

## 6.5 Community Facilities and Public Services

### 6.5.1 Introduction

This section describes impacts on community facilities and public services, including recreation, under CEQA that would result from construction and operation of the CEQA Alternatives. This section analyzes the CEQA Alternatives' potential to affect fire protection, emergency services, law enforcement, schools, and parks.

Existing conditions are provided in Chapter 4, Section 4.4.2.1, *Environmental Setting*.

### 6.5.2 Regulatory Setting

#### 6.5.2.1 State

##### **Senate Bill 50**

The Leroy F. Greene School Facilities Act of 1998, or Senate Bill (SB) 50, restricts the ability of local agencies to deny project approvals on the basis that public school facilities (e.g., classrooms, auditoriums) are inadequate. School impact fees are collected at the time when building permits are issued. Payment of school fees is required by SB 50 for all new residential development projects and is considered full and complete mitigation of any school impacts. School impact fees are payments to offset capital cost impacts associated with new development, which result primarily from costs of additional school facilities, equipment, and maintenance requirements. Consequently, agencies cannot require additional mitigation for any school impacts.

##### **Chawanakee Unified School District v. County of Madera (June 20, 2011) 196 Cal.App.4th 1016**

This challenge to Madera County's approval of a large residential project in the Rio Mesa Area Plan focused on whether the project's EIR was required to consider the project's impacts on school facilities. During the public review of the EIR and consideration of the project, the school district submitted two lengthy letters alleging that the cap on school impact fees established by Government Code Section 65996 (known commonly as SB 50) did not eliminate the requirement for full disclosure of development's impacts on school services. Furthermore, the school district contended that Madera County must consider alternative mitigation measures to reduce any project impacts on school services.

The Court of Appeal, in the published portion of this decision, reviewed the legislative history of SB 50. In short, SB 50 places a statutory limit on the school impact fees that may be imposed on any project. SB 50 (Government Code Section 65996(a)) further provides, in part, "Notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code (CEQA), or any other provision of state or local law, the

following provisions shall be the exclusive methods 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” (emphasis added).

The Court examined the meaning of the word “considering” in subsection (a) to determine whether it limits the scope of the review of school facilities impacts. The Court concluded:

Because the methods set forth in Government Code section 65996, subdivision (a) are exclusive, that provision obviates the need for an EIR to contain a description and analysis of a development’s impacts on school facilities. Based on this interpretation, we reject School District’s claim that the EIR violates CEQA because it lacks any analysis of the environmental consequences for the existing school facilities that will be forced to accommodate hundreds of students beyond current overcrowded conditions.

The court held that SB 50’s limitation on review and mitigation does not extend to “the project’s indirect impacts on parts of the environment that are not school facilities.” These could include the impact on traffic of getting students to and from school and the impact of school construction on the environment.

### **California Government Code, Section 65995 (b)**

In 2012, the State Allocation Board approved an increase in statutory school facility fees (Level 1 School Fees) pursuant to Government Code Section 65995(b) to \$3.20 per square foot for residential construction of at least 500 square feet and \$0.51 per square foot for new commercial development. These fees can be increased every other year and are expected to continue to increase in response to inflation.

### **Quimby Act**

The Quimby Act (California Government Code Sections 66475–66478) was approved by the California legislature to preserve open space and parkland in the state. This legislation was in response to California’s increased rate of urbanization and the need to preserve open space and provide parks and recreation facilities for California’s growing communities. The Quimby Act authorizes local governments to establish ordinances requiring developers of new subdivisions to dedicate parks, pay an in-lieu fee, or perform a combination of the two.

The Quimby Act provides two standards for the dedication of parks. If the existing park acreage in a community is greater than 3 acres per 1,000 persons, then the community may require dedication based on a standard of up to 5 acres per 1,000 persons within a subdivision. If the existing park acreage in a community is less than 3 acres per 1,000 persons, then the community may require dedication based on a standard of only 3 acres per 1,000 persons residing in the subdivision. Government Code Section 66475.1 also states that a new subdivision may be required to dedicate land for bicycle paths if the subdivider is dedicating roadways to the public.

## 6.5.2.2 Local

### City of San Jose General Plan

The following *Envision San Jose 2040 General Plan* (City of San Jose 2011) policies are related to public services and recreation.

CD-5.5: Include design elements during the development review process that address security, aesthetics, and safety. Safety issues include, but are not limited to, minimum clearances around buildings, fire protection measures such as peak load water requirements, construction techniques, and minimum standards for vehicular and pedestrian facilities and other standards set forth in local, state, and federal regulations.

ES-3.9: Implement urban design techniques that promote public and property safety in new development through safe, durable construction and publically-visible and accessible spaces.

PR-1.1: Provide 3.5 acres per 1,000 population of neighborhood/community serving parkland through a combination of 1.5 acres of public parks and 2.0 acres of recreational school grounds open to the public per 1,000 San Jose residents.

PR-1.2: Provide 7.5 acres per 1,000 population of citywide /regional park and open space lands through a combination of facilities provided by the City of San José and other public land agencies.

PR-2.6: All new residential developments over 200 units in size should be located within 1/3 of a mile walking distance of an existing or new park, trail, open space or recreational school grounds open to the public after normal school hours or shall include one or more of these elements in the project design.

### City of San Jose Municipal Code Chapters 19.38 and 14.25

The purpose of San Jose Municipal Code Chapter 19.38 (Parkland Dedication Ordinance) and Chapter 14.25 (Park Impact Ordinance) is to mitigate the impacts of new housing development growth on existing parkland under the Quimby Act and Mitigation Fee Act. Per the requirements of the Parkland Dedication Ordinance and the Park Impact Ordinance, new residential development must provide 3 acres of parklands per 1,000 residents.

### City of Santa Clara General Plan

The following *City of Santa Clara 2010-2035 General Plan* (City of Santa Clara 2010) policies are related to public services and recreation.

5.9.1-P14: Encourage publicly accessible open space in new development.

5.9.1-P17: Foster site design for new development so that building height and massing do not overshadow new parks and plazas.

5.9.1-P18: Promote open space and recreation facilities in large-scale developments in order to meet a portion of the demand for parks generated by new development.

5.9.1-P20: Promote the continuation of a parks per population ratio of 2.4 per 1,000 residents and explore the potential to increase the ratio to 3.0, based on the Parks and Recreation Needs Assessment (Parks Master Plan), referenced in Plan Prerequisite 5.1.1-P24.

5.9.2-P7: Support efforts by school districts to maintain improve and expand educational facilities and services, to meet the demands of new development.

5.9.2-P8: Cooperate with local school districts in collecting fees for development projects as required by State regulations.

5.9.3-P1: Encourage design techniques that promote public and property safety in new development and public spaces.

5.9.3-P3: Maintain a City-wide average three minute response time for 9 percent of police emergency service calls.

5.9.3-P4: Maintain a City-wide average three minute response time for fire emergency service calls.

### **Santa Clara City Code Chapter 17.35**

The purpose of Santa Clara City Code Chapter 17.35 (Chapter 17.35) is to mitigate the impacts of new housing development growth on existing parkland under the Quimby Act and Mitigation Fee Act. New residential development not involving a subdivision must meet the Mitigation Fee Act standards of 2.53 acres per 1,000 residents.

## **6.5.3 CEQA Methods of Analysis**

Temporary and permanent impacts on community facilities and public services resulting from construction and operation are evaluated against existing public service capacity, as identified in Chapter 4, Section 4.4.2.1, *Environmental Setting*. This analysis determines if public service providers would be capable of adequately servicing the BART Extension Alternative or BART Extension with Transit-Oriented Joint Development (TOJD) Alternative. Appendix G of the State CEQA Guidelines is used to evaluate the significance of potential public service impacts.

## **6.5.4 CEQA Thresholds of Significance**

In accordance with Appendix G of the State CEQA Guidelines, a project would have a significant impact on public services if it would result in the conditions listed below.

- Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or a need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the following public services:
  - Fire protection
  - Police protection
  - Schools
  - Parks
  - Other community facilities
- Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated.

- Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.

## 6.5.5 Environmental Consequences and Mitigation Measures

Using the criteria identified in Section 6.5.4, *CEQA Thresholds of Significance*, this section identifies impacts on community facilities and public services including recreation and evaluates whether they would be significant according to CEQA.

### 6.5.5.1 No Build Alternative

The No Build Alternative consists of the existing transit and roadway networks and planned and programmed transportation improvements (see Chapter 2, Section 2.2.1, *NEPA No Build Alternative*, for a list of these projects) and other land development projects planned by the Cities of San Jose and Santa Clara.

The No Build Alternative projects could result in effects on community facilities and public services typically associated with transit, highway, bicycle, and pedestrian facilities, and roadway projects, as well as land development projects. All individual projects planned under the No Build Alternative would undergo separate environmental review to identify effects on community facilities and public services. Review would include an analysis of impacts and identification of mitigation measures to reduce potential impacts.

### 6.5.5.2 BART Extension Alternative

**Impact BART Extension CS-1: Require new or physically altered existing community services or facilities**

#### **Construction**

Construction of the BART Extension would take approximately 8 years to complete. Construction would be coordinated with the cities of San Jose and Santa Clara to ensure the safety of construction workers, employees, and the public during construction. Therefore, the need for emergency services during construction activities would be minimal.

Construction activities would align with local and state-recognized safety practice requirements. Fencing and lighting of construction zones would be implemented to avoid accidents. Safety plans would be designed to account for worksite traffic control, pedestrian and bicyclist access, and handling of potential hazardous or contaminated materials. The construction manager would be responsible for job site safety and security during construction. Is it not anticipated that new or expanded fire or police facilities would be required during construction.

BART Extension–related construction would not generate a direct increase in population and would therefore not permanently increase the demand for schools. Construction-related

impacts on public services from the construction of the BART Extension Alternative would be *less than significant*, and no mitigation is required.

### **Operation**

Impacts on community facilities and public services related to operation of the BART Extension Alternative are summarized below. Please refer to Chapter 4, Section 4.4, *Community Facilities and Public Services*, and Chapter 4, Section 4.13, *Security and System Safety*, for a more detailed analysis of security and public services impacts associated with the BART Extension Alternative.

### **Police Protection**

BART Police would provide primary law enforcement within the BART Extension Alternative Operating Corridor, including onboard trains, tunnels and operating rights-of-way, and within the station platforms. Police protection for BART facilities outside of the Operating Corridor would be coordinated by VTA and the Santa Clara County Sheriff's Office (SCCSO). VTA would also expand existing mutual aid agreements with regional police providers that would provide supplemental law enforcement along the BART Extension, including San Jose Police Department (SJPD), Santa Clara Police Department (SCPD), and San Mateo County Sheriff's Office (SMCSO). SCCSO would need to increase staffing to provide adequate enforcement to the BART Extension. Additional facilities could be provided through reconfiguring one of VTA's existing facilities. Therefore, this demand would not require new or expanded police facilities that would result in significant impacts.

The BART Extension Alternative does not propose new at-grade crossings and would not interfere with emergency responders traveling along existing roadways.

Given the above, this impact would be *less than significant*. No mitigation is required.

### **Fire Protection**

San Jose Fire Department (SJFD) and Santa Clara Fire Department (SCFD) would be the primary responders to incidents along the BART Extension. However, operational safety procedures implemented by BART's System Safety Department would significantly reduce the need for emergency services within the BART system. Furthermore, the BART Extension Alternative would be designed to comply with the pertinent BART Facilities Standards Design Criteria, which ensure that new BART projects provide a high level of security and safety. Though SJFD and SCFD would respond to incidents along the BART Extension, this demand would not require new or expanded fire facilities.

The BART Extension Alternative does not propose new at-grade crossings and would not interfere with emergency responders traveling along existing roadways.

Given the above, this impact would be *less than significant*. No mitigation is required.

### **Schools**

School demand is based on population factors. Because the BART Extension Alternative would not directly increase population, no new or expanded school facilities would be required. This impact would be *less than significant*, and no mitigation is required.

### **Impact BART Extension CS-2: Require new or physically altered recreational facilities**

#### **Construction**

Construction of the BART Extension Alternative would not generate a direct increase in population and would not permanently increase the use of existing recreational facilities.

A portion of the proposed Five Wounds Trail may run along the abandoned railroad right-of-way near the Alum Rock/28<sup>th</sup> Street Station in San Jose, which is currently identified as a construction staging area (CSA) for the BART Extension. There are no City of San Jose studies, master plans, or secured funding sources for the proposed Five Wounds Trail, but the community has worked with San Jose State University to develop a conceptual plan for the trail alignment. VTA would work with San Jose to ensure that the construction schedules are coordinated should the City secure funding and wish to begin construction before the BART Extension construction.

Construction of the BART Extension Alternative would have a *less-than-significant impact* on recreational facilities, and no mitigation is required.

#### **Operation**

Park demand is based on population factors. The BART Extension Alternative constitutes a transportation project that would not directly introduce new population to the area. As a result, implementation of the BART Extension Alternative would not directly increase the demand for parks beyond what is currently provided in the area.

Several park facilities would be directly above the tunnel alignment, including Roosevelt Park, Theodore Lenzen Park, Guadalupe River Park & Trail, Los Gatos Creek Trail (Proposed), Five Wounds Trail (Proposed) and Coyote Creek Trail (Proposed). The BART Extension Alternative would not entail surface improvements that would interfere with these park facilities.

Operation of the BART Extension Alternative may lead to increased usage of the Guadalupe River Trail near the Diridon Station South and North Options. This trail network may be used to access employers, homes, and other regional destinations. However, the BART Extension Alternative is considered in VTA's *Valley Transportation Plan 2030* and San Jose's *Diridon Station Area Plan Environmental Impact Report*. Together, these planning documents propose multimodal circulation improvements to accommodate transit users near the Diridon Station South and North Options.

Given the above, operation of the BART Extension Alternative would have a *less-than-significant impact* on recreational facilities, and no mitigation would be required.

### **6.5.5.3 BART Extension with TOJD Alternative**

The five TOJDs in San Jose (at Alum Rock/28<sup>th</sup> Street Station, Downtown San Jose Station, Diridon Station, the Santa Clara and 13<sup>th</sup> Street ventilation facility, and the Stockton Avenue ventilation facility) would create approximately 130,000–280,000 square feet of retail space, 1,175,000–1,443,000 square feet of office space, and 275 dwelling units depending on the Downtown San Jose East or West Options. Using the 3.2-person average household size assumption identified in the *Envision San Jose 2040 General Plan*, implementation of the TOJD would increase San Jose's population by 880 residents. All of these residents would be located in the Alum Rock/28<sup>th</sup> Street TOJD.

The TOJD in Santa Clara (at the Santa Clara Station) would create approximately 30,000 square feet of retail space, 500,000 square feet of office space, and 220 residential dwelling units. Using the 2.65-person average household size assumption identified in the *City of Santa Clara 2010-2035 General Plan*, implementation of the TOJD would increase Santa Clara's population by 583 residents.

#### **Impact BART Extension + TOJD CS-1: Require new or physically altered existing community services or facilities**

##### **Construction**

In addition to construction impacts associated with BART Extension Alternative, the BART Extension Alternative with TOJD Alternative would also include typical construction activities associated with office, retail, and residential uses, such as demolition, excavation, trenching, infrastructure installation, and framing. However, similar to the BART Extension Alternative, safety plans would be developed and implemented onsite pursuant to local and state law. Construction-related impacts of the BART Extension with TOJD Alternative on public services would be *less than significant*, and no mitigation is required.

##### **Operation**

###### ***Police Protection***

Potential impacts on the SCCSO and SMCSO are only associated with operation of the BART stations, right-of-way, and system facilities. Therefore, the TOJD would not increase impacts on these public services beyond those analyzed under Impact BART Extension CS-1.

###### ***San Jose Police Department***

SJPD provides police services to the San Jose portions of the alignment. In addition to providing supplemental law enforcement along the BART Extension, SJPD would respond to calls generated by new residents and commercial space in the TOJD. According to SJPD, this



increased demand would not directly require new or expanded SJPD facilities (Morales pers. comm.). This impact would be *less than significant*, and no mitigation is required.

#### *Santa Clara Police Department*

SCPD provides police services to the Santa Clara portions of the alignment. In addition to providing supplemental law enforcement along the BART Extension, the SCPD would respond to service calls generated by new residents and commercial space in the TOJD. Implementation of the BART Extension with TOJD Alternative would require SCPD to add one officer to maintain their current office-per-resident ratio (McDowell pers. comm.). Although additional police staff may be required, implementation of the TOJD would not directly require new or expanded SCPD facilities. This impact would be *less than significant*, and no mitigation is required.

#### **Fire Protection**

##### *San Jose*

SJFD provides fire and emergency services to the San Jose portions of the alignment. In addition to service calls generated by the BART Extension Alternative, the SJFD would respond to calls generated by new residents and businesses in the TOJD. However, it is unlikely that this increased demand would require new or expanded SJFD facilities. This impact would be *less than significant*, and no mitigation is required.

##### *Santa Clara*

SCFD provides fire and emergency services to the Santa Clara portions of the alignment. In addition to service calls generated by the BART Extension Alternative, the SCFD would respond to calls generated by new residents and businesses in the TOJD. However, it is unlikely that this increased demand would require new or expanded SCFD facilities. This impact would be *less than significant*, and no mitigation is required.

#### **Schools**

##### *San Jose*

San Jose Unified School District (SJUSD) operates schools in San Jose's portion of the alignment. The SJUSD schools that would service the Alum Rock/28<sup>th</sup> Street TOJD are Empire Gardens Elementary School, Burnett Middle School, and San Jose High School. The Alum Rock/28<sup>th</sup> Street TOJD would generate approximately 90 new elementary students, 39 middle school students, and 48 high school students (Case pers. comm.).

SJUSD schools serving the alignment currently have the capacity to accept students generated by the BART Extension with TOJD. If all students generated by the BART Extension with TOJD attend local SJUSD-operated schools, Empire Gardens Elementary would be at 90 percent capacity, Burnett Middle School would be at 92 percent capacity, and San Jose High School would be at 79 percent capacity.

Additionally, the BART Extension with TOJD Alternative would comply with SB 50 and California Government Code Section 65995(b), which require the project applicant to pay school developer fees. This impact would be *less than significant*, and no mitigation is required.

#### *Santa Clara*

Santa Clara Unified School District (SCUSD) operates schools in Santa Clara's portion of the alignment. The SCUSD schools that would serve the Santa Clara TOJD are Scott Lane Elementary School, Buchser Middle School, and Santa Clara High School. Scott Lane Elementary School is at capacity, and both Buchser Middle School and Santa Clara High School are over capacity (Healy pers. comm.).

The Santa Clara TOJD would generate approximately 12 new students (Healy pers. comm.), which would be distributed among the elementary, middle, and high schools. The BART Extension with TOJD Alternative would comply with SB 50 and California Government Code Section 65995(b), which require the project applicant to pay school developer fees. Although the BART Extension with TOJD Alternative would contribute students to an already over-burdened school system, it would not directly require the construction or expansion of SCUSD school facilities. This impact would be *less than significant*, and no mitigation is required.

### **Impact BART Extension + TOJD CS-2: Require new or physically altered recreational facilities**

#### **Construction**

Impacts associated with construction of the BART facilities would be similar to those analyzed under Impact BART Extension CS-2 above.

Construction activities related to the TOJD would not directly generate a population increase, and would not permanently increase the use of existing neighborhood and regional parks or recreational facilities. This impact would be *less than significant*, and no mitigation is required.

#### **Operation**

Impacts associated with operation of the BART facilities would be similar to those analyzed under Impact BART Extension CS-2.

New residential developments are required to provide additional park facilities to prevent deterioration of existing park facilities resulting from increased use. The approximately 880 new residents from the San Jose TOJD would require an additional 2.64 acres of parkland to meet requirements of San Jose's Parkland Dedication Ordinance and Park Impact Ordinance. The approximately 583 new residents from the Santa Clara TOJD would require an additional 1.49 acres of parkland to meet the requirements of Santa Clara City Code

Chapter 17.35. The TOJD developers would be required to comply with these regulations through parkland dedication or payment of in-lieu fees.

Daytime users of proposed commercial and office uses and people visiting, shopping, or working in nonresidential TOJD may use nearby parks. However, existing and proposed facilities are anticipated to be capable of accommodating increased usage resulting from the BART Extension with TOJD Alternative without experiencing substantial deterioration.

Given the above, this impact would be *less than significant*. No mitigation is required.

## 6.5.6 CEQA Conclusion

Primary law enforcement to the BART Extension Alternative would be coordinated by BART Police, VTA, and SCCSO. SJPd, SCPD, and SMCSO would provide supplemental law enforcement along the BART Extension, while SJPd and SCPD would provide primary law enforcement to the TOJD. These law enforcement providers would be able to serve the BART Extension with TOJD Alternative without new or expanded police facilities.

SJFD and SCFD would respond to incidents along the BART Extension with TOJD Alternative. Existing fire and emergency services would be able to serve the BART Extension with TOJD Alternative without new or expanded fire facilities.

In accordance with applicable regulations, TOJDs would pay fees to minimize impacts on schools and parks resulting from the BART Extension with TOJD Alternative.

Given the above, impacts on community services and public services would be *less than significant*. No mitigation is required.

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