

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: August 16-17, 2023

From: TANISHA TAYLOR, Executive Director

Reference Number: 2.2c.(6), Action

Prepared By: Cherry Zamora
Assistant Deputy Director

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Subject: Approval of Project for Future Funding Consideration – Final Second Supplemental Environmental Impact Report and Addenda for the Eastridge to BART Connector Project, Resolution #E-23-126A

Recommendation:

Staff recommends the California Transportation Commission (Commission), as a Responsible Agency, accept the Final Second Supplemental Environmental Impact Report and Addenda analyzing the Eastridge to Bay Area Rapid Transit (BART) Regional Connector Project (Project) in the City of San Jose in Santa Clara County and approve the Project for future funding consideration.

Issue:

The Santa Clara Valley Transportation Authority is the California Environmental Quality Act Lead Agency for the Project. The Project will extend light rail along Capitol Expressway between the existing Alum Rock Light Rail Station and Eastridge Transit Center, a distance of approximately 2.4 miles. Light rail will operate primarily in the median of Capitol Expressway within exclusive and semi-exclusive rights-of-way. To provide the additional right-of-way to accommodate light rail, high-occupancy vehicle lanes will be removed between Story Road and Tully Road. The Project will include new light rail stations at Story Road (aerial) and Eastridge Transit Center (at-grade). The Project will also include traction power substations at Ocala Avenue and Eastridge Transit Center. Relocation and replacement of a number of 115- kilovolt steel lattice electrical transmission towers with Tubular Steel Poles will be required for the Project. The Project is located along Capitol Avenue and Capitol Expressway between the Alum Rock Light Rail Station at Wilbur Avenue and the Eastridge Transit Center south of Tully Road in the City of San Jose in Santa Clara County.

For all projects that are anticipated to be funded through a program under the purview of the Commission, full compliance with the California Environmental Quality Act is required. The Commission will not allocate funds to projects for design, right-of-way, or construction until the environmental document is complete, and the Commission has approved the environmentally cleared project for future funding consideration.

Background:

On June 6, 2019, the Santa Clara Valley Transportation Authority certified the Final Second Supplemental Environmental Impact Report. This report updated information presented in the previous environmental documents prepared for the Project, including the 2005 Final Environmental Impact Report, the 2007 Supplemental Environmental Impact Report, the June 2010 Revised Addendum, and the 2014 Subsequent Mitigated Negative Declaration. The Final Second Supplemental Environmental Impact Report considered the following project changes proposed since certification of these previous documents: extension of the aerial guideway to grade-separate the Ocala Ave and Cunningham Ave intersections; revisions to Capitol Expressway roadway lane configurations; modifications to Eastridge Station platforms and track; reduction in parking spaces at Eastridge Park-and-Ride lot; minor shift in the location and straightening of the Story Station pedestrian overcrossing; modification to Story Station pedestrian access; relocation of a construction staging area; relocation of PG&E electrical transmission facilities; and extension of construction duration and modification to the construction scenario.

On February 6, 2020, the Santa Clara Valley Transportation Authority approved the Second Addendum to the Final Second Supplemental Environmental Impact Report. The Second Addendum evaluated the following changes: (1) Maintain an existing second left-turn lane on northbound Capitol Expressway at Ocala Avenue, (2) Add a supplemental feeder system and increase the size of two new traction power substations, (3) Modify PG&E electrical distribution service for two new traction power substations, (4) Provide in-lieu funds instead of replacing trees removed as part of Project, and (5) Include parking canopies with photovoltaic system at Eastridge Park-and-Ride Lot.

On March 4, 2021, the Santa Clara Valley Transportation Authority approved the Third Addendum to the Final Second Supplemental Environmental Impact Report. The Third Addendum evaluated the removal of an additional 60 to 70 trees located within the aerial easement of PG&E's relocated electrical transmission lines along the east side of Capitol Expressway between Ocala Avenue and Quimby Road in the City of San Jose.

The Santa Clara Valley Transportation Authority found that the Project's impacts on traffic, air quality, environmental justice, and noise and vibration would be significant and unavoidable adverse environmental impacts.

The Santa Clara Valley Transportation Authority found there were several benefits that outweigh the unavoidable adverse impacts of the project. These overriding benefits include economic, legal, social, and technological considerations that outweigh the identified significant effects on the environment. The Santa Clara Valley Transportation Authority determined the Project would accomplish the following benefits:

- Improve public transit service in the corridor
- Provide an attractive transit alternative
- Enhance regional connectivity
- Improve regional air quality
- Improve mobility options
- Support local economic and land development goals

On July 27, 2023, the Santa Clara Valley Transportation Authority confirmed that the Final Second Supplemental Environmental Impact Report and addenda remain valid and that there are no new identified impacts requiring mitigation. The Santa Clara Valley Transportation Authority also confirmed that the Project set forth in the Final Second Supplemental Environmental Impact Report and addenda are consistent with the Project scope of work programmed by the Commission.

The Project is estimated to cost \$530,000,000 and is funded through construction with Measure A (\$313,490,000), Senate Bill 1 Local Partnership Formulaic Program (\$25,120,000), Regional Measure 3 (\$130,000,000), Low Carbon Transit Operations Program (\$14,800,000), and Transit and Intercity Rail Capital Program (\$46,590,000) funds.

Construction is scheduled to begin in Fiscal Year 2023-24.

Attachments:

- Attachment A: Resolution E-23-126A
- Attachment B: Findings of Fact and Statement of Overriding Considerations
- Attachment C: Notice of Determination
- Attachment D: Project Location Map

**CALIFORNIA TRANSPORTATION COMMISSION
Resolution for Future Funding Consideration**

**4 – Santa Clara County
Resolution E-23-126A**

- 1.1 WHEREAS, the Santa Clara Valley Transportation Authority has completed a Final Second Supplemental Environmental Impact Report and Addenda for the Eastridge to Bay Area Rapid Transit (BART) Project (Project); and
- 1.2 WHEREAS, the Santa Clara Valley Transportation Authority has certified the Final Second Supplemental Environmental Impact Report and approved the Addenda pursuant to the California Environmental Quality Act (CEQA) and the CEQA Guidelines; and
- 1.3 WHEREAS, the Project is located along Capitol Avenue and Capitol Expressway between the Alum Rock Light Rail Station at Wilbur Avenue and the Eastridge Transit Center south of Tully Road in the City of San Jose in Santa Clara County; and
- 1.4 WHEREAS, the Project will extend light rail along Capitol Expressway between the existing Alum Rock Light Rail Station and Eastridge Transit Center, a distance of approximately 2.4 miles. Light rail will operate primarily in the median of Capitol Expressway within exclusive and semi-exclusive rights-of-way. To provide the additional right-of-way to accommodate light rail, high-occupancy vehicle lanes will be removed between Story Road and Tully Road. The Project will include new light rail stations at Story Road (aerial) and Eastridge Transit Center (at-grade). The Project will also include traction power substations at Ocala Avenue and Eastridge Transit Center. Relocation and replacement of a number of 115- kilovolt steel lattice electrical transmission towers with Tubular Steel Poles will be required for the Project; and
- 1.5 WHEREAS, on June 6, 2019, the Santa Clara Valley Transportation Authority certified the Final Second Supplemental Environmental Impact Report; and
- 1.6 WHEREAS, on February 6, 2020, the Santa Clara Valley Transportation Authority approved the Second Addendum to the Final Second Supplemental Environmental Impact Report; and
- 1.7 WHEREAS, on March 4, 2021, the Santa Clara Valley Transportation Authority approved the Third Addendum to the Final Second Supplemental Environmental Impact Report; and

- 1.8 WHEREAS, the Santa Clara Valley Transportation Authority determined that the Project's impacts on traffic, air quality, environmental justice, noise and vibration would be significant and unavoidable adverse environmental impacts; and
- 1.9 WHEREAS, the above-referenced significant effects are acceptable when balanced against the facts set forth in the Statement of Overriding Considerations; and
- 1.10 WHEREAS, on July 27, 2023, the Santa Clara Valley Transportation Authority confirmed that the Project set forth in the Final Second Supplemental Environmental Impact Report and Addenda are consistent with the Project scope of work programmed by the California Transportation Commission (Commission); and
- 1.11 WHEREAS, the Commission, as a Responsible Agency, has considered the information contained in the Final Second Supplemental Environmental Impact Report and Addenda; and
- 2.1 NOW, THEREFORE, BE IT RESOLVED that the Commission does hereby accept the Final Second Supplemental Environmental Impact Report and Addenda and approves the above-referenced Project for future funding consideration.

Section 3

Findings Regarding Significant Effects

3.1 CEQA Requirements

CEQA, Public Resources Code section 21002 provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” The same statute states that the procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.” Section 21002 goes on to state that “in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects.”

Regarding these Findings, section 15091 of the CEQA Guidelines (14 California Code of Regulations) states:

- a) No public agency shall approve or carry out a project for which an [environmental impact report] EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
 - 1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
 - 2) Such changes or alternations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
 - 3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make

infeasible the mitigation measures or project alternatives identified in the final EIR.

- b) The findings required by subsection (a) shall be supported by substantial evidence in the record.

The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417 [183 Cal.Rptr. 898].)

‘[F]easibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (Id.; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715 [29 Cal.Rptr.2d 182].)

The CEQA Guidelines do not define the difference between “avoiding” a significant environmental effect and merely “substantially lessening” such an effect. VTA must therefore glean the meaning of these terms from the other contexts in which the terms are used. Public Resources Code section 21081, on which CEQA Guidelines section 15091 is based, uses the term “mitigate” rather than “substantially lessen.” The CEQA Guidelines therefore equate “mitigating” with “substantially lessening.” Such an understanding of the statutory term is consistent with the policies underlying CEQA, which include the policy that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” (Public Resources Code section 21002, emphasis added.)

For purposes of these Findings, the term “substantially lessen” refers to the effectiveness of such measure or measures to substantially reduce the severity of a significant effect, but not to reduce that impact to a “Less than Significant” level. These interpretations appear to be mandated by the holding in *Laurel Hills Homeowners Association v. City Council* (1978) 83 Cal.App.3d 515, 519–527 [147 Cal.Rptr. 842], in which the Court of Appeal held that an agency had satisfied its obligation to substantially lessen or avoid significant impacts by adopting numerous mitigation measures, not all of which rendered the significant impacts in question (e.g., the “regional traffic problem”) to less than significant.

3.2 Legal Effects of Findings

To the extent that these Findings conclude that various proposed mitigation measure outlined in the Final SEIR-2 are feasible and have not been modified, superseded, or withdrawn, VTA’s Board of Directors hereby binds itself to implement these measures with the adoption of the Mitigation Monitoring and Reporting Program (MMRP). The MMRP will ensure that the mitigation measures identified in the Final SEIR-2 are

implemented. These Findings, in other words, are not merely informational, but rather constitute a binding set of obligations.

The documents and other materials that constitute the record upon which VTA's Board of Directors' decision and these findings are based can be reviewed at the following location.

VTA Environmental Programs
3331 North First Street, Building B-2
San Jose, CA 95134-1927
(408) 321-5789

3.3 Findings Regarding Independent Review and Judgment

Each member of the VTA Board of Directors was provided a link to a complete copy of the 2005 Final EIR, 2007 Final SEIR, 2010 Revised Addendum, 2014 SMND, and 2019 Final SEIR-2 for the Project. The VTA Board of Directors hereby finds that the environmental documents reflect its independent judgment. The VTA Board of Directors also finds that the Board has independently reviewed and analyzed the environmental documents prior to taking final action with respect to the Project.

3.4 Findings Regarding the Project

The Findings presented in this document are based on the substantial evidence contained in the Final SEIR-2 for the Project and in relevant technical studies included as part of the administrative record. The Findings do not attempt to describe the full analysis of each significant environmental impact contained in the Final SEIR-2. Rather, each Finding provides a summary description of each impact, describes the applicable mitigation measures identified in the Final SEIR-2 and adopted by VTA's Board of Directors, and states the Findings on the significance of each impact after imposition of the adopted mitigation measures. A full explanation of these environmental Findings and conclusions can be found in the Final SEIR-2.

In making these Findings, VTA's Board of Directors ratifies, adopts, and incorporates into these Findings the analysis and explanation in the Final SEIR-2 and supporting documents, and ratifies, adopts, and incorporates in these Findings, the determinations and conclusions of the Final SEIR-2 relating to environmental impacts and mitigation measures, except to the extent any such determinations and conclusions are specifically and expressly modified by these Findings. With regard to the mitigation measures referenced in the Findings, the full text of the mitigation measures are contained in the MMRP adopted in conjunction with approval of these Findings and incorporated herein by reference.

3.5 Findings Regarding Significant and Unavoidable Impacts

VTa's Board of Directors determines that, for the following impacts, mitigation measures included in the Final SEIR-2 and required as part of the Project's approval will reduce the impacts, but not to a Less than Significant" level.

Transportation (Traffic Impact at Capitol Expressway and Story Road Intersection)

The proposed changes to the approved project would result in a significant impact related to Level of Service (LOS) at the Capitol Expressway and Story Road intersection under existing (2017), year 2023, and year 2043 conditions. This impact is due to the proposed removal of the HOV lanes and the addition of HOV lane traffic into the remaining mixed-flow lanes.

This potentially significant impact was identified in the 2005 Final EIR as: TRN-2a (Traffic Impact at Capitol Expressway/Story Road in 2018 (now 2023)) and TRN-8b (Traffic Impact at Capitol Expressway/Story Road in 2025 (now 2043)).

Findings: VTA's Board of Directors hereby makes Finding (a)(3) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: In the 2005 Final EIR, no feasible mitigation was identified for impacts TRN-2a and TRN-8b. These significant and unavoidable impacts were included in a Statement of Overriding Considerations that was adopted by the VTA Board of Directors in May 2005.

The proposed changes to the approved project would need to include the restoration of the HOV lanes on Capitol Expressway in the northbound and southbound directions to reduce this impact to a less than significant level. However, there is currently insufficient right-of-way to restore the HOV lanes and additional right-of-way would require the removal of existing buildings and sidewalks along Capitol Expressway, which is infeasible. There is no feasible mitigation for this impact; thus, this impact would be "Significant and Unavoidable." The proposed changes to the approved project would result in new significant impacts or a substantial increase in the severity of previously identified significant impacts related to LOS.

Transportation (Traffic Impact at Capitol Expressway and Ocala Avenue Intersection)

The proposed changes to the approved project would result in a significant impact related to LOS at the Capitol Expressway and Ocala Avenue intersection under existing (2017), year 2023, and year 2043 conditions. This impact is due to the proposed removal of the HOV lanes, the removal of a northbound left-turn lane on Capitol Expressway, and the addition of HOV lane traffic into the remaining mixed-flow lanes.

The following impacts from the 2005 Final EIR would still apply to the proposed changes to the approved project: TRN-2b (Traffic Impact at Capitol Expressway/Ocala Avenue in 2018 (now 2023)) and TRN-8c (Traffic Impact at Capitol Expressway/Ocala Avenue in 2025 (now 2043)).

Findings: VTA's Board of Directors hereby makes Finding (a)(3) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: In the 2005 Final EIR, no feasible mitigation was identified for Impact TRN-2b and TRN-8c. These significant and unavoidable impacts were included in a Statement of Overriding Considerations that was adopted by the VTA Board of Directors in May 2005.

The proposed changes to the approved project would need to include the restoration of the HOV lanes on Capitol Expressway in the northbound and southbound directions, and the restoration of the second northbound left-turn lane, to reduce this impact to a less than significant level. There is currently insufficient right-of-way to replace the HOV lanes and additional right-of-way would require the removal of existing buildings and sidewalks along Capitol Expressway, which is infeasible. There is no feasible mitigation for this impact and this impact would be "Significant and Unavoidable." Based on the analysis above, the proposed changes to the approved project would result in new significant impacts or a substantial increase in the severity of previously identified significant impacts related to LOS.

Transportation (Construction Traffic Impacts – Vehicular, bicyclists, and pedestrians)

The proposed lane reductions on Capitol Expressway during construction may cause study intersections to temporarily operate at LOS F, impacting passenger vehicles, buses, and trucks. The proposed changes to the approved project may also result in the temporary closures of bicycle facilities, bus stops, and sidewalks in the corridor during construction. The duration, times, and locations of temporary closures during construction cannot be predicted with certainty.

The following impacts from the 2005 Final EIR would apply to the proposed changes to the approved project: TRN (CON)-1 (Long-Term Street or Lane Closure).

Findings: VTA's Board of Directors hereby makes Finding (a)(3) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The following mitigation measures identified in the 2005 Final EIR would still apply to the proposed changes to the approved project: TRN

(CON)-2a (Prepare Traffic Management Plan), TRN (CON)-2b (Inform Public of Traffic Detours), and TRN (CON)-2c (Inform Public of Transit Service Changes). During construction, VTA will prepare traffic handling plans, employ traffic flaggers, and endeavor to minimize peak hour delays to all users. Such measures would potentially lessen impacts by managing transportation in the vicinity of construction activities and planned roadway lane closures, but cannot guarantee that construction activities would not cause temporary significant impacts to passenger vehicles, buses, trucks, bikes, and pedestrians. These impacts would therefore not be reduced to less than significant levels because no other feasible mitigation measures are available to substantially lessen the impact. Therefore, the proposed changes to the approved project would result in new significant impacts or a substantial increase in the severity of previously identified significant transportation impacts during construction, and would be “Significant and Unavoidable”.

Air Quality (Cumulative PM2.5 Concentrations During Construction)

Cumulative PM2.5 concentrations would be elevated at the receptors located near the corners of Ocala Avenue and Capitol Expressway and Cunningham Avenue and Capitol Expressway due to substantial sources of pollutant concentrations that currently exist in the area where the Project would occur. Even without the contribution of emissions from construction, existing PM2.5 concentrations near these sensitive receptors are at or exceed the Bay Area Air Quality Management District’s (BAAQMD) threshold because Capitol Expressway and its cross streets are heavily traveled roadways, with residences located in close proximity to the roadway edge. The Project would cause further exceedances of existing pollutant concentrations, worsening the cumulative exposure of sensitive receptors to toxic air contaminant concentrations. Although the contribution of the Project to existing concentrations would not be substantial (approximately 6% at the locations where concentrations are at or exceed 0.8 µg/m3), there would nevertheless be a worsening of an already cumulatively significant impact.

Findings: VTA’s Board of Directors hereby makes Finding (a)(3) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The following mitigation measures identified in the 2005 Final EIR would still apply to the proposed changes to the approved project: AQ (CON)-1 (BAAQMD’s BMPs to reduce particulate matter emissions from construction activities), AQ (CON)-2 (BAAQMD’s BMPs to reduce GHG emissions from construction equipment), and AQ (CON)-3 (Use tier 3 or 4 construction equipment where possible). The measures would lessen this impact during construction, but would not reduce the impact to less than significant. However, the Project would also result in lower vehicle volumes in future years on nearby all roadways. Thus, after construction is completed, the Project would likely result in reduced pollutant concentrations from existing roadway traffic due to increased light rail usage. During construction, however,

the approved changes to the project would result in a new significant impact that would be “Significant and Unavoidable”.

Noise (Vibration Levels in Buildings from Transit Operations That Exceed Federal Transit Administration Criteria)

The Project would result in exceedances of the Federal Transit Administration (FTA) nighttime (10:00 pm to 7:00 am) vibration impact criteria at sensitive receivers located within 100 feet of the proposed aerial guideway. Most of the impacts are anticipated to occur between 6:00 am and 7:00 am when VTA would be operating at peak service levels. The proposed aerial guideway (direct fixation fasteners) and ballasted track on embankment sections would cause an exceedance of the nighttime impact criteria at 67 sensitive receiver locations.

No daytime vibration impacts are anticipated under current train parameters, schedules, headways, and speeds.

Findings: VTA’s Board of Directors hereby makes Finding (a)(3) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measure identified in the 2005 Final EIR and 2007 Final SEIR, which include NV-4b (Use Vibration-Dampening Track Construction Materials), would lessen the vibration impacts, but not reduce them to a less than significant level. With inclusion of tire derived aggregate (TDA), vibration would exceed the nighttime impact criteria at 66 sensitive receiver locations at the at-grade and embankment sections of the alignment.

If a 5-Hertz floating slab track (FST) or a bridge bearing vibration isolation system is included as mitigation, the nighttime impact criteria would not be exceeded at any sensitive receptor locations. In addition, reducing train speed typically results in lower groundborne vibration levels. Specifically, if speeds are reduced from 55 mph to 35 mph between 10:00 pm and 7:00 am, the nighttime impact criteria would not be exceeded at any sensitive receptor locations.

VTA is not recommending to include FST or a bridge bearing isolation system as mitigation for several reasons. Future vibration levels, which include a +3 VdB safety factor, are at or slightly above the nighttime vibration impact criteria at many impacted locations, and may not actually exceed the threshold in operation. Many impacted locations are up to 100 feet from the aerial guideway, which is much farther than the typical distance at which nighttime vibration impacts are experienced. In addition, VTA is only aware of one example of FST installed on an aerial guideway on Hong Kong’s KCRC West Rail and of one example of a bridge bearing vibration isolation system installed on an aerial structure at Miami Central Station, on the All Aboard Florida-Brightline network. Thus, additional analysis of the effectiveness of FST and bridge

bearing isolation systems on aerial structures would be needed to confirm the level of vibration reduction that would be achieved. Other reasons that VTA is not proposing to FST or bridge bearing isolation is that it would greatly complicate the track and structural design.

VTA is also not proposing to include speed reduction as mitigation because it would negatively affect travel time and operations between 10:00 pm and 7:00 am.

By not including FST; a bridge bearing vibration isolation system; or implementing speed reductions as mitigation, TDA would be the only feasible mitigation option to reduce vibration levels. No other feasible mitigation measures are available which would substantially lessen nighttime impacts. Therefore, the impact would remain “Significant and Unavoidable”.

Noise (Generation of Noise or Vibration that Substantially Affects Nearby Sensitive Receptors)

The project would result in exceedances of the FTA construction vibration of 0.2 PPV impact criteria at homes within 100 feet of pile driving activity. Pile driving would exceed the construction vibration impact criteria at 64 sensitive receiver locations.

Findings: VTA’s Board of Directors hereby makes Finding (a)(3) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The following mitigation measures identified in the 2005 Final EIR and the 2007 Final SEIR would still apply to the proposed changes to the approved project: NV (CON)-1a (Notify Residents of Construction Activities), NV (CON)-1c (Restrict Pile Driving), NV (CON)-1e (Locate Stationary Construction Equipment as Far as Possible from Sensitive Receptors) and NV (CON)-2.

Even though non-impact piling methods would mitigate all construction vibration impacts, VTA is only recommending these methods in the vicinity of Capitol Avenue and Capitol Expressway, where construction vibration levels are the highest. VTA is not recommending the use of non-impact piling methods at most locations for several reasons. Most locations are only slightly above the FTA Damage Criteria, and therefore may not experience any actual impacts. At the locations with the highest construction vibration levels, structural damage is not anticipated to occur. However, if any structural and cosmetic damage does occur due to construction vibration, the damage shall be repaired by VTA. In addition, non-impact piling methods would require extensive lane closures which would cause additional traffic impacts during construction. As a result, VTA is not recommending the use non-impact piling methods at most locations. Thus, no other feasible mitigation measures are available which would substantially lessen construction vibration impacts; this impact would be “Significant and Unavoidable.”

Environmental Justice (Construction and Operation)

The proposed changes to the approved project would result in new or more severe significant and unavoidable impacts to environmental justice populations related to transportation, noise and vibration, and cumulative air quality impacts during construction. However, disproportionate and adverse environmental effects to environmental justice populations would only result from noise and vibration, and cumulative air quality impacts during construction.

The significant and unavoidable transportation impacts would occur only within the study area. However, users of the corridor within the study area would include both populations that reside within the study area (environmental justice populations), and populations that reside outside the study area (non-environmental justice populations) who are passing through the area, visiting the area, or using the corridor as a regional transportation route. Because the significant and unavoidable transportation impacts would affect both environmental justice populations and non-environmental justice populations, these transportation impacts would not cause a disproportionate and adverse impact on environmental justice populations.

The significant and unavoidable operational and construction vibration impacts would also only occur within the study area, but would predominately affect environmental justice populations. This is because the impacts would only occur at residences within the study area, which are primarily environmental justice populations. Therefore, operational and construction vibration impacts would cause a disproportionate and adverse impact on environmental justice populations.

Similarly, the significant and unavoidable cumulative air quality impacts during construction would also only occur within the study area, but would predominately affect environmental justice populations. This is because the impacts would only occur at the receptors located near the corners of Ocala Avenue and Capitol Expressway and Cunningham Avenue and Capitol Expressway, which are primarily environmental justice populations. Therefore, cumulative air quality impacts during construction would cause a disproportionate and adverse impact on environmental justice populations.

Findings: VTA's Board of Directors hereby makes Finding (a)(3) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures proposed for the significant and unavoidable transportation, air quality, and noise and vibration impacts would lessen environmental justice impacts, but would not reduce the impact to less than significant.

Transportation

There are no feasible mitigation measures to reduce the transportation impacts associated with the proposed changes to the approved project. The project would need to restore the HOV lanes on Capitol Expressway in the northbound and southbound directions that would be removed by the project to provide space for the light rail tracks. However, there is currently insufficient right-of-way to replace the HOV lanes and additional right-of-way would require the removal of existing buildings and sidewalks along Capitol Expressway, which is infeasible. Therefore, the LOS impacts identified at the Capitol Expressway and Story Road intersection and at the Capitol Expressway and Ocala Avenue intersection would be “Significant and Unavoidable.” Additionally, during construction, VTA will prepare traffic handling plans, employ traffic flaggers, and endeavor to minimize peak hour delays to all users. However, such measures cannot guarantee that construction activities would not cause temporary significant impacts to passenger vehicles, buses, trucks, bikes, and pedestrians. Therefore, this impact is considered “Significant and Unavoidable.” However, for the reasons described above, these transportation impacts would not cause a disproportionate and adverse impact on environmental justice populations.

Noise and Vibration

Regarding nighttime exceedance of operational FTA vibration levels at homes within 100 feet of the proposed aerial guideway, VTA identified tire derived aggregate (TDA), 5-Hertz floating slab track (FST) or bridge bearing vibration isolation system, and speed reduction as potential mitigation measures. By not including FST; a bridge bearing vibration isolation system; or implementing speed reductions as mitigation, and because TDA is the only feasible mitigation option to reduce vibration levels from operation, this impact would be “Significant and Unavoidable.” Based on the analysis above, the proposed changes to the approved project would result in new significant impacts related to vibration levels from transit operation. With inclusion of TDA, vibration impacts are expected to occur at 66 sensitive receivers under the proposed changes to the approved project. This is an increase of 14 sensitive receivers compared to the 2005 Final EIR, which concluded 52 sensitive receivers would be potentially exposed to vibration impacts during operation. Therefore, this impact is considered “Significant and Unavoidable” and would result in a disproportionate and adverse impact on environmental justice populations.

Regarding exceedance of FTA construction vibration criteria at homes within 100 feet of the proposed piling activity, non-impact piling methods would mitigate all of these exceedances. However, VTA is only recommending these methods in the vicinity of Capitol Avenue and Capitol Expressway where construction vibration levels are the highest. VTA is not recommending the use of non-impact piling methods at most locations for several reasons. Most locations are only slightly above the FTA Damage Criteria, and therefore may not experience any actual impacts. At the locations with the highest construction vibration levels, structural damage is not anticipated to occur.

However, if any structural and cosmetic damage does occur due to construction vibration, the damage shall be repaired by VTA. In addition, non-impact piling methods would require extensive lane closures which would cause additional traffic impacts during construction. As a result, VTA is not recommending non-impact piling methods at most locations. Thus, this impact would be “Significant and Unavoidable” and would result in a disproportionate and adverse impact on environmental justice populations.

Air Quality

With respect to cumulative air quality impacts during construction, the following mitigation measures identified in the 2005 Final EIR would still apply to the proposed changes to the approved project: AQ (CON)-1 (BAAQMD’s BMPs to reduce particulate matter emissions from construction activities), AQ (CON)-2 (BAAQMD’s BMPs to reduce GHG emissions from construction equipment), and AQ (CON)-3 (Use tier 3 or 4 construction equipment where possible). Even with inclusion of these mitigation measures, this impact would be “Significant and Unavoidable”, and would result in a disproportionate and adverse impact on environmental justice populations.

3.6 Findings Regarding Impacts That Will be Mitigated to Below a Level of Significance (CEQA §21081(a)(1) and CEQA Guidelines §15091(a)(1))

VTA has determined that, for the following effects, mitigation measures included in the 2005 Final EIR, 2007 Final SEIR, and 2014 SMND will mitigate the effects of the Project to a less than significant level.

Transportation (Traffic Impact at Capitol Expressway and Tully Road)

The following impact from the 2005 Final EIR would still apply to the proposed changes to the approved project: TRN-2c (Traffic Impact at Capitol Expressway/ Tully Road in 2018 (now 2023)) and TRN-8d (Traffic Impact at Capitol Expressway/ Tully Road in 2025 (now 2043)) Project would result in a significant impact to LOS at the Capitol Expressway and Tully Road intersection in year 2023 and year 2043 conditions. This impact is due to the proposed removal of the HOV lanes and the addition of HOV lane traffic into the remaining mixed-flow lanes.

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

Facts in Support of Findings: The following mitigation measures identified in the 2005 Final EIR would still apply to the proposed changes to the approved project: TRN-2c (Maintain eight lanes on Capitol Expressway at Tully Road intersection).

Because light rail would be located on the west side of Capitol Expressway through the Tully Road intersection, sufficient width would be available to maintain the fourth through lane on Capitol Expressway in the vicinity of Tully Road as a General Purpose Bypass Lane.

As a result, implementation of this mitigation measure would reduce these impacts to a “Less than Significant” level.

Transportation (Parking Impacts during Construction)

During construction, access may be restricted and parking eliminated during short periods of time for several residential properties and businesses along the project corridor.

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

Facts in Support of Findings: The following mitigation measures identified in the 2005 Final EIR would still apply to the proposed changes to the approved project: TRN (CON)-2a (Prepare Traffic Management Plan), TRN (CON)-2b (Inform Public of Traffic Detours), and TRN (CON)-2c (Inform Public of Transit Service Changes).

VTA would coordinate the construction activities with the homeowners and tenants. Any adjustment to the construction schedule would be conveyed to the residents upon determination of the need to adjust the schedule. The construction duration and disruptions to residents would be kept to a minimum. In addition, overall access to businesses would be maintained. Property owners and businesses would be notified in advance of construction and provided with a detailed construction schedule if their access would be restricted. Changes to the construction schedule would be conveyed as soon as possible, and signs would be provided along Capitol Expressway indicating that the business is open during construction and that overall access is available. As a result, implementation of these mitigation measures would reduce these impacts to a “Less than Significant” level.

Air Quality (Temporary Increase in Construction-Related Emissions during Grading and Construction Activities)

The following impacts from the 2005 Final EIR would still apply to the proposed changes to the approved project: AQ (CON)-1: (Temporary Increase in Construction-Related Emissions during Grading and Construction Activities). During construction, emissions of several air pollutants, including criteria pollutants, would be produced by various sources. Criteria pollutant emissions could be produced by construction equipment and fugitive dust created by wind and the operation of equipment over exposed earth. Construction-related emissions were estimated, and were determined to be below the BAAQMD’s thresholds where thresholds had been identified.

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

Facts in Support of Findings: The following mitigation measures identified in the 2005 Final EIR and 2014 Subsequent IS/MND would still apply to the proposed changes to the approved project as recommended by the BAAQMD's 2017 CEQA Guidelines: AQ (CON)-1 (BAAQMD's BMPs to reduce particulate matter emissions from construction activities), AQ (CON)-2 (BAAQMD's BMPs to reduce GHG emissions from construction equipment), and AQ (CON)-3 (Use tier 3 and tier 4 construction equipment where possible). Mitigation Measure AQ (CON)-1 has been revised to be consistent with the BMPs in the 2017 CEQA Guidelines. As a result, implementation of these mitigation measures would reduce these impacts to a "Less than Significant" level.

Biological Resources (Permanent Loss of Biological Habitats and Disturbance to Inhabiting Species)

As discussed in the 2005 Final EIR, implementation of the Project would result in a permanent loss of approximately 5.21 acres of ruderal habitat within the Capitol Expressway Corridor (potential habitat for Western burrowing owl [state species of special concern and federal species of concern]). Habitat loss would result from realignment of Capitol Expressway between Ocala and Cunningham Avenues and construction of new pedestrian sidewalks. Implementation of the Project would also result in the temporary disturbance of a total of approximately 2.76 acres of ruderal habitat within the Capitol Expressway Corridor. (Impact BIO-7)

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

Facts in Support of Findings: The Final SEIR-2 determined that burrowing owls do not currently nest on or near the project corridor, and have not nested in the vicinity in three or more years. Thus, it is assumed that breeding burrowing owls are currently absent from the study area. As a result, the proposed changes to the approved project would not result in a significant impact on burrowing owl habitat. Ruderal habitat impacted by the proposed changes to the approved project is ostensibly suitable for the species, and it is possible that occasional migrant or wintering owls may roost or forage on the site. However, because burrowing owls are more abundant and widespread in the South Bay in the winter than during the breeding season, suitable habitat for migrants and wintering owls is unlikely to limit South Bay burrowing owl populations. Therefore, impacts on potential, but unoccupied, burrowing owl habitat resulting from the proposed changes to the approved project would not adversely affect baseline regional burrowing owl populations. Thus, the compensatory mitigation for habitat impacts described in the 2005 Final EIR as part of Mitigation Measure BIO-7 is not necessary and the mitigation

measure has been revised below accordingly. Nevertheless, ostensibly suitable habitat is present within the project corridor, and there is some potential for burrowing owls to occur in the project corridor, at least as occasional migrants or winter visitors. Therefore, this impact would remain “Less than Significant with Mitigation”.

Mitigation Measure BIO-7

Preconstruction surveys for Western burrowing owls shall be conducted by a qualified ornithologist before any development within the habitat identified in Figure 3.3-1. These surveys, which shall include any potentially suitable habitat within 250 feet of construction areas, shall be conducted no more than 30 days before the start of site grading, regardless of the time of year in which grading occurs. If breeding owls are located on or immediately adjacent to the site, a construction-free buffer zone (typically 250 feet) around the active burrow must be established as determined by the ornithologist in consultation with CDFW. No activities, including grading or other construction work or relocation of owls, would proceed that may disturb breeding owls. If owls are resident within 250 feet of the Project Area during the nonbreeding season a qualified ornithologist, in consultation with CDFW, shall passively relocate (evict) the owls to avoid the loss of any individuals if the owls are close enough that they or their burrows could potentially be harmed by associated activities.

Biological Resources (Permanent Loss of Aquatic Habitat, Temporary Disturbance of Riparian Habitat, and Temporary Disturbance of Southwestern Pond Turtle)

The 2005 Final EIR includes the western pond turtle in the discussion of special-status species that could occur in aquatic habitat, but indicates that the potential for its occurrence on the site is low. The Santa Clara Valley Habitat Plan maps the reach of Thompson Creek south and west of Lake Cunningham as “primary habitat” for the western pond turtle, however biologists did not observe any western pond turtles in either Thompson Creek or Silver Creek during surveys. Nevertheless, this species has the potential to occur in either creek. Although neither creek currently contains optimal habitat for the western pond turtle, some of the habitat elements preferred by western pond turtles are present and thus this species could occur here, at least in low numbers. The magnitude of anticipated impacts on this species due to the proposed changes to the approved project would be very low, if at all, given the low number of western pond turtles that may be present in or near the project area.

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

Facts in Support of Findings: Mitigation Measure BIO-12 would ensure that impacts to individual western pond turtles do not occur during project construction. Preconstruction surveys for western pond turtles would be conducted by a qualified biologist just prior to (i.e., the day of) initiation of any construction in non-developed habitat that occurs within

100 feet of Thompson Creek. If any individual western pond turtles are detected within the project's impact areas, the individuals will be moved to suitable habitat within the nearest creek, at least 300 feet outside the project area. Thus, this impact would be reduced to "Less than Significant with Mitigation".

Biological Resources (Temporary Disturbance of Nesting Raptors)

Non-listed special-status raptors and common raptor species are protected under California Fish and Game Code Section 3503.5. Disturbance related to human activity and construction noise could cause nest abandonment and death of young or loss of reproductive potential at active nest sites. Construction of the Project throughout the study area may disturb raptor nesting activity in habitat adjacent to the study area. No mitigation is required if construction activities occur during the non-breeding season (September 1 to December 31). However, if construction activities occur during the breeding season, disturbance of nesting special-status raptors would be minimized and avoided through implementation of the following mitigation measures.

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

Facts in Support of Findings: Mitigation Measure BIO-14a provides that preconstruction surveys for nesting raptors will be conducted by a qualified ornithologist to ensure that no raptor nests will be disturbed during implementation of the Project. This survey shall be conducted within 48 hours of construction activity during the breeding season. For nesting raptors, the breeding season is from January 1 to August 31. During this survey, the ornithologist would inspect all trees and suitable grassland habitat in and immediately adjacent to the affected areas for raptor nests. If the survey does not identify any nesting special-status raptor species in the area potentially affected by the proposed activity, no further mitigation is required.

Mitigation Measure BIO-14b further provides if an active nest (i.e., a nest with eggs or young, or any completed raptor nest attended by adults) is found sufficiently close to work areas to be disturbed by these activities, the ornithologist, in consultation with the CDFW, will determine the extent of a disturbance-free buffer zone to be established around the nest (typically 300 ft for raptors), to ensure that no nests of species protected by the California Fish and Game Code will be disturbed during project implementation. VTA shall require that no grading or construction be allowed within this buffer during the nesting seasons for special-status raptor species that are present, except as approved by USFWS or CDFW, as applicable.

These measures will reduce the impact to a "Less than Significant" level.

Biological Resources (Temporary Disturbance to Nesting Habitat for Migratory Birds)

Construction of the Project could disturb nesting migratory birds. Migratory birds are not considered special-status species, but their occupied nests and eggs are protected by federal and state laws, including the Migratory Bird Treaty Act and California Fish and Game Code Section 3503.5. Temporary disturbance of nesting migratory birds would be considered a substantial adverse effect. However, implementation of the following mitigation measures would minimize this effect.

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

Facts in Support of Findings: Mitigation Measure BIO-15 provides that if construction activities are scheduled to occur during the migratory bird breeding season (February 1-August 31), a preconstruction survey for nesting migratory birds shall be conducted prior to commencement of construction activities. If an active nest is identified within the study area, construction activities will stop (only where a nest is located) until the young fledge or the nest is removed in accordance with CDFW approval. Inclusion of this mitigation measure would reduce this impact to a “Less than Significant” level.

Biological Resources (Loss of Urban Trees)

Construction of the Project may result in the removal of trees in landscaped areas along the proposed alignment. Trees that may be removed include California pepper, olive, tree-of-heaven, and blue gum eucalyptus (*Eucalyptus globulus*). These large trees may serve as nest sites or perches for raptors, and loss of these trees would be considered a substantial adverse effect.

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

Facts in Support of Findings: Pursuant to Mitigation Measure BIO-18a, VTA will conduct a tree survey along the Capitol Expressway Corridor to identify trees subject to removal or loss during construction. If the survey determines that no trees would be lost, no further mitigation is required. However, if the survey identifies trees that would be removed or damaged, VTA will also implement Mitigation Measure BIO-18b.

Mitigation Measure BIO-18b provides that all urban trees that are to be removed or lost shall be replaced. Trees with a diameter less than 12 inches shall be replaced at a 2:1 ratio. All trees with a diameter of 12 inches or more shall be replaced at a 3:1 ratio. If urban trees (non-natives and ornamentals) are replaced with native trees, a reduced

mitigation ratio of 1:1 for all trees smaller than 12 inches in diameter, and 2:1 for all trees with a diameter 12 inches or more, shall be implemented. These trees shall be irrigated and maintained for a period of not fewer than 3 years.

These measures will reduce the impact to a “Less than Significant” level.

Energy (Consumption of Nonrenewable Energy Resources in a Wasteful, Inefficient, and/or Unnecessary Manner from Project Construction)

As identified in the 2005 Final EIR, the highest indirect energy consumption would occur during demolition and construction of onsite facilities, such as track work, guideways, structures, stations, and support facilities. This construction-related energy consumption would result in one-time, non-recoverable energy costs. Unplanned and inefficient delivery of materials to the work sites would increase the number of truck trips required, resulting in wasteful use of energy. Wasteful consumption of energy would result if construction equipment and machinery were not kept in good condition. Equipment and vehicles, if left idling, would also result in unnecessary use of energy. Because the Project has only been designed to a conceptual level, specific details regarding construction practices and methods have not been specified. Effects to nonrenewable energy resources would therefore be considered potentially adverse.

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

Facts in Support of Findings: Pursuant to Mitigation Measure E (CON)-1, VTA will require contractors to adopt construction energy conservation measures including, but not limited to, those listed below.

Use energy-efficient equipment and incorporate energy-saving techniques in the construction of the Project.

- Avoid unnecessary idling of construction equipment.
- Consolidate material delivery as much as possible to ensure efficient vehicle utilization.
- Schedule delivery of materials during non-rush hours to maximize vehicle fuel efficiency.
- Encourage construction workers to carpool.
- Maintain equipment and machinery, especially those using gasoline and diesel, in good working condition.

This measure will reduce the impact to a “Less than Significant” level.

Geology, Soils and Seismicity (Risk to People or Structures Caused by Strong Seismic Ground Shaking)

As identified in the 2005 Final EIR, the aerial structures for the Light Rail Alternative would be located in an area of strong seismic ground shaking. Strong seismic ground shaking could result in structural failures and could increase the risk of structural loss, injury, or death.

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

Facts in Support of Findings: Mitigation Measure GEO-4 requires that during the design process, VTA shall design any and all proposed infrastructure in accordance with the appropriate Caltrans Seismic Design Criteria. With the implementation of these criteria into the design and ultimate construction of the light rail system structures, there would not be any adverse effects on people or structures resulting from strong seismic ground shaking under this alternative.

This measure will reduce the impact to a “Less than Significant” level.

Geology, Soils and Seismicity (Risk to People or Structures Caused by Seismic-Related Ground Failure, Including Liquefaction)

As identified in the 2005 Final EIR, there are sections of the light rail alignment that are grade separated. Specifically, the proposed aerial structures are located in an area that is highly susceptible to liquefaction. In addition, portions of the alignment would be placed within retained fill. Soils and underlying geologic materials that are susceptible to liquefaction could increase the risk of structural loss, injury, or death.

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

Facts in Support of Findings: Pursuant to Mitigation Measure GEO-5, VTA shall conduct geotechnical and geologic investigations during final design, including field excavation and laboratory testing, to provide site-specific geotechnical conclusions and recommendations for design and construction of the proposed facilities. If liquefiable soils or soils susceptible to seismically induced settlement are determined to be present at any location along the corridor, corrective actions shall be taken, including removal and replacement of soils, in-site densification, grouting, design of special foundations, or other similar measures, depending on the extent and depth of susceptible soils.

This measure will reduce the impact to a “Less than Significant” level.

Geology, Soils and Seismicity (Risk from Lateral Spreading, Subsidence, and Collapse)

As identified in the 2005 Final EIR, the alignment of the Project would be located in an area that may be susceptible to lateral spreading, subsidence, and collapse. Soils and underlying geologic materials that are susceptible to lateral spreading, subsidence, and collapse could increase the risk of structural loss, injury, or death.

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

Facts in Support of Findings: Mitigation Measure GEO-6 provides that prior to implementation of the Project the following construction methods shall be employed:

- construct edge containment structures such as berms, dikes, retaining structures, or compacted soil zones;
- remove or treat soils and geologic materials prone to lateral spreading and settling; and
- install drainage measures to lower the groundwater table below the level of settleable soils pursuant to the California Division of Mines and Geology's Guidelines for Evaluating and Mitigating Seismic Hazards in California, Special Publication 117A (2008).

This measure will reduce the impact to a "Less than Significant" level.

Geology, Soils and Seismicity (Risk Caused by the Presence of Expansive Soil)

As identified in the 2005 Final EIR, the Project is located in an area that may have expansive soils. Expansive soils could cause structures to fail, presenting a risk of structural loss, injury, or death.

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

Facts in Support of Findings: Mitigation Measure GEO-7 requires special engineering techniques such as using reinforced steel in foundations, using drainage control devices, and/or over-excavating and backfilling with non-expansive soil to be implemented during construction activities to minimize the risk of structural loss, injury, or death.

This measure will reduce the impact to a "Less than Significant" level.

Hazardous Materials (Hazard to the Public or Environment through Reasonable Foreseeable Upset and Accident Conditions Caused by the Release of Hazardous Materials)

As identified in the 2005 Final EIR, the Project has at and above grade segments. Construction of this Project would also involve subsurface drilling, which could lead to a finding of contaminated soil and/or groundwater.

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

Facts in Support of Findings: Pursuant to Mitigation Measure HAZ-9a, VTA shall conduct Phase I (and if necessary Phase II) site investigations to determine whether any chemicals of concern are present. If necessary, a risk assessment shall be prepared and procedures established before construction to address the identification, excavation, handling, and disposal of hazardous materials. If contaminated soil or groundwater is encountered, VTA shall notify the appropriate local environmental management agencies and local fire departments. VTA shall ensure that any identified environmental site conditions that may represent a risk to public health and safety will be remediated in accordance with federal, state, and local environmental laws and regulations.

Furthermore, before construction, a determination shall be made by a qualified environmental assessor as to the nature of environmental risk associated with construction activities at the identified hazardous materials sites. A similar determination shall also be made for the proposed park-and-ride lot site. All recommendations of the qualified environmental assessor (e.g., preparation of a health and safety plan (HSP) for the Project, implementation of a soil management work plan (SMWP) for the Project, remediation of affected soil and groundwater, etc.) that are required to comply with federal, state, and local environmental laws and regulations shall be implemented by VTA and all its representatives, including contractors and earthwork construction workers, such that people are not exposed to an environmental condition on the Project site as a result of existing sources of contamination.

This measure also provides that before construction activities, soil samples shall be taken at park-and-ride lot facilities (only where grading is planned) to determine the presence or absence of banned pesticides. If soil samples indicate the presence of any contaminant in hazardous quantities, VTA shall contact the Regional Water Quality Control Board and Department of Toxic Substances Control to determine the level of any necessary remediation efforts. These soils shall be remediated in compliance with applicable laws.

Mitigation Measure HAZ-9b requires that in the event that previously unidentified waste or debris is discovered during construction/grading activities, and the waste or debris is believed to involve hazardous waste or materials, the contractor shall take the following actions:

- immediately stop work in the vicinity of the suspected contaminant, and remove workers and the public from the area;
- notify the Resident Inspector;
- secure the area as directed by the Resident Inspector; and
- notify the City of San Jose Hazardous Waste/Materials Coordinator and the San Jose Fire Department.

These measures will reduce the impact to a “Less than Significant” level.

Hazardous Materials (Release of Hazardous materials into the Environment)

The Project would extend service from the Alum Rock Station, located at the Capitol Avenue/Wilbur Avenue intersection to the Eastridge Station. Along the proposed 2.4-mile extension, the light rail alignment would be at or above the existing grade of the roadway. Construction would involve subsurface drilling, which could lead to a finding of contaminated soil and/or groundwater.

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

Facts in Support of Findings: Mitigation Measures HAZ(CON)-1a and –1b will require that Mitigation Measures HAZ-9a and –9b, described above, are applied before and during construction and grading activities.

Mitigation Measure HAZ(CON)-1c provides that lead-based paint and asbestos-containing material surveys will be conducted at any structure proposed for demolition or renovation during project development that is known or suspected to have been constructed prior to 1990. Identified lead-based paint and asbestos-containing materials will be abated and disposed of in accordance with applicable abatement, worker health and safety, and hazardous waste regulations.

These measures will reduce the impact to a “Less than Significant” level.

Hydrology and Water Quality (Creation of Additional Runoff)

The Project facilities would decrease the amount of impervious surface in the Capitol Expressway Corridor area through the replacement of pavement with landscaping. While the Project will reduce total runoff along the corridor, there may be local increases in the amount of impervious surfaces. The increase in impervious surface locally could generate new sources of contamination, including sediment, pesticides, oil and grease, metals, bacteria, and trash.

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

Facts in Support of Findings: Pursuant to Mitigation Measure HYD-12, VTA shall perform inspections and cleanings such that permit treatment requirements will be met, and shall ensure that outlet structures provide for proper energy dissipation in accordance with standard specifications for storm drainage. VTA shall ensure that regular maintenance of parking facilities includes a program to clean curbside pavement areas of litter, fuel, and oil spills. Storm drain inlet traps shall be inspected at least annually and cleaned as required.

This measure further provides that the BMPs for projects that result in the displacement of more than 43,560 square feet (1 acre) of impervious surface must implement treatment BMPs to the maximum extent practicable (MEP). Those BMPs whose primary mode of action to treat stormwater depends on volume capacity, such as detention/retention units or infiltration structures, will typically be designed to treat stormwater runoff equal to either the maximized stormwater quality capture volume for the area, based on historical rainfall records; or equal to the volume of annual runoff required to achieve 80% or more capture.

Mitigation Measure HYD 12 also requires that treatment BMPs such as swales, sand filters, wetlands, and others whose primary mode of action depends on flow capacity will typically be sized to treat 1) 10% of the 50-year peak flow; or 2) the flow of runoff produced by a rain event equal to at least two times the 85th-percentile hourly rainfall intensity for the applicable area, based on historical records of hourly rainfall depths; or 3) the flow of runoff resulting from a rain event equal to at least 0.2-inch-per-hour intensity.

These measures will reduce the impact to a “Less than Significant” level.

Hydrology and Water Quality (Alterations in Existing Drainage Patterns)

With the Project, no permanent changes to existing drainage patterns are anticipated. However, drainage patterns may be temporarily altered during construction activities. This temporary alteration could result in erosion, siltation, or flooding onsite or offsite.

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

Facts in Support of Findings: Mitigation Measures HYD-11 (Comply with All Applicable Regulations and Subsequent Permit Programs Related to Water Quality Control) and HYD-14 (Construct Facilities to Minimize Flood Impacts) will apply to reduce this impact.

These measures will reduce the impact to a “Less than Significant” level.

Hydrology and Water Quality (Water Quality Impairment Caused by Grading and Construction Activities)

During construction of the Project, large areas of bare soil would be exposed to erosive forces for long periods of time. Bare soils are much more likely to erode than vegetated areas because of the lack of dispersion, infiltration, and retention created by covering vegetation. Construction activities involving soil disturbance, excavation, cutting/filling, stockpiling, and grading activities could result in increased erosion and sedimentation to surface waters. If precautions are not taken to contain contaminants, construction activities could produce contaminated stormwater runoff (nonpoint source pollution), a major contributor to the degradation of water quality. Hazardous materials associated with construction equipment (such as fuels and lubricants) could also adversely affect water quality if spilled or stored improperly.

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

Facts in Support of Findings: Mitigation Measure HYD (CON)-1 provides that VTA shall require the contractor to submit and implement an approved erosion and sedimentation control plan to control erosion and prevent water pollution during Project construction. No ground-disturbing activities shall be performed until such a plan is accepted. The plan shall emphasize standard temporary erosion control measures to reduce sedimentation and turbidity of surface runoff from disturbed areas. Each rainy season (October 1 to May 1), the contractor shall have in place desilting basins for runoff from areas disturbed by clearing, grubbing, and grading operations. As part of this mitigation, VTA shall require the contractor to submit a spill prevention, containment, and clean-up (SPCC) plan for fuels, oils, lubricants and other hazardous substances that may be used during construction. No construction activities shall be performed until such a plan is accepted.

This measure will reduce the impact to a “Less than Significant” level.

Hydrology and Water Quality (Depletion of Groundwater Supplies)

Construction activities associated with the Project could result in a temporary increase in water demand.

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

Facts in Support of Findings: Mitigation Measure HYD (CON)-2 provides that VTA shall require that non-potable water be used for construction activities as feasible.

This measure will reduce the impact to a “Less than Significant” level.

Noise (Noise Levels from Transit Operations That Would Be Considered a Severe Impact by Federal Transit Administration Criteria)

The project would result in 78 moderate and 23 severe noise impacts in 2017 without the proposed aerial guideway sound walls and without the proposed open-graded asphalt concrete (OGAC). The proposed changes would result in 93 moderate and 59 severe noise impacts in 2043 without the proposed aerial guideway sound walls and without the proposed OGAC.

With only the proposed aerial sound walls, the proposed changes would result in 45 moderate and 0 severe noise impacts in 2017 as well as 116 moderate and 0 severe noise impacts in 2043. With both the proposed aerial guideway sound walls and the proposed OGAC, all moderate and severe impacts would be eliminated in 2017 and 2043. For sensitive receivers where a moderate impact is anticipated, VTA does not require mitigation measures under CEQA.

The following impact from the 2005 Final EIR would still apply to the proposed changes to the approved project: NV-1 (Noise Levels from Transit Operations That Would Be Considered a Severe Impact by Federal Transit Administration Criteria).

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

Facts in Support of Findings: The following mitigation measures identified in the 2005 Final EIR and the 2007 Final SEIR would still apply to the proposed changes to the approved project: NV-1a (Construct Soundwalls) and NV-1c (Provide Quiet Pavement). Mitigation Measure NV-1b (Provide Noise Insulation) is no longer needed as a result of the proposed changes to the approved project. Inclusion of these mitigation measures would reduce these impacts to “Less than Significant.”

Noise (Generation of Noise that Substantially Affects Nearby Sensitive Receptors)

During construction, pile driving would be conducted to install foundation piles for the proposed aerial guideway. The project would result in exceedances of the FTA construction noise impact criteria at unobstructed homes and businesses (i.e., homes and businesses not shielded by other structures or sound walls) within 300 feet of pile driving activity. The noise impacts would have a duration of 8 to 15 days per sensitive receiver. Pile driving would exceed the construction noise impact criteria of 80 Leq at residences and 85 Leq at commercial properties at 149 sensitive receiver locations. The following

impact in the 2005 Final EIR and the 2007 Final SEIR would still apply: NV (CON)-1 (Generation of Noise or Vibration that Substantially Affects Nearby Sensitive Receptors)

Findings: VTA's Board of Directors hereby makes Finding (a)(3) (as described in Section 3.1 above), as required by Public Resources Code Section 21081 and stated in State CEQA Guidelines Section 15091, with respect to the above identified impact.

Facts in Support of Findings: The mitigation measures provided in the 2005 Final EIR and the 2007 Final SEIR, NV (CON)-1a (Notify Residents of Construction Activities), NV (CON)-1b (Construct Temporary Noise Barriers During Construction), NV (CON)-1c (Restrict Pile Driving), NV (CON)-1d (Use Noise Suppression Devices), NV (CON)-1e (Locate Stationary Construction Equipment as Far as Possible from Sensitive Receptors), NV (CON)-1f (Reroute Construction-Related Truck Traffic), NV (CON)-1g (Develop Construction Noise Mitigation Plan), NV (CON)-1h (Use Impact Cushions), and NV (CON)-2 would lessen the noise impacts, but not reduce them to a less than significant level.

With inclusion of impact cushions and noise shields around the pile equipment, impacts from pile driving would reduce from 149 impacted receptors to 2 impacted receptors. The remaining impacts would be mitigated through the use of non-impact pile driving in the vicinity of Capitol Avenue and Capitol Expressway. As a result of the inclusion of these mitigation measures, this impact would be "Less than Significant with Mitigation".

Safety and Security (Inadequate Lighting or Visual Obstructions at Park-and-Ride Lots)

The new rail stations along the Project alignment would create activity centers with increased pedestrian activity, auto and bus drop-offs and loadings, and park-and-ride traffic at two existing locations. Similar to other public facilities, transit facilities such as trains, buses, stations, or park-and-ride lots may be potential targets for crime. The most common type of crime at such facilities is vandalism, including the defacement of property with graffiti. Automobile vandalism and theft from vehicles left in park-and-ride lots also occasionally occurs. Finally, more serious crimes, such as robbery and assault, are rarely committed at such facilities.

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

Facts in Support of Findings: Pursuant to Mitigation Measure SS-4a, VTA shall solicit public participation regarding station design during the final design phase to address safety and security concerns. Design features will include adequate lighting, minimal landscaping in outlying or secluded areas, and the avoidance of poorly lit, visually obscured public waiting areas. VTA will design and operate the Project in accordance with applicable California Public Utilities Commission (CPUC) regulations to minimize

the frequency and severity of criminal activities.

Pursuant to Mitigation Measure SS-4b, VTA will design and locate station platforms so they are visible from adjacent roadways. All platforms and park-and-ride lots will be lighted during the evening and at night to enhance security. Closed-circuit television cameras may be employed at specific locations to enhance security. VTA will extend coverage provided by its Protective Services unit to any new light rail transit operations. The additional police protection service needs associated with new light rail service will be supported by the Santa Clara County Sheriff's Department and San Jose Police Department. VTA security personnel will patrol all facilities on a regular basis to maintain passenger security.

Pursuant to Mitigation Measure SS-4c, VTA will work with the local fire and police departments during preliminary engineering and final design of the Light Rail Project to ensure that fire and life safety issues are adequately addressed. VTA will also coordinate development of evacuation plans for the aerial portions of the Project, to ensure the safety of light rail patrons and operators.

These measures will reduce the Project's impact to a "Less than Significant" level.

Safety and Security (Potential for Safety Risks during Construction)

At the height of construction, construction employees and equipment would occupy portions of the street, including the median and parking lanes at active construction locations.

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

Facts in Support of Findings: Pursuant to Mitigation Measure SS (CON)-1, VTA shall require construction contractors to implement BMPs to ensure the safety of construction workers and local residents during construction of the Project. Fencing and lighting of construction and staging areas, as well as recognized construction materials, shall be used to contain construction activities and avoid accidents. VTA shall require the construction project coordinator to be responsible for job-site safety and security.

This measure will reduce the Project's impact to a "Less than Significant" level.

Socioeconomics (Displacement of Existing Businesses or Housing)

CEQA does not consider social or economic effects to be impacts on the environment unless they contribute to or are caused by physical impacts on the environment (Public Resources Code Section 21080). VTA is making findings for this impact because physical displacement will occur as a result of the Project.

Although most of the light rail alignment would be placed within the median of an existing regional transportation facility, the Project would have full property needs of three parcels and the partial property needs of numerous other parcels for structures, stations, and ancillary facilities.

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

Facts in Support of Findings: Despite all of the anticipated acquisitions associated with the alignment segments, stations, park-and-ride facilities and substations, the Project is not anticipated to result in an adverse effect related to the displacement of residential or business properties. Properties would be negotiated at fair market value and relocation assistance provided where applicable in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

Pursuant to Mitigation Measure SOC-16a, VTA shall comply with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, and shall implement the Project in conformance with all applicable regulations. VTA shall purchase properties at fair market value and shall provide relocation assistance to residents and business owners.

Pursuant to Mitigation Measure SOC-16b, VTA shall establish and conduct a community information and outreach program throughout the environmental, design, and construction phases of the Project. The purpose of the program shall be to respond to community concerns (both adjacent residences and businesses). Outreach shall include, but shall not be limited to:

- holding community meetings;
- inviting project-related public comment on environmental review and conceptual design phases;
- notifying adjacent residences and businesses of construction activities; and
- providing access to an information officer.

These measures will reduce the impact to a “Less than Significant” level.

Utilities (Require Construction of New Stormwater Drainage Facilities or Expansion of Existing Facilities)

Stormwater drainage facilities located within the Capitol Expressway Corridor could be affected by the Project in several ways. Existing facilities may need to be relocated to accommodate construction of the light rail alignment within the median of Capitol Expressway. Existing facilities may need to be altered to accept new sources of drainage created by construction of the light rail facilities. Additional facilities may need to be

constructed to accept stormwater flows generated by construction of the light rail facilities.

The proposed replacement of the at-grade track alignment with an aerial guideway between south of Story Road and north of Tully Road would introduce an impervious elevated surface above a pervious median. The proposed revisions to the Capitol Expressway roadway configuration would require roadway widening, which could create minor additional impervious areas. Overall, it is anticipated that these proposed changes to the approved project would result in a slight increase in impervious areas within the corridor, but it is unlikely this slight increase would have any substantial effect on the existing storm drainage system. The installation of bikeways, walkways, and landscaped areas would increase the amount of permeable area within the Capitol Expressway right-of-way, and thereby reduce the amount of water directed to the storm drain system. Further, aerial guideways would include appropriate drainage facilities that would be directed to the existing storm drain system.

At the Eastridge Transit Center, the surfaces to be used for the expanded park-and-ride lot are already covered by impervious surfaces; there would be little or no effect on the storm drain system at this location.

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

Facts in Support of Findings: Mitigation Measure HYD-12 provides that VTA will ensure that new stormwater inlets at parking lots include trash grates and maintainable silt traps, and that outlet structures provide for proper energy dissipation in accordance with best management practices consistent with permit requirements. VTA shall ensure that regular maintenance of parking facilities includes a program to clean curbside pavement areas of litter, fuel, and oils spills. Storm drain inlet traps shall be inspected at least annually and cleaned as required.

This measure will reduce the Project's impact to a "Less than Significant" level.

Utilities (Disrupt a Utility Service for a Period of 24 Hours or More)

With the Project, utility infrastructure would need to be relocated. Relocation of utilities, which requires disruption of service, is commonly required during construction. The relocations required with the Project would not be uncommonly large or complex. Related service disruptions are not expected to last more than a few hours, and disruptions of 24 hours are highly unlikely. The relocation and temporary disruption of these utilities is not considered a significant effect, however, a mitigation measure is being adopted to minimize any adverse effects.

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

Facts in Support of Findings: Mitigation Measure UTL(CON)-1 provides that VTA shall conduct careful and periodic coordination with all utility providers during final design and construction stages to identify potential strategies for overcoming potential problems. VTA shall coordinate with all affected utility providers to restrict utility service disruption by time duration and geographic extent.

This measure will reduce the Project's impact to a "Less than Significant" level.

Visual Quality (Creation of a New Source of Substantial Light or Glare)

Consistent with the rest of the VTA Light Rail Transit system, the Project would result in almost 24-hour operations. The operations would require lighting to be provided at the light rail stations and park-and-ride lots 24 hours per day. Such lighting is commonly used at the existing stations and lots. This lighting would slightly increase light and glare affecting residences in the Capitol Expressway Corridor.

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

Facts in Support of Findings: Pursuant to Mitigation Measure VQ-1, VTA shall design lighting to illuminate designated areas only, to minimize intrusion onto adjoining land uses. VTA shall control potential light and glare by directing lighting associated with park-and-ride facilities and stations onto the premises of each facility, and by ensuring that driveways providing access to parking areas are not directly opposite the windows of residential buildings. Lighting at platform-only stations shall be at reduced levels during hours when the light rail is not running. This would reduce potential light or glare and would not result in an adverse effect. The following specific elements shall be incorporated into the Project design:

- Luminaire placement should be the minimum allowable by VTA, and spacing should be the maximum allowable, for safety.
- Luminaires should be cutoff-type fixtures that cast low-angle illumination to minimize incidental spillover of light onto adjacent private properties. Fixtures that project upward or horizontally should not be used.
- Luminaires should be directed toward the facility and away from adjacent residences and open space areas.
- Luminaire lamps should provide good color rendering and natural light qualities. Low-pressure and high-pressure sodium fixtures that are not color-corrected should not be used.
- Luminaire intensity should be the minimum allowable for safety.

- Luminaire mountings should be downcast and the height of the poles minimized to reduce potential for backscatter into the nighttime sky and incidental spillover of light into adjacent private properties and open space.
- Luminaire mountings should have non-glare finishes.
- All Project surfaces shall be designed and finished to reduce horizontal glare from the sun.

This measure will reduce the Project's impact to a "Less than Significant" level.

Visual Quality (Degradation of Existing Visual Quality)

The Project will redesign the streetscape of Capitol Expressway to create an urban parkway. Changes to the existing visual character of the Capitol Expressway Corridor would include the construction of new station features such as shelters and platforms (including an aerial station) and placement of new trackway (including aerial guideways). One-story traction power substations would be installed in various locations along the alignment, including some residential areas. In most locations, perhaps the most noticeable visual feature of the Project would be the presence of the overhead contact system that supplies electrical power to the light rail vehicles.

In general, the proposed changes to the Project will affect the visual environment along the Capitol Expressway Corridor. In several locations, the Project will add or relocate major structural elements that will alter existing views. However, given the urban character of this area and the absence of scenic resources, this impact is not considered significant. Implementation of the Mitigation Measures below would reduce significant impacts on existing visual quality to a less than significant level.

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

Facts in Support of Findings: Pursuant to Mitigation Measure VQ-3, VTA shall develop and implement a public involvement program regarding station design during the final design phase of the Project.

Mitigation Measure VQ-4 will commit VTA to develop and implement a comprehensive landscaping plan to soften the massing, hardscape, and structural elements of the Project. The landscaping shall be designed to be consistent with vegetation types and patterns within the Capitol Expressway Corridor, and shall provide year-round aesthetic enhancement.

These measures and the revisions made to the Project will reduce its impact to a "Less than Significant" level.

Visual Quality (Construction Impact: Creation of a New Source of Substantial Light and Glare)

During construction of the Project, nighttime construction activities would involve the use of lighting equipment that could cause glare, potentially affecting the residents adjacent to the light rail alignment.

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

Facts in Support of Findings: To reduce glare from lighting used during nighttime construction activities, Mitigation Measure VQ (CON)-1 commits VTA to requiring construction contractors to direct lighting onto the immediate area under construction only, and to avoid shining lights toward residences.

This measure and the Project's revisions will reduce its impact to a "Less than Significant" level.

3.7 Findings Regarding Recirculation

CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR but before certification of the Final EIR. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the Project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement. The CEQA Guidelines provide the following examples of significant new information under this standard:

- A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- A substantial increase in the severity of an environmental impact would result unless mitigation is adopted that reduces the impact to a level of insignificance.
- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
- The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043).

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. The above standard is "not intend[ed] to promote endless rounds of revision and recirculation of EIRs."

(*Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal. 4th 1112, 1132). “Recirculation was intended to be an exception, rather than the general rule.” (*Ibid.*)

The Final SEIR-2 incorporates information since the Draft SEIR-2 was completed and contains additions, clarifications, and other changes to the Project. Where changes or additions have been made to information in the Draft SEIR-2, these revisions do not change any conclusions on the significance of impacts presented in the Draft SEIR-2 and do not meet any of the standards for recirculation under CEQA Guidelines section 15088.5.

CEQA case law emphasizes that “[t]he CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736-737; see also *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 168, fn. 11.) “‘CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process.’ [Citation.] In short, a project must be open for public discussion and subject to agency modification during the CEQA process.” (*Concerned Citizens of Costa Mesa, Inc. v. 33rd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 936).

The Final SEIR-2 also includes minor edits made in response to various comments on the Draft SEIR-2. These revisions were made for accuracy or providing additional supplemental information to that contained in the Draft SEIR-2 and did not change any conclusions of the Draft SEIR-2 regarding the Project’s impacts. The revisions only constituted minor revisions or augmentations to information in the Draft SEIR-2 that did not change any of the determinations regarding the significance of the Project’s impacts.

The VTA Board of Directors finds that none of the changes in the Final SEIR-2 involves “significant new information” triggering recirculation because neither the additional information nor changes to any mitigation measure resulted in any new significant environmental effects, any substantial increase in the severity of any previously identified significant effects, or otherwise trigger recirculation under CEQA standards.

3.8 Incorporation by Reference

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

3.9 Record of Proceedings

Various documents and other materials constitute the record of proceedings upon which the VTA's Board of Directors bases its Findings and decisions contained herein, including, without limitation, the Final SEIR-2 (text, appendices and supporting technical reports), the Findings, and the MMRP. All documents related to the Project are available upon request at VTA offices located at 3331 North First Street, Building B, in San Jose. In accordance with Public Resources Code Section 21167.6, subdivision (e), the record of proceedings for VTA's Board of Directors' decision on the Project held by VTA's Board Secretary include but is not limited to the following documents along with the associated VTA's Board of Directors' actions:

- 2019 Final SEIR-2
- 2014 SMND
- 2010 Revised Addendum to Final SEIR
- 2007 Final SEIR
- 2005 Final EIR

Section 4

Statement of Overriding Considerations

The 2005 Final EIR, 2007 Final SEIR, 2014 SMND, and Final SEIR-2 indicate that if the Project is implemented, certain significant environmental effects may be unavoidable. As required by the CEQA Guidelines Section 15093, the VTA Board of Directors finds that the unavoidable significant effects described in Section 3 of this document are acceptable because of the overriding considerations described below. These benefits of the Project outweigh its unavoidable environmental effects. The proposed design changes to the Project do not affect the following statements of fact in support of overriding considerations.

4.0 Statements of Fact in Support of Overriding Considerations

The Project is designed to improve public transit service in the Capitol Expressway Corridor. More specifically, the Project has several benefits including: 1) improve public transit service in the Corridor, 2) provide an attractive transit alternative, 3) enhance regional connectivity, 4) improve regional air quality, 5) improve mobility options, and 6) support local economic and land development goals. Specifically, the Project would:

Improve public transit service in the Corridor

The Project is anticipated to reduce automobile trips and improve VTA transit ridership system-wide. The Project is estimated to have a daily ridership of approximately 4,500 boardings in 2043 with the Project as opposed to approximately 2,300 boardings without the Project.

Provide an Attractive Transit Alternative

As discussed in the 2005 Final EIR, the Project would also provide travel time benefits compared to the automobile and bus modes of travel. The travel time for the Project from Alum Rock Station to Eastridge would be approximately 4.3 minutes, which would be more efficient than using the automobile along the same corridor. Travel times during peak hours along the Capitol Expressway Corridor between Tully Road and I-680 could take as long as 08:27 minutes even without the Project (this example would be for the

Year 2023 in the northbound direction during the AM peak hour), which is approximately 4 minutes longer than the light rail travel time.

Enhance Regional Connectivity

The Metropolitan Transportation Commission's Regional Transportation Plan (RTP) identifies priority transportation projects within the Bay Area. The Project, as well as other light rail extensions in VTA's 2000 Measure A Transit Program, are included in the RTP. Therefore, approval of the Project will enable the RTP to be implemented. The Project would also enable a direct connection to BART at the Milpitas BART Station, which provides access to regional destinations.

Improve Regional Air Quality

The Project is anticipated to result in improved air quality in comparison to future projections without the Project. Ridership projections indicate that transit ridership would increase both system-wide and within the Capitol Expressway Corridor under the Project. Because light rail service is anticipated to remove single-occupant-vehicle trips from the road, reduced emissions would result. Decreases in daily vehicle miles traveled would result along with associated reduced emissions of ROG, NO_x, and PM₁₀.

Improve Mobility Options

The Project supports the Major Investment Study (MIS) initiated in 1999 for the Downtown/East Valley study area. Specifically, the Project supports the five MIS goals; improve mobility, increase transit ridership, target the highest commute corridors, with emphasis on work trips and school trips, promote liveable neighborhoods; and engage community support.

VTA's Valley Transportation Plan 2020 (VTP 2020), adopted by the Board of Directors in 2000, included light rail along Capitol Expressway in its capital investment program. This program identified those specific transit projects that would be implemented during the 20-year time frame of VTP 2020, consistent with the "Measure A" ½ cent sales tax approved by Santa Clara County voters in November 2000. Accordingly, the Project will implement the Measure A Transit Program. In addition, VTP 2040, which was adopted in October 2014, and the 2000 Measure A Revenue and Expenditure Plan in VTA's Fiscal Year 2020 and Fiscal Year 2021 Proposed Budget, reaffirm VTA's commitment to the Project. In June 2018, voters approved Regional Measure 3 (RM 3), which included \$130 million in funding for the Project. RM 3 would finance a comprehensive suite of highway and transit improvements through an increase tolls on the region's seven state-owned toll bridges to help solve the Bay Area's growing congestion problems.

Support Local Economic And Land Development Goals

The Project represents the incremental extension of the light rail line envisioned under the City of San Jose General Plan. Locations of existing and future light rail stations, as well as the alignment of the existing and future light rail tracks, are identified on the Land Use/Transportation Diagram.

The Project will support the following Transportation Policy of the City of San Jose General Plan by providing extended transit access to residents along the Capitol Expressway Corridor. It would serve schools, a regional shopping facility (Eastridge Mall), libraries, and recreational facilities.

Goal TR-3 – Maximize use of Public Transit

Maximize use of existing and future public transportation services to increase ridership and decrease the use of private automobiles.

Policies – Maximize Use of Public Transit

- TR-3.1 Pursue development of BRT, bus, shuttle, and fixed guideway (i.e., rail) services on designated streets and connections to major destinations.
- TR-3.2 Ensure that roadways designated as Grand Boulevards adequately accommodate transit vehicle circulation and transit stops. Prioritize bus mobility along Stevens Creek Boulevard, The Alameda, and other heavily traveled transit corridors.
- TR-3.3 As part of the development review process, require that new development along existing and planned transit facilities consist of land use and development types and intensities that contribute toward transit ridership. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.
- TR-3.4 Maintain and improve access to transit stops and stations for mobility challenged population groups such as youth, the disabled, and seniors
- TR-3.5 Work with the Valley Transportation Authority (VTA) and other public transit providers to increase transit frequency and service along major corridors and to major destinations like Downtown and North San José.
- TR-3.6 Collaborate with Caltrans and Santa Clara Valley Transportation Authority to prioritize transit mobility along the Grand Boulevards identified on the Growth Areas Diagram. Improvements could include installing transit signal priority, queue jump lanes at congested intersections, and/or exclusive bus lanes.
- TR-3.7 Regularly collaborate with BART to coordinate planning efforts for the proposed BART extension to San José/Santa Clara with appropriate land use designations and transportation connections.
- TR-3.8 Collaborate with transit providers to site transit stops at safe, efficient, and convenient locations, and to develop and provide transit stop amenities such as pedestrian pathways approaching stops, benches and shelters, nighttime lighting,

traveler information systems, and bike storage to facilitate access to and from transit stops.

TR-3.9 Ensure that all street improvements allow for easier and more efficient bus operations and improved passenger access and safety, while maintaining overall pedestrian and bicycle safety and convenience.

NOTICE OF DETERMINATION

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: California Transportation Commission
Attn: Cherry Zamora
1120 N Street, MS 52
Sacramento, CA 95814
(916) 654-4245

Subject: Filing of Notice of Determination in compliance with Section 21108 of the Public Resources Code.

Project Title: Eastridge to BART Connector Project

200109214	Christina Jaworski	(408) 321-5751
State Clearinghouse Number	Lead Agency Contact Person	Area Code/Telephone

Project Location (include county): The project is located along Capitol Avenue and Capitol Expressway between the Alum Rock Light Rail Station at Wilbur Avenue and the Eastridge Transit Center south of Tully Road in the City of San Jose in Santa Clara County.

Project Description: The project will extend light rail along Capitol Expressway between the existing Alum Rock Light Rail Station and Eastridge Transit Center, a distance of approximately 2.4 miles. Light rail will operate primarily in the median of Capitol Expressway within exclusive and semi-exclusive rights-of-way. To provide the additional right-of-way to accommodate light rail, high-occupancy vehicle lanes will be removed between Story Road and Tully Road. The project will include new light rail stations at Story Road (aerial) and Eastridge Transit Center (at-grade). The project will also include traction power substations at Ocala Avenue and Eastridge Transit Center. Relocation and replacement of a number of 115-kilovolt steel lattice electrical transmission towers with Tubular Steel Poles will be required for the project.

This is to advise that the California Transportation Commission has approved the above-described
(☐ Lead Agency/ ☒ Responsible Agency)
project on August 16-17, 2023, and has made the following determinations regarding the above-described project:

1. The project (☒ will/ ☐ will not) have a significant effect on the environment.
2. ☒ A Final Second Supplemental Environmental Impact Report, Second Addendum, and Third Addendum was prepared for this project pursuant to the provisions of CEQA.
☐ A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures (☒ were/ ☐ were not) made a condition of the approval of the project.
4. Mitigation reporting or monitoring plan (☒ was / ☐ was not) adopted for this project.
5. A Statement of Overriding Considerations (☒ was / ☐ was not) adopted for this project.
6. Findings (☒ were/ ☐ were not) made pursuant to the provisions of CEQA.

The above identified document with comments and responses and record of project approval is available to the General Public at: Santa Clara Valley Transit Authority, River Oaks Building B Lobby, 3331 North First Street, San Jose, CA 95134.

TANISHA TAYLOR		Executive Director California Transportation Commission
<i>Signature (Public Agency)</i>	<i>Date</i>	<i>Title</i>

Date received for filing at OPR:

Project Location Map

