

## CHAPTER 7.0: FINAL SECTION 4(f) EVALUATION

### 7.1 INTRODUCTION

This discussion addresses the federal requirements found in 49 USC, Section 303 and 23 USC, Section 138, commonly referred to as Section 4(f). These requirements pertain to all actions or projects undertaken by agencies within the Department of Transportation (DOT), including the Federal Transit Administration (FTA). The essence of 4(f) requirements is that special efforts are to be made to protect public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Section 4(f) of the Department of Transportation Act of 1966 specifies that:

"[t]he Secretary [of Transportation] may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance, or land of a historic site of national, state, or local significance (as determined by the federal, state, or local officials having jurisdiction over the park, area, refuge or site) only if:

- (1) there is no prudent and feasible alternative to using that land; and
- (2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use."

Section 4(f) further requires consultation with the Department of Interior and, as appropriate, the involved offices of the Department of Agriculture and the Department of Housing and Urban Development, and relevant state and local officials, in developing transportation projects and programs that use lands protected by Section 4(f).

As defined under Section 4(f), use can occur under three circumstances: (1) when protected land is permanently acquired for a transportation facility, (2) when a temporary use is considered adverse, or (3) when there is "constructive use" of the resource. These circumstances are further defined below.

#### **Direct Use**

A direct use of a Section 4(f) resource takes place when property is permanently incorporated into a proposed transportation project. This may occur as a result of partial or full acquisition of a fee simple interest, permanent easements, or temporary easements that exceed regulatory limits noted below (*see* 23 CFR §771.135(p)(7)).

#### **Temporary Use**

A temporary use of a Section 4(f) resource occurs when there is a temporary occupancy of property that is considered adverse in terms of the preservationist purposes of the Section 4(f) statute. Under the FTA/Federal Highway Administration (FHWA) regulations, a temporary occupancy of property does not constitute a use of a Section 4(f) resource when the following conditions are satisfied: (1) the occupancy must be of temporary duration (i.e., shorter than the period of construction) and not involve a change in ownership of the property; (2) the scope of work must be minor, with only minimal changes to the protected resource; (3) there are no permanent adverse physical effects on the protected resource, nor will there be temporary or permanent interference with activities or purpose of the resource; (4) the property being used must be fully restored to a condition which is at least as good as that which existed prior to the proposed project; and (5) there must be documented agreement of the appropriate officials having jurisdiction over the resource regarding the foregoing requirements.

### **Constructive Use**

The third circumstance that is considered in whether “use” would be made of an eligible Section 4(f) property is the potential for constructive use. Although the term “constructive” is often thought of a positive, in this case it has a meaning more similar to “imposed.” When assessing whether a proposed project would make use of an eligible Section 4(f) property, the corollary effects of the project must be accounted for. A constructive use can occur even when a transportation project does not permanently incorporate land from the Section 4(f) resource, but the proximity of the project to the resource results in impacts (i.e., noise, vibration, visual, access, and/or ecological impacts) so severe that the protected activities, features, or attributes that qualify the resource for protection under Section 4(f) are substantially impaired. Substantial impairment occurs only if the protected activities, features, or attributes of the resource are substantially diminished. The determination of whether constructive use would be generated upon a Section 4(f) property is made through: (1) identification of the current activities, features, or attributes of the resource which may be sensitive to proximity impacts; (2) analysis of the potential proximity impacts on the resource; and (3) consultation with the appropriate officials having jurisdiction over the resource.

Section 4(f) applies to the Silicon Valley Rapid Transit Corridor (SVRTC) project because the BART Extension Alternative (BART Alternative) potentially affects 4(f) properties in three cities. The BART Alternative alignment would need to acquire a strip of land from a parcel that has been dedicated to the City of Milpitas for development as a public park. Entrance design options at the Market Street Station would affect up to two historic properties by involving the direct use of buildings within a historic district or designated as a historic resource by a local agency; potential entrance locations to the underground Diridon/Arena Station would affect the historic Cahill Station and Santa Clara Underpass property, also referred to as the San Jose Diridon Caltrain Station, by requiring direct use of areas within the boundary of the historic property; and the walkway options to the BART Santa Clara Station would affect the Santa Clara Caltrain Station, also referred to as the historic Caltrain Depot or Santa Clara Station, by involving the direct use of areas within the boundary of the historic property and diminishing the integrity of the historic Santa Clara Station Depot and Santa Clara Tower, elements of the Santa Clara Caltrain Station. These affected properties are listed in or are eligible for listing in the National Register of Historic Places (NRHP) or are historic sites of local significance and are therefore protected under Section 4(f).

This Final Section 4(f) evaluation is being circulated with the environmental document for review and comment by state and local officials having jurisdiction over the resources regarding the impacts, discussion of Section 4(f) use, avoidance alternatives, planning efforts to reduce harm, and the proposed finding discussed herein.

## **7.2 PROJECT PURPOSE AND NEED**

The Santa Clara Valley Transportation Authority (VTA) proposes to extend BART from its planned terminus at the Warm Springs Station 16.3 miles through the cities of Milpitas and San Jose to a terminus in the City of Santa Clara adjacent to the Santa Clara Caltrain Station. The primary purpose of these transportation improvements in the Silicon Valley Rapid Transit Corridor (SVRTC) is to improve public transit services in one of the most congested corridors of the metropolitan Bay Area and provide faster, more convenient access to Silicon Valley and other corridor and regional activity centers.

The project will also address a number of related needs. It will enhance regional connectivity through expanded, interconnected rapid transit services among BART, VTA light rail and bus, Caltrain, ACE, Capitol Corridor Intercity Rail Service, and Amtrak, as discussed in Section 4.2 of the Silicon Valley Rapid Transit Corridor Final Environmental Impact Statement/Environmental Impact Report, 2004 (SVRTC EIS/EIR). It will accommodate future travel demand in the corridor by expanding capacity and increasing modal options. As a competitive alternative to private auto travel, the project is also expected to alleviate severe and ever-increasing traffic congestion on the I-880 and I-680 freeways between Alameda

County and Silicon Valley and improve regional air quality by reducing auto emissions as discussed in Section 4.3 of the SVRTC EIS/EIR. The project is also expected to support local economic and land use plans and goals, as discussed in Section 4.12 of the SVRTC EIS/EIR. Finally, the project would improve mobility options to employment, education, medical, and retail centers for corridor residents, in particular low-income, youth, elderly, disabled and ethnic minority populations as discussed in Section 4.9 of the SVRTC EIS/EIR. More detailed discussion of the project purpose and need is provided in Section 2.4 of the SVRTC EIS/EIR.

### 7.3 PROJECT DESCRIPTION

The Preferred Investment Strategy/Locally Preferred Alternative for the SVRTC envisions a new BART rail transit line constructed in an existing Union Pacific (UPRR) railroad corridor between the planned BART Warm Springs Station in Fremont, Alameda County and Santa Clara Street in San Jose, continuing in a subway configuration under public and private property through eastern and downtown San Jose, and terminating at grade near the Santa Clara Caltrain Station. The environmental document for the SVRTC project considers three alternatives and several options, as described in the following subsections.

Of the eleven alternatives considered in the Major Investment Study/Alternatives Analysis, 2001 (MIS/AA), six alternatives were refined and subjected to additional technical analysis and evaluation, supplemented with input received through numerous public and agency meetings. Based on this technical analysis and input, on November 9, 2001, the VTA Board unanimously selected BART on the UPRR Alignment as the Preferred Investment Strategy/Locally Preferred Alternative for the SVRTC and instructed that in addition to this BART Alternative, a Baseline Alternative was to be carried into environmental review. The Baseline Alternative was subsequently refined in accordance with FTA "New Starts" Program project development guidance. Further engineering studies for the BART Alternative produced a number of alignment, profile, and station location and design options. A brief description of these alternatives and options is provided in the following paragraphs; Chapter 3 of the SVRTC EIS/EIR describes these alternatives and options in detail. Table 7.3-1 identifies the resources affected by the Baseline and BART Alternatives.

<b>Table 7.3-1 : Section 4(f) Resources Affected by Build Alternatives</b>	
<b>Alternative</b>	<b>Section 4(f) Resource Affected</b>
Baseline	Unrecorded, archaeological resources potentially eligible for the NRHP
BART (including Minimum Operating Segment scenarios 1E or 1F)	Unrecorded, archaeological resources potentially eligible for the NRHP
	Parc Metropolitan Development property future parkland
	San Jose Downtown Commercial Historic District (historic district with 13 individual resources listed in the NRHP) including 28 East Santa Clara Street (1 of the 13 resources in the District listed in the NRHP)
	17-25 East Santa Clara Street, a historic building of local significance
	Cahill Station and Santa Clara Underpass (listed in the NRHP)
	Santa Clara Caltrain Station (historic district with 2 individual resources, Santa Clara Station Depot and Santa Clara Tower, listed or previously determined eligible for listing in the NRHP)
Note: NRHP = National Register of Historic Places	

### **7.3.1 BASELINE ALTERNATIVE**

The Baseline Alternative builds upon existing, planned, and programmed transportation improvements in the corridor with additional express bus service and other associated bus transit improvements. The Baseline Alternative also includes construction of three new busway connectors between I-680 and the planned BART Warm Springs station bus transfer facility in Alameda County (the bus transfer facility is not part of the present project); between the Warm Springs Station and I-880; and between I-880 and the Montague Expressway in Santa Clara County. Detailed description and graphic depictions of Baseline Alternative facilities are provided in Section 3.3 and Appendix D of the SVRTC EIS/EIR. Elements of the Baseline Alternative could affect unrecorded archaeological properties, which if found eligible for the National Register of Historic Places (NRHP), would be subject to Section 4(f) protection.

### **7.3.2 BART ALTERNATIVE**

The BART Alternative consists of a 16.3-mile extension of BART at grade in the UPRR San Jose Branch railroad right-of-way (ROW) now owned by VTA, transitioning to retained cut entering northeastern San Jose, and then in retained cut, at-grade, or aerial alignment until it transitions to a deep tunnel configuration under the Santa Clara Street ROW, continuing westward crossing I-880 and emerging to terminate at grade near the Santa Clara Caltrain Station. Seven stations plus one future station are proposed as follows:

- South Calaveras (Future) – at Calaveras Boulevard and the railroad corridor ROW
- Montague/Capitol – at the railroad corridor ROW between Montague Expressway and Capitol Avenue.
- Berryessa – at Berryessa Road and the railroad corridor ROW
- Alum Rock – at 28th Street between East Julian and East Santa Clara streets
- Civic Plaza/SJSU – at East Santa Clara Street between 4th and 7th streets
- Market Street – at East/West Santa Clara Street between 1st Street and Almaden Avenue. The underground station in this area includes multiple entrance options, one that would require direct use or affect a historic building in the San Jose Downtown Commercial Historic District and one that would require direct use or affect a historic building of local significance.
- Diridon/Arena – south of and parallel to West Santa Clara Street between Autumn and White streets. The underground station in this area includes multiple potential entrance, elevator, and ventilation shaft locations, some of which could require direct use within the boundary of the historic Cahill Station and Santa Clara Underpass property.
- Santa Clara – at Benton Street/Brokaw Road between El Camino Real and Coleman Avenue. The BART Santa Clara Station has three pedestrian walkway options to link the new BART station with the existing historic Santa Clara Caltrain Station.

Design options are provided for in the vicinity of the underground Market Street Station and BART Santa Clara Station. Details and figures are provided in Section 3.4 and in Appendices A and B of the SVRTC EIS/EIR.

Two Minimum Operating Segment (MOS) scenarios are being analyzed in the SVRTC EIS/EIR as sub-options under the “full-build” BART Alternative. Under both MOS scenarios, the entire trackway alignment would be built in phase 1 (MOS-1E or MOS-1F) but other project elements, such as certain stations, vehicles, parking spaces, maintenance facility components, and BART core impact modifications, would be deferred to phase 2 (MOS-2E or MOS-2F). It is assumed that the deferred MOS-2E and 2F elements would be completed within three years of initial MOS-1E and 1F phase start-up. For purposes

of this 4(f) evaluation, the BART Alternative and MOS scenarios are referred to as the BART Alternative except where noted.

### **7.3.3 ALTERNATIVES CONSIDERED AND WITHDRAWN (POTENTIAL AVOIDANCE ALTERNATIVES)**

Nine other alternatives for the SVRTC project were considered during the MIS/AA and withdrawn from further study because they would not achieve similarly high composite rankings as the BART Alternative for achievement of SVRTC Goals, Objectives, and Evaluation Criteria (refer to Table 3.6-1 of the SVRTC EIS/EIR); would not fully accomplish the purpose and need for the project; would have greater environmental impacts; or would be less cost-effective than other alternatives. Of the nine other alternatives, four were carried forward for additional analysis before they were withdrawn. The four included Alternative 2-Busway, Alternative 3-Commuter Rail on the Alviso Alignment, Alternative 5-Commuter Rail on the UPRR Alignment, and Alternative 9-Light Rail on the UPRR Alignment. All of these four had approximately the same or greater number of historic and archaeological sites that would be subject to potentially adverse effects under NEPA/potentially significant impacts under CEQA when compared to the BART Alternative. Accordingly, the Alternative 2-Busway, Alternative 3-Commuter Rail on the Alviso Alignment, Alternative 5-Commuter Rail on the UPRR Alignment, and Alternative 9-Light Rail on the UPRR Alignment are not considered to be avoidance alternatives. A summary of the MIS/AA development and screening process is provided in Section 3.6 of the SVRTC EIS/EIR.

A variety of BART Alternative alignment and station options that emerged during the MIS/AA and SVRTC EIS/EIR environmental scoping were considered and discarded on the basis of Policy Advisory Board (PAB) and Technical Advisory Committee (TAC) comments and community input elicited through an extensive public involvement program. At one time two east-west tunnel alignments, the Santa Clara Street and the San Fernando Street alignments, were being considered for the BART Alternative. The San Fernando Street alignment, however, was dropped from further consideration for a number of reasons including Section 4(f) considerations, as it would potentially have substantially more impacts to historic buildings than the Santa Clara Street alignment. Thus, a San Fernando Street alignment would not be considered to be an avoidance alternative.<sup>1</sup>

### **7.3.4 REFINEMENT OF ALTERNATIVES**

VTA conducted an analysis to determine the feasibility of using mined construction methods on the BART Alternative underground stations and crossover structure in downtown San Jose. Based on this evaluation, on March 26, 2003, the PAB selected the cut-and-cover method for further analysis in the SVRTC EIS/EIR since it was deemed the safest, most economical option, and could be constructed much faster than the mining alternatives. On October 6, 2003, VTA presented six MOS scenarios to the PAB for consideration. After reviewing the trade-offs for the MOS scenarios and in response to public input, the PAB decided to include MOS-1E and MOS-1F as sub-options to the BART Alternative in the SVRTC EIS/EIR.

## **7.4 AFFECTED SECTION 4(f) PROPERTIES**

Section 4(f) applies to the SVRTC project because the BART Alternative potentially affects 4(f) properties in three cities. The BART Alternative would require acquisition of a strip of Parc Metropolitan Development property that is dedicated to the City of Milpitas to be developed as a public park. The

---

<sup>1</sup> For a detailed review of the design options, review process, findings, and reasons for withdrawal of design options, please see *Policy Advisory Board Status Report #2: Alignment and Station Options* (VTA 2002), and *Policy Advisory Board Status Report #3: Recommended Project Description* (VTA 2002).

BART Alternative would affect historic properties that are eligible for the NRHP: (1) the San Jose Downtown Commercial Historic District, including the property at 28 East Santa Clara Street, which has been determined eligible to the NRHP as a contributor to the historic district, (2) the Cahill Station and Santa Clara Underpass property, which is listed in the NRHP and is located above the proposed Diridon/Arena Station in San Jose; and (3) the Santa Clara Caltrain Station, including the Santa Clara Station Depot, which is listed in the NRHP, and the Santa Clara Tower, which has been determined to be eligible for listing in the NRHP, located along Railroad Avenue near Benton Street in Santa Clara. One of the Market Street Station entrance options would also affect the building at 17-25 East Santa Clara Street, a historic site of local significance. In addition, there is potential for the Baseline and BART alternatives (as well as the MOS scenarios) to encounter unrecorded archaeological resources as discussed in Section 4.6 of the SVRTC EIS/EIR. Pursuant to USDOT Rules and Regulations 23 CFR Part 771.135(g)(2), however, Section 4(f) would not apply to archaeological sites where the FTA, after consultation with the SHPO and the ACHP, determines that the archaeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place, and data recovery is undertaken.

Further information is provided for the properties affected by the BART Alternative below.

#### **7.4.1 PARC METROPOLITAN DEVELOPMENT PARKLAND**

The Parc Metropolitan Development residential project dedicated parkland to the City of Milpitas. The property consists of an irregularly shaped parcel of land that is approximately 80,000 square feet in area (see Figure A-19 in Appendix A of the SVRTC EIS/EIR). It fronts for approximately 100 feet along the railroad corridor in which the BART Alternative would be constructed. The BART Alternative would need to acquire a 20-foot-wide by 100-foot-long strip of land from the eastern end of the parcel. The parkland property is planned to be developed as an open lawn area with benches, swings, and other play equipment for general use by Milpitas citizens, although it is situated for ease of access by Parc Metropolitan Development residents.

#### **7.4.2 SAN JOSE DOWNTOWN COMMERCIAL DISTRICT**

The San Jose Downtown Commercial Historic District was listed in the NRHP on May 26, 1983. It comprises both architecturally and historically significant buildings dating from the 1870s to the early 1940s that represent the remaining vestiges of late nineteenth and early twentieth century commercial structures in the downtown area. The District is composed of two city blocks and is bounded by East Santa Clara Street to the north, East San Fernando Street to the south, South 3<sup>rd</sup> Street to the east, and South 1<sup>st</sup> Street to the west. The District includes about 30 contributory and 16 non-contributory buildings and sites dating from the 1870s, reflecting the emergence of the American city; sites from the 1890s, reflecting San Jose's boom years as an agricultural center; and sites from the 1920s, reflecting the South Bay Area's first skyscraper construction.

#### **7.4.3 28 EAST SANTA CLARA STREET BUILDING**

The building at 28 East Santa Clara Street was included among 19 contributory sites and buildings identified in the 1986 nomination for the San Jose Downtown Commercial Historic District. While this building is one of the District contributory properties, it is not designated as a City Landmark by the San Jose City Council. The District nomination form describes the building as Firato Delicatessen (architect not identified), a two-story brick commercial building with a stuccoed façade, dating from the 1880s. It would therefore be one of the oldest surviving buildings in the District, reflecting the emergence of the American city. This property is considered as part of the San Jose Downtown Commercial Historic District and is listed in the NRHP as a contributor to a historic district.

#### **7.4.4 17-25 EAST SANTA CLARA STREET BUILDING**

The building at 17-25 East Santa Clara Street, also referred to as the St. Francis Block, is not eligible for inclusion in the NRHP and is not designated as a City Landmark by the San Jose City Council. It is, however, identified as a Structure of Merit and is considered a locally significant historic building. Originally built in 1876, this building is associated with Senator Herbert C. Jones, a significant person in local history. The current two-story façade is architecturally consistent with the continued viability of the building during the 1930s and 1940s.

#### **7.4.5 HISTORIC CAHILL STATION AND SANTA CLARA UNDERPASS**

The historic Cahill Station (now San Jose Diridon Caltrain Station) dates from 1935 and is listed in the NRHP. The NRHP boundary for the site includes the depot, car cleaner's shack, herder's shack, compressor house, wall and fence system, water tower, Santa Clara Underpass, two butterfly sheds, and tracks at the station as contributors to the station. The Cahill Station and Santa Clara Underpass property was determined eligible under Criterion C (embodying distinctive characteristics of a type, period, or method of construction or that possess high artistic values), specifically, in the area of architecture as a late example of the Italian Renaissance Revival style in commercial architecture in the state.

#### **7.4.6 HISTORIC SANTA CLARA CALTRAIN STATION**

The historic Santa Clara Caltrain Station (historic Station), also referred to as the Caltrain Depot or the Santa Clara Station, includes the Santa Clara Station Depot (historic Depot) and Santa Clara Tower (historic Tower). The historic Depot, dating back to 1864, is the oldest continuously operating passenger depot in California and is listed in the NRHP. It was determined eligible under Criterion A (association with events that have made a significant contribution to the broad patterns of our history) for its association with the original development of rail transportation and Criterion C (embodying distinctive characteristics of a type, period, or method of construction or that possess high artistic values) at the state level. The historic Tower dates back to the 1920s and was determined to be eligible for listing in the NRHP under Criterion C. The boundary of the historic Station also includes the Maintenance of Way Speeder Shed and Maintenance of Way Section Tool House dating from 1863 to 1864 and 1877.

### **7.5 IMPACTS**

#### **7.5.1 ARCHAEOLOGICAL RESOURCES**

Section 4.6 of the SVRTC EIS/EIR reported that record surveys indicated there are numerous recorded archaeological resources, and the potential for unrecorded resources, that could be affected by the Baseline and BART alternatives. However, the project corridor is in an urban setting, and has been paved over, built up, or in-filled. Given the findings of the archaeological inventory and sensitivity assessment, it is likely that resources would qualify as historic properties. It is not anticipated that the SVRTC project alternatives would encounter archaeological resources whose value is for preservation in place rather than data recovery. Therefore, subject to consultation with the SHPO and ACHP, it appears that Section 4(f) does not apply to any of the archaeological resources identified or potentially existing in the project Area of Potential Effect (APE).

Additionally, the project would be implemented with contractual requirements that address unanticipated discovery of archaeological resources. These would include the following measures:

- If buried cultural resources are uncovered during construction, all work shall be halted in the vicinity of the archaeological discovery until a qualified archaeologist can visit the site of discovery and assess the significance of the archaeological resource.

- In the event of an accidental discovery of any human remains in a location other than a dedicated cemetery, the steps and procedures specified in Health and Safety Code 7050.5, CEQA 15064.5(e), and the Public Resources Code 5097.98 shall be implemented.
- Provisions for the disposition of recovered prehistoric artifacts shall be made in consultation with culturally affiliated Native Americans.

### **7.5.2 IMPACTS TO PARC METROPOLITAN DEVELOPMENT PARKLAND**

The BART Alternative would require acquisition of a 20-foot-wide by 100-foot-long strip of land from Parc Metropolitan Development property that has been dedicated to the City of Milpitas for development as a public park. This strip of land is needed to accommodate the replacement UPRR industrial spur between Curtis Avenue and Montague Expressway. Figure 7.5-1 shows the proposed acquisition; also see Section 3.7 of the SVRTC EIS/EIR. The remainder of the parcel would be developable for park amenities as originally planned.

The types of Section 4(f) uses include (a) direct use resulting from the acquisition, and (b) potential constructive use imposed on the remaining parkland for development of the acquired property.

### **7.5.3 IMPACTS TO A CONTRIBUTORY PROPERTY TO SAN JOSE DOWNTOWN COMMERCIAL HISTORIC DISTRICT**

The San Jose Downtown Commercial Historic District (District) would be affected by station entrance and related facility options for the Market Street Station under the BART Alternative as shown in Figure 7.5-2. One option, (Option M-1A) would place entrance, elevator, bicycle storage, and/or ventilation structures on the parcel occupied by 28 East Santa Clara Street, a property that has been determined eligible to the NRHP as a contributor to the historic district. A photo of the building is provided in Figure 7.5-3. Figure B-31 in Appendix B of the SVRTC EIS/EIR shows all of the proposed station entrance/facility location options.

Construction of the BART entrance facilities at 28 East Santa Clara Street would require demolition and/or substantial alteration of this historic property, both of which would be a direct use of the historic district under Section 4(f). Demolition of this building would reduce the total concentration, linkage, and continuity of the overall District, potentially affecting its architectural significance. Alteration of this building would likely affect characteristics of the building that make it eligible for listing in the NRHP as a contributor to the District. Alterations to the contributing building that result in loss of its historic status would be a use under Section 4(f). This impact has been discussed with City of San Jose staff at monthly Project Development Team meetings. The City has indicated that they are not opposed to eliminating this entrance option that they originally proposed for consideration.

The types of Section 4(f) uses include (a) direct use resulting from the demolition of a contributing structure, (b) potential temporary use of district resources during construction, and (c) potential constructive use of the historic district arising from alterations of a contributing building.

### **7.5.4 IMPACTS TO 28 EAST SANTA CLARA STREET BUILDING**

The direct impacts listed for the District apply to the building itself. Demolition would be a direct use, as would alterations of the building that affect the characteristics that make it eligible for the NRHP.

The types of Section 4(f) uses include (a) direct use resulting from the demolition of a historic structure, (b) potential temporary use of a historic resource during construction, and (c) potential constructive use of a historic structure arising from alterations.



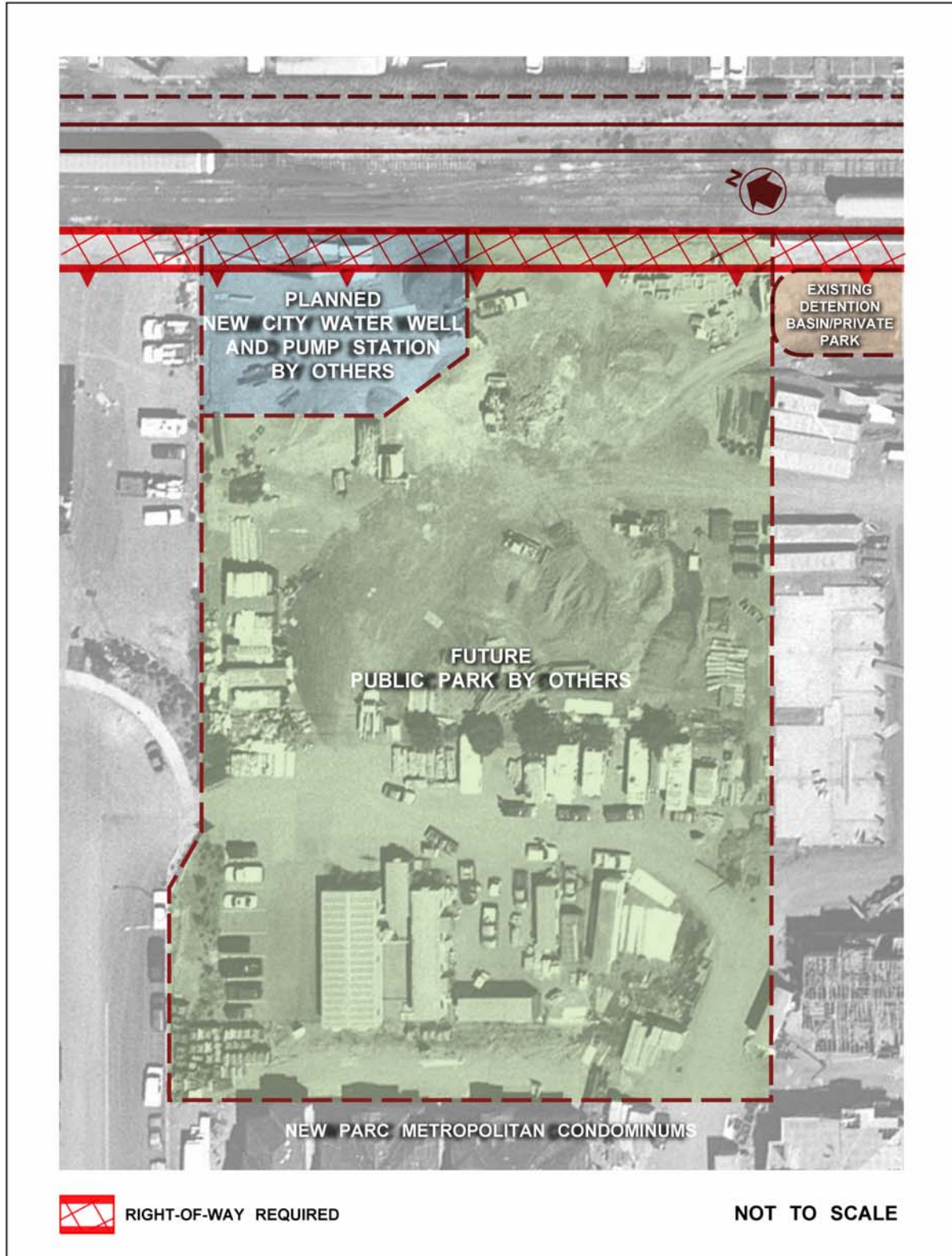


Figure 7.5-1: Proposed Acquisition of Dedicated Parkland for BART Alternative

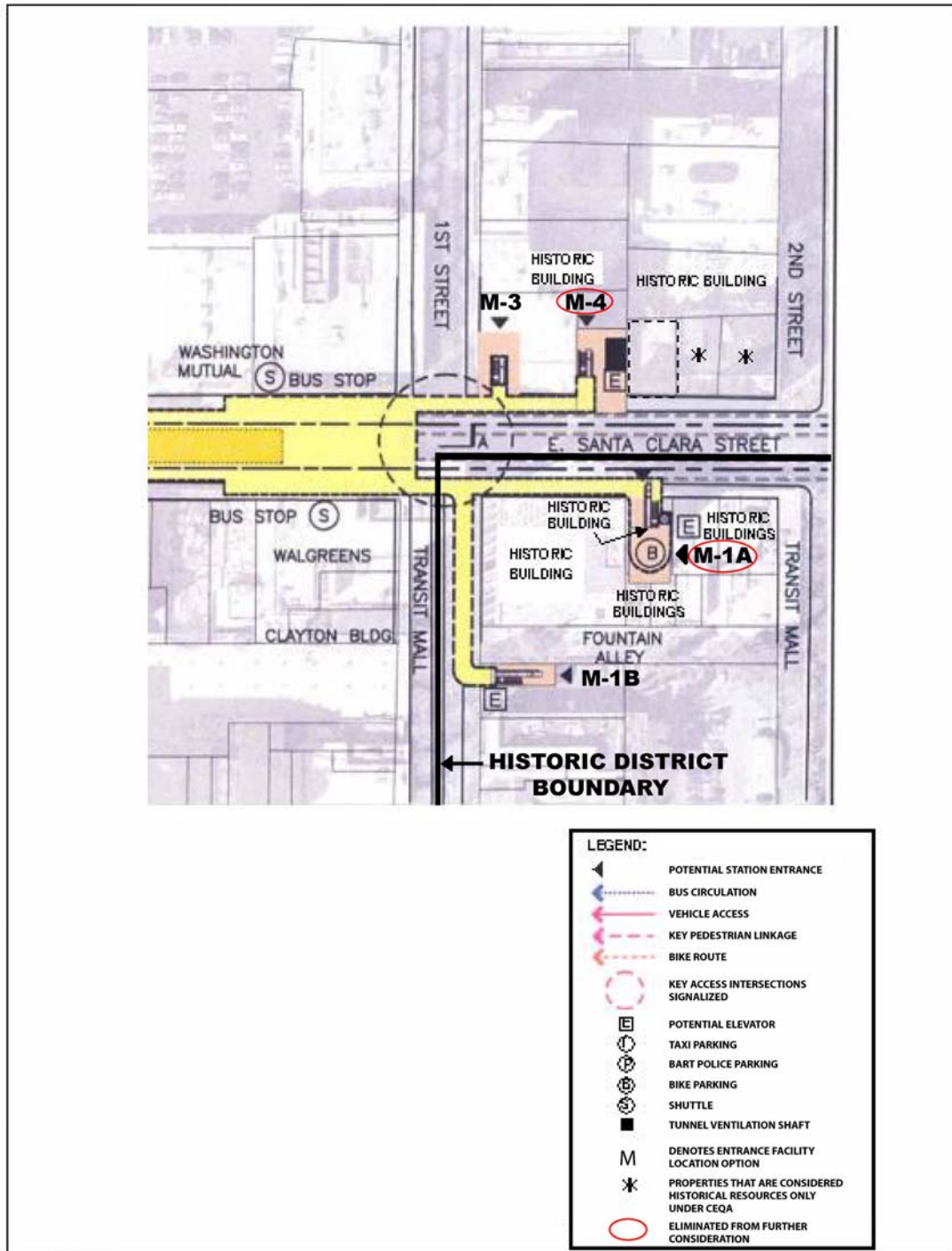


Figure 7.5-2: East Side Market Street Station Entrance Options



Figure 7.5-3: 28 East Santa Clara Building (Option M-1A)

### 7.5.5 IMPACTS TO 17-25 EAST SANTA CLARA STREET BUILDING

This building would be affected by station entrance and related facility options for the Market Street Station under the BART Alternative. One option (Option M-4) would place entrance, elevator, and/or ventilation structures on the parcel occupied by 17-25 East Santa Clara Street, a historic building of local significance. This property is shown in Figure 7.5-4. Figure B-31 in Appendix B of the SVRTC EIS/EIR shows all the proposed station entrance/facility location options.

Construction of Option M-4 would require demolition and/or substantial alteration of this property, both of which would be a direct use of the historic building under Section 4(f).



Figure 7.5-4: 17-25 East Santa Clara Street Building (Option M-4)

### 7.5.6 IMPACTS TO HISTORIC CAHILL STATION AND SANTA CLARA UNDERPASS

The BART Alternative includes six potential station entrances, four potential elevators, and six potential ventilation shafts into the underground Diridon/Arena Station. The final decision on which entrances, elevators, and ventilation shafts to be constructed will be made during Preliminary Engineering and will be based on a number of factors including cost, constructibility, availability of land, pedestrian connectivity, and safety and security. Four potential entrances, two elevators, and four ventilation shafts are within the NRHP boundary of the Cahill Station and Santa Clara Underpass property. The three potential entrances, one elevator, and three ventilation shafts east of the railroad tracks are in areas now



**Figure 7.5-5: Area for Potential New Entrances, Elevators, and Ventilation Shafts to Diridon Station, View Toward Cahill Station**

used for parking, as shown in Figure 7.5-5, and are separated from the depot building by an existing bus transfer facility. One potential entrance, elevator, and ventilation shaft are west of the railroad tracks and on railroad property that is vacant. The four potential entrances, two elevators, and four ventilation shafts would not physically affect the nearby Santa Clara Underpass; they would be at least 50 feet from the backside of the south retaining wall of the underpass. In addition, these station features would not physically affect the other contributing elements of the historic property. Figure B-37 in Appendix B of the SVRTC EIS/EIR shows the proposed pedestrian entrances, elevators, and ventilation shafts. Two of the six potential station entrances and two of the six potential ventilation shafts are located to the east of Cahill Street, outside the NRHP boundary.

The Diridon/Arena Station support facilities include two large multi-level parking structures. The Parking Structure North is located on a parking area adjacent to and immediately west of the HP Pavilion event center and is outside the NRHP boundary. The Parking Structure south is located east of the historic station and south of West San Fernando Street. This structure is located outside the NRHP boundary. Adjacent to this parking structure and within the NRHP boundary is an existing surface parking lot. This use would continue as a surface parking lot that supports transit.

The types of Section 4(f) uses are (a) direct use of land within the boundary of an NRHP-listed property, (b) potential temporary use of the property during construction, and (c) potential constructive use of the history property arising from alterations of setting.

The affected portion of the grounds of the historic Cahill Station and Santa Clara Underpass property currently serve transportation purposes (parking and pedestrian access to transportation service). Implementation of the proposed project would result in ongoing use of the grounds for transportation purposes. This circumstance is addressed in Department of Transportation Environmental Impact and Related Procedures, Final Rule, Section 771.135(f):

A determination of whether a resource is used under Section 4(f) is also subject to consideration of 23 CFR § 771.135(f) of the Department of Transportation guidelines for preparation of environmental documents. This section states that certain properties are excluded from 4(f) evaluation because they are already in use for transportation purposes; the project contemplates the restoration, rehabilitation, or maintenance of these properties; and the project will not adversely affect the historic qualities of these properties.

The SVRTC project would maintain the transportation functions of the historic property and would not alter the characteristics of the property that qualifies it for the NRHP. As shown in Figure 7.5-5, the areas of the potential entrances, elevators, and ventilation shafts are well removed from the historic train station. They are separated from the historic train station by the existing bus transfer facility. As noted above, the potential entrances, elevators, and ventilation shafts would also not have an adverse effect on the underpass portion of the site. Inasmuch as the project elements qualify for the above exemption, no discussions of avoidance alternatives or efforts to reduce harm are provided for the Cahill Station and Santa Clara Underpass property.

#### **7.5.7 IMPACTS TO HISTORIC SANTA CLARA CALTRAIN STATION**

The BART Alternative encompasses two design options for the parking garage at the BART Santa Clara Station: the Parking Structure North Option and the Parking Structure South Option. Both design options incorporate three pedestrian linkage options crossing the UPPR/Caltrain tracks to reach the historic Station and bus transfer facility on the west side of the tracks as shown in Figure 7.5-6. These options are as follows:

- **Aerial Walkway North Option.** An aerial walkway that crosses diagonally over the Caltrain and freight train tracks and terminates on the west side of the Caltrain tracks north of the historic Tower;
- **Aerial Walkway South Option.** An aerial walkway that crosses more directly over the Caltrain and freight train tracks and terminates on the west side of the Caltrain tracks south of the historic Tower, and
- **Underground Walkway Option.** An underground walkway that crosses in the more direct alignment under the Caltrain and freight train tracks and terminates on the west side of the Caltrain tracks south of the historic Tower.

Figures B-40 through B-43 in Appendix B of the SVRTC EIS/EIR show the three proposed pedestrian links for both BART Santa Clara Station parking garage options in greater detail.

Either of the two pedestrian walkways with their western terminus south of the historic Tower – that is, terminating between the historic Tower and the historic Depot – would result in a direct use of the historic property.

The types of Section 4(f) uses include (a) direct use resulting from placement of new facilities in a historic complex, (b) potential temporary use of a historic resource during construction, and (c) potential constructive use arising from alterations to a historic complex.

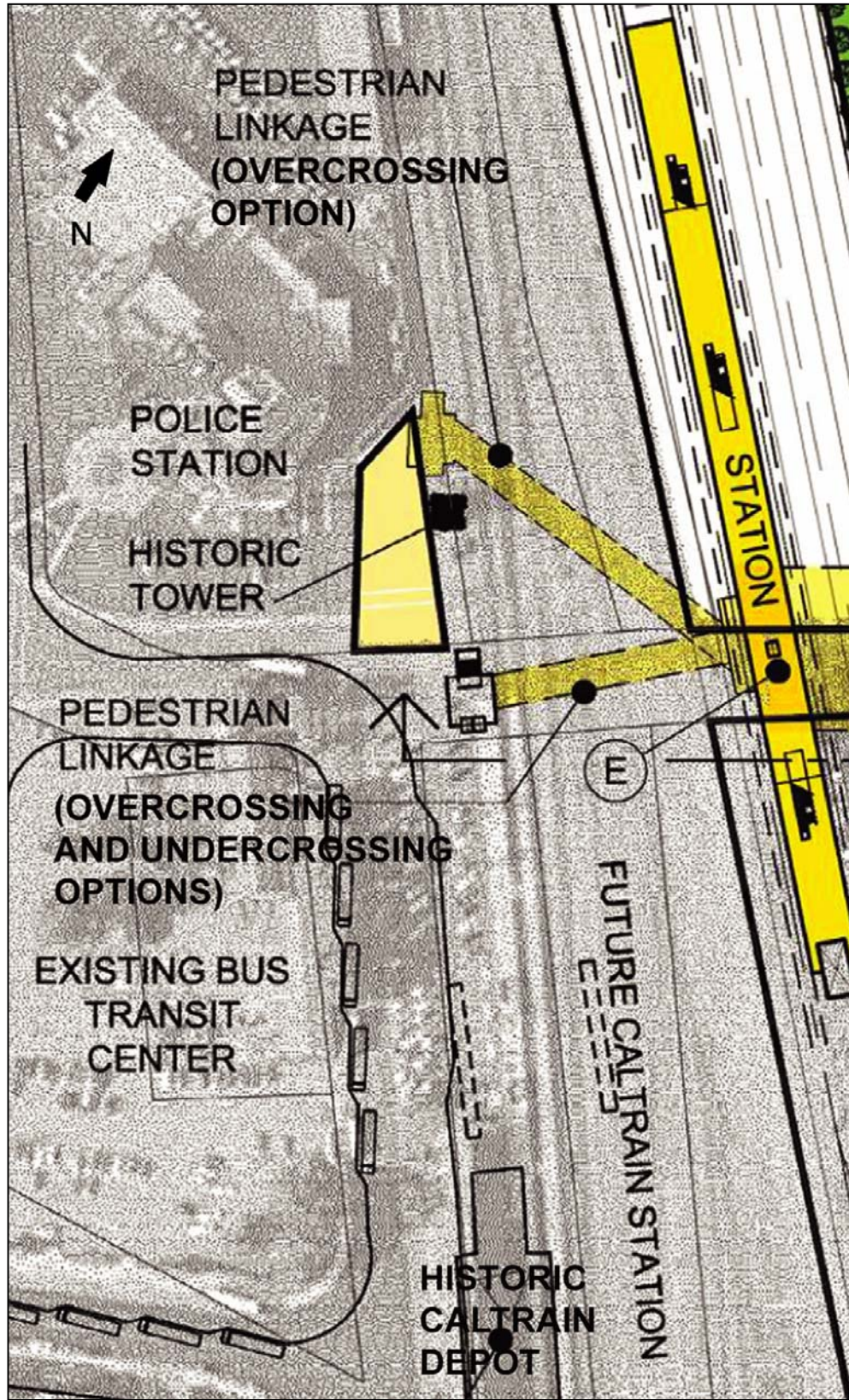


Figure 7.5-6: BART Santa Clara Station Pedestrian Linkage Options

## **7.6 AVOIDANCE ALTERNATIVES**

The following subsections discuss alternatives that would avoid use of parkland or historic properties, which are applicable to the BART Alternative and MOS scenarios. As noted under Section 7.3.3, other potential alignments that would avoid these particular resources would have resulted in impacts to other Section 4(f) resources.

### **7.6.1 BASELINE ALTERNATIVE**

The Baseline Alternative would not use Parc Metropolitan Development parkland property, 28 East Santa Clara Street, the San Jose Downtown Commercial Historic District, or the historic Station. However this alternative would only partially meet the project's purpose and need. The Baseline Alternative would not improve transit services sufficiently to meet the future demand for transit travel within the SVRTC, nor would it improve regional connectivity, attract the new transit ridership, or achieve the reductions in corridor vehicle miles traveled (VMT), air emissions or energy use that are obtainable with the BART Alternative. The Baseline Alternative would also not support local economic and urban development goals by influencing higher-density development near the new BART stations. Thus, while the Baseline Alternative is feasible, it would not be a prudent avoidance alternative in relationship to the project's purpose and need.

### **7.6.2 BART ALTERNATIVE**

#### **7.6.2.1 Alternative to Avoid Use of Parc Metropolitan Development Parkland**

VTA evaluated an alignment variation for locating the replacement UPRR industrial spur between Curtis Avenue and Montague Expressway that would avoid acquisition of the 20-foot-wide by 100-foot-long strip (0.05 acres) of dedicated public parkland.

The total width needed for the combined BART and UPRR tracks in this area is 80 feet, providing 50 feet for the BART line and 30 feet for the UPRR industrial spur. The existing railroad ROW width is only 60 feet, requiring the 20-foot acquisition of parkland. While a realignment of the BART Alternative to the east side of the rail ROW appears technically feasible, the alignment of the BART system and spur track on the west side addresses the following issues.

- The existing industrial spur serves only businesses on the east side of the BART alignment. A west side spur would require a grade-separated crossing of the BART alignment. To accomplish this grade separation, the BART Alternative would need to be in a retained cut section, and the railroad would cross over this trench at-grade. To locate this crossing north of Curtis Ave would require extending the BART trench section northward approximately 1,800 feet at an additional estimated cost of \$19 million (including add-ons).
- Positioning the spur entirely on the east side of the ROW would require purchase of a 20-foot-wide strip approximately 2,000 feet long, directly affecting three industrial buildings by eliminating approximately 200 parking spaces. Acquisition of the ROW on the east side would cost approximately \$1 million to \$3 million.
- In addition, the three industrial buildings on the east side of the ROW have loading docks facing west, and tractor-trailer trucks serving these buildings would have restricted turning radii for maneuvering into these loading docks.
- An east side alignment would also be positioned near the existing 42-inch diameter Milpitas water pipeline, potentially requiring its relocation.



Given the very high costs for acquisition of ROW, and direct impact to three businesses on the east side of the ROW including the loss of approximately 200 parking spaces and restricted loading dock access, it can be concluded that although the east side design option is technically feasible, it is not a prudent alternative.

There are no other feasible avoidance alignment options at this location—the ROW can be expanded only to the east or west.

#### **7.6.2.2 Alternatives to Avoid Use of the San Jose Downtown Commercial Historic District and Its Contributory Property; the Historic 28 East Santa Clara Street Building Itself; and the Locally Significant 17-25 East Santa Clara Street Building**

Station locations were developed during two Station Entrance Workshops with downtown property owners and members of the downtown business community in attendance. In addition, VTA met with the following project stakeholders to receive input regarding any of their concerns: the San Jose Redevelopment Agency, the City of San Jose, the Downtown San Jose Community Working Group, BART, and SHPO.

Figure 7.5-2 depicts the four current west side station entrance, elevator, bicycle parking, and ventilation shaft options. One of the options, M-1A, would have an adverse effect on a San Jose Downtown Commercial Historic District contributory property located at 28 East Santa Clara Street and has been eliminated from further consideration. Another option, M-4, is located at 17-25 East Santa Clara Street and is outside the San Jose Downtown Commercial Historic District. The property, however, is considered a historic resource for the purposes of CEQA. This option would result in a potentially significant impact under CEQA. To avoid this impact, Option M-4 has also been eliminated from consideration. Avoidance alternatives (options) to impacting M-1A and M-4 are depicted in the figure and include the following:

- **Alternative 1 (Option M-3).** Option M-3 is located at 15 East Santa Clara Street and is outside the San Jose Downtown Commercial Historic District.
- **Alternative 2 (Option M-1B).** Option M-1B is located at 26 South First Street and is within the San Jose Downtown Commercial Historic District. The site is bordered by Fountain Alley and a non-contributing building, and is a parking lot as shown in Figure 7.6-1. The setting and linkage of the District along the east side of South 1st Street is less cohesive and includes more open space and non-contributing elements. The construction of an entrance facility at this location would not appear to diminish the linkage of historic resources in the District and would not require demolition or alteration of contributing elements. This entrance facility option does not appear to constitute an adverse effect to this historic district because the undertakings would not alter the characteristics of the property that qualify it for listing in the NRHP.

#### **7.6.2.3 Alternatives to Avoid Use of the Cahill Station and Santa Clara Underpass**

As noted under Section 7.5.5, the Cahill Station and Santa Clara Underpass property is excluded from 4(f) evaluation and no discussions of avoidance alternatives are provided.

#### **7.6.2.4 Alternatives to Avoid Use of the Historic Santa Clara Caltrain Station**

Providing pedestrian linkage from either of the parking garages and the BART station to the historic Station and bus transit center would entail a direct use of the historic property, arising from the touchdown of an aerial pedestrian bridge or the entry/exit of a subterranean passage within the confines of the historic Station boundary. This direct use does not seem to be avoidable, given the need to access



**Figure 7.6-1: Fountain Alley and Adjacent Parking Lot (Option M-1B)**

the depot rail services for connections and the physical position of the historic Station between the bus transit center and the proposed BART station and garages. Because of the need to provide safe connections among BART, Caltrain, the bus transit center and the parking garages, pedestrians must walk across historic Station grounds.

### **7.6.3 ALTERNATIVES AND PLANNING TO REDUCE HARM**

#### **7.6.3.1 Planning to Reduce Harm to Parc Metropolitan Development Parkland**

The acquisition of a 20-foot wide strip of land from the eastern edge of the proposed park would affect only 2.5 percent of the total area of the park. The City of Milpitas plans to develop the park as an open lawn area with benches, swings, and other play equipment. Decreasing of the park area by 20 feet should not compromise the intended function of the park. VTA has met with the City of Milpitas and will continue discussions with the City of Milpitas at monthly Project Development Team meetings to specify measures to mitigate the acquisition and reduce harm. One or a combination of the following measures, suggested by the City of Milpitas, will be implemented and reported in the Final SVRTC EIS/EIR.

- Pay an in-lieu fee equivalent to the cost of replacement parkland;
- Acquire replacement park property immediately adjacent to parkland site;

- Expand a nearby park;
- Provide additional amenities at the affected parkland site; and/or
- Assist in funding a pedestrian crossing over the railroad corridor that would link and facilitate access to the affected park, possibly at Curtis Avenue.

#### **7.6.3.2 Planning to Reduce Harm to the San Jose Downtown Commercial Historic District and Its Contributory Property; to the Historic 28 East Santa Clara Street Building Itself; and to the Locally Significant 17-25 East Santa Clara Street Building**

VTA has conducted and will continue to conduct planning sessions with interested and affect parties within the San Jose Downtown Commercial Historic District regarding the locations and elements of station entrances and ancillary facilities that may be constructed within the District. The goal of this planning is to develop specific plans to incorporate project-related elements into the historic district in a manner that does not make direct use of historic properties or diminish their integrity. Avoiding direct use and maintaining integrity of resources would reduce harm.

The historic district exists within a modern urban setting, as recognized by the City of San Jose General Plan and Municipal Code, which provides for and requires the issuance of Historic Preservation (HP) Permits for properties listed as City Landmarks or in a city historic district. VTA's planning efforts regarding the San Jose Downtown Commercial Historic District will continue during Preliminary Engineering to refine the initial concepts used in the SVRTC EIS/EIR, with the end products being such that the City of San Jose would be positioned to issue HP Permits and that the SHPO would concur that plans would not result in adverse effects to the historic district or its contributory properties. Concurrence by the SHPO would provide demonstrable evidence that harm has been avoided.

#### **7.6.3.3 Planning to Reduce Harm to the Cahill Station and Santa Clara Underpass**

As noted under Section 7.5.5, the Cahill Station and Santa Clara Underpass property is excluded from 4(f) evaluation and no discussions of efforts to reduce harm are provided.

#### **7.6.3.4 Planning to Reduce Harm to the Historic Santa Clara Caltrain Station**

Three alternatives to provide pedestrian linkage between the BART Santa Clara Station and parking and the historic Station have been developed - Aerial Walkway South Option, Aerial Walkway North Option, and Underground Walkway Option. Figure 7.5-6 and Figures B-40 through B-43 in Appendix B of the SVRTC EIS/EIR depict the three pedestrian linkage options being considered at this station. These alternatives represent ways to potentially reduce harm.

- **Aerial Walkway North Option.** The Aerial Walkway North Option would cross over the Caltrain and freight rail tracks on a diagonal alignment, terminating north of the historic Tower. At a meeting with the City of Santa Clara on August 12, 2002, the Police Department expressed security concern about an elevated pedestrian walkway being adjacent to their jail facility and the views into their property. A follow-up letter from the City of Santa Clara Police Department is provided in Appendix C of the SVRTC EIS/EIR documenting their concerns.
- **Aerial Walkway South Option.** The Aerial Walkway South Option would cross over the Caltrain and freight rail tracks on a perpendicular alignment, terminating approximately 100 feet south of the historic Tower. This alignment avoids direct contact with the historic Tower or Depot. Photosimulations of this option are depicted in Figures 4.17-30 and 4.17-31 of the SVRTC EIS/EIR. This direct crossing of the rail ROW would save an estimated 7,000 riders per day from walking about 440 feet farther to get to or from the Caltrain station/platform area than the Aerial Walkway North Option.

This option was originally conceived in concert with plans to extend the Caltrain platform, which would have reduced the distance between the aerial walkway terminus and the Caltrain station. It now appears that the Caltrain platform will not be extended, meaning that passengers transferring between the BART Alternative and Caltrain, bus connections, and walk/bike trips would have a longer distance to walk.

- **Underground Walkway Option.** The underground configuration that would cross perpendicular under the Caltrain and freight rail tracks would have an entrance between the historic Tower and Depot. The location of the subterranean entrance would be at approximately the same location as the touchdown for the Aerial Walkway South Option. This option has the drawback that it would introduce an additional level for passenger connections among stations and modes since the proposed BART station is elevated at mezzanine level and the possible future people mover to the SJIA would be elevated, while the Caltrain station is at-grade. In addition, there is a perception by riders that underground tunnels are less safe than aboveground walkways.

VTA has conducted and will continue to conduct planning sessions with interested and affect parties about the needed pedestrian connection to the historic Depot. The goal of this planning is to develop specific plans to incorporate project-related elements into the historic Station complex in a manner that does not affect its character, defining features and minimizes potential harm. VTA's planning efforts regarding the BART Santa Clara Station will continue during Preliminary Engineering to refine the initial concepts used in the SVRTC EIS/EIR, with the end products being such that the SHPO would concur that plans would not result in adverse effects to the historic property. Concurrence by the SHPO would provide demonstrable evidence that harm has been avoided.

## **7.7 FINDING**

The Federal Transit Administration has determined the following:

1. There are no feasible and prudent alternatives that would avoid use of unrecorded archaeological resources that may be affected by construction of the Baseline or BART alternatives.
2. The project includes planning to minimize harm to unrecorded archaeological resources, as evidenced by contractual requirements that address unanticipated discovery of archaeological resources.
3. There is no feasible and prudent alignment alternative that would avoid use of the planned Parc Metropolitan Development Parkland in the City of Milpitas.
4. The project includes current and future planning to minimize harm to the planned park.
5. There are feasible and prudent Market Street Station entrance facility alternatives to avoid the direct use of the 28 East Santa Clara Street Building and the use of that building as a component of the San Jose Downtown Commercial Historic District.
6. There are feasible and prudent Market Street Station entrance facility alternatives to avoid the direct use of the 17-25 East Santa Clara Street Building.
7. The project includes current and future planning to minimize harm to the historic district.
8. Potential station entrances, elevators, and ventilation shafts to the underground Diridon/Arena Station and surface parking within the NRHP boundary of the historic Cahill Station and Santa Clara Underpass property would be ongoing transportation uses of the property and would not

alter the characteristics of the property that qualify it for the NRHP and thus are exempt from Section 4(f) under 23 CFR § 771.135(f).

9. There are no feasible and prudent alternatives that would avoid use of the historic Santa Clara Caltrain Station, given the need to access the depot rail services for connections and the physical position of the historic Depot between the bus transit center and the proposed BART station and garages. Because of the need to provide safe connections among BART, Caltrain, the bus transit center, and the parking garages, pedestrians must traverse the historic Santa Clara Caltrain Station grounds.
10. The project includes current and future planning to minimize harm to the historic Santa Clara Caltrain Station.

This page intentionally left blank