately address the need to house the students to be generated by the foreseen development and discuss or provide mitigation.
- The DEIR must discuss or provide mitigation for community and recreational facilities for the students and residents of the District.

A. The DEIR Must Address Provision of Adequate School Facilities To House The Students That Will Be Generated By The Residential Development.

The Project's new residential development will generate a large number of new elementary and middle school students that the District will be obligated to serve. Current Project projections show approximately 1364 new residential units as part of a high-density residential development. A recent demographic study determined the following student generation rates for areas west of Capitol Avenue/Expressway:

Type of Housing	Student Generation Rate
Most Affordable SFD	1.11
Modest Income SFD	.96
Minimal Amenities Attached	
Duplexes through Fourplexes	.96
Apartments, Condos, Townhouses	.77
Intermediate Attached: Section 8	.65
Intermediate Attached: Market Rate	.75
Upgrade Attached (incl. large duplexes)	.22

Projected Enrollment 2000-2010
Enrollment Projection Consultants
3 West 37th Avenue, Suite 7
San Mateo, CA 94403-4457

It appears that using a student generation rate of .6 students per dwelling unit substantially underestimates the number of students the Project will generate. To determine approximate numbers, the District would need to know the number of each type of unit within the Project.

Nonetheless, even a low generation rate of .6 students per dwelling unit for the Project results in 818 additional students for which the District has no facilities. At the District's generation rates, even more students will be generated. Assuming that 29% of these students attend middle school and using the low estimate, the Project will generate approximately 578 new elementary school students, a number which exceeds the current average total student population of a District elementary school, and 240 new middle school students. The District does not have adequate space to house these new students.

The District has nineteen elementary schools (grades K-5/6) and seven middle schools (grades 6-8). McCollam Elementary School and Sheppard Middle School currently serve the area where the Project will be located. The capacity of McCollam Elementary School is 650 students and current enrollment is 538. The capacity of

Sheppard Middle School is 900 and current enrollment is 650. Current District-wide elementary enrollment is at 85% of capacity and middle school enrollment is at 76% of capacity.

The District has very limited available space at its current school sites to house students from the new Project. The District recently completed a space utilization study and determined that no one school would be able to accommodate all of the students generated by this Project. The students would have to be bused to several different schools. Moreover, the District expects new incoming students from other new development projects already in process to fill its limited available space. If any space remains for new Project students at existing District sites, this space will be at various school sites and busing will be necessary to transport Project students to available spaces. This will mean an additional burden on the District's existing transportation capacity and require the purchase of new buses and the hiring of new bus drivers. The additional burden from this Project would require the hiring of approximately five new bus drivers and the purchase of five new buses. The hiring of school bus drivers is a difficult task in today's market. The District spent the entire 2005/06 school year with two open driver positions. The necessary numbers of new drivers and buses may increase depending upon how many schools the children will be distributed among. Alternatively, attendance areas would need to be reconfigured and a larger number of current District students would need busing.

The District estimates that the Project will require at least one new elementary school to house new students generated by the Project. The new school would need to house approximately 600 students. The District estimates that it will require a school with at least 30 classrooms, a minimum of two per grade, for a kindergarten through 5th grade (K-5) school. Under the formula of the state Office of Public School Construction the minimum acreage for a K-5 school with 30 classrooms is 9.6 acres. In addition to regular classrooms, multi-use, and administrative space, the school must have facilities to house preschool children, special education services, migrant student services, and a media center. These are minimal amenities required for a properly sized and functional public K-5 school.

The District expects that dedication of space for a new school site will be included in the proposed mitigation of the Project's impacts. Yet, dedication of a school site does nothing to secure the critical funding needed for the construction of the school to serve students generated by this Project.

A K-5 school with 30 classrooms and the appropriate auxiliary facilities is estimated to cost a minimum of $13,000,000 to construct. This estimate does not include any

cost for land acquisition, furniture and equipment, or educational materials. In addition, this estimate does not include the cost of escalation in construction costs which has exceeded 4 percent per year in recent years. Construction of an actual school facility would take from three to five years.

The District is currently eligible to collect Level 1 developer fees of $1.43 per square foot of residential space and $.22 per square foot of commercial/industrial space. Such developer fees will barely begin to mitigate the impact of the Project on the District's facilities, however, and will be inadequate to fund the construction of facilities necessary to house the Project students. As a small school district dependent on limited state revenue, the District is not in a financial position to build the necessary school facilities to house the students generated by this large Project. In 1991 the District passed a $47 million bond. As a result, the District's remaining bonding capacity is approximately $23 million. The District expended all of the $47 million on improvements to facilities at existing sites. In order to have bond funding for a new school to meet the needs presented by this Project, the District would have to receive the approval of voters on a new bond measure, which would be a formidable task for the community.

It is critical, therefore, for the DEIR to discuss the significant impact of student generation from the Project upon the District's limited school facilities and to review available mitigation measures extensively. CEQA requires this discussion and consideration. (See Pub. Resources Code, §§ 21002.1, 21100; Title 14 Cal. Code of Regs. §§ 15126.2, 15126.4, "CEQA Guidelines.")

B. The DEIR Must Address Provision Of Adequate Community And Recreational Facilities To Serve The District's Residents.

The Project's proposed high-density residential development of the Project will also impact the limited community and recreational facilities available to the District's residents. The City of San Jose has funded or assisted with funding of three large youth centers and two smaller youth-oriented buildings. All five are on District property. A new community library is being built on a sixth site. Both youth and adult sports leagues use District sites daily. There does not appear to be any other public land available through either the City or the County for community recreation. The Project's new development should provide the impacted communities recreation facilities and other community services. Such facilities and services are critical to the quality of life of the children of the District community and their families. The DEIR should address the impacts of potential overcrowding of existing community and recreational facilities.

As discussed above, the District has no resources to assist in providing, expanding or improving these types of facilities in light of the fact that it does not have sufficient financial resources to build classrooms. The Project description should describe current community and recreational facilities in great detail and address the Project's impacts on these facilities in the DEIR.

C. **Conclusion**

For the foregoing reasons, the District believes the DEIR must address the provision of adequate school facilities to house new students generated by the Project and the provision of community and recreational facilities for District residents. The District faces an overwhelming impact from the proposed Project. Even using a low estimate, the Project will generate approximately 578 new elementary school students, a number that exceeds the number of students currently housed at an average-sized District elementary school, and 240 additional middle school students. CEQA requirements provide for discussion and review of these impacts and provision of adequate mitigation measures.

Please contact the District directly or us if you have any questions regarding these comments. Thank you for your consideration.

Very truly yours,

MILLER BROWN & DANNIS

Chad J. Graff

cc: Linda Latasa
Will Burns

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RESPONSE TO COMMENT LETTER L-8

Alum Rock Unified School District

L-8.1 *The 2004 FEIR, Chapter 4.5, and Draft SEIR, Chapter 4.5, discuss community services and facilities within ¼-mile or walking distance of the SVRTC study area. The nearest school in the Alum Rock Union Elementary School District (ARUESD), San Antonio Elementary School, is more than ¼ mile from the Project and is not expected to be impacted by the Project. Because there are no impacts, the school and ARUESD were not discussed in the FEIR or SEIR.*

Scoping efforts for the Project began in 2002 with notification to the public that an EIR/EIS would be prepared. Since then, the Draft EIR/EIS, 2004 FEIR, and Draft Supplemental EIR have been published. Announcements of the availability of each of these documents have been published in several newspapers. Thousands of multi-lingual notices have been mailed and numerous public meetings have been held to discuss the Project at the various stages of the scoping and environmental processes. The most recent scoping meetings were held in August 2006. A Public Notice of Availability of the Draft Supplemental EIR for the Project was mailed to approximately 34,000 properties within 1,000 feet from the Project alignment and ½ mile of the Project stations as an invitation to attend one of the four public hearings or public scoping meetings for the Project. Notices were also placed in local newspapers. A notice was mailed to San Antonio School at 1855 East San Antonio Street. The 2004 FEIR, Chapter 6, and Draft SEIR, Chapter 6, further describe the Project's scoping efforts.

L-8.2 *The BART Extension Project to Milpitas, San Jose and Santa Clara provides transit facilities. The Project does not include any approvals for residential, commercial or industrial development. Such development, if and when it occurs, would be separate and distinct from the proposed BART Project and would be under the jurisdictions of separate lead agencies.*

The Berryessa and Alum Rock Stations would only have one "Station Agent" at each site during operations. Maintenance and security personnel would periodically be on site to perform their services. Therefore, Berryessa and Alum Rock Station transit operations would not generate any students at these locations. As a result, employment resulting from the operation of these stations would not contribute to either a project-level or a cumulative impact on schools.

The correspondence attached to the comment letter refers to the Dobbin Drive Residential Project. This is a project proposed by a private developer, for approval by the City of San Jose, that is completely separate from the public transit project that is being proposed by VTA and that is analyzed in the Draft SEIR.

L-8.3 *School fees are not appropriate mitigation for this public transit project. As noted above, the project will not have an adverse impact on schools. Moreover, VTA is not proposing to carry out or approve any residential or commercial development that would be subject to school fee mitigation. Also, refer to Responses to Comments L-8.1 and L-8.2.*

L-8.4 *The 2004 FEIR for the Project was approved in December 2004 and the comment and legal challenge period has expired for that environmental document. Proposed changes to the approved project are the subject of this SEIR. The SEIR addresses short-term and long-term impacts including traffic and noise impacts projected to the year 2030. Also refer to response to Comment L-8.3.*

L.8-5 *The BART Project as addressed in the SEIR would not result in adverse impacts on the School District. As stated in Response to Comment L-8.2, only one full time employee for three shifts (a Station Agent) would be on site. Moreover, any residential projects in the surrounding area, if and when they occur, would be separate and distinct from the proposed transit facilities and are not effects of these facilities. Rather, local jurisdictions are responsible for planning for, reviewing and approving residential projects in the area. Residential projects should provide mitigation for their own impacts to schools. There is no justification to reopen the environmental review based upon the comment.*