SILICON VALLEY LAW GROUP
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Via Hand Delivery & Electronic Mail: BARTphase2EIS-EIR@vta.org

Mr. Tom Fitzwater
Santa Clara Valley Transportation Authority
3331 North First Street, Building B
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Via U.S. Mail

Ms. Dominique M. Paukowits
U.S. Dept. of Transportation
Federal Transit Administration, Region IX
90 Seventh Street, Suite 15-300
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RE: Sharks Sports & Entertainment LLC Comments Regarding VTA's BART Silicon Valley Phase II Extension Project – Draft Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report and Draft Section 4(f) Evaluation, December 2016.

Dear Mr. Fitzwater Ms. Paukowits:

I am submitting comments to the Draft Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report and Draft Section 4(f) Evaluation, dated December 2016 (Draft SEIS/SEIR) for the BART Silicon Valley Phase II Extension Project (the Phase II Project) on behalf of Sharks Sports & Entertainment LLC (SSE). SSE supports BART to San Jose and the downtown development. Nevertheless, our review indicates that as currently presented the Draft SEIS/SEIR does not contain the necessary evaluation of certain significant impacts and does not offer adequate mitigation measures. It is our sincere hope that by drawing attention to these issues now the Draft SEIS/SEIR can be revised and the Phase II Project will be constructed without unnecessary damage to the downtown. P84-1

Background:

P84-2

SSE is the parent company of San Jose Arena Management, LLC, which manages the SAP

Center (the Arena), an 18,000-seat regional multipurpose event center located adjacent to the planned BART Diridon Station.

With over 170 events per year, the Arena is one of San Jose's most consistent and impactful economic catalysts, and is a critical asset to the City's economic success. The SAP Center operations support over 5,000 FTE jobs, generate more than $250 million in annual economic impact, and provide millions of dollars in direct general fund revenue for the City of San Jose (City).

As a regional event center, the Arena attracts more than 1.5 million people to San Jose's downtown area every year, drawing a diverse crowd from throughout Santa Clara, San Mateo, Santa Cruz and Alameda counties and beyond. The region from which the Arena draws is primarily suburban, and mass transit is not a viable option for the majority of the Arena's patrons. Accordingly, the Arena is reliant on a large supply of convenient parking nearby, as well as highly functional and efficient vehicle ingress and egress. One of the reasons the Arena was located where it was is because of the excellent access to this location by major highways and large surface streets. P84-2 cont.

Automobile transport is the primary means of transportation in the South Bay. In fact, the 2040 San Jose General Plan predicts that more than 20 years from now 60% of all trips will still be by automobile. After approximately 20 years of light rail operation, the use of light rail to attend Arena events is trivial – currently averaging less than 2% of patrons for regular games and far less for special events. Similarly, travel by Caltrain for Arena events is minimal – estimated to be less than 5% of patrons for regular games and far less for special events. Past predictions of mass transit use for Arena events have been grossly overestimated. There is no evidence in the record that BART would do any better, and certainly there is no study in the Draft SEIS/SEIR supporting any speculation that BART riders will reduce parking demand for Arena events by any measurable level. For the foreseeable future the users of the Diridon Station area and Arena will remain automobile dependent, and the Draft SEIS/SEIR must recognize that reality. Providing adequate parking, therefore, is required for any reasonable planning horizon.

SSE has been one of downtown's biggest investors for more than two decades, and will continue to support efforts to advance the city center's smart growth, so long as the success of the SAP Center is not impeded. SSE was proud to be a major contributor to Measure B which is funding the BART Phase II extension to downtown San Jose. SSE did so with the clear understanding for the better part of a decade that the BART Diridon station would include a parking garage and would not dramatically disrupt traffic operations and pedestrian flow on Santa Clara Street. SSE is incredibly disappointed that the VTA staff has abandoned any plans to provide parking for the P84-3

BART station and intends to close up to two lanes of Santa Clara Street in front of the Arena, potentially for years, apparently without any direction from the VTA Board. SSE cannot stand by on a project that as currently planned and under analyzed will severely wound the Arena's ability to remain downtown's primary economic engine. P84-3, cont.

Prior Planning Review:

SSE has participated in nearly every environmental or planning process affecting the Diridon Station area over the last twenty-five years. SSE participated in the scoping process for the Phase II Project's environmental evaluation, and on February 27, 2015, submitted a letter to the Federal Transit Administration (FTA) and Santa Clara Valley Transportation Authority (VTA) identifying significant environmental issues that should be addressed in the Draft SEIS/SEIR (SSE Scoping Letter).

The SSE Scoping Letter was not SSE's first attempt to have these significant issues addressed. SSE submitted a letter dated March 28, 2002, from Ken Sweezey to Lisa Ives with comments on the scoping process for the original environmental analyses. SSE subsequently submitted a letter dated May 14, 2004, from Jim Goddard to Tom Fitzwater with comments on the Draft Environmental Impact Report for the Silicon Valley Rapid Transit Corridor Project. SSE also submitted a letter dated May 8, 2009, from Jim Goddard to Tom Fitzwater with comments on the Draft Environmental Impact Statement for the Silicon Valley Rapid Transit Corridor Project. All of these letters identified significant environmental impacts that would need to be studied and mitigated in connection with the Phase II Project. P84-4

Notwithstanding those prior efforts by SSE to call attention to important environmental concerns, the Draft SEIS/SEIR wholly fails to identify, evaluate, propose mitigation for, or otherwise address the issues raised in SSE's Scoping Letter. Inexplicably, the Draft SEIS/SEIR has even ignored the prior transportation and parking analysis and mitigations that were presented by VTA in its March 2010 Final EIS for this same project. P84-5

Other environmental planning documents in the Diridon Station area have taken the transportation and parking issues into consideration, including the 2004 Final Environmental Impact Report (EIR) for the San Jose Water Land Company Planned Development Rezoning; the 2005 Downtown Strategy 2000 Final Program EIR; the 2011 Envision San Jose 2040 General Plan Final Program EIR; the 2015 Envision San Jose 2040 General Plan Supplemental EIR; the 2014 Diridon Station Area Plan EIR; the 2015 Final EIR for Caltrain's Peninsula Corridor Electrification Project; and a host of others. P84-6

A transportation and parking evaluation is something the City of San Jose would require in an EIR for any other large project in the Diridon Station area. The City has, on multiple occasions, recognized the need to consider and mitigate adverse impacts on the Arena caused by any major project in the Diridon Station area, particularly impacts related to parking and transportation. This expressly includes transit projects. In a memo dated June 6, 2014 (excerpts of which are attached as **EXHIBIT A**), City staff recommended the following approach, which was accepted by the City Council upon approval of the Diridon Station Area Plan:

> "For the BART and High Speed Rail transit projects, the City will request that the lead agency conduct a project parking analysis – The analysis should include a projection of parking demand, demand management strategies, recommended supply solutions, and potential impacts on the existing parking supply within the Diridon area, including suggested ways to mitigate the impact if it is deemed significant. The results of any parking analysis will be provided to Arena Management for review and comment. The City will consider Arena Management's timely feedback in formulating comments that the City forwards to the lead agency as part of the project development and approval process."

P84-7

The AMA and Baseline Conditions:

The City and SSE are parties to an Arena Management Agreement (AMA), which includes a Transportation and Parking Management Plan (TPMP) of over 100 pages. The AMA requires the City to maintain certain levels of available parking within close proximity to the Arena, and to manage traffic operations in order to ensure convenient and efficient ingress and egress to and from the Arena. Typically, environmental documents relating to projects in the vicinity of the Arena have considered these obligations as part of their analyses. In other words, the agencies have treated the City's obligations under the AMA as tantamount to a land use plan, and have considered whether the projects in question would be consistent with such plan.

P84-8

The City's obligations related to parking and traffic are expressly incorporated into the June 2014 final plan report for the Diridon Station Area Plan. The primary project objectives listed on page 1-5 of the Plan include the objective to "ensure the continued vitality of the San Jose Arena, recognizing that the San Jose Arena is a major anchor for both Downtown San Jose and the Diridon Station area, and that sufficient parking and efficient access for San Jose Arena Customers, consistent with the provisions of the Arena Management Agreement, are critical for the San Jose Arena's on-going success." The Plan includes numerous provisions in support of this objective, including the following:

> "Since its opening some two decades ago as the home of the San Jose Sharks, the San Jose Arena has consistently ranked among the 10 busiest indoor facilities for non-sporting entertainment events. Preserving the extraordinary success of Downtown's "anchor tenant" appears paramount and is reflected in the Land Use Plan. Although densities will increase, and parking ratios will drop over time, it is imperative that Diridon's development occurs in a coordinated fashion with its transportation infrastructure to ensure adequate parking supply for the San Jose Arena and avoid traffic problems in each phase of development." (Page 2-3)

> "The San Jose Arena Management Agreement commits the City to pursue best efforts to achieve and maintain at least 6,350 parking spaces at Off-Site Parking Facilities available for Arena patrons within one-half mile of the West Santa Clara Street entrance to the Arena, of which approximately half of such spaces will be within one-third mile of the West Santa Clara Street entrance. In addition, the City will manage and facilitate convenient vehicular access to and from parking facilities located in the Diridon Station area. Future TPMPs need to be in compliance with this agreement in order to meet the City's obligations and ensure the continued success of the Arena as an anchor of the Diridon area and as a regional draw." (Page 2-133)

P84-8, cont.

Unfortunately, the Draft SEIS/SEIR for the Phase II Project completely ignores these important provisions of this land use plan. The permanent need for adequate parking, and for continued excellent access to and from the Arena, is a baseline condition of the Diridon Station area that was identified in the SSE Scoping Letter, yet the Draft SEIS/SEIR fails to identify or evaluate the adverse impacts the Phase II Project will have on transportation and parking within the Diridon Station area.

Economic Consequences:

The consequences of this failure in planning is that not only will there be significant adverse environmental impacts as will be detailed below, but there will also be significant long term socioeconomic impacts that will burden the Arena, the Diridon Station area (including the surrounding neighborhoods) and the City as a whole. Travel to Arena events is unlike commuter transportation analysis. Like other sports and entertainment venues, travel to the Arena is discretionary. Thus, worsening transportation or parking conditions, which may not deter a commuter from making a required trip to work or home, will often completely deter a patron from going to an Arena event. Consequently, good transportation access is required in order for the Arena's on-going success. A Phase II Project that damages the transportation and parking experience can have ruinous economic impacts on the continued vitality of the Arena.

P84-9

VTA has a long history of failing to consider the disruption and resulting economic damage caused by its construction projects. One only needs to remember the damage to San Jose's downtown businesses caused by the construction of the downtown transit mall, and the damage to businesses on Alum Rock Avenue due to construction of VTA's Bus Rapid Transit (BRT), to know that myopic planning causes significant harm. Several articles documenting these impacts are attached as **EXHIBIT B**. The City can ill afford to allow one of its major anchors for both downtown San Jose and the Diridon Station area to be harmed the same way businesses adjacent to those other projects were harmed. P84-10

NEPA Legal Background:

SSE believes the current environmental review does not comply with the National Environmental Policy Act, 42 U.S.C.A. §§ 4321 et. seq. (NEPA) or, as will be discussed later, the California Environmental Quality Act, Pub. Res. C. §§ 21000-21189.3 (CEQA).

An EIS must identify and provide a full and fair discussion of all significant environmental impacts caused by the proposed action. 42 U.S.C.A §4332; 40 CFR §1502.1. EISs shall not serve as a means of justifying decisions already made. 40 CFR §1502.2(g). The EIS shall describe the environment of the area. 40 CFR §1502.15. The EIS shall also describe all direct and indirect effects and their significance. 40 CFR §1502.16. Such analysis must include the urban environment. 40 CFR §1502.16(g). An EIS shall identify the means to mitigate adverse environmental impacts. 40 CFR §1502.16(h). Agencies must insure professional and scientific integrity in the discussions and analysis in an EIS. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix. 40 CFR §1502.24. P84-11

The agency must take a "hard look" at identifying and evaluating potential adverse environmental impacts. *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1376 (1998). An action will be set aside as arbitrary or capricious if the agency identified no "rational connection between the facts found and the choice made," if the "explanation for its decision [ran] counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

The impact of traffic and parking is a NEPA impact. NEPA covers the human environment including quality of urban life. 40 CFR §1502.16(g). "[O]mission of a reasonably complete discussion of possible mitigation measures would undermine the 'action forcing' function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals

can properly evaluate the severity of the adverse effects." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352, 371 (1989). Here, providing adequate parking is a mitigation measure. A number of cases have held an EIS inadequate because it did not adequately discuss mitigation measures, or because it did not contain mitigation measures that should have been discussed. *NEPA Law and Litig.* § 10:44 (2016).

Mitigation measures must meet the NEPA scientific integrity standard of 40 CFR §1502.24, and be presented in sufficient detail to ensure that environmental consequences have been fairly evaluated. See *S. Fork Band Council of W. Shoshone of Nev. v. U.S. Dep't of the Interior*, 588 F.3d 718, 727 (9th Cir. 2009) A perfunctory description of mitigating measures is inconsistent with the "hard look" an EIS is required to render under NEPA. "Mitigation must 'be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.' " *Carmel-By-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1154 (9th Cir.1997). There should be an estimate of how effective the mitigation measures would be if adopted, or a reasoned explanation as to why such an estimate is not possible. Mitigation cannot be so general that it would be impossible to determine where, how, and when they would be used and how effective they would be. *Neighbors of Cuddy Mountain*, 137 F.3d at 1381 There needs to be clear commitments and performance expectations that are measurable. CEQ Memo dated January 4, 2011 "*Appropriate Use of Mitigation Monitoring and Clarifying the Appropriate use of Mitigated Findings of No Significant Impact*" p. 8. P84-11, cont.

The Failure to Apply NEPA Analysis to the Transit-Oriented Joint Development

The Draft SEIS/SEIR artificially limits its NEPA analysis to only direct BART construction and operation adverse impacts and disclaims any responsibility for a NEPA analysis of the Transit-Oriented Joint Development (TOJD). With this artificial constraint the Draft SEIS/SEIR only evaluates the TOJD under CEQA. Draft SEIS/SEIR 6.1-1 et. seq. The VTA and FTA take too narrow a view of the scope of NEPA. NEPA is to be interpreted broadly and used by federal agencies to the fullest extent possible. 40 CFR §1500.2. The statutory requirement that an environmental impact statement be prepared for all "major Federal actions" must be assessed with a view to the overall, cumulative impact of the action proposed, related federal action and projects in the area, and further actions contemplated. 42 U.S.C.A. § 4332. P84-12

The determination of whether federal and non-federal projects are sufficiently intertwined to constitute a federal action for NEPA purposes will generally require a careful analysis of all facts and circumstances surrounding the relationship. 42 U.S.C.A. § 4332(2)(C). Here the TOJD is tightly intertwined with the federal action and could not take place but for the federal action, and therefore the TOJD must be analyzed under NEPA. Moreover, to survive a challenge over the legal sufficiency of the Draft SEIS/SEIR there must be, in the document, a careful analysis of all the facts and circumstances between the TOJD and the Phase II Project justifying the conclusion that the TOJD is not a connected project requiring a NEPA analysis. There is no such analysis in the Draft SEIS/SEIR. P84-13

Traffic Engineer Report

SSE's traffic engineer, Jim Benshoof of Wenck Associates, reviewed the Draft SEIS/SEIR to determine whether the transportation and parking impacts have been accurately and professionally identified and evaluated. He also assessed any proposed mitigation measure to determine whether it was likely to be effective. His professional judgment is that the Draft SEIS/SEIR has not adequately identified or evaluated easily foreseeable adverse transportation and parking impacts. Moreover, the vague assurances of future mitigation in the Draft SEIS/SEIR lack detail or measurable objectives and thus do not meet the NEPA standard requiring sufficient detail to ensure that environmental consequences have been fairly evaluated.

Mr. Benshoof's memorandum regarding *VTA's BART Silicon Valley Phase II Extension Project, Draft Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report and Draft Section 4(f) Evaluation, December 2016 – Failure to Adequately Identify or Mitigate Direct and Indirect Transportation Impacts in the Diridon Station Area* and attachments dated March 2, 2017 (Wenck Memo) is submitted as **EXHIBIT C** and incorporated by reference. P84-14

Highlights of Mr. Benshoof's analysis include the following:

1. The Draft SEIS/SEIR fails to adequately describe and address construction-related impacts and mitigation measures for Diridon Station options. See the Wenck Memo at sections B.1 & C. Appendix C in the Draft SEIS/SEIR presents three options for the Diridon Station. Although the Draft SEIS/SEIR indicates that major impacts would occur during construction of all three options, the magnitude of such impacts is unexplained, and the differences in impacts among the alternatives are not presented in sufficient detail to allow them to be fairly evaluated. The construction impacts related to the North Option Single Bore Tunnel, North Option Twin Bore Tunnel, and South Option Single and Twin Bore Tunnel must be separately identified and evaluated. Otherwise it is impossible to determine which option should be preferred. P84-15

2. The Draft SEIS/SEIR fails to address the alternative presented in 2010 FEIS for Diridon Station requiring an 8-level parking garage to handle the expected BART parking demand. See Wenck Memo at sections B.2 & D. NEPA requires that all reasonable alternatives be rigorously explored and evaluated, and for alternatives which were eliminated from detailed study, the reasons for their having been eliminated must be discussed. In the 2010 FEIS for this project, the preferred alternative for the Diridon Station included a 1,300 space parking garage to accommodate parking by BART users. Neither the Draft SEIS/SEIR, nor the Environmental Scoping Report dated May 2015 provides any discussion of this alternative or reasons why it has been eliminated. This violates 40 CFR §1502.14(a); see also "The existence of a viable but unexamined alternative renders an environmental impact statement inadequate." *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1038 (9th Cir. 2008). P84-16

3. Despite statements in the Draft SEIS/SEIR that some BART riders using the Diridon Station would drive to the station and need to find a parking space, the Draft SEIS/SEIR states that no parking spaces would be provided at the Diridon Station for BART users. Beyond causing difficulties for BART users and impacts on nearby parking facilities and neighborhoods, this intention to provide no BART parking at the Diridon Station is illogical and unsupported in the Draft SEIS/SEIR for the several reasons that are laid out in the Wenck Memo at sections B.3 & E. P84-17

4. As explained in the Wenck Memo at sections B.4 & F, the Draft SEIS/SEIR fails to identify or mitigate parking impacts that would occur upon completion of the Phase II Project. NEPA requires analysis of potential parking impacts and development of mitigation measures where necessary to overcome negative impacts. Inexplicably, the Draft SEIS/SEIR presents **no analysis** of the increased parking demand caused by BART riders using the Diridon Station, where those motorists would park, and whether there are sufficient spaces available to accommodate those BART parkers. **No analysis** is presented regarding indirect impacts in the Diridon and downtown areas caused by BART parkers, including vehicle emissions, congestion, and safety. Both NEPA and CEQA require analysis of these indirect impacts. Further, depending on the Diridon Station option chosen, the Phase II Project would cause an approximate permanent loss of between 210 and 310 parking spaces. The Draft SEIS/SEIR presents **no analysis** regarding impacts caused by the permanent loss of these parking spaces, and no mitigation measures are presented to alleviate these impacts. P84-18

5. The Draft SEIS/SEIR fails to adequately identify or mitigate parking impacts that would occur during construction of Diridon Station. See Wenck Memo sections B.5 & G. The Draft SEIS/SEIR states that up to 715 parking spaces in the Diridon area would be removed during construction of the station. **No analysis** is presented regarding the impacts caused by this loss of parking. P84-19

    a. The Draft SEIS/SEIR incorrectly states that an interim parking study being completed by the City (not VTA) for completely different purposes will mitigate parking impacts during construction of the Phase II Project. The City's report on that study, however, clearly shows that the purpose of the parking study was not to analyze the BART construction impacts or to mitigate those impacts. Furthermore, the agencies participating in that study have not committed to any budgets, allocation of costs, funding, construction schedules, or any other actions that would be needed in order to implement any recommendations from such study or to achieve any parking solution. Any mitigation resulting from such P84-20

parking study is completely speculative. Accordingly, the City parking study may not be relied on as a mitigation in the Draft SEIS/SEIR. P84-20, cont.

6. Mitigation proposed in the Draft SEIS/SEIR in response to identified construction related transportation impacts does not meet NEPA standards. See Wenck Memo sections B.6 & H. The impacts include full and partial closures of Autumn, Montgomery, and Cahill Streets, one at a time, for several months each. In addition, page 5-75 states that "truck haul routes may impact traffic on West Julian Street, Almaden Boulevard, Santa Clara Street, Montgomery Street, Autumn Street, Notre Dame Street, and Bird Avenue." The proposed haul routes and projected volumes of material are described in Section 5.2.4.2. The Draft SEIS/SEIR presents two mitigation measures that will be developed and applied to minimize adverse traffic impacts during construction. The two mitigation measures have several deficiencies. In particular, mitigations identified as TRA-CNST-A and TRA-CNST-B, fail to provide sufficient specificity to meet Federal requirements. The measures provide just a general description of steps that will be taken, which fall far short of requirements specified in the Federal Transit Administration document dated August 2016 that "the environmental document clearly identifies the impact(s) to be mitigated and carefully specifies any relied-upon mitigation 'in terms of measurable performance standards or expected results, so as to establish clear performance expectations.'" Furthermore, this is but one of several examples of where the Draft SEIS/SEIR has impermissibly deferred "myriad studies, surveys and mitigation plans" in violation of NEPA, NEPA requires discussion of "mitigation of likely impacts at the outset." *S.Fork Band*, 588 F.3d at 727. P84-21

Additional Comments

SSE believes that the Draft SEIS/SEIR is deficient in numerous other respects as well. The following is a summary of SSE's additional concerns, focused on transportation and parking – the two categories of impacts that SSE has consistently raised with the VTA.

7. The Draft SEIS/SEIR improperly manipulated the traffic demand model by treating the Diridon station as an urban station in complete disregard of the actual physical setting of the Diridon station being surrounded by parking lots, and its over 80-year history of being a terminus for a commuter train (currently known as "Caltrain"). NEPA and CEQA require an accurate description of the project area. P84-22

8. The 2010 FEIS for the BART Extension covered parking impacts and required mitigation (8-level parking garage). Nothing regarding transportation and parking has changed for the better in the Diridon Station area since 2010. Parking is tighter now than it was in 2010. The VTA decision not to study parking demand impacts and to unashamedly assert P84-23

that BART riders will not drive and park at the BART Diridon station is incomprehensible. It is particularly incomprehensible in light of the SSE Scoping Letter, SSE's previous letters, the discussion of the issue in every other environmental document relating to the Diridon Station area, the recent litigation over parking shortfalls, etc. It is apparent that if the Draft SEIS/SEIR had studied parking demand with "scientific integrity," that study would show extremely significant adverse parking and transportation impacts that require mitigation. Yet the Draft SEIS/SEIR does not identify, evaluate or suggest ways to mitigate these parking impacts that were previously studied and known to VTA. P84-23, cont.

9. The physical plan of the Diridon BART station has not changed-except the parking garage is gone! See 2010 FEIS D-30. The station is the same size, same general layout, and same number of trains. However, the predicted number of passengers has decreased. The travel demand model used for the 2010 FEIS, which assumed unconstrained parking demand, predicted that the daily boardings and alightings at the Diridon Station in 2030 would be approximately 21,020. The travel demand model used for the 2016 DEIS assumed that there would be no dedicated BART parking spaces at the Diridon Station, but that BART riders could park in other nearby parking facilities. With that model and assumptions, the 2016 Draft SEIS/EIR predicts that the daily boardings and alightings at the Diridon Station in 2035 would be only 13,771. There is **no study provided** supporting that prediction. Additionally, the Draft SEIS/SEIR is assuming BART riders will drive to the Diridon station and park in other nearby parking facilities. The direct and indirect impacts of these BART riders parking in other facilities is not analyzed. P84-24

10. The Draft SEIS/SEIR completely fails to identify, analyze or suggest ways to mitigate the increased parking demand the new BART Diridon station riders will place on existing parking for the Arena, other Diridon Station area businesses and nearby neighborhoods. The amount of additional parking caused by BART riders will cause direct adverse impacts to the planned parking supply in the area. P84-25

    a. A similar concern was addressed in the 2002 EIR for the Dublin Transit Center (DTC), as described in the 2016 Addendum to that EIR (excerpts of the Addendum are attached as **EXHIBIT D**). The DTC project included a multi-level BART parking structure to replace surface parking throughout the DTC area. The DTC EIR recognized that even this was not sufficient to solve for the parking demand created by the project, and identified a significant impact (Impact 4.11-4) resulting from the fact that BART patrons could utilize on-street and nearby private parking, resulting in insufficient parking for such facilities. The DTC EIR required that such impact be mitigated. P84-26

11. The additional parking pressure at the BART Diridon station, coupled with no additional parking supply, and indeed a reduction in existing parking, will cause adverse indirect impacts on the surrounding area: congestion, negative land use and economic impacts on business, traffic safety, interference with other downtown/Diridon area future development plans, etc. Failure to identify, evaluate and suggest ways to mitigate these indirect effects violates both NEPA and CEQA. P84-27

12. The Draft SEIS/SEIR assumption that there will be very few BART riders driving to the BART Diridon station appears to be motivated by the desire to avoid the cost of the 8-level parking garage described in the 2010 FEIR, which is necessary to mitigate the impacts caused by the BART riders. EISs must serve as the means of assessing the environmental impact of proposed agency actions rather than justifying decisions already made. Ignoring clearly foreseeable adverse impacts, particularly when done to avoid mitigation costs, violates NEPA. *Environmental Defense v Corps of Engineers*, (2007) 515 F. Supp 2d 69, 77-81. VTA cannot avoid doing its fair share to mitigate the parking shortage by attempting to foist the burden, and cost, on others. P84-28

    a. This is not the only example of BART deciding not to build a parking garage to save money even though the parking is needed and called for in its own environmental planning documents. In the case of the DTC described above, the parking structure was to be constructed in two phases: Phase I was a seven-level structure containing 1,512 parking spaces that was completed in 2007. Phase II, which was originally described in the 2002 DTC EIR and is the subject of the 2016 Addendum, called for a six-level parking structure expansion to help mitigate a dire parking situation that has become even worse than what was originally anticipated. According to the information on page 7 of the Addendum, all 2,886 parking spaces in the existing parking structure and nearby surface lots at the Dublin/Pleasanton Station are 100 percent occupied by approximately 7:30 a.m. each typical weekday morning. This results in BART patrons having to drive around looking for other spaces or forego transit and continue their commute by automobile. Despite this, the BART Board last month voted to look at options other than constructing the parking structure expansion that they had previously said they would construct, due to the high cost of such construction. Articles regarding the parking problem and the Board's vote to look at other options are attached as **EXHIBIT E**. P84-29

13. By arbitrarily assuming that only a few people will park and ride at the BART Diridon station the Draft SEIS/SEIR is making an impermissible agency predetermination. By not identifying and evaluating with scientific integrity the increased parking demand on the surrounding environment VTA is irreversibly and irretrievably committing itself to a plan P84-30

of action that is dependent upon the NEPA environmental analysis producing a certain assumed outcome. This is contrary to the law, which requires that the agency only commit to a project alternative after it has completed its environmental analysis – which of course is supposed to involve an objective, good faith inquiry into the environmental consequences of the agency's proposed action. *Forest Guardians v U. S. Fish & Wildlife*, 611 F.3rd 692, 714 (2010) P84-30, cont.

14. The BART riders' occupancy of spaces in the Diridon area will be a hardship to SAP's employees and customers. For some events, SSE may have well over 400 employees who need to park within walking distance, many of whom arrive early in the day to start work and many others who arrive mid-day but leave late at night. In addition, some events occur during weekday daytime hours. Finally, the Draft SEIS/SEIR implies that there are a relatively small number of events occurring during the weekday evenings, but that is not true. BART riders who leave their cars parked into the early evening will deprive SSE customers of needed parking for evening events. All of these factors should be studied in the Draft SEIS/SEIR. P84-31

15. BART policy has been to provide parking associated with expansion projects. For example, in the 2006 BART Warm Springs Expansion FEIS, the response to comment 37-13 states in part as follows:

    "37-13: BART policy is to provide parking associated with expansion projects that meets the demand expected to be generated by the projects. **Failure to do so would be considered a direct adverse environmental impact to transportation** and, by reducing access, would reduce the ridership and indirectly reduce the associated environmental benefits of the projects." (Emphasis added) P84-32

    There is no explanation for why the Draft SEIS/SEIR deviates from BART policy.

16. The BART Diridon station is the equivalent of an end of line station because it is at the southwest crook of the BART Line. It has large automobile infrastructure feeding it, namely freeway access via 87 and 280 plus large urban roads such as Santa Clara Street, Montgomery Street and Bird Avenue. Significantly, the City of San Jose will open Autumn Street through to Coleman within a few weeks which will provide easy access through Coleman Avenue to the 880 freeway. The large, spread-out South Bay communities use the roads, not mass transit. The miniscule VTA light rail ridership numbers demonstrate that the South Bay commuters will use their cars to get to Diridon BART station. Most South Bay commuters do not take light rail, as the stations are too spread out and light rail is too slow. Generally, South Bay residents will need to get in their cars to start their commute. Once in their cars they will not go to a light rail station P84-33

to get to a BART station; rather, they will drive to the Diridon BART station. Moreover, Diridon is a traditional main terminus for Caltrain, and community habit is to drive to the Diridon station to get on Caltrain. P84-33, cont.

a. As an end of line station, BART and other heavy rail operators know they need parking. BART admitted as much the following response to a comment letter in the 2006 BART Warm Springs Expansion FEIS (with emphasis added):

"37-12: **Parking facilities with large numbers of parking spaces are commonly found at the end-of-the-line stations in most heavy rail systems in this country**, including FTA New Starts heavy rail projects. The Largo Metrorail Extension for the WMATA system in Washington, D.C. includes the Largo Station at the end of the line with 2,200 parking spaces. The North Springs Station of the North Line Extension in Atlanta, which is operated by MARTA, has 2,325 parking spaces. The BART San Francisco Airport Extension includes the Millbrae Station at the end of the line with 3,000 parking spaces. These three stations were all recently funded in part with federal New Starts funding. The Red Line in Boston was extended to the Alewife Station with 2,595 parking spaces. (These examples are illustrative and not intended to be comprehensive.)" P84-34

17. The Draft SEIS/SEIR does not meet CEQA requirements for a project level environmental review. The Draft SEIS/SEIR indicates in the Introduction section that it tiers off of several prior studies, and provides clearance for Phase II of the BART project. This Draft SEIS/SEIR does not provide "project-specific" analysis under NEPA or CEQA, given that there are several decisions still to be made later about major project components, which could dramatically change the long-term and short-term environmental impacts to nearby land uses. Some of the main examples of this are: P84-35

a. Construction Staging Areas:

i. The Draft SEIS/SEIR states (on pages 5-28 through 5-31) that the contractor may use any of the Construction Staging Areas (CSAs) for tunnel construction, launch or excavation shafts, storage of equipment, and muck removal. According to the Draft SEIS/SEIR, no decisions have been made at this time regarding what types of construction activities will occur at each of the CSA sites. P84-36

ii. The Draft SEIS/SEIR does not provide "project-specific" analysis under NEPA or CEQA, given that it has not been determined which construction activities will occur at the different construction staging areas. Our P84-37

understanding of such tunnel boring projects is that there are often very different activities (and resulting noises, waste streams, truck trip lengths, etc.) that occur at the launch shaft vs. the receiving shaft, for example. The Draft SEIS/SEIR does not analyze the specifics of the environmental impacts (such as noise levels, air quality and greenhouse gas emissions), of such equipment or activity at each staging site. The Draft SEIS/SEIR also does not identify specific noise mitigation measures for the various equipment which would be used at the launch shaft(s) vs. at the receiving shaft(s) or the reduction and attenuation expected to be received from such measures. Therefore, the residents and businesses nearby cannot accurately understand the potential impacts to them resulting from project construction. P84-37 cont.

b. Construction Transportation Management Plan (p. 5-60):

i. The Draft SEIS/SEIR states that temporary traffic disruptions will be mitigated by the development and implementation of a Transportation Management Plan (TMP), however, the Draft SEIS/SEIR does not identify any specific details about this future TMP or metrics of its effectiveness. While these TMPs are often general at this stage during the environmental review process, this project will have extensive and atypical construction impacts throughout downtown San Jose, for many years. As the Draft SEIS/SEIR acknowledges, construction is estimated to take a total of 8 years. Given the long duration and the heavy amount of construction work along major arterials and adjacent to existing businesses and residences in downtown San Jose, this appears, at best, to be a program-level analysis of these impacts. If the intention of this analysis is to be project-specific, then this is improper "deferred mitigation" under CEQA. The basic TMP details and measures of effectiveness need to be identified in this Draft SEIS/SEIR to show that this mitigation is in fact feasible and will reduce the transportation impacts, particularly if this is identified as "mitigation" that is relied upon in the Draft SEIS/SEIR to reduce this significant unavoidable impact to a less than significant level under CEQA. As stated in CEQA Guidelines Section 15126.4(a)(B): "Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specific way." There are no specifics or performance standards regarding this proposed TMP mitigation measure in the Draft SEIS/SEIR. P84-38

c. Material Disposal:

i. The Draft SEIS/SEIR states that excavated material from the tunnel construction will be transported to a disposal site permitted to receive such material. (Some of this excavated material will likely be classified as hazardous waste.) The Draft SEIS/SEIR does not state where this material will be disposed. P84-39

ii. Were the truck trips for this waste disposal included in the construction traffic and the construction AQ/GHG analyses? If so, what landfill and what trip length was assumed? P84-40

18. The Draft SEIS/SEIR violates CEQA due to its unstable project description. Given all the variables for the Phase II Project which are discussed in the Draft SEIS/SEIR (including the east/west Downtown Station options, the north/south Diridon Station options, and the Single-Bore vs. Twin Bore tunnel options), it appears that the Project Description is not well defined and is not stable as required by CEQA. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185. (An accurate, stable, finite project description is an essential element of an informative and legally sufficient EIR.) P84-41

a. The Draft SEIS/SEIR only cursorily mentions the differences in impacts that would result from these variations; however, the reader is not presented with a clear comparison of the differences in impacts from each option. P84-42

19. The Draft SEIS/SEIR also fails to identify several potential construction impacts of the Phase II Project under CEQA:

a. The Draft SEIS/SEIR acknowledges on page 6.2-6 that "construction activities for the BART Extension Alternative may result in lane or road closures in the vicinity of SAP Center and Avaya Stadium." However, the document states that "because potential interference with activities at event centers is not included in Appendix G of the State CEQA Guidelines…this discussion is provided for informational purposes." This is an incorrect interpretation of CEQA. The Draft SEIS/SEIR then states that "similar to other businesses and property owners affected by construction, VTA will coordinate with the owners/operators of these event centers to provide information regarding lane closures and detours and provide wayfinding signs during construction." P84-43

b. Coordination alone is not adequate mitigation. This applies to NEPA and CEQA. While Appendix G of the CEQA Guidelines does not specifically mention event centers, question X. Land Use and Planning (a) asks: "Would the project physically divide an established community?" Up to eight years of lane closures, lost parking, and disruptive construction activity immediately adjacent to long-established businesses (including the SAP Center) and residents, could significantly impact the viability of these businesses and would constitute physically dividing an established community. This impact is erroneously not identified, analyzed or mitigated in the Draft SEIS/SEIR. P84-44

c. The Draft SEIS/SEIR is deficient because it is impossible to determine if the sidewalk on the south (eastbound) side of Santa Clara Street between Stockton and Delmas Avenues will remain fully available for pedestrians during construction, under either the north or south alignment, and whether the single- or twin-bore option is chosen. Page 5-74 of the Draft SEIS/SEIR states that there will be lane closure (and impliedly sidewalk closures) on Santa Clara Street. This is inconsistent with Figures 5-7/8 which indicate the construction staging area will not intrude onto Santa Clara Street. This creates two problems: (1) The document does not accurately identify the potential adverse impacts; and (2) The Arena will suffer significant adverse impacts if any portion of that sidewalk is inaccessible to pedestrians or if the vehicular capacity of Santa Clara Street is diminished. As to the first issue, the Draft SEIS/SEIR is deficient on its face due to the inconsistency. As to the second issue, SSE is strongly opposed to any intrusion onto Santa Clara street by the BART construction. P84-45

20. The Alternatives analysis is wholly inadequate under CEQA. The SEIS/SEIR includes only three CEQA alternatives (the No Project, the BART Alt. and the TOJD BART Alt), which do not constitute an adequate "reasonable range" of CEQA alternatives in accordance with CEQA Guidelines Section 15126.6(a), which states:

> "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives."

P84-46

21. The three alternatives included in the SEIS/SEIR do not address the potential to reduce or avoid significant impacts of the Phase II Project. In fact, there are only two real alternatives analyzed aside from the required No Project Alternative, and these are essentially two variations of the proposed project. There is no real discussion of other potential Alternatives that could reduce the significant impacts identified (particularly the P84-47

transportation disruption and noise impacts). The courts have held that a major function of an EIR is "to ensure that all reasonable alternatives are thoroughly assessed by the responsible official (or board)." (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197)

a. As outlined in CEQA Guidelines Section 15126.6(b) & (c):

"Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1) the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." P84-47, cont.

"Selection of a range of reasonable alternatives. The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination...."

22. The two alternatives analyzed in the Draft SEIS/SEIR are variations of the proposed Phase II Project, and do not appear to be created specifically to reduce potential environmental impacts of the project. Although the Draft SEIS/SEIR is a subsequent analysis that tiers off of prior environmental documents, and incorporates those prior analyses by reference, the prior environmental documents completed were of a program nature and are now obsolete. There is no discussion of the original selection process for this segment of the BART alignment and no evaluation of why it was the selected. While there was a discussion of this in the original EIR in 2004 or the SEIR in 2007, in either case, those documents are very old now, and the existing setting and conditions in downtown San Jose have changed drastically since 2001, 2004, and 2007. P84-48

23. The locally preferred alignment alternative was originally selected in 2001. This decision is very old now, and may need to revisited since downtown has changed much in the last 16 years. The discussion on page 1-22 page 1-22 even admits that much has changed since prior documents in 2004 and 2007, thus warranting this Draft SEIS/SEIR. P84-49

24. Much new information has arisen regarding potential environmental impacts, thresholds, and mitigation requirements since these prior environmental documents were finalized.

For these reasons, the Draft SEIS/SEIR should include a summary of how the alignment and station locations were originally selected, and should examine why those alignments and station locations are still the best alternatives to be considered for the Phase II Project. There is no such analysis in the Draft SEIS/SEIR. P84-49, cont.

25. There is no discussion of the other Alternatives Considered but Rejected. There is also no discussion of alternative locations for the stations or track alignment (other than the two east/west and north/south options), and no explanation of how this has been explored previously. P84-50

As support for SSE's observation that BART has repeatedly failed to adequately plan for parking needs at its stations, SSE is attaching a collection of articles obtained from the internet (**EXHIBIT E**), documenting the negative impacts lack of parking has on BART ridership, on the neighborhoods where BART stations are located, and on local businesses. Particularly instructive is the article about Stoneridge Mall having to chain up its parking lots because BART riders were taking it over. This is just one example of what happens when BART fails to provide adequate parking to meet the demand caused by its projects – the burden is shifted to innocent parties. These articles also document the burdens on businesses when VTA fails to adequately disclose and mitigate its construction impacts. P84-51

Conclusion:

SSE supports BART to San Jose. However, the Draft SEIS/SEIR must include suitable analysis based on fact, not assumption, as well as definitive, enforceable mitigation of the significant adverse environmental impacts identified by SSE. It is SSE's belief, grounded in long experience, that such mitigation will result in a Phase II Project that is better for BART, for VTA, for SSE and for the entire City. P84-52

Respectfully Submitted,

SILICON VALLEY LAW GROUP

Jeffrey S. Lawson

Exhibits A: Excerpts from City of San Jose staff memo dated June 6, 2014
B: Articles re economic impacts from prior transit projects
C: Wenck Associates Memorandum dated March 2, 2017, with attachments
D: Excerpts from 2016 Addendum to Dublin Transit Center EIR
E: Articles re BART parking problems at other stations

Cc: Jim Goddard, w/attachments via email
John Tortora, w/attachments via email
Nanci Klein, w/attachments via email
Sean Morley, w/attachments via email
Jim Benshoof w/attachments via email
Ken Caveney, w/attachments via email
Lucy Lofrumento, w/attachments via email

COUNCIL AGENDA: 6/10/14
ITEM: 10.2

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Hans F. Larsen
Harry Freitas
Kim Walesh

SUBJECT: DIRIDON STATION AREA PLAN

DATE: June 6, 2014

Approved

Date 6/6/14

COUNCIL DISTRICT: 3 & 6

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL MEMO

This memo responds to City Council questions and public comments about the Diridon Station Area Plan raised during the General Plan Public Hearing on May 20, 2014; and consolidates Recommendations B and E from the May 15, 2014 staff report into Recommendation B below which also reflects staff's recommendation to revise the parking policies in the Implementation Strategy Report to augment the shared parking provisions, and adds a new Recommendations E.

RECOMMENDATION

Conduct a Public Hearing to consider taking the following actions:

(a) Approve the Diridon Station Area Plan, Implementation Strategy Report including revised shared parking policies described in the supplemental staff memo, Art Master Plan, and 10–Year Horizon Analysis to provide a framework for transforming the Diridon Station Area into a regional transportation hub, employment center, and entertainment destination; and more specifically to use the 10–Year Horizon Analysis as a guide to assess the parking needs of near term development in the Central Zone of the Plan area, to identify opportunities for shared parking, and to ensure that the parking provisions in the City of San Jose and San Jose Arena Management agreement continue to be met;

(b) Approve the Diridon Station Area Plan, Implementation Strategy Report including revised shared parking policies described in the supplemental staff memo, Art Master Plan, and 10–Year Horizon Analysis to provide a framework for transforming the Diridon Station Area into a regional transportation hub, employment center, and entertainment destination; and more specifically to use the 10–Year Horizon Analysis as a guide to assess the parking needs of near term development in the Central Zone of the Plan area, to identify opportunities for shared parking, and to ensure that the parking

Art Master Plan and Reference to 1% Art Requirement for Private Development

During the public hearing, a question was raised about the financing approach for public art in the Diridon area. Since initiation of the Diridon planning process in 2009, there has been extensive input and a high degree of community and professional support for using public art to make the Diridon Area a memorable, interesting, beautiful and engaging gateway to San Jose and Silicon Valley. By approving the Diridon Station Area Plan and Art Masterplan, the City Council will be approving the vision and framework for public art that is identified in the Art Master Plan. The Council will not be approving or endorsing any of the specific policies for financing public art, including a 1% public art contribution from private development practiced in several other California cities (San Francisco, Los Angeles, San Diego, Palo Alto, Sunnyvale). Specific viable methods for financing public art will be brought forward for Council review and approval as part of future implementation planning, along with financing requirements for affordable housing and other Plan elements.

It should be noted that, since there will be limited City investment eligible for the current 1% requirement on City capital projects, financing mechanisms will need to be pursued for public art throughout the Area. This could include negotiated development agreements for eligible development projects under the City's Development Agreement Ordinance. Staff does not recommend that any public benefits which could be negotiated through the City's development agreement authority be removed from consideration at this time for any potential development in the Diridon Area.

Coordination with San Jose Arena Management

During the public hearing, the Mayor requested that staff continue its efforts to resolve the remaining concerns of San Jose Arena Management with the Diridon Station Area Plan. As Council is aware, an unprecedented level of coordination has occurred with San Jose Arena Management on the Plan, especially the traffic and parking elements. Scores of issues have been resolved during development of the Plan. In an effort to resolve the outstanding concerns, further review has occurred with Arena Management, and additional modifications have been made that effectively address the remaining concerns. It is acknowledged that continued coordination will occur with Arena Management during the implementation phase, with specific emphasis on the areas most recently addressed.

A summary of the items addressed is provided below:

- Staff recommends "approval" of the 10–Year Horizon Analysis rather than "acceptance"

- Staff is recommending the addition of a new parking policy (to be numbered Parking Policy 9) in the Diridon Station Area Plan's Implementation Strategy Report to provide that the City will include shared parking as a condition of development for non-residential development that would result in the loss of substantial existing public parking, if necessary to mitigate the loss of parking. The shared parking condition would

require that the development's parking facilities be available for the general public, with or without fees, at times when the garage is not being fully used by the development.

Shared parking is a fundamental strategy in the Diridon Plan and is already employed successfully in the Downtown and the Diridon area. Downtown San Jose is a relatively small geographic area. As the City strives to add office, retail and residential uses, it is essential to make the most efficient use of Downtown and Diridon land resources, retaining as much land as possible for development capacity that will continue to support the vitality of Downtown and the Diridon area, and help make it the commercial, cultural, and entertainment center for which it is intended. Developing parking that can be shared, particularly on evenings and weekends, promotes more efficient land use, and encourages higher transit use. Staff can potentially require shared parking as a condition of development if there is a nexus between the new development and the loss of existing public parking. Shared parking would be implemented as a mitigation for the loss of existing surface parking that is already extensively used by the public.

- Staff recommends making certain text edits to the Diridon Station Area Plan, the Implementation Strategy Report, and the 10–Year Horizon Analysis as requested by San Jose Arena Management. Attachment A itemizes all the recommended changes to the Plan documents, including a change related to the interpretation of design guidelines.

- Staff has made refinements in this staff report to further specify coordination of future private development and major transit projects, particularly as they relate to parking analysis and the need to maintain compliance with the City–Arena Mgmt Agreement.

The recommended approach is described below:

- *Development Proposal Referrals* – Refer to Arena Management development proposals on parcels within approximately one-third of a mile of the Diridon Station that have off-street public parking facilities, and are in excess of 25,000 square feet. Referrals will include the cover letter, plan set, and other relevant materials the applicant provides as part of the project submittal. Referrals will also include notification of preliminary review applications, initial studies, and EIR's. Staff will provide comments received in a timely manner from Arena Management to the applicant and consider them in formulating initial comments the City may provide on the proposed project.

- *Future Project Parking Analysis* – Require development proposals on parcels within the central and northern zone of the Diridon Station Area Plan that have off-street public parking facilities, and are in excess of 100,000 square feet of commercial space or in excess of 50,000 square feet of stand alone retail/restaurant projects, to conduct a parking analysis for the project; and to similarly request the same of development proposals within approximately one-third of a mile of the Diridon Station. These projects would be required to analyze and identify the projected parking demand, demand management strategies, and the supply to be provided by

the project. The analysis would identify the impacts of the project on the existing parking supply within the Diridon area, and suggest ways to mitigate the impact if it is deemed significant. The analysis would also include an assessment of spaces impacted or needed during construction.

- *For the BART and High Speed Rail transit projects, the City will request that the lead agency conduct a project parking analysis* – The analysis should include a projection of parking demand, demand management strategies, recommended supply solutions, and potential impacts on the existing parking supply within the Diridon area, including suggested ways to mitigate the impact if it is deemed significant. The results of any parking analysis will be provided to Arena Management for review and comment. The City will consider Arena Management's timely feedback in formulating comments that the City forwards to the lead agency as part of the project development and approval process.

Specific Land Use on the East Side of Stockton Avenue

During the public hearing, a question was raised about staff's recommendation to retain the Transit Employment Land Use Designation on the properties on the eastside of Stockton Avenue between The Alameda and Julian Street and not to designate this block with an Urban Village Land Use, which would allow high-density residential uses integrated with commercial development.

Staff continues to recommend retaining the Transit Employment Residential Land Use Designation on the eastside of Stockton Avenue to facilitate employment in close proximity to Diridon Station. The block could support approximately 310,000 square feet of commercial development, which could yield 1,400 jobs. In addition to the former San Jose Water Co property owned by Adobe, the Stockton/Alameda/Julian block is one of two best opportunity sites in close proximity to the Diridon Station that can attract new office development in the near term. Because of the need to first establish a governance structure and financing plan for the redevelopment of properties owned by the City, VTA and Caltrain, the Central Zone in front of Diridon Station is anticipated to be a longer term development opportunity. As noted in the staff report and the public hearing, many high technology companies put a premium on sites located adjacent to Caltrain and are actively seeking to relocate to what is a relatively limited supply of such sites. Staff from the Office of Economic Development is currently working with growing high technology firms interested in moving into Downtown San Jose, and the Stockton/Alameda/Julian block is one of the viable opportunity sites that is being presented to these companies for new office uses. The interested technology companies have identified proximity to Caltrain as an attractive amenity for their companies.

The Stockton/Alameda/Julian block also presents a shared parking opportunity that could be used by SAP Center customers on nights and weekends if these properties are developed with commercial uses. Because it is not as feasible to share residential parking with other users, particularly on nights and weekends, the development of these properties with residential uses would preclude or provide a significantly reduced shared parking opportunity in close proximity

MINOR TEXT EDITS TO DIRIDON PLAN DOCUMENTS

DIRIDON STATION AREA PLAN DRAFT PREFERRED PLAN DATED APRIL 2014

Comment No	Section	Page	Subject	Edits / Added Texts (in red)
1	1.2	1-5	Project Objective	Revise the project objective to be consistent with the language throughout the report: "Ensure the continued vitality of the San Jose Arena, recognizing that the Arena is a major anchor for both Downtown San Jose and the Diridon Station area, and that sufficient parking and efficient access for Arena customers, consistent with the provisions of the Arena Management Agreement, are critical for the Arena's on-going access."
2	3.1	3-2	Design Guidelines / Interpretation of These Guidelines	Delete entire sub-section.

TEN YEAR HORIZON ANALYSIS DATED APRIL 2014

Comment No	Section	Page	Subject	Edits / Added Texts (in red)
1	2.3	2-3	Adobe Expansion Site Redevelopment	Delete entire paragraph at top of page and replace with the following: "If and when the potential future Adobe development occurs, the City will investigate means and use its best efforts to continue fulfilling off-site parking requirements in the City's agreement with SJAM, including encouraging the developer to make available parking spaces during and after site development, and to design the future parking facility in a way that facilitates efficient operations of likely users, including event users."
2	3.5	3-10	6PM Transition Period on Event Days	Insert the following text at the end of the first paragraph: "To achieve the satisfactory parking outcomes, assuming the development scenario occurs as outlined in Section 3.1, it is important to note that practically all Caltrain customers would need to park in the existing Arena parking lots and in the adjacent planned parking garage. On about 85 weekdays per year, all transit users would need to vacate Arena parking facilities by 6:00pm in order to accommodate customers for weekday evening events."
3	3.6	3-13	Shared Parking Summary	Insert the following text after the 3rd sentence in the first paragraph: "For the purpose of this summary, results from scenario a) are presented."

IMPLEMENTATION STRATEGY REPORT DATED APRIL 2014

Comment No	Section	Page	Subject	Edits / Added Texts (in red)
1	2.2	2-6	Compatibility with San Jose Arena Objective	Add the following new policy: "Compatibility Policy 2: Consider the Ten Year Horizon Analysis, when implementing the Preferred Plan and analyzing projects that may be developed within the Plan's boundaries for consistency with the Ten Year Horizon Analysis, including its conditions and assumptions."
2	2.2	2-11	Parking Policy	Add the following new policy: Parking Policy 9: Include Shared parking as a condition of development for non-residential development that would result in the loss of substantial existing public parking, if necessary to mitigate the loss of parking. The shared parking condition would require that the development's parking facilities be availalbe for the general public, with or without fees, at times when the garage is not being fully used by the development.

History Repeats In Alum Rock

by Eugene B • December 21, 2015 – *Silicon Valley Transit Users*

Bus Rapid Transit build at Alum Rock/Jackson in May 2015. Courtesy Google Maps.

There goes the Valley Transportation Authority's (VTA) record of having projects built on-time and on-budget. By now, you've probably heard the news about how construction delays along Alum Rock Avenue in San Jose have delayed the Bus Rapid Transit (BRT) project until Summer 2016.

More on this issue – and how it parallels a past transit project in San Jose – follows.

Background

This story was initially reported by Jennifer Wadsworth of *San Jose Inside* back in August. One followup story on this issue from *San Jose Inside* was published in October, with another shortly afterward. Several months later, a followup story and an opinion piece on this issue from the *San Jose Mercury News* were published several months later.

On November 15, I was interviewed for this story by Joe Rodriguez, Staff Writer at the *San Jose Mercury News*. I expressed displeasure on the delays and their affects on businesses along Alum Rock Ave. in eastern San Jose. I also pointed out that this BRT project was approved by the voters as part of Measure A in 2000.

Forgotten History Now Retold

This is not the first time that construction problems and delays on a transit project in San Jose have hurt local businesses. Back in 1987 – years before VTA came into existence – Santa Clara County and the City of San Jose worked together to build the downtown San Jose "Transit Mall." The Transit Mall runs down 1st and 2nd streets, between St. James Place and San Carlos Streets. VTA light rail and several bus lines like the 23, 66, 68, 72, 73, 181 Express and Highway 17 Express bus lines run along the Transit Mall today. Back in 1987, the project was managed by the City of San Jose.

Light rail "Transit Mall" construction along N. 2nd Street in 1987. Courtesy San Jose Memories.

This documented the cause and effects of the delays on completing the Transit Mall until 1988:

> Q Why has the cost increased so much?
> A The city and contractor Weiss both acknowledge that some of the cost was the result of unforeseen problems, including a sealing mixture that did not work and inaccurate storm sewer and basement diagrams used to plan the job. Weiss contends that the city dragged its feet on more than 300 redesigns and plan revisions. Weiss also contends that the city has been too slow in considering his claims for more money. Those delays and the extra work are what cost him money, Weiss says. The city maintains that the Public Works Department is understaffed, but has been keeping pace with the change orders.
> Q When will the transit mall be completed and why is the completion date important?
> A The mall was originally scheduled to be completed Nov. 20. But it is now is 80 days behind schedule, according to city estimates. Bus traffic, rerouted during construction, is scheduled to return to First and Second streets on Dec. 7.
> Though city officials say that the mall is 92 percent completed, major work remains to be done on each block. Sidewalks outside the Fairmont Hotel were completed in time for the hotel opening last month. But scores of downtown businesses have folded and the remaining downtown merchants say their existence is threatened by every new delay.

This parallels the root of the delays of the VTA Bus Rapid Transit project back on July 9. At that time a "third-party" contractor hit a gas line without calling 811 first to have underground gas lines marked. One more reason why one should always "call before digging" on any construction project.

It appears VTA needs to put more emphasis on "responsible" in "lowest responsible bidder" when it comes to future transit projects. There are suggestions detailed in a letter from Chris Lepe, Silicon Valley Senior Community Planner at TransFORM, that give some solutions to this and future projects. In addition, the following are questions VTA should ask of current and prospective vendors as part of the bidding process:

- Has the vendor been fired from prior projects within the last few years? If so, why?
- For construction projects, is the vendor familiar with procedures to identify locations of **all** utilities before starting work?
- What is the vendor's record of "change orders" for prior projects? If "change orders" took place, why were the change orders needed?
- Has the vendor filed for bankruptcy over the last few years?
- As for subcontractors the vendor may hire, what is their record, based on the prior points made above?

Also, citizens should better educate themselves on how bidding for public contracts at VTA works.

WHAT IS THE ISSUE?

Construction problems have caused delays on the Alum Rock BRT Project, resulting in harm to businesses in the area that VTA is trying to rectify.

WHO'S RESPONSIBLE AT VTA?

Ken Ronsse, Project Manager and Deputy Director. (408)929-2990 (project office) or (408)321-5680.

Conclusion

This is an issue that will continue to be monitored at the Silicon Valley Transit Users in 2016. More on what happened during and after the Transit Mall construction in 1987 – and the lessons it can provide VTA – will be highlighted in a future post.

Eugene Bradley,
Founder, Silicon Valley Transit Users

http://www.svtransitusers.org/advocacy/history-repeats-in-alum-rock

Rapid bus project in East San Jose becomes an endless big dig

By Joe Rodriguez | Mercury News, Bay Area News Group
PUBLISHED: November 21, 2015 at 6:14 am | UPDATED: August 11, 2016 at 11:46 pm

DELAYED TRANSIT PROJECT CAUSING HEADACHES

Once completed, the $114 million Alum Rock/Santa Clara Bus Rapid Transit project will provide just over 7 miles of limited-stop bus service from Eastridge Mall to SAP Center. The project is clogged up on Alum Rock Avenue, mostly between Highway 101 and Interstate 680.

Source: Valley Transportation Authority BAY AREA NEWS GROUP

SAN JOSE — Not too long ago, the five refrigerators at Sweet Passions Bakery in Little Portugal were filled with creamy cakes for weddings, quinceaneras and birthday parties. But now that the street has been torn up by an ambitious transportation project gone terribly wrong, only a few cakes sat on the shelves last week.

"Constant noise and dirt and dust," manager Romesh Vidanage fumed on the sidewalk outside his bakery. "Our customers can't even find our driveway, so they call in frustration and cancel their orders."

After several construction mishaps, a $114 million rapid-bus project that was supposed to be completed in October and improve transit service for San Jose's often-neglected East Side now could stretch into 2017. The bureaucrats and politicians in charge have apologized. And the

Santa Clara Valley Transportation Authority has approved "relief" grants of up to $50,000 to businesses hurt by the upheaval after an emotional public forum on the mess.

The estimated $1.5 million cost will come from the agency's reserve fund and not from ongoing or future projects, VTA spokeswoman Brandi Childress said.

"The community deserves a very sincere apology," Santa Clara County Supervisor and VTA board member Cindy Chavez said.

When it comes to rapid transit, the East Side has seen little: The VTA's light rail trains stop at the community's edge, and a Bay Area Rapid Transit line under construction will skirt the community on its way downtown. So when the VTA proposed rapid buses, Luis Fourenco and other merchants in Little Portugal welcomed the idea.

"I loved the project from the beginning," said Fourenco, who was born in the Azores and co-owns the Bacalhau Grill and Trade Rite Market, a Little Portugal institution since 1945. "But it was mismanaged from the beginning, and nobody listened or did anything after we complained."

By now, the plush and extra-long rapid buses in their own, greenlighted lanes were supposed to be running the 7-mile route between Eastridge Mall and Diridon Station in downtown.

The so-called Bus Rapid Transit line is part of a controversial VTA master plan for more dedicated bus lanes up and down Silicon Valley. Opponents of a $234 million rapid-bus line on El Camino Real from Santa Clara to Palo Alto are already taking notes on the Alum Rock fiasco.

"Not only do I think this is a bad idea, I don't believe it will be done in a manner better than what I am witnessing with Alum Rock," said Darren Pham, a Santa Clara resident who works in East San Jose.

It's hard to tell exactly what went wrong and who's to blame because the VTA and the general contractor, Goodfellow Top Grade of Livermore, have decided to part ways without pointing fingers, at least not in public. In a joint statement on the divorce, both sides listed "unmarked" or "unknown" utility lines as key issues. The agency is shopping for a new contractor.

According to Childress, the "last straw" for VTA came when construction workers hit a second natural gas line, this one near a Carl's Jr. restaurant in July.

"It was a safety concern for us going forward," Childress said.

The VTA listed other problems: The ground under the street turned out to be "unsuitable" for repaving, forcing crews to dig deeper and import new soil. Some utility lines had to be moved and a highway offramp needed to be redesigned, requiring special permits.

Brian Gates, president of Goodfellow, would only defend his company's performance and 25-year history in the Bay Area.

"We are one of the safest contractors in the area," he said. "It's our No. 1 core value. ... It's unfair how those businesses were impacted the way they were."

In any case, starting last spring, much of Alum Rock Avenue through this gateway to East San Jose became a swerving, two-lane obstacle course marked by orange cones. Bus stops suddenly appear in the middle of the street. Construction ditches and heavy machinery circled with yellow tape have wiped out curbside parking and obscured driveways and parking lots.

San Jose is well-represented on the VTA, which is overseen by 18 board members and alternates, all of whom are city and county elected officials. San Jose Mayor Sam Liccardo and five current City Council members all sit on the VTA board as members or alternates. Chavez and the two other county supervisors serving as members or alternates on the board are former San Jose council members.

Childress called the project's problems "unprecedented" as she stood in a field office the agency opened to hand out relief applications and push the project along.

"The community has been very patient with us," Childress said.

Ken Cortez was the first to walk in for an application last week. The 69-year-old mechanic and owner of K&M Tire and Automotive declined the free Mexican pastries on a corner table and started speaking his mind.

"I've lost at least $60,000," Cortez told Manolo Gonzalez-Estay, a VTA official. "We're a mom-and-pop, been on this street over 50 years. I had to get an equity loan to keep the business afloat. One tire supplier won't deliver to me anymore. I never had bad credit in my life and now I do."

Gonzalez-Estay listened intently and tried to assure Cortez without overpromising.

"We're not able to make you whole on this, but it will help," Gonzalez-Estay said.

The more than 220 businesses hurt by the construction on the street have three choices: They can apply for a quick $1,000 relief payment, submit more paperwork for $50,000, or go after the VTA in court for more.

"I'm going for the $50,000," Cortez said with a shrug later that day at his shop. "Hiring lawyers and suing them would cost money we don't have, and it could be buried for years."

Across the street, the owners of a new Portuguese restaurant were wondering who would show up if they open during the street construction.

"We could be the first restaurant to fold before we even open," said Carlos Carreira, adding that his family plunked their life savings into the new venture, named Adega.

Fourenco believes the relief payments are much too little for businesses that lost $100,000 or more. But auto shop owner Cortez just wants his relief check to arrive and the project finished.

"I want to leave my children and grandchildren a business that is profitable," Cortez said, "not a business that is bankrupt."

Contact Joe Rodriguez at 408-920-5767. Twitter.com/JoeRodMercury.

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VTA Offers Cash to Businesses Hurt by BRT Construction Delays

By Jennifer Wadsworth @jennwadsworth / October 20, 2015 – *San Jose Inside*

Construction delays along Alum Rock Boulevard have put some stores out of business and, according to residents, blighted the neighborhood. (Image via Facebook)

The Valley Transportation Authority (VTA) will partially reimburse businesses hurt by a drawn-out construction project running through San Jose's Little Portugal neighborhood.

A VTA subcommittee on Friday recommended leasing private land for public parking for affected businesses, posting signs to guide customers through the maze of roadwork and paying cash to business owners who took a financial hit from the under-construction bus line.

Business owners who can quantify the financial toll and are willing to waive all legal claims against the VTA and the city of San Jose can claim up to $50,000, according to the VTA. Those with an immediate need can qualify for $1,000 at a time. Mimi Hernandez, of the Hispanic Chamber of Commerce Silicon Valley, said her group and neighborhood activists have counted more than 250 businesses that have been affected.

The VTA Board of Directors will vote on the plan when it meets Nov. 5.

Work on a bus rapid transit line—commonly called BRT—has upended a 7.2-mile stretch of the Alum Rock corridor. Construction was originally scheduled to end this fall, but a burst pipeline and other problems pushed back the completion date to late next year or early 2017.

Meanwhile, business owners have been fuming and some have even closed up shop, unable to stay open because of a massive decline in patronage. In the past two weeks alone, a bakery, bridal shop and a Carl's Jr. plans to close, which would leave dozens of employees without work. Customers hassled by the roadwork have taken their business elsewhere, according to locals.

Most of the businesses along the affected corridor are small, mom-and-pop shops and restaurants, independent boutiques and professional offices. Frustrated by what they called a lack of communication from the VTA and other agencies, they voted to form a new business association as a result of the construction fiasco.

"It is critical that we move quickly to assist businesses impacted by the extended construction on Alum Rock," San Jose Mayor Sam Liccardo said in a statement.

Liccardo, along with fellow VTA trustees Santa Clara County Supervisor Cindy Chavez and Gilroy Councilman Perry Woodward, worked with East Side Councilwoman Magdalena Carrasco to come up with recommendations.

Once completed, the BRT line will connect San Jose's East Side, from Eastridge Mall, to downtown San Jose.

The project was expected to cost $114 million but will now total much more, especially when counting the compensation plan for local businesses. VTA spokeswoman Brandi Childress said the agency should have a revised cost estimate by its next board meeting.

Jennifer Wadsworth is a staff writer for San Jose Inside and Metro Newspaper. Email tips to jenniferw@metronews.com or follow her on Twitter at @jennwadsworth.

http://www.sanjoseinside.com/2015/10/20/vta-offers-cash-to-businesses-hurt-by-brt-construction-delays/

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MEMORANDUM

To: Jim Goddard, Sharks Sports & Entertainment/SAP Center at San Jose

CC: Jeff Lawson, Silicon Valley Law Group

From: Jim Benshoof, Registered Traffic Engineer in California (TR 2289) JaB

Date: March 2, 2017

Subject: Comments Regarding VTA's BART Silicon Valley Phase II Extension Project, Draft Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report and Draft Section 4(f) Evaluation, December 2016 – Failure to Adequately Identify or Mitigate Direct and Indirect Transportation Impacts in the Diridon Station area.

A. PURPOSE AND BACKGROUND

I have reviewed the above referenced environmental document (Draft SEIS/SEIR). My review has focused on the portion of this project encompassing the Diridon Station area, with particular attention to potential transportation and parking issues that could cause significant adverse impacts for the SAP Center, the Diridon Station area and the surrounding neighborhoods. I have examined whether the Draft SEIS/SEIR has adequately analyzed potential transportation issues and whether adequate mitigation plans have been presented. This memorandum presents the results of my investigation.

Both the SAP Center and the Diridon Station are highly important developments in the City of San Jose, and both are major generators of traffic and parking. The SAP Center, which is just across Santa Clara Street from the Diridon Station, is an 18,000 seat multipurpose event center, which has been in operation for almost 24 years. It is home to the San Jose Sharks and San Jose Barracuda hockey teams and attracts over one million people to San Jose's downtown area every year. The SAP Center draws patrons from throughout the greater San Francisco Bay Area region, the vast majority of which drive to the SAP Center because they do not have convenient public transportation options. The SAP Center is heavily reliant on off-site parking, because only 1,650 on-site parking spaces are provided. The existing 581 parking spaces at the Diridon Station controlled by the Peninsula Corridor Joint Powers Board and the Santa Clara Valley Transportation Authority are among the most important off-site spaces presently used by SAP Center patrons. For the last 24 years, formal written agreements have officially allowed shared use of these Diridon Station parking spaces by SAP Center patrons. P84-53

The Diridon Station first opened under the name of the Cahill Depot over 80 years ago. It was restored and renamed the Diridon Station in 1994. Caltrain, which is the principal transit agency using the station, operated 92 weekday trains through the station in 2013. These trains accommodated an average of 3,489 passengers per day, which was the fourth highest volume station for the entire Caltrain route to San Francisco. In 2013, the park-and-ride mode share for the station was 42%. At present, over 1,100 transit passengers

park each weekday at the Diridon Station or adjacent parking areas. The Diridon Station is a major transit hub, which serves the following transit operations, in addition to Caltrain: Altamont Commuter Express rail service, Amtrak Capitol Corridor rail service, Amtrak Coast Starlight rail service, Vasona Light Rail, and multiple regional bus routes. P84-53, cont.

B. SUMMARY

From my review, I have identified one item that is incomplete and for which clarification is needed. Also, I have found five major transportation related issues for which the Draft SEIS/SEIR fails to consider significant and relevant factors, fails to identify potential significant adverse environmental impacts, or has presented a conclusion that runs counter to all the relevant evidence. Following is a brief summary of these six points. Subsequent sections of this memorandum address each item in full detail.

B.1. DRAFT SEIS/SEIR FAILS TO ADEQUATELY DESCRIBE AND ADDRESS CONSTRUCTION-RELATED IMPACTS AND MITIGATION MEASURES FOR DIRIDON STATION OPTIONS

The Draft SEIS/SEIR presents three options for the Diridon Station, and explains that under all three options, construction of this station would cause major transportation impacts. However, the Draft SEIS/SEIR does not adequately describe and distinguish the different impacts associated with each option, nor the different mitigation measures that would be needed for each option. In order for decision-makers to determine the best option, substantial additional information is needed regarding the extent of impacts under each option and measures that would be implemented to mitigate those impacts.

B.2. DRAFT SEIS/SEIR FAILS TO ADDRESS ALTERNATIVE PRESENTED IN 2010 FEIS FOR DIRIDON STATION P84-54

NEPA requires that all reasonable alternatives be rigorously explored and evaluated, and for alternatives which were eliminated from detailed study, the reasons for their having been eliminated must be discussed. In the 2010 FEIS for this project, the preferred alternative for the Diridon Station included a 1,300 space parking garage to accommodate parking by BART users. Neither the Draft SEIS/SEIR, nor the Environmental Scoping Report dated May 2015 provides any discussion of this alternative or reasons why it has been eliminated.

B.3. DRAFT SEIS/SEIR FAILS TO ADDRESS PARKING DEMAND FOR DIRIDON STATION

Despite statements in the Draft SEIS/SEIR that some BART riders using the Diridon Station would drive to the station and need to find a parking space, the document states that no parking spaces would be provided at the Diridon Station for BART users. Beyond causing difficulties for BART users and impacts on nearby parking facilities, this intention to provide no BART parking at the Diridon Station is illogical and unsupported in the Draft SEIS/SEIR for the following reasons:

- It is inconsistent with the station access typologies published by BART.
- It fails to consider that the Diridon Station is much more similar to existing BART stations that provide parking than it is to downtown stations without parking, thus presenting a conclusion that runs counter to this pertinent evidence.
- It is completely contrary to the historic, current, and future extensive use of the Diridon Station for park/ride purposes.

- It constitutes a radical departure from findings in the 2010 BART FEIS, which indicated that the BART parking demand at the Diridon Station would be 1,610 vehicles in the opening year and 2,585 vehicles in 2030.
- It is contrary to findings in the 2014 Diridon Station Area Plan, which indicated that the BART parking demand in 2030 would be 260 to 520 vehicles.

B.4. DRAFT SEIS/SEIR FAILS TO IDENTIFY OR MITIGATE PARKING IMPACTS THAT WOULD OCCUR UPON COMPLETION OF PROJECT

NEPA requires analysis of potential parking impacts and development of mitigation measures where necessary to overcome negative impacts. Inexplicably, the Draft SEIS/SEIR presents no analysis of the increased parking demand caused by BART riders using the Diridon Station, where those motorists would park, and whether there are sufficient spaces available to accommodate those BART parkers. No analysis is presented regarding indirect impacts in the Diridon and downtown areas caused by BART parkers, including vehicle emissions, congestion, and safety. Further, depending on the Diridon Station option chosen, the project would cause an approximate permanent loss of between 210 and 310 parking spaces. The Draft SEIS/SEIR presents no analysis regarding impacts caused by the permanent loss of these parking spaces, and no mitigation measures are presented to alleviate these impacts.

B.5. DRAFT SEIS/SEIR FAILS TO ADEQUATELY IDENTIFY OR MITIGATE PARKING IMPACTS THAT WOULD OCCUR DURING CONSTRUCTION OF DIRIDON STATION

P84-54, cont.

The Draft SEIS/SEIR states that up to 715 parking spaces in the Diridon area would be removed during construction of the station. No analysis is presented regarding the impacts caused by this loss of parking. Further, the Draft SEIS/SEIR falsely states that an interim parking study being completed by the City will mitigate parking impacts during construction of the project. The City's report for that study clearly states that it was not intended to solve for the entire projected loss of parking spaces, including those lost due to construction of the BART Diridon Station. Furthermore, the agencies participating in that study have not committed to any funding or other actions that would be needed in order to implement any recommendations from such study. Therefore, any parking mitigation resulting from such parking study is completely speculative.

B.6. DRAFT SEIS/SEIR FAILS TO ADEQUATELY IDENTIFY OR MITIGATE TRANSPORTATION IMPACTS THAT WOULD OCCUR DURING CONSTRUCTION OF DIRIDON STATION

The Federal Transit Administration (FTA) requires that construction related effects on traffic must be considered. NEPA requires that mitigation measures be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated. FTA guidance further clarifies that mitigation measures should be defined in terms of measureable performance standards or expected results, so as to establish clear performance expectations. Statements in the Draft SEIS/SEIR regarding transportation impacts during construction are too vague. They do not constitute a hard look at these issues. The mitigation measures presented in the Draft SEIS/SEIR are conclusory statements and do not fulfill FTA requirements.

C. DRAFT SEIS/SEIR FAILS TO ADEQUATELY DESCRIBE AND ADDRESS CONSTRUCTION-RELATED IMPACTS AND MITIGATION MEASURES FOR DIRIDON STATION OPTIONS

Appendix C in the Draft SEIS/SEIR presents three options for the Diridon Station. The Draft SEIS/SEIR indicates that major impacts would occur during construction of all three options and generally describes the types of potential significant impacts that could occur. However, Draft SEIS/SEIR does not adequately explain the magnitude of such impacts for each option or describe the differences in impacts among the options. Consequently, it is impossible to determine which, if any, mitigation measures will adequately mitigate the potential impacts for each different option. P84-55

In order for decision-makers to determine the best option, further evaluation of impacts under all three options would be needed. The following are representative types of questions that would need to be answered in order to evaluate the impacts of each option: P84-56

North Option Single Bore Tunnel

a) How many parking spaces would be removed?
b) What specific partial and full street closures would be needed (including identification of specific areas that would be impacted), and for what specific period of time? P84-57
c) To what extent would lane closures be necessary on Santa Clara Street – number of lanes closed at one time, number of days, hours per day, and any closures on weekday evenings and weekends? P84-58
d) To what extent would sidewalks along Santa Clara, Cahill, Montgomery, and Autumn Streets be closed? P84-59
e) The concept plan for this station has two features that would negatively impact the SAP Center: (i) eastern station entrance on the west side of Montgomery Street, and (ii) traction power substation on the immediate south side of Santa Clara Street between Montgomery and Autumn Streets. However, this adverse impact is not identified or evaluated. Is it possible to modify the station plan so that the eastern entrance is on the west side of Autumn Street and the traction power substation is south of this entrance? P84-60

North Option Twin Bore Tunnel

a) How many parking spaces would be removed? P84-61
b) What specific partial and full street closures would be needed (including identification of specific areas that would be impacted), and for what specific period of time? To what extent would these closures be greater than with the north option single bore tunnel? P84-62
c) To what extent would lane closures be necessary on Santa Clara Street – number of lanes closed at one time, number of days, hours per day, and any closures on weekday evenings and weekends? To what extent would these closures be greater than with the north option single bore tunnel? P84-63
d) To what extent would sidewalks along Santa Clara, Cahill, Montgomery, and Autumn Streets be closed? P84-64

South Option Single and Twin Bore Tunnel

a) How many parking spaces would be removed? P84-65
b) What specific partial and full street closures would be needed (including identification of specific areas that would be impacted), and for what specific period of time? To what extent would these closures be greater or less than with the north option single bore tunnel or the north option twin bore tunnel? P84-66
c) To what extent would sidewalks along Cahill, Montgomery, and Autumn Streets be closed? P84-67

D. DRAFT SEIS/SEIR FAILS TO ADDRESS ALTERNATIVE PRESENTED IN 2010 FEIS FOR DIRIDON STATION

40 CFR 1502.14 (**Attachment 1**) states that in the alternatives section for environmental impact statements, "agencies shall rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." In the 2010 FEIS for this project, the preferred alternative for the Diridon Station included a 1,300 space parking garage to accommodate parking by BART users. Neither the Draft SEIS/SEIR, nor the Environmental Scoping Report dated May 2015 provides any discussion of this alternative or reasons why it has been eliminated. P84-68

E. DRAFT SEIS/SEIR FAILS TO ADDRESS PARKING DEMAND FOR DIRIDON STATION

Table 3-16 in the Draft SEIS/SEIR presents the forecasted mode of access for each BART extension station for the year 2035. In this table, auto park-and-ride for the Diridon Station is shown as n/a. Alternatively, the table could have cited 0% park-and-ride, because with 0% for this mode, the sum for all mode shares adds up to 100%. This prediction of 0% park-and-ride conflicts with the following statements in the Draft SEIS/SEIR, which indicate that some BART users of the Diridon Station would drive and seek parking:

- Page 3-77 – "If BART riders require parking, they could access either the BART Alum Rock/28th Street or Santa Clara Stations or one of several downtown parking garages." P84-69
- Page 3-80 – "Note that the BART Extension Alternative would not provide dedicated parking spaces for BART riders at the Downtown San Jose and Diridon Station, although BART riders would be able to park in public and private parking facilities near these stations."

To support not providing any BART parking spaces at the Diridon Station, the Draft SEIS/SEIR simply says on page 3-77: "The Diridon Station design would be similar to other BART system Downtown stations where parking is not provided." There is no evidence or study to support that statement. Rather, substantial available evidence cited below indicates that BART parking demand will occur at the Diridon Station. P84-70

a) The concept that the Diridon BART Station will be like other downtown stations without parking conflicts with the station access typology definitions published by BART in June 2016 as part of the Bart Station Access Policy Implementation Key

(**Attachment 2**). The Diridon Station is very different from the characteristics defined by BART for an urban station without parking. Two examples of differences are:

(1) With over 1,100 transit parkers per day, the Diridon Station presently has a high park-and-ride mode share. Information presented in a Memorandum submitted by the VTA to Caltrain staff on January 30, 2014 (**Attachment 3**), specifically Table 7 of that memorandum, shows that the park-and-ride mode share in 2013 was 42%. This rate contrasts sharply with a drive alone rate of 5% or less for an urban station, according to the BART station typology document. P84-70, cont.

(2) The Diridon Station is well served by the nearby regional highway system, particularly Highway 87 and I-280. The BART definition for an urban station states that "Almost all auto access is from drop-off activity; highway access is not convenient."

b) Rather than being similar to "other BART system downtown stations," as alleged in the Draft SEIS/SEIR, the Diridon Station has much greater similarity to other near end of the line stations. The existing Millbrae Station, for example, bears many similarities to the Diridon Station. The park-and-ride share for the Millbrae Station presently is 67%, because many BART riders drive to the station from locations farther to the south. This pattern is very similar to existing patterns for Caltrain riders at the Diridon Station and to likely future patterns for BART riders. The Millbrae Station also is similar to the Diridon Station in that it provides transfers to/from BART with Caltrain and regional transit services. The Millbrae Station presently provides 2,978 parking spaces owned by BART and 175 spaces owned by Caltrain. P84-71

c) While failing to meet BART's definition for an urban station, the Diridon Station closely meets the criteria in BART's station typology document for a Balanced Intermodal Station.

- "A Balanced Intermodal station is well-served by transit, though there is also parking provided by BART and in some instances other/private operators." With substantial parking presently provided for Caltrain users, this statement accurately describes the existing Diridon Station.
- "The station would typically be found on an urban or suburban grid network." The street system near the Diridon Station fits this definition.
- "Balanced Intermodal stations have both walking and drive alone/carpool rates of approximately 25-40%." The existing 42% mode share for park-and-ride at the Diridon Station closely fits this definition. P84-72
- "A medium-to-large transit terminal is provided onsite, serving primarily corridor and local transit." The Diridon Station is a major multi-modal transit terminal.
- "Parking spaces fill early because the parking lot is not very large." Occupancy surveys have shown that practically all parking spaces presently available for transit users at the Diridon Station fill early on weekday mornings.

d) The Draft SEIS/SEIR conflicts with the 2010 FEIS for the BART project. As shown in Table 3-15 of the 2010 FEIS (**Attachment 4**), that document predicted that the auto park-and ride mode share at the Diridon Station would be 44%. Table 3-23 from that document (**Attachment 5**) shows three key forecasts for the Diridon Station: P84-73

opening year parking demand of 1,610 spaces, 2030 parking demand of 2,585 spaces, and a plan to provide a 1,300 space parking facility to accommodate that demand. P84-73 cont.

e) The Draft SEIS/SEIR conflicts with the 2014 Diridon Station Area Plan. As shown in Figure 2-8-3 (**Attachment 6**), that plan predicted that the 2030 BART parking demand at the Diridon Station would be in the range of 260 to 520 vehicles. P84-74

In my opinion, the severe conflicts described above clearly demonstrate that the plan presented in the Draft SEIS/SEIR to provide no BART parking spaces at the Diridon Station has no basis in reality and represents a faulty conclusion. The Draft SEIS/SEIR fails to consider important facts associated with parking demand at the Diridon Station, and the document runs counter to station typology definitions published by BART. I believe a comprehensive and objective analysis is needed to establish a valid projection of BART parking demand at the Diridon Station. P84-75

F. DRAFT SEIS/SEIR FAILS TO IDENTIFY OR MITIGATE PARKING IMPACTS THAT WOULD OCCUR UPON COMPLETION OF PROJECT

Potential parking impacts must be addressed in Federal EIS documents. This requirement is clearly presented in the guidance published by the Federal Transit Administration in March 2016 (**Attachment 7**). The following statement is presented near the bottom of this document: "Environmental documentation for transit projects should identify anticipated parking impacts and provide ways to avoid, minimize, and mitigate any adverse effects on nearby residential or business communities."

Page 3-79 in the Draft SEIS/SEIR states: "The following discussion of parking is for information purposes for CEQA and impact analysis purposes for NEPA and as background to the evaluation of any secondary effects on traffic operations and air quality." As represented by the following statements at the bottom of page 3-80 and top of page 3-81, the alleged analysis work was very minimal:

> "..VTA will work with existing and future transit providers in the Diridon Station area to evaluate parking demand based on updated transit patron mode of access data and/or VTA policies established for transit park-and-ride lots and/or joint development parking requirements. The interim parking plan and the Diridon Intermodal Study will address the provision, location, and management of parking in the area; identify an overall strategy for meeting parking needs with stakeholders; allow for shared use parking among area transit providers, the SAP Center, and future development; and evaluate strategies that would encourage transit-supportive access to the area and non-auto travel." P84-76

In my opinion, the Draft SEIS/SEIR fails to meet the FTA's requirements to identify and mitigate parking impacts upon completion of construction for the following reasons:

a) Though construction of the Diridon Station will cause a permanent loss of existing parking spaces, no information is presented in the Draft SEIS/SEIR regarding the number of spaces lost, the impacts caused by that loss, or measures that would be implemented to mitigate the impacts of those lost parking spaces. Depending on the particular option chosen to construct the Diridon Station, it is estimated that the

number of existing parking spaces permanently lost will be between 210 and 310 spaces. This parking loss will cause significant negative impacts for the SAP Center, because some of the lost spaces presently are part of the on-site parking supply, and the remaining spaces are among off-site spaces heavily used by SAP Center patrons. P84-76, cont.

b) The Draft SEIS/SEIR presents literally no analysis of parking impacts upon completion of the project. The document simply says that no BART parking spaces will be provided at the Diridon Station, and that BART users who want to park can find spaces in nearby parking facilities. No projections are provided regarding the number of BART riders who would drive and seek parking near the Diridon Station. No information is provided regarding where those motorists would park. No analysis is provided regarding the applicable parking requirements under the City of San Jose's zoning ordinance, including requirements related to shared parking. No analysis is provided regarding whether parking spaces are available for BART riders in the facilities where BART riders would seek parking or whether parking by BART riders would obstruct parking by other existing parkers. An example of a potential obstruction to existing SAP Center parking is that BART riders who park in the Almaden Financial Plaza Garage likely would interfere with existing parking by about 400 SAP Center employees who park in that facility. In addition to the above items not addressed in the Draft SEIS/SEIR, no analysis is provided regarding secondary impacts on traffic congestion, traffic safety, and vehicle emissions caused by BART riders who would drive around the Diridon and downtown areas seeking parking spaces. P84-77

c) The Draft SEIS/SEIR falsely relies upon the interim parking plan and the Diridon Intermodal Study to mitigate parking impacts upon completion of the project. The City's interim parking plan only addresses parking needs between 2017 and 2025; it does not address parking needs upon completion of the BART project. Also, very importantly, the Scope of Services for the Diridon Intermodal Study (also known as the San Jose Diridon Transportation Facilities Master Plan) (**Attachment 8**) will not achieve results which the Draft SEIS/SEIR says will be produced. Results from work tasks 3.4.4 and 4.3.1 in that Scope of Services will be starkly different and more limited than statements presented in the Draft SEIS/SEIR. Moreover, neither study carries with it any commitment by any agency to fund or implement any parking solutions that may be recommended, making these studies entirely speculative for any mitigation purposes. P84-78

For all the reasons cited above, it is my opinion that the Draft SEIS/SEIR fails to meet Federal requirements to identify and mitigate parking impacts upon completion of the project. The document fails to address relevant factors, and it presents conclusions that run counter to the relevant information presented in the document or otherwise available. Substantial additional analysis is necessary to adequately meet Federal requirements. P84-79

G. DRAFT SEIS/SEIR FAILS TO ADEQUATELY IDENTIFY OR MITIGATE PARKING IMPACTS THAT WOULD OCCUR DURING CONSTRUCTION OF DIRIDON STATION

Potential parking impacts during construction of the project must be addressed in order to meet Federal requirements for EIS documents. The previously referenced guidance published by the FTA in March 2016 states that parking impacts must be addressed. The following three attached documents published by the Federal government provide further P84-80

guidance regarding requirements to address potential parking impacts during construction and mitigation of such impacts:

a) Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, Council on Environmental Quality, March 23, 1981 (**Attachment 9**). Item 19a reads as follows:

> "19a. Mitigation Measures. What is the scope of mitigation measures that must be discussed? A. The mitigation measures discussed in an EIS must cover the range of impacts of the proposal. The measures must include such things as design alternatives that would decrease pollution emissions, construction impacts, esthetic intrusion, as well as relocation assistance, possible land use controls that could be enacted, and other possible efforts. Mitigation measures must be considered even for impacts that by themselves would not be considered 'significant.'"

b) Memorandum for Heads of Federal Departments and Agencies, Council on Environmental Quality, January 14, 2011 (**Attachment 10**). Page 6 includes the following statement:

> "When an agency prepares an EIS, it must include mitigation measures (not already included in the proposed action or alternatives) among the alternatives compared in the EIS. Each EIS must contain a section analyzing the environmental consequences of the proposed action and its alternatives, including means to mitigate adverse environmental impacts."

P84-80, cont.

c) Guideline entitled, "Documentation of Mitigation Commitments," Office of Planning and Environment, Federal Transit Administration, August 2016 (**Attachment 11**). Item 4.2 begins as follows:

> "4.2. Content and structure of mitigation measures. Consistent with CEQ guidance on mitigation and monitoring, FTA Regional staff should ensure that the environmental document clearly identifies the impact(s) to be mitigated and carefully specifies any relied-upon mitigation 'in terms of measureable performance standards or expected results, so as to establish clear performance expectations.'"

Page 5-75 in the Draft SEIS/SEIR states that approximately 635 off-street spaces and 80 on-street spaces would be removed in the Diridon Station area during construction of the twin bore station option. The off-street spaces would be unavailable for the full duration of construction, and the on-street spaces would be unavailable for several months at a time. The document indicates that the loss of parking spaces would be less under the single bore option, but the extent of difference is not quantified. The document provides no analysis regarding the extent to which this loss of parking spaces would negatively impact existing users of these parking spaces, particularly Caltrain customers and SAP Center patrons. The Draft SEIS/SEIR provides three statements to support the conclusion that construction of the Diridon Station will have no adverse impact on parking:

P84-81

a) Page 5-76 includes the following statement: "First, the City of San Jose is currently leading an effort in partnership with VTA, the Peninsula Corridor Joint Powers Board,

and area stakeholders to develop an interim short-term parking plan through 2025 that will address parking needs in the Diridon Station area."

b) Page 5-59 presents "Mitigation Measure TRA-CNST-A: Develop and Implement a Construction Education and Outreach Plan." This measure states: "The plan will be implemented to coordinate construction activities with existing business operations and other development projects and to establish a process that will adequately address concerns of businesses and their customers, property owners, residents, and commuters." The measure then lists eight components that will be included in the plan.

c) Page 5-60 presents "Mitigation Measure TRA-CNST-C: Develop and Implement a Parking Management Plan." As presented in the Draft SEIS/SEIR, this measure will consist of just two components: P84-81, cont.

- Information provided to the Cities of San Jose and Santa Clara and other stakeholders regarding lane and road closures that would affect parking, together with efforts by the VTA to minimize disruptions to parking.
- Construction staging area will be available for public parking if not required for construction activities.

Based on my review of statements presented in the Draft SEIS/SEIR in relationship to requirements published by the Federal government, it is my opinion that the Draft SEIS/SEIR fails to meet the applicable requirements for identifying and mitigating potential parking impacts during construction. Principal reasons for this conclusion are as follows:

a) The Draft SEIS/SEIR fails to identify negative impacts caused by the loss of up to 635 off-street parking spaces and 80 on-street spaces during construction of the station. The spaces lost presently are fully occupied practically every weekday by Caltrain customers and are heavily occupied during weekday evenings and on weekends by persons attending events at the SAP Center. No analysis is presented regarding the negative impacts the Caltrain and SAP Center customers would incur due to removal of these parking spaces. P84-82

b) The two mitigation measures presented in the Draft SEIS/SEIR, TRA-CNST-A and TRA-CNST-C, fail to provide sufficient specificity to meet Federal requirements. The measures provide just a general description of steps that will be taken, which fall far short of requirements specified in the Federal Transit Administration document dated August 2016 (**Attachment 11**), at Section 4.2, which states that "the environmental document clearly identifies the impact(s) to be mitigated and carefully specifies any relied-upon mitigation 'in terms of measureable performance standards or expected results, so as to establish clear performance expectations.'" P84-83

c) The Draft SEIS/SEIR falsely suggests on page 5-76 that the interim short-term parking plan being developed by the City will fulfill parking needs through 2025. This is contradicted by the City's report to the Diridon Station Joint Policy Advisory Board dated December 16, 2016 (**Attachment 12**), as shown by several statements on page 2 of that report. In the middle of the first paragraph, the following statement is presented: "It is possible that a parking supply of as many as 1,500 spaces will be lost proximate to Diridon Station by these construction projects." The P84-84

specific construction projects referenced are the Diridon TOD development, BART, and high speed rail. The second paragraph includes the following sentences:

> "This parking study was not intended to solve for this entire loss, nor to resolve any issues solely tied to the SAP Center operations. The study was intended to identify potential sites on which parking could be provided for this interim construction period and that, should the various agencies agree, could evolve into longer term or permanent parking solutions."

P84-84, cont.

Furthermore, the agencies participating in that parking study have not committed to any budgets, allocation of costs, funding, construction schedules, or any other actions that would be needed in order to implement any recommendations from such study or to achieve any parking solution. Therefore, any mitigation resulting from such parking study is completely speculative.

Based on the above, it is my opinion that the Draft SEIS/SEIR fails to take a hard look at potential parking impacts during construction, that it fails to base its conclusions regarding potential parking impacts during construction on relevant factors, and that the findings presented run counter to evidence presented in the document. I believe that substantial additional analysis is needed to adequately identify parking impacts caused by construction of the Diridon Station and to establish a mitigation program that would overcome significant negative impacts.

P84-85

H. DRAFT SEIS/SEIR FAILS TO ADEQUATELY IDENTIFY OR MITIGATE TRANSPORTATION IMPACTS THAT WOULD OCCUR DURING CONSTRUCTION OF DIRIDON STATION

Potential transportation impacts during construction of the project must be addressed in order to meet Federal requirements for EIS documents. The following four attached documents published by the Federal government provide clear guidance to assess whether the Draft SEIS/SEIR adequately addresses potential transportation impacts during construction and mitigation of such impacts:

a) Guidance for addressing transportation impacts published by the Federal Transit Administration on March 16, 2016 (**Attachment 7**). This document states that construction related effects on traffic must be considered.

P84-86

b) Guideline entitled, "Documentation of Mitigation Commitments," Office of Planning and Environment, Federal Transit Administration, August 2016 (**Attachment 11**). Item 4.2 begins as follows:

> "4.2. Content and structure of mitigation measures. Consistent with CEQ guidance on mitigation and monitoring, FTA Regional staff should ensure that the environmental document clearly identifies the impact(s) to be mitigated and carefully specifies any relied-upon mitigation 'in terms of measureable performance standards or expected results, so as to establish clear performance expectations.'"

c) Memorandum for Heads of Federal Departments and Agencies, Council on Environmental Quality, January 14, 2011 (**Attachment 10**). Page 6 includes the following statement:

> "When an agency prepares an EIS, it must include mitigation measures (not already included in the proposed action or alternatives) among the alternatives compared in the EIS. Each EIS must contain a section analyzing the environmental consequences of the proposed action and its alternatives, including means to mitigate adverse environmental impacts."

d) Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, Council on Environmental Quality, March 23, 1981 (**Attachment 9**). Item 19a reads as follows: P84-86, cont.

> "19a. Mitigation Measures. What is the scope of mitigation measures that must be discussed? A. The mitigation measures discussed in an EIS must cover the range of impacts of the proposal. The measures must include such things as design alternatives that would decrease pollution emissions, construction impacts, esthetic intrusion, as well as relocation assistance, possible land use controls that could be enacted, and other possible efforts. Mitigation measures must be considered even for impacts that by themselves would not be considered 'significant.'"

Even with implementation of two mitigation measures, page 5-75 in the Draft SEIS/SEIR states that vehicular traffic in the Diridon Station area would experience adverse impacts during construction of either the twin-bore or single-bore options. The impacts include full and partial closures of Autumn, Montgomery, and Cahill Streets, one at a time, for several months each. In addition, page 5-75 states that "truck haul routes may impact traffic on West Julian Street, Almaden Boulevard, Santa Clara Street, Montgomery Street, Autumn Street, Notre Dame Street, and Bird Avenue. The proposed haul routes and projected volumes of material are provided in Section 5.2.4.2." P84-87

Pages 5-59 and 5-60 describe two mitigation measures that will be developed and applied to minimize adverse traffic impacts during construction. The first is: "Mitigation Measure TRA-CNST-A: Develop and Implement a Construction Education and Outreach Plan." This measure states: "The plan will be implemented to coordinate construction activities with existing business operations and other development projects and to establish a process that will adequately address concerns of businesses and their customers, property owners, residents, and commuters." The measure then lists eight components that will be included in the plan. The second is: "Mitigation Measure TRA-CNST-B: Develop and Implement a Construction Transportation Management Plan." This measure states that the VTA will develop a transportation management plan to coordinate vehicle, bike, pedestrian, and public transportation circulation during construction. It then lists six components of the plan, which consist of just basic steps and coordination with other agencies and stakeholders. P84-88

Based on my review of statements presented in the Draft SEIS/SEIR in relationship to requirements published by the Federal government, it is my opinion that the Draft SEIS/SEIR fails to meet the applicable requirements to identify and mitigate potential transportation impacts during construction. Principal reasons for this conclusion are as follows: P84-89

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a) The Draft SEIS/SEIR fails to sufficiently identify negative traffic impacts caused by construction of the Diridon Station. No analysis is provided regarding impacts of the full and partial street closures. No specifics are provided regarding the extent to which impacts of the full and partial street closures would be less under the single bore option. No analysis is provided regarding capacity and safety impacts of truck operations on the intended truck haul routes. P84-89, cont.

b) The two mitigation measures presented in the Draft SEIS/SEIR, TRA-CNST-A and TRA-CNST-B, fail to provide sufficient specificity to meet Federal requirements. The measures provide just a general description of steps that will be taken, which fall far short of requirements specified in the Federal Transit Administration document dated August 2016 that "the environmental document clearly identifies the impact(s) to be mitigated and carefully specifies any relied-upon mitigation 'in terms of measureable performance standards or expected results, so as to establish clear performance expectations.'" P84-90

Based on the above, it is my opinion that the Draft SEIS/SEIR fails to base its conclusions regarding potential traffic impacts during construction on all relevant factors due to the lack of any substantive analysis. I believe that substantial additional analysis is needed to adequately identify transportation impacts caused by construction of the Diridon Station and to establish a mitigation program that would overcome significant negative impacts. P84-91

40 CFR 1502.14 - Alternatives including the proposed action.

§ 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

BART STATION ACCESS POLICY IMPLEMENTATION KEY

Station Access Typology Map - June 9, 2016

BART STATION ACCESS TYPOLOGY DEFINITIONS

- **Urban:** This station type is a high-ridership station with a combined walk, bike, and transit access share of greater than 75% with drive alone rates of 5% or less and no BART-managed parking. Almost all auto access is from drop-off activity; highway access is not convenient. The station can be often found in a downtown or neighborhood business district. The street system is typically an urban or historic grid. The station may be underground or otherwise has a limited spatial footprint. The station is well-served by many types of transit service that stop on adjacent streets.
- **Urban with Parking:** This station type has similar characteristics as "Urban" station type with the exception of parking and lower non-driving access rates. Stations included in this category have small parking lots with limited spaces which fill up in the early morning. Urban with Parking stations have combined walk, bike, and transit access shares of approximately 60% to 75% with transit contributing the lowest amount to this aggregate as these stations do not serve as major bus connections. The availability of some parking translates into drive alone rates of up to 25%. The station can be often found in a neighborhood business or residential district or a district both businesses and residential.
- **Balanced Intermodal:** A Balanced Intermodal station is well-served by transit, though there is also parking provided by BART and in some cases other/private operators. The station would typically be found on an urban or suburban grid network. Balanced Intermodal stations have both walking and drive alone/carpool rates of approximately 25%-40%. A medium-to-large transit terminal is provided onsite, serving primarily corridor and local transit. Parking spaces fill early because the parking lot is not very large.
- **Intermodal – Auto Reliant:** Although this station type is also well-served by transit, there is more provision for parking on a medium size station footprint. The station would be found in a suburban grid or suburban residential area. A medium-to-large transit terminal is provided on-site, serving regional and local transit; the station is probably designated a regional transit hub. Intermodal – Auto Reliant stations have combined drive alone/carpool and dropoff/taxi/other rates of 55% to 80%. Walk access is lower than average. Parking spaces do not necessarily fill early because there is a large amount of parking. Nonetheless, parking utilization rates are high.
- **Auto Dependent:** This station represents the highest level of investment in auto-based access. With a large station footprint, structured and/or surface parking, and adjacent highway access, the station's ridership is considered low to moderate. The large footprint may also allow for a small to moderate-sized multimodal station. Auto Dependent Stations have combined drive alone/carpool and dropoff/taxi/other rates of approximately 67% or higher. For many stations with parking garages, transit and walk mode shares vary widely; it is important to note that a station which is considered Auto Dependent is predominantly an auto-only station with lower levels of transit, bicycle, and walk access.

SANTA CLARA
Valley Transportation Authority

MEMORANDUM

TO: Stacy Cocke, Caltrain JPB

FROM: George Naylor, Santa Clara VTA

DATE: January 30, 2014

SUBJECT: Caltrain Peninsula Corridor Electrification Project – System Ridership Analysis

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The system wide ridership forecasts prepared for the purposes of the Peninsula Corridor Electrification (PCEP) EIR does not imply that VTA endorses any subsequent findings made in the PCEP EIR, or in any other planning document, based on the ridership forecasts prepared by VTA staff.

Prototypical Caltrain schedules were assumed for the 2020 Project and the 2040 Project + Transbay Transit Center (TTC) scenarios. These schedules were assumed for the purposes of EIR analysis and do not represent a commitment of Caltrain service.

1.0 Introduction

The Peninsula Corridor Joint Powers Board (JPB) is in the planning and environmental phase of analysis for the Caltrain Peninsula Corridor Electrification Project. As part of the analysis, detailed ridership forecasts are required in order to determine system and station-level impacts and to provide inputs for air quality impacts. Ridership forecasts to produce primarily system-level results were prepared using the VTA Model for a base year 2013 validation for existing conditions, and for year 2020 and 2040 forecast horizons. No Project, Project and Project plus the Transbay Transit Center (TTC) scenarios were modeled for the years 2020 and 2040. No Project conditions for the Caltrain Corridor for both 2020 and 2040 reflected operations the same as service levels provided in existing year 2013, with different service configurations for the 2020 Project and 2040 Project plus TTC scenarios.

This technical memorandum summarizes the methodology used to prepare the ridership to support the ridership forecasts, and describes the base year 2013 and forecast year 2020 and 2040 ridership results. A description is also provided of the inputs and assumptions used in the preparation of the base and forecast ridership. It should be noted that the ridership forecasts produced by the VTA Model presented in this memorandum will be subsequently refined using other methods that will allow more detailed station-level impacts to be analyzed, using a process known as the Fehr & Peers Direct Ridership Model

The following corrections were implemented to improve the validation results:

- Drive-access connectors to stations were added to San Francisco Caltrain stations at King/4th and 22nd Street to reflect the informal park-and-ride that occurs at these stations based on the intercept surveys,
- Reviewing coded frequencies and alignments of public bus feeder services to improve transit access shares,
- Private shuttles were added to improve boardings at specific stations (based on information shown in Table 2), and
- Comprehensive review of drive-access connectors to all stations supplemented with field observations of park-and-ride demand to verify model estimates.

The final results of the modeled daily boarding estimates for each Caltrain station are provided in Table 4. Overall, the model estimates system wide ridership to within 1.4 % error and between -0.4 % to 10.9 % error at the County level, close to meeting the validation goals. At the individual station level, the results have a much wider range of variation, with stations exhibiting a low boarding volume more problematic in matching than the high volume stations. Express train stations, which exhibit the most passenger volume, are within -3.9 % error.

Table 5 summarizes the park-and-ride demand predicted by the models compared to the observed park-and-ride demand counted at each station. As previously mentioned, considerable time and attention was paid to the park-and-ride estimates generated by the models supplemented by field reviews of the parking behavior at particularly problematic stations. In addition to the actual counted spaces occupied at each station, counts were supplemented with data from the intercept surveys as well as a determination by JPB staff as to adjacent parking spaces available off site. When this parking demand was accounted for in the observed spaces, the model estimated improved significantly, however, system wide, the model overestimates park-and-ride demand by over 50 percent of observed. This systematic overestimation will be accounted for and improved in the DRM station level estimates used to define station level impacts in the environmental analysis.

Table 6 shows a comparison of the daily boardings by each operator in the corridor. Overall transit boardings estimated by the models are within 1 percent of the observed boardings, however, there is significant variation between the operators. Caltrain and BART system estimates are closest to observed values, with MUNI Metro and bus showing slightly better results compared to both VTA and SamTrans. As with the Caltrain system comparisons, the model is much more accurate for larger corridor comparisons and becomes less accurate at more detailed levels. Tables 7 and 8 provide the boardings summarized by mode of access. The mode of access is the means by which the rider accesses the station. The VTA Model is capable of estimating mode of access for walk, park-and-ride, kiss-and-ride and transit. Table 7 shows the boardings split out by the mode of access to each station. Table 8 shows a comparison of the mode of access percentages estimated by the models to the observed percentages developed from the station intercept surveys. As with the previous model metrics, the model is much more accurate at the system level with significant variation for individual stations. It should be noted that a significant limitation of the VTA Model is that the models are not able to estimate bike mode of

Table 7 Base Year 2013 Caltrain Boardings by Mode of Access by Station

STATION	Walk	PNR	KNR	Transit	All	Walk	PNR	KNR	Transit	All
	Ons	Ons	Ons	Ons	Ons	Share	Share	Share	Share	Share
SF	832	1,195	131	4,143	6,301	13%	19%	2%	66%	100%
22nd	256	1,639	314	396	2,605	10%	63%	12%	15%	100%
Bayshore	0	53	9	677	739	0%	7%	1%	92%	100%
SSF	561	271	61	51	944	59%	29%	6%	5%	100%
San Bruno	842	92	21	89	1,044	81%	9%	2%	9%	100%
Millbrae	399	1,137	221	716	2,473	16%	46%	9%	29%	100%
Broadway	8	0	0	-8	0	0%	0%	0%	0%	0%
Burlingame	889	319	61	66	1,335	67%	24%	5%	5%	100%
San Mateo	1,354	1,048	210	134	2,746	49%	38%	8%	5%	100%
Hayward Park	213	170	31	0	414	51%	41%	7%	0%	100%
Hillsdale	853	2,163	424	473	3,913	22%	55%	11%	12%	100%
Belmont	355	367	72	90	884	40%	42%	8%	10%	100%
San Carlos	295	774	144	718	1,931	15%	40%	7%	37%	100%
Redwood City	796	1,024	195	1,582	3,597	22%	28%	5%	44%	100%
Atherton	0	0	0	0	0	0%	0%	0%	0%	0%
Menlo Park	303	606	112	1,732	2,753	11%	22%	4%	63%	100%
Palo Alto	727	806	136	267	1,936	38%	42%	7%	14%	100%
Cal Avenue	232	421	84	35	772	30%	55%	11%	5%	100%
San Antonio	495	240	46	56	837	59%	29%	5%	7%	100%
Mountain View	531	1,331	271	246	2,379	22%	56%	11%	10%	100%
Sunnyvale	414	1,475	295	329	2,513	16%	59%	12%	13%	100%
Lawrence	343	152	29	1	525	65%	29%	6%	0%	100%
Santa Clara	89	285	53	271	698	13%	41%	8%	39%	100%
College Park	3	0	0	0	3	100%	0%	0%	0%	100%
Diridon	167	1,643	311	1,771	3,892	4%	42%	8%	46%	100%
Tamien	115	833	158	47	1,153	10%	72%	14%	4%	100%
Capitol	59	96	18	1	174	34%	55%	10%	0%	100%
Blossom Hill	46	125	19	0	190	24%	66%	10%	0%	100%
Morgan Hill	24	122	20	6	172	14%	71%	12%	3%	100%
San Martin	7	67	12	4	90	8%	74%	13%	5%	100%
Gilroy	49	133	27	492	701	7%	19%	4%	70%	100%
All	**11,257**	**18,587**	**3,485**	**14,386**	**47,715**	**24%**	**39%**	**7%**	**30%**	**100%**
SF County Stations	1,088	2,887	454	5,216	9,645	11%	30%	5%	54%	100%
SM County Stations	6,868	7,971	1,552	5,643	22,034	31%	36%	7%	26%	100%
SCL County Station	3,301	7,729	1,479	3,527	16,036	21%	48%	9%	22%	100%
Express Train Stations	5,278	13,019	2,410	11,655	32,362	16%	40%	7%	36%	100%

Table 8 **Base Year 2013 Daily Station Boardings by Mode of Access Compared to Observed***

	Model Estimate				Observed from Intercept Survey					
	Walk	Auto	Transit	All	Walk	Auto	Transit	Bike	Other	All
STATION	Share	Share	Share	Share	Share	Share	Share	Share	Share	Share
SF	13%	21%	66%	100%	19%	17%	39%	24%	1%	100%
22nd	10%	75%	15%	100%	23%	44%	15%	18%	1%	100%
Bayshore	0%	8%	92%	100%	20%	35%	33%	13%	0%	100%
SSF	59%	35%	5%	100%	37%	53%	0%	10%	0%	100%
San Bruno	81%	11%	9%	100%	28%	63%	0%	6%	3%	100%
Millbrae	16%	55%	29%	100%	12%	34%	47%	6%	0%	100%
Broadway	0%	0%	0%	0%	NA	NA	NA	NA	NA	NA
Burlingame	67%	28%	5%	100%	61%	19%	1%	15%	3%	100%
San Mateo	49%	46%	5%	100%	43%	36%	6%	14%	1%	100%
Hayward Park	51%	49%	0%	100%	67%	17%	0%	17%	0%	100%
Hillsdale	22%	66%	12%	100%	20%	57%	6%	16%	0%	100%
Belmont	40%	50%	10%	100%	38%	48%	0%	14%	0%	100%
San Carlos	15%	48%	37%	100%	33%	55%	2%	10%	0%	100%
Redwood City	22%	34%	44%	100%	32%	43%	6%	19%	0%	100%
Atherton	0%	0%	0%	0%	NA	NA	NA	NA	NA	NA
Menlo Park	11%	26%	63%	100%	35%	28%	15%	21%	1%	100%
Palo Alto	38%	49%	14%	100%	20%	35%	22%	23%	0%	100%
Cal Avenue	30%	65%	5%	100%	49%	22%	2%	27%	0%	100%
San Antonio	59%	34%	7%	100%	66%	15%	0%	19%	0%	100%
Mountain View	22%	67%	10%	100%	24%	56%	12%	9%	0%	100%
Sunnyvale	16%	70%	13%	100%	27%	53%	9%	11%	0%	100%
Lawrence	65%	34%	0%	100%	29%	62%	0%	9%	0%	100%
Santa Clara	13%	48%	39%	100%	18%	48%	22%	11%	0%	100%
College Park	100%	0%	0%	100%	NA	NA	NA	NA	NA	NA
Diridon	4%	50%	46%	100%	8%	58%	24%	10%	0%	100%
Tamien	10%	86%	4%	100%	8%	86%	5%	0%	0%	100%
ALL	**24%**	**46%**	**30%**	**100%**	**25%**	**50%**	**11%**	**14%**	**0%**	**100%**

***Compared to passenger intercept survey completed in June 2013.**

5.0 Year 2020 and 2040 Forecast Results

With the completion of the base year 2013 model validation, the model inputs were updated to reflect year 2020 and year 2040 conditions and the model results were summarized, similar to the outputs generated for the base year 2013. As described in previous sections, the socioeconomic data, background networks and pricing inputs were updated to reflect year 2020 and 2040 conditions, and the No Project, Project and Project + TTC scenarios were coded and executed in the models. The results of the model forecasts for the No Project and Project alternatives, relative to the base year 2013 conditions, are presented in Tables 9 through Table 16. The typical outputs of daily station boardings, park-and-ride demand and mode of access shares are shown in Tables 9 through 15.

Table 16 summarizes the proportion of boardings made during the peak and off-peak periods, and is an estimate of unconstrained passenger demand. This information will be used to determine if there is adequate train capacity to meet the projected demand. Capacity constraints will be applied, if needed, in subsequent model post-processing as part of the impact analysis.

The VTA Model is also capable of producing estimates for auto vehicle demand in addition to transit demand. A critical input needed for the environmental analysis is an estimate of the vehicle-miles-traveled (VMT) segmented by operating speed. Vehicle-miles-traveled are basically the amount of vehicles traveling over the roadway networks. The VTA Model is capable of providing VMT stratified by time of day and by speed. For air quality analysis, the VMT is required to be separated out by 5 mph increments, referred to as a speed bin. The results of the VMT for the entire VTA Model region, by speed bin and by time of day are provided in Table 17.

Table 10 **Caltrain Daily Park-and-Ride Space Demand by Station by Scenario, 2013, 2020 and 2040**

Station	Existing Caltrain Lot Capacity	A Observed PNR Spaces Occupied	B 2013 Modeled PNR Spaces	C 2020 No Project Modeled PNR Spaces	E 2020 Project Modeled PNR Spaces	G 2040 No Project Modeled PNR Spaces	I 2040 Project + TTC Modeled PNR Spaces
SF	0	0	543	836	776	1,231	1,075
22nd *	0	0	745	1,126	1,055	1,620	1,410
Bayshore	38	5	24	83	90	105	149
SSF	75	40	123	162	167	232	222
San Bruno	171	36	42	54	43	75	49
Millbrae	175	133	517	660	639	949	1,644
Broadway	137	0	0	0	4	0	3
Burlingame	58	21	145	173	170	211	224
San Mateo	40	9	476	554	470	702	761
Hayward Park	213	5	77	83	235	135	172
Hillsdale	518	445	983	1,189	1,057	1,567	1,610
Belmont	375	79	167	197	207	260	262
San Carlos	212	72	352	416	409	521	528
Redwood City	557	259	465	533	549	722	755
Atherton	0	0	0	0	286	0	42
Menlo Park	155	53	275	333	363	455	465
Palo Alto	389	383	366	385	330	510	498
Cal Avenue	185	65	191	233	211	307	282
San Antonio	199	65	109	131	140	191	217
Mountain View	340	325	605	760	741	1,078	1,027
Sunnyvale	439	491	670	867	913	917	985
Lawrence	122	93	69	94	114	85	118
Santa Clara	289	319	130	162	166	93	84
College Park	0	0	0	0	0	0	0
Diridon	581	593	747	880	845	880	912
Tamien	275	275	379	432	588	403	367

Each transit trip includes one boarding and one alighting. Table 3-14 shows the number of projected average weekday boardings and alightings at stations on the SVRTP Alternative, including home-based work and non-work trips. The three highest-volume stations would each have more than 26,000 average weekday boardings and alightings. These stations offer the best intermodal transfer opportunities to bus, light rail, and commuter rail services. Note that total boardings and alightings are not double the weekday ridership estimate since many riders have one trip end outside the SVRTP Alternative extension.

Table 3-14: Average Weekday Boardings and Alightings on SVRTP Alternative in 2030

SVRTP Alternative Stations	Home-Based Work	Non-Work	Total
Milpitas	17,408	8,964	26,372
Berryessa	18,115	5,776	23,891
Alum Rock	10,776	7,417	18,193
Downtown San Jose	21,579	10,007	31,586
Diridon/Arena	13,382	7,638	21,020
Santa Clara	17,427	8,815	26,242

Source: Travel Demand Forecasts, Hexagon Transportation Consultants, Inc., February 2008.

Mode of Access at Stations

Table 3-15 presents projected mode of access at stations on the average weekday. Transit modes would account for 30 percent of the access trips while 11 percent of access trips would be by pedestrians or bicycles. The high use of non-auto modes is due to the convenience of transit connections and the proximity of jobs and housing to SVRTP Alternative stations in downtown San Jose.

Table 3-15: Mode of Access at SVRTP Alternative Stations

Station	Walk/ Bike	Bus	LRT	APM[a]	Commuter Rail[b]	Auto KNR[c]	Auto PNR[d]	Auto Subtotal	Total
Milpitas	12%	19%	9%	–	0%	10%	50%	60%	100%
Berryessa	7%	14%	–	–	–	9%	70%	79%	100%
Alum Rock	11%	32%	-	–	0%	17%	40%	57%	100%
Downtown	35%	40%	25%	–	–	–	–	–	100%
Diridon	10%	12%	10%	–	15%	9%	44%	53%	100%
Santa Clara	5%	21%	0%	8%	5%	11%	51%	62%	100%
Total	11%	21%	5%	1%	3%	10%	48%	58%	100%

[a] APM = Automated People Mover.
[b] Commuter Rail = Caltrain, ACE, and Capitols.
[c] Kiss-and-Ride.
[d] Park-and-Ride.
Source: Hexagon Transportation Consultants, Inc., February 2008.

Table 3-23: Opening Year and 2030 SVRTP Alternative Park-and-Ride Demand and Supply

Station Name	Opening Year Parking Demand (spaces)	2030 Parking Demand (spaces)	2030 Parking Supply (spaces)
Milpitas	1,680	3,140	3,140
Berryessa	2,820	6,590	6,590
Alum Rock	2,500	2,500	2,500
Diridon/Arena	1,610	2,585	1,300
Santa Clara	1,560	2,465	2,465
Total	**10,170**	**17,280**	**15,995**

Source: Travel Demand Forecasts, Hexagon Transportation Consultants, Inc. and VTA, February 2008.

Projected demand for riders who board and alight SVRTP Alternative Express/Shuttle services at stations would be accommodated in park-and-ride areas at stations and an off-site parking facility. The SVRTP Alternative would require three park-and-ride parking lots for the additional bus service. Demand for two of the three park-and-ride lots would be met within existing facilities located at the approved Warm Springs BART Station (291 spaces) and the existing Evelyn LRT Station in Mountain View (47 spaces). The third site would be located at the southeast corner of Carroll Street and Evelyn Avenue in downtown Sunnyvale to accommodate 61 spaces. The Berryessa Station would not require any additional park-and-ride parking to support the bus service for this alternative. See Chapter 2, Alternatives, for more information on the SVRTP Alternative bus routes. Figure 2-15 shows the locations of the park-and-ride lots.

Park-and-ride demand for the SVRTP Alternative under these conditions would be approximately 17,280 spaces in 2030 for the five stations with park-and-ride facilities (park-and-ride parking is not being provided for the Downtown San Jose station). The Milpitas Station is projected to require approximately 3,140 spaces that would be accommodated by a six- to eight-level parking structure and future transit facility/surface parking in the station area. Berryessa Station demand is estimated to be just fewer than 6,600 spaces. This includes demand for 2,580 spaces shifted from the Alum Rock Station to Berryessa Station to address community concerns about site impacts at the Alum Rock Station. As a result, Alum Rock Station demand is limited to 2,500 spaces. Without the shift in demand, Berryessa and Alum Rock station parking demand would be approximately 4,000 and 5,100 spaces, respectively.

Berryessa Station parking would be accommodated with an eight-level parking structure and future transit facility/surface parking in the station area. The Alum Rock Station parking demand would be accommodated by a four- to five-level parking structure and additional future transit facility/surface parking in the station area.

FIGURE 2-8-3:DIRIDON STATION TRANSIT ACCESS MODE SPLIT GOALS AND PARKING SPACES

	2030 Projection	10% PNR Mode Share Target	15% PNR Mode Share Target	20% PNR Mode Share Target
BART	2,585	260	390	520
Caltrain	2,281	600	900	1,200
Amtrak and Capitol Corridor	65	65	65	65
High Speed Rail*	3,800	428	428	428
Total		1,353	1,783	2,213

**Refer to HSR discussion below*

Based on discussions with VTA and Caltrain, it is believed that the mode split goals will be achievable, given the planned land use changes that will support a higher walking mode share and increased transit connections that will support higher transit transfer rates.

Parking demand was also estimated for Amtrak and Capitol Corridor services by using available station access mode share information and extrapolating to future ridership levels. Commuter parking for ACE is not anticipated at Diridon Station. The parking demand estimates are summarized in Figure 2-8-3.

High Speed Rail

According to the High Speed Rail (HSR) Authority, there is a total demand for 3,800 spaces at Diridon Station *(16)* . Demand for commuter trips (daily parking) can be accommodated within the station area. Long term, overnight parking will be accommodated outside of an area within a one half mile radius of the Station, at remote parking locations within three miles of the station. Using passenger demand forecast information provided by HSR, it is estimated that 428 parking spaces will be required within the station area to serve commuter demand. Overnight, long distance trips will account for a large share of the parking demand. This is due to the fact that passengers taking longer distance trips will also have longer duration trips. For example, a commuter passenger driving to the station will occupy a parking space for one day, while a long

(16) California High Speed Rail Authority. Parking Guidance Memo. July 2010.

FTA

Environmental Programs

Home » Regulations and Guidance » Environmental Programs

https://www.transit.dot.gov/regulations-and-guidelines/environmental-programs/transportation-impacts-0

Transportation Impacts

By definition, any proposed transit project will potentially influence elements of the local and regional transportation system, including transit facilities and services, bicycle and pedestrian facilities, road traffic patterns and volumes, and parking. Other transportation network impacts may occur, such as to airports, freight railways, or other type of travel. As such, environmental documents for transit projects should include a discussion of potential transportation impacts. For example, the level of analysis depends on the magnitude and scale of the project. In general, transit grant applicants should consult with FTA and local and/or state traffic engineering and planning officials as early as possible to identify potential transportation impacts and determine the level of analysis that will be needed for the environmental document.

How are impacts to transit operations considered?
Construction and operation of new transit facilities and/or expansion of transit facilities and services can affect existing transit operations. The environmental documentation for projects should discuss potential impacts of project construction and operation on transit systems. Specific transit considerations for the construction and operation of transit projects include, but are not limited to changes in:

1. Transit service (e.g. frequency, hours of service, network, etc.)
2. Travel times
3. Transit ridership and demand
4. Bus stop locations and access
5. Station access and circulation

How are impacts to traffic and circulation considered?
Transit projects often cause changes in road traffic volumes, level of service, and local/regional circulation patterns, which must be considered during the environmental documentation process. Small scale projects may require documentation that streets in the immediate vicinity of the project have sufficient capacity for the anticipated additional trafficand an adequate level of service would be maintained. Large scale projects may require detailed analysis of anticipated changes to traffic on highways and local roadways. Considerations:

1. Traffic and circulation on adjacent/parallel/intersecting roadways and highways
2. Traffic and circulation around stations and depots (often related to park and ride, passenger drop-off, local bus access)
3. Changes in travel patterns and travel time
4. Changes in roadway or highway access, configuration or capacity
5. Construction-related effects on traffic

How are impacts to parking considered?
Transit projects can affect the availability and location of parking spaces, and it can be a local concern. Potential parking impacts include consequences or impacts from new parking lots constructed to serve transit facilities, changes in parking demand as a result of transit facility construction/service expansion, and changes to on-street and off-streetparking during construction and operation of a project. Environmental documentation for transit projects should identify anticipated parking impacts and provide ways to avoid, minimize, and mitigate any adverse effects on nearby residential or business communities.

How are impacts to pedestrian and bicycles considered?
[Text to be developed]

Updated: Wednesday, March 16, 2016

CONTRACT
BETWEEN
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND
AECOM TECHNICAL SERVICES, INC.
FOR
SAN JOSE DIRIDON TRANSPORTATION FACILITIES MASTER PLAN

CONTRACT NO. S16053

THIS CONTRACT for professional services ("Contract") is entered into between the Santa Clara Valley Transportation Authority ("VTA") and AECOM Technical Services, Inc. ("Contractor").

A. SERVICES TO BE PERFORMED: Contractor shall furnish all technical and professional labor, and materials to perform the services described in Exhibit A (herein referred to as "Services"). Contractor shall, in the performance of the Work, have the right to reasonably rely upon information provided by VTA without independent verification of its accuracy and completeness.

B. TERM OF THE CONTRACT: The term of the Contract shall commence upon the execution of the Contract by both parties (the "Parties") and continue through completion on or before December 31, 2017.

C. COMPENSATION: Contractor shall be paid for the Services in accordance with Exhibits B and C.

Maximum compensation for the Services provided hereunder shall not exceed $799,942.00.

D. PERFORMANCE OF THE SERVICES:

1. Contractor represents that it is sufficiently experienced, properly qualified, registered, licensed, equipped, organized and financed to perform the Services.

2. Contractor shall perform the Services with the degree of skill and judgment normally exercised by firms performing services of a similar nature. In addition to other rights and remedies that VTA may have, VTA, at its option, may require Contractor, at Contractor's expense, to re-perform any Services that fail to meet the above standards.

E. ASSIGNMENT AND SUBCONTRACTS:

1. Contractor shall not assign or transfer this Contract or any portion thereof without the prior written consent of VTA. Additionally, Contractor shall not subcontract any part of its Services other than to those subcontractors that may be identified in Exhibit D. Any assignment, transfer, change or subcontract in violation of this Contract shall be void.

EXHIBIT A
SCOPE OF SERVICES

This Scope of Services will require the Contractor to identify and evaluate conceptual alternatives that would be advanced under future studies for the Diridon Transportation Center. The Contractor shall develop and screen conceptual alternative(s) so as to include solutions that could accommodate a range of potential configurations for future high-speed rail and BART facilities.

To achieve this goal, the Contractor will identify the facility requirements for all current and planned transportation services in the Diridon Transportation Center, as well as the facilities that will be required to provide seamless passenger connections to and between all of those services. Contractor will identify passenger access and station facility requirements and develop and evaluate configuration alternatives as part of the process.

The Master Plan will be conducted in two phases. The first phase, defined as "Objectives & Criteria," will identify the future facility requirements through review of data on the existing and future utilization of the transit center. The second phase, defined as "Alternatives Analysis," will develop and evaluate potential configurations for the transit and transit-supportive facilities at the Diridon Transportation Center, and related multimodal access improvements. Both phases are included in this Scope of Work.

Both phases will include extensive coordination among a Technical Stakeholders' Group representing VTA, Caltrain, the City of San Jose (CSJ), and CAHSR. This group has been formed to coordinate the efforts of this Master Plan with other ongoing planning efforts adjacent to the existing Historic Diridon Station area. All work products will be reviewed with this stakeholder group to ensure consistency with other planning efforts and agency goals.

The project will build off prior reports, plans, studies and analyses, including but not limited to:

- Silicon Valley Rapid Transit Corridor Final Environmental Impact Statement (March 2010);
- Supplemental Alternatives Analysis Report for the San Francisco to San Jose Section (August 2010), CAHSR;
- Envision San Jose 2040 General Plan (November 2011);
- Diridon Station Area Plan (June 2014);
- Diridon Station Area Plan Integrated Final Program EIR (August 2014);
- Peninsula Corridor Electrification Project Final Environment Impact Report (January 2015); and
- Strategic Assessment of potential development impacts of BART Silicon Valley Phase 2 (Under development – led by the City of San Jose).
- VTA Bicycle Expenditure Plan
- San Jose Bike Plan 2020

The project will require coordination with ongoing and related efforts including the CAHSR environmental analysis and alternatives evaluation, BART Silicon Valley Phase 2 environmental analysis, Caltrain and CAHSR service planning and ridership forecasting, the California State Rail Plan, CSJ land use market analysis, and VTA/CSJ Diridon Transportation Center financial analysis. The Contractor will be required to coordinate, as needed, with these other efforts and integrate applicable solutions and recommendations.

The goal of this project will be to identify conceptual alternative(s) that size, locate, and configure the transportation facilities proposed for the Diridon Transportation Center to provide high-quality access to, and connectivity between, the transit services that will operate at the center. Elements to be incorporated into the alternatives will include BART station entrances, multi-modal station ticketing and waiting areas, customer services areas, bus and shuttle loading and staging areas, locations for customer drop-off/pick-up, queuing and loading zones for taxi and on-demand ridesharing services, and bicycle parking facilities. Consideration must be given to plazas, station structures, and massing. An analysis of access, circulation planning and parking elements will be conducted. The alternatives must include consideration for phased implementation of both BART and CAHSR.

This project will study various options for the area required to develop and operate the Diridon Transportation Center, and adjacent properties that will have an influence on passenger access and travel demand for services at the Diridon Transportation Center. Current transportation services provided at the Diridon Station are shown in **Figure 1** on the next page.

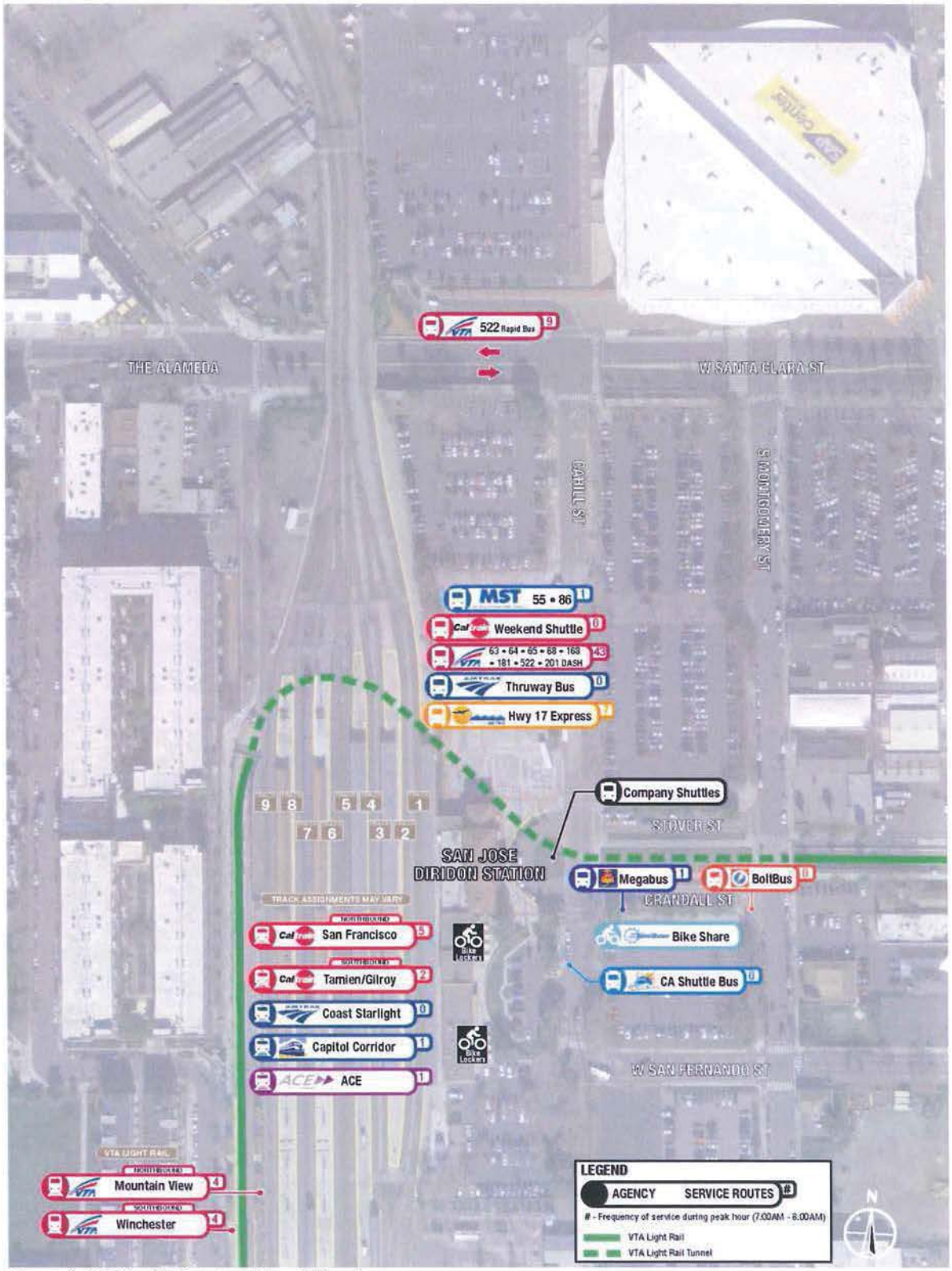

Figure 1: Diridon Station Area Transit Services

Contractor will analyze information provided by VTA related to rail platform and track options (Caltrain/CAHSR) and BART station location and tunnel configuration in the Diridon Transportation Center.

Analysis of the greater Diridon-area transportation system beyond the Access Study Area is not included in the scope of this study.

Future efforts not included in this scope of services may include: project implementation planning, preliminary and final station facility design, environmental clearance and permitting, and design support during construction.

Both phases included in the scope include the following efforts:

Task 1.0: Project Management

The Contractor will provide project management over all tasks detailed in this scope of services for the duration of the Agreement. Project management activities will consist of, but are not limited to:

- Preparation of a Work Plan identifying the principal activities to be conducted, the resources that will be involved, and a timeline for completing Phases 1 and 2 of the Master Plan;
- Ongoing management and administration over the scope of services;
- Preparation of monthly progress updates;
- Attendance at regular meetings with VTA staff;
- Participation in agency coordination meetings with VTA staff and its partners;
- Preparation of meeting agendas and meeting minutes; and
- Preparation and submission of a monthly invoice by task that will present charges by staff member at agreed to hourly rates, expense charges, and subcontractor charges. Support documentation for the Contractor's direct expenses and other charges will be attached.

Task 2.0: Agency/Stakeholder Coordination

The Contractor will present materials and obtain feedback from a multi-agency stakeholder group. Contractor will attend meetings of the Technical Stakeholder Group and the Management Stakeholder Group, convened by VTA and do the following:

- Technical Stakeholder Group (TSG): Contractor will lead up to ten monthly technical stakeholder meetings to present key project deliverables and solicit input. The TSG includes representatives from all operating agencies (VTA, Caltrain, CAHSR, BART, ACE, and Capitol Corridor) and the City of San Jose.
- Management Stakeholder Group: Contractor will attend up to ten management stakeholder group meetings, comprised of VTA, Caltrain, CAHSR and City of San Jose staff, to present key deliverables as needed.

When coinciding with key deliverables, these Technical Stakeholder and Management Stakeholder Group meetings may take on the form of interactive workshops with the stakeholder agencies.

The following additional meetings are included in this scope of work, and are limited to the scheduled duration of this project:

- Attendance at bi-weekly check-in meetings with VTA staff;
- Attendance at quarterly Diridon Joint Policy Advisory Board meetings;
- Attendance at up to eight additional meetings with stakeholders, such as community stakeholder meetings, the BART Community Working Groups, and other existing and future Diridon Station area transit providers and their consultants at various points on the project to present and obtain input on project deliverables. Contractor will be responsible for meeting agendas, presentation materials, and meeting summaries. Contractor will not be responsible for meeting logistics (e.g., publicity, invitations, and venue).

Task 2.0: Deliverables

- Attendance at Technical Stakeholder and Management Stakeholder Group Meetings; presentation of materials; documentation of feedback from stakeholders;
- Attendance at bi-weekly check-in meetings with VTA staff;
- Attendance at quarterly Diridon Joint Policy Advisory Board meetings;

  Attendance at up to eight additional meetings with stakeholders, such as community stakeholder meetings, the BART Community Working Groups, and other existing and future Diridon Station area transit providers and their consultants at various points on the project to present and obtain input on project deliverables. Contractor will be responsible for meeting agendas, presentation materials, and meeting summaries.

Task 3.0: Phase 1 – Objectives & Criteria

The first phase of the project includes the following:

Task 3.1: Finalize Work Plan

The Contractor and VTA staff will work together to review and finalize work breakdown structure and deliverables schedule.

Task 3.2: Review Prior Work

The Contractor will familiarize itself with previously noted prior work performed for the historic Diridon Station area and for planned transit facilities that may use the Diridon Transportation Center area.

Task 3.3: Goals and Objectives

The Contractor will prepare a draft and final white paper documenting the goals and objectives of the Master Plan. This will include development of priorities. The Contractor will address comments provided by VTA and both Technical and Management Stakeholder Groups.

Task 3.3: Deliverables:

- Draft and final white paper documenting goals and objectives of the study.

Task 3.4: Transportation Facility Programming

The goal of this task is to quantify and document programmatic needs for the DTC, as described below.

Task 3.4.1: Data Collection

The Contractor will identify data needed from VTA and stakeholder agencies to perform the scope of work. VTA will, to the extent possible, obtain and furnish Contractor with the requested data.

The Contractor will prepare a narrative description supplemented by maps and diagrams that will quantify existing and planned transit service levels for the following transit systems:

- VTA Bus and Paratransit
- VTA LRT
- Caltrain
- ACE
- Amtrak Capital Corridor / Amtrak Coast Starlight
- BART
- Intercity Bus / Amtrak Thruway
- Private Shuttles
- Taxi / On-demand Ridesharing
- CAHSR
- Bike Facilities

The Contractor will make a request through VTA to obtain forecast ridership and transfer information for each of the above identified transit systems. Contractor will incorporate Caltrain and CAHSR service plans and ridership estimates furnished by VTA (which may overlap with the start of this project) into the analysis conducted under this project. Contractor will prepare a narrative description with graphics and tables that clearly document ridership activity and mode of access by time of day for the existing historic Diridon Station and future services at the Diridon Transportation Center.

Contractor will review the existing facilities and structures at the existing Historic Diridon Station. This will include interviews with transit operators to discuss the adequacy of those facilities and understand future needs. The usability and adaptability of the existing historic Diridon Station buildings, walkways, and platforms will be visually assessed, and deficiencies relevant to the analysis of this study will be noted in the summary memo of existing and planned transit levels and existing facilities.

Task 3.4.2: Prioritization of Services and Needs

Building on the data collection effort, the Contractor will identify critical transfer activities and transportation circulation requirements for the future Diridon Transportation Center area. The Contractor will prioritize service needs and connections and indicate how that prioritization may affect facility sizing, location, and access.

Task 3.4.3: Document Facility Requirements

Contractor will prepare a request to VTA to obtain information on required transit facility sizing and location, including:

- BART tunnel alignment
- BART station box configuration
- BART Entrance Requirements
- BART Facility Standards
- CAHSR minimum/maximum footprint and station platform requirements

CAHSR San Francisco to San Jose and San Jose to Merced environmental planning and alternatives evaluation activities will be underway concurrent with this project. Contractor will coordinate with CAHSR and their consultant(s) to obtain information on the minimum and maximum anticipated footprints of rail track and platform facilities at the Diridon Transportation Center.

Building on the planned service information obtained and analyzed in the data collection task, discussions with the transit operators, and the above information provided to the Contractor, the Contractor will identify the space program and footprint requirements for collective transit operations. This will include all facilities necessary for each operator at the Diridon Transportation Center Area, including those related to operations, customer service, and maintenance. Space program data will be aggregated at a user / departmental level (e.g., "Caltrain Customer Service"), rather than presented as individual spaces. Consideration will be given to fluctuations in needs by time of day and during special events.

Contractor will rely on existing data with regard to travel demand modeling, mode of access, ridership information and comparable facilities in identifying the size and location requirements of facilities related to transit parking, private shuttles, taxis, kiss-and-ride, and on-demand ridesharing services.

Contractor will summarize the facility requirements and prioritization in a report documenting the assumptions and analysis performed in this phase.

Task 3.4.4: Document Parking Requirements

The Contractor will:

1. Based on planned service and mode of access information furnished by VTA, update the quantities in the transit parking demand analysis (TRANSIT PARKING DEMAND, pp. 2-141 to 2-145) of the 2014 Diridon Station Area Plan;

2. Develop up to two additional alternative parking policy alternatives, and recommend one to become the project parking program. The parking program will serve as the basis of design for development of transportation facility alternatives to be prepared under Section 4.3.1, including:

   a. Establish quantitative criteria for replacement of existing and planned parking that would be displaced by new DTC facilities, and new spaces warranted by DTC demand. Identify precedent projects that illustrate the benefits of each alternative approach;

   b. Address parking program evolution over time (up to two design years; e.g., 2020 and 2025) to reflect changes in ridership and PNR mode share; and

   c. Incorporate applicable findings from the City of San Jose's December, 2016 parking evaluation, and the parking supply and parking demand analysis in Chapter 7 of the Diridon Station Area Plan Existing Conditions Report.

Task 3.4 Deliverables

- Draft Summary memo of existing and planned transit levels and existing facilities
- Draft Report summarizing facility requirements and prioritization
- Draft technical memo documenting updated 2014 transit parking demand, and parking program recommendations.
- Final Transportation Facility Programming Report (consolidating Task 3.4 reports above)

Task 3.5: Access Study Area: Existing Conditions

For purposes of this Scope of Work, the "Access Study Area" (ASA) is defined as the freeway, downtown and bicycle routes shown in **Figure 2** below.

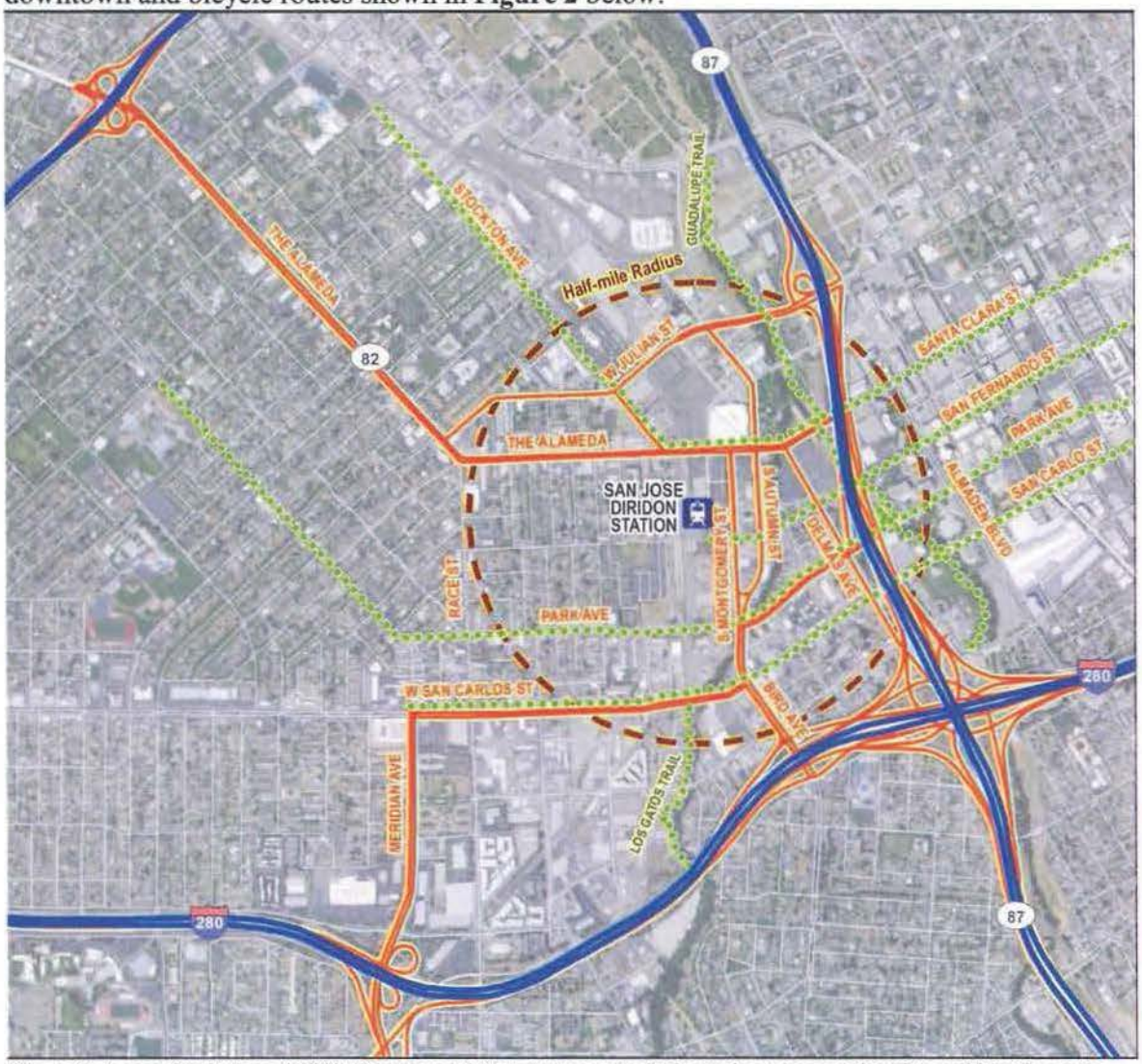

Figure 2: Access Study Area (ASA). Freeway and downtown access is shown in orange, pedestrian and bicycle access routes are shown in green.

Task 3.5.1: Access Study Area: Data Collection

Contractor will:

1. Gather existing auto, bicycle, and pedestrian counts within the Study Area that are available from the City of San Jose, Caltrain, CAHSR and others; perform new peak period, single-mode counts for up to five (5) additional locations where exiting data is not readily available.
2. Obtain existing transit routing, bus stops, ridership, and service levels within the Study Area.

3. Obtain Next Network service plans for planned service changes within a 2-mile radius of Diridon Station.
4. Obtain travel demand forecast volumes for the study area for baseline and transportation network buildout scenarios. Travel demand forecast volumes to be provided by VTA.
5. Identify existing circulation paths to access Diridon Station (auto, bicycle, pedestrian, transit - public and private, TNC generation and distribution).
6. Identify existing circulation paths during special events at SAP Center for auto, transit, bicycle and pedestrian modes. Perform field observations to identify road closures and traffic diversions, pedestrian desire lines and demand levels, transit routing modifications and activity, and parking activity during a typical weekday evening special event.
7. Collect five years of collision history within the Study Area.
8. Obtain results Potential Diridon Station Area Parking Analysis conducted for City of San Jose

Task 3.5.2: Access Study Area: Existing (Baseline) Conditions Analysis

For Existing (2016) Conditions, Contractor will:

1. Based on travel demand forecast volumes, identify and qualitatively evaluate potential auto congestion hotspots within study area;
2. Analyze and quantify gaps in bicycle connectivity and high-stress bicycle areas;
3. Identify gaps in pedestrian connectivity;
4. Analyze and quantify delay points for existing transit routes;
5. Analyze collision history to identify high-collision locations, particularly for bikes and pedestrians, and trends regarding primary collision factors.

Task 3.5 Deliverables:

- Contractor shall complete a baseline conditions technical memorandum that includes the results of the ASA data collection and Existing Conditions analysis tasks. Provide technical memorandum for one round of review and revision.

Task 4.0: Phase 2 – Alternatives Analysis

Task 4.1: Develop Screening Criteria

Contractor will prepare and submit to VTA a white paper on screening criteria that will be used to develop and evaluate the transportation facility and Access Study Area alternatives. Criteria may include bicycle and pedestrian circulation, ease of transfers, transit access, cost, opportunity for transit-oriented development integration, consistency with regional, City, and transit operator goals and policies, and others to be identified by the Contractor. The screening criteria will be directly related to the goals and objectives identified in Phase 1.

Task 4.1: Deliverables

- Draft and final white papers on screening criteria used to develop and evaluate alternatives

Task 4.2: Identify Transportation Facility Alternatives

Contractor will prepare and submit to VTA a list of recommended alternatives to be prepared and analyzed under Phase 2 of the study for review and approval.

Task 4.2: Deliverables

- List of alternatives recommended for study under Phase 2

Task 4.3: Develop Alternatives

Task 4.3.1: Develop Transportation Facility Alternatives

Upon VTA acceptance of the list of alternatives, the Contractor will develop up to four (4) conceptual alternative configurations of the master plan transportation facilities. Each alternative will be developed and documented at a level of detail that supports evaluation and comparison with other concepts, and demonstrates the approach to:

1. Facility footprint and overall massing of building elements;
2. Location and general configuration of new and existing rail guideways and platforms;
3. Location and general configuration of bus access, circulation and passenger boarding areas;
4. Pedestrian access locations and intermodal circulation, including vertical circulation locations;
5. Locations of kiss-and-ride, taxi/car sharing and bike stations;
6. Pedestrian, auto, bicycle, and transit traffic circulation and primary access routes in the DTC area;
7. Public plazas;
8. A parking solution that includes transit passenger parking facilities, and replacement of existing parking displaced by the project. The parking solution will be based on criteria established under Task 3.4.4, and may include structured or surface parking, a parking management program, and/or use of existing parking facilities;
9. Modification of transit routing and stop locations;
10. Identify the trip generation for each mode generated by the enhanced transit services and any joint development land uses at Diridon Transportation Center
11. Project future volumes along those circulation paths for all travel modes
12. Calculate projected travel time for auto and transit modes along key circulation paths for each alternative

13. Modifications, if any, to Diridon Station Area Plan; and

14. Potential commercial, retail and office locations within the Diridon Transportation Center.

Each transportation facility alternative will be documented in a 3D CAD model (e.g., SketchUp), annotated to describe key features. Circulation will be indicated diagrammatically. Primary functional areas will be identified. Depiction of individual spaces, architectural finishes and details will not be required.

Depiction of parking facilities will be limited to basic information such as vehicular entry/exit locations, internal traffic patterns, gross area, number of levels, and ramp/sloping floor concepts (for structured parking alternatives).

Preliminary alternatives will be consistent with design guidelines and standards adopted by the transit operators, VTA, and CSJ.

Although this study is not anticipated to include the detail of a wayfinding plan, consideration will be given to ease of connectivity between transportation uses and with nearby destinations and attractions, including during special events.

As part of the alternatives development, the Contractor will consider the phasing of implementation, given the anticipated construction and completion dates of planned services at the Diridon Transportation Center.

Task 4.3.2: Develop Access Study Area Alternatives

The Contractor shall:

1. Identify a set of multimodal, Access Study Area circulation improvements that would benefit DTC implementation.
2. Identify variations, if any, that would apply to the ASA circulation improvements based on different attributes of the transportation facility alternatives; and
3. Identify major risk factors and/or trade-offs resulting from the proposed improvements.

Task 4.3.3: Preliminary Alternatives Report

The Contractor will prepare a Preliminary Alternatives Report (draft and final) with narrative, graphics, and illustrations to depict:

1. the configuration, and circulation of the transportation facilities to be provided in the DTC, and their relationship to the existing and planned land use and transportation environment, with cost estimates based on aggregated historical per square foot data for comparable facilities; and
2. proposed multimodal Access Study Area improvements with variations, if any, for each alternative.

Task 4.3 Deliverables

- Draft and final Preliminary Alternatives Report

Task 4.4: Perform Evaluation

The Contractor will evaluate the transportation facility and Access Study Area alternatives using the screening criteria developed earlier in this phase. The evaluation will occur in conjunction with agency coordination and stakeholder participation to be reflected in the evaluation process. An evaluation matrix will be prepared with supporting discussion and analysis. The evaluation will include a comparison of cost estimates as described above.

Evaluation of Access Study Area alternatives will compare:

- performance in terms of desirability, comfort, safety, and promotion of sustainability for the following modes: auto, transit, bicycle, and pedestrian;
- major risk factors and/or trade-offs for each of the station area circulation improvements identified; and
- the benefit to travel time, reliability, ease of access and level of comfort associated with the identified improvements

The evaluation will be summarized in a draft and final alternatives evaluation report.

Task 4.4: Deliverables

- Draft and final Alternatives Evaluation Report

Task 5.0: Project Final Report

The selected alternatives, analysis, and recommendations from Phase 1 and Phase 2 will be summarized in a Project Final Report. The report will be presented to and reviewed sequentially by technical and then executive staff from the multi-agency stakeholder group. The Contractor will prepare draft and final Project Final Reports, addressing comments at each stage of review.

Task 5.0 Deliverables

- Draft and final Master Plan Phase 1 and 2 Final Report

46 Fed. Reg. 18026 (March 23, 1981)
As amended

COUNCIL ON ENVIRONMENTAL QUALITY

Executive Office of the President

Memorandum to Agencies:

Forty Most Asked Questions Concerning
CEQ's National Environmental Policy Act Regulations

SUMMARY: The Council on Environmental Quality, as part of its oversight of implementation of the National Environmental Policy Act, held meetings in the ten Federal regions with Federal, State, and local officials to discuss administration of the implementing regulations. The forty most asked questions were compiled in a memorandum to agencies for the information of relevant officials. In order efficiently to respond to public inquiries this memorandum is reprinted in this issue of the Federal Register.

Ref: 40 CFR Parts 1500 - 1508 (1987).

FOR FURTHER INFORMATION CONTACT:

General Counsel,
Council on Environmental Quality,
722 Jackson Place NW,
Washington, D.C. 20006;
(202)-395-5754.

March 16, 1981

MEMORANDUM FOR FEDERAL NEPA LIAISONS, FEDERAL, STATE, AND LOCAL OFFICIALS AND OTHER PERSONS INVOLVED IN THE NEPA PROCESS

Subject: Questions and Answers About the NEPA Regulations

During June and July of 1980 the Council on Environmental Quality, with the assistance and cooperation of EPA's EIS Coordinators from the ten EPA regions, held one-day meetings with federal, state and local officials in the ten EPA regional offices around the country. In addition, on July 10, 1980, CEQ conducted a similar meeting for the Washington, D.C. NEPA liaisons and persons involved in the NEPA process. At these meetings CEQ discussed (a) the results of its 1980 review of Draft EISs issued since the July 30, 1979 effective date of the NEPA regulations, (b) agency compliance with the Record of Decision requirements in Section 1505 of the NEPA regulations, and (c) CEQ's preliminary findings on how the scoping process is working. Participants at these meetings received copies of materials prepared by CEQ summarizing its oversight and findings.

These meetings also provided NEPA liaisons and other participants with an opportunity to ask questions about NEPA and the practical application of the NEPA regulations. A number of these questions were answered by CEQ representatives at the regional meetings. In response to the many requests from the agencies and other participants, CEQ has compiled forty of the most important or most frequently asked questions and their answers and reduced them to writing. The answers were prepared by the General Counsel of CEQ in consultation with the Office of Federal Activities of EPA. These answers, of course, do not impose any additional requirements beyond those of the NEPA regulations. This document does not represent new guidance under the NEPA regulations, but rather makes generally available to concerned agencies and private individuals the answers which CEQ has already given at the 1980 regional meetings. The answers also reflect the advice which the Council has given over the past two years to aid agency staff and consultants in their day-to-day application of NEPA and the regulations.

CEQ has also received numerous inquiries regarding the scoping process. CEQ hopes to issue written guidance on scoping later this year on the basis of its special study of scoping, which is nearing completion.

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END NOTES

1a. **Range of Alternatives.** What is meant by "range of alternatives" as referred to in Sec. 1505.1(e)?

A. The phrase "range of alternatives" refers to the alternatives discussed in environmental documents. It includes all reasonable alternatives, which must be rigorously explored and objectively evaluated, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them. *Section 1502.14*. A decisionmaker must not consider alternatives beyond the range of alternatives discussed in the relevant environmental documents. Moreover, a decisionmaker must, in fact, consider all the alternatives discussed in an EIS. *Section 1505.1(e)*.

1b. **How many alternatives** have to be discussed when there is an infinite number of possible alternatives?

A. For some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. For example, a proposal to designate wilderness areas within a National Forest could be said to involve an infinite number of alternatives from 0 to 100 percent of the forest. When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. An appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the Forest to wilderness. What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.

2a. **Alternatives Outside the Capability of Applicant or Jurisdiction of Agency.** If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS

rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant?

A. Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.

2b. Must the EIS analyze **alternatives outside the jurisdiction** or capability of the agency or beyond what Congress has authorized?

A. An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. *Section 1506.2(d)*. Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies. *Section 1500.1(a)*.

3. **No-Action Alternative.** What does the "no action" alternative include? If an agency is under a court order or legislative command to act, must the EIS address the "no action" alternative?

A. Section 1502.14(d) requires the alternatives analysis in the EIS to "include the alternative of no action." There are two distinct interpretations of "no action" that must be considered, depending on the nature of the proposal being evaluated. The first situation might involve an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases "no action" is "no change" from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the "no action" alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, projected impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development.

The second interpretation of "no action" is illustrated in instances involving federal decisions on proposals for projects. "No action" in such cases would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward.

Where a choice of "no action" by the agency would result in predictable actions by others, this consequence of the "no action" alternative should be included in the analysis. For example, if

denial of permission to build a railroad to a facility would lead to construction of a road and increased truck traffic, the EIS should analyze this consequence of the "no action" alternative.

In light of the above, it is difficult to think of a situation where it would not be appropriate to address a "no action" alternative. Accordingly, the regulations require the analysis of the no action alternative even if the agency is under a court order or legislative command to act. This analysis provides a benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action alternatives. It is also an example of a reasonable alternative outside the jurisdiction of the agency which must be analyzed. *Section 1502.14(c).* See Question 2 above. Inclusion of such an analysis in the EIS is necessary to inform the Congress, the public, and the President as intended by NEPA. *Section 1500.1(a).*

4a. **Agency's Preferred Alternative.** What is the "agency's preferred alternative"?

A. The "agency's preferred alternative" is the alternative which the agency believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors. The concept of the "agency's preferred alternative" is different from the "environmentally preferable alternative," although in some cases one alternative may be both. See Question 6 below. It is identified so that agencies and the public can understand the lead agency's orientation.

4b. Does the **"preferred alternative"** have to be identified in the Draft EIS **and** the Final EIS or just in the Final EIS?

A. Section 1502.14(e) requires the section of the EIS on alternatives to "identify the agency's preferred alternative if one or more exists, in the draft statement, and identify such alternative in the final statement . . ." This means that if the agency has a preferred alternative at the Draft EIS stage, that alternative must be labeled or identified as such in the Draft EIS. If the responsible federal official in fact has no preferred alternative at the Draft EIS stage, a preferred alternative need not be identified there. By the time the Final EIS is filed, Section 1502.14(e) presumes the existence of a preferred alternative and requires its identification in the Final EIS "unless another law prohibits the expression of such a preference."

4c. Who recommends or determines the **"preferred alternative?"**

A. The lead agency's official with line responsibility for preparing the EIS and assuring its adequacy is responsible for identifying the agency's preferred alternative(s). The NEPA regulations do not dictate which official in an agency shall be responsible for preparation of EISs, but agencies can identify this official in their implementing procedures, pursuant to Section 1507.3.

Even though the agency's preferred alternative is identified by the EIS preparer in the EIS, the statement must be objectively prepared and not slanted to support the choice of the agency's preferred alternative over the other reasonable and feasible alternatives.

5a. **Proposed Action v. Preferred Alternative.** Is the "proposed action" the same thing as the "preferred alternative"?

A. The "proposed action" may be, but is not necessarily, the agency's "preferred alternative." The proposed action may be a proposal in its initial form before undergoing analysis in the EIS process. If the proposed action is [46 FR 18028] internally generated, such as preparing a land management plan, the proposed action might end up as the agency's preferred alternative. On the other hand the proposed action may be granting an application to a non- federal entity for a permit. The agency may or may not have a "preferred alternative" at the Draft EIS stage (see Question 4 above). In that case the agency may decide at the Final EIS stage, on the basis of the Draft EIS and the public and agency comments, that an alternative other than the proposed action is the agency's "preferred alternative."

5b. Is the analysis of the **"proposed action"** in an EIS to be treated differently from the analysis of alternatives?

A. The degree of analysis devoted to each alternative in the EIS is to be substantially similar to that devoted to the "proposed action." Section 1502.14 is titled "Alternatives including the proposed action" to reflect such comparable treatment. Section 1502.14(b) specifically requires "substantial treatment" in the EIS of each alternative including the proposed action. This regulation does not dictate an amount of information to be provided, but rather, prescribes a level of treatment, which may in turn require varying amounts of information, to enable a reviewer to evaluate and compare alternatives.

6a. **Environmentally Preferable Alternative.** What is the meaning of the term "environmentally preferable alternative" as used in the regulations with reference to Records of Decision? How is the term "environment" used in the phrase?

A. Section 1505.2(b) requires that, in cases where an EIS has been prepared, the Record of Decision (ROD) must identify all alternatives that were considered, ". . . specifying the alternative or alternatives which were considered to be environmentally preferable." The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.

The Council recognizes that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS. Through the identification of the environmentally preferable alternative, the decisionmaker is clearly faced with a choice between that alternative and others, and must consider whether the decision accords with the Congressionally declared policies of the Act.

6b. **Who recommends or determines** what is environmentally preferable?

A. The agency EIS staff is encouraged to make recommendations of the environmentally preferable alternative(s) during EIS preparation. In any event the lead agency official responsible for the EIS is encouraged to identify the environmentally preferable alternative(s) in the EIS. In all cases, commentors from other agencies and the public are also encouraged to address this question. The agency must identify the environmentally preferable alternative in the ROD.

7. **Difference Between Sections of EIS on Alternatives and Environmental Consequences.** What is the difference between the sections in the EIS on "alternatives" and "environmental consequences"? How do you avoid duplicating the discussion of alternatives in preparing these two sections?

A. The "alternatives" section is the heart of the EIS. This section rigorously explores and objectively evaluates all reasonable alternatives including the proposed action. *Section 1502.14.* It should include relevant comparisons on environmental and other grounds. The "environmental consequences" section of the EIS discusses the specific environmental impacts or effects of each of the alternatives including the proposed action. *Section 1502.16.* In order to avoid duplication between these two sections, most of the "alternatives" section should be devoted to describing and comparing the alternatives. Discussion of the environmental impacts of these alternatives should be limited to a concise descriptive summary of such impacts in a comparative form, including charts or tables, thus sharply defining the issues and providing a clear basis for choice among options. *Section 1502.14.* The "environmental consequences" section should be devoted largely to a scientific analysis of the direct and indirect environmental effects of the proposed action and of each of the alternatives. It forms the analytic basis for the concise comparison in the "alternatives" section.

8. **Early Application of NEPA.** Section 1501.2(d) of the NEPA regulations requires agencies to provide for the early application of NEPA to cases where actions are planned by **private applicants** or **non-Federal entities** and are, at some stage, subject to federal approval of permits, loans, loan guarantees, insurance or other actions. What must and can agencies do to apply NEPA early in these cases?

A. Section 1501.2(d) requires federal agencies to take steps toward ensuring that private parties and state and local entities initiate environmental studies as soon as federal involvement in their proposals can be foreseen. This section is intended to ensure that environmental factors are considered at an early stage in the planning process and to avoid the situation where the applicant for a federal permit or approval has completed planning and eliminated all alternatives to the proposed action by the time the EIS process commences or before the EIS process has been completed.

Through early consultation, business applicants and approving agencies may gain better appreciation of each other's needs and foster a decisionmaking process which avoids later unexpected confrontations.

Federal agencies are required by Section 1507.3(b) to develop procedures to carry out Section 1501.2(d). The procedures should include an "outreach program", such as a means for

prospective applicants to conduct pre-application consultations with the lead and cooperating agencies. Applicants need to find out, in advance of project planning, what environmental studies or other information will be required, and what mitigation requirements are likely, in connection with the later federal NEPA process. Agencies should designate staff to advise potential applicants of the agency's NEPA information requirements and should publicize their pre-application procedures and information requirements in newsletters or other media used by potential applicants.

Complementing Section 1501.2(d), Section 1506.5(a) requires agencies to assist applicants by outlining the types of information required in those cases where the agency requires the applicant to submit environmental data for possible use by the agency in preparing an EIS.

Section 1506.5(b) allows agencies to authorize preparation of environmental assessments by applicants. Thus, the procedures should also include a means for anticipating and utilizing applicants' environmental studies or "early corporate environmental assessments" to fulfill some of the federal agency's NEPA obligations. However, in such cases the agency must still evaluate independently the environmental issues [46 FR 18029] and take responsibility for the environmental assessment.

These provisions are intended to encourage and enable private and other non-federal entities to build environmental considerations into their own planning processes in a way that facilitates the application of NEPA and avoids delay.

9. **Applicant Who Needs Other Permits.** To what extent must an agency inquire into whether an applicant for a federal permit, funding or other approval of a proposal will also need approval from another agency for the same proposal or some other related aspect of it?

A. Agencies must integrate the NEPA process into other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Specifically, the agency must "provide for cases where actions are planned by . . . applicants," so that designated staff are available to advise potential applicants of studies or other information that will foreseeably be required for the later federal action; the agency shall consult with the applicant if the agency foresees its own involvement in the proposal; and it shall insure that the NEPA process commences at the earliest possible time. *Section 1501.2(d).* (See Question 8.)

The regulations emphasize agency cooperation early in the NEPA process. *Section 1501.6.* Section 1501.7 on "scoping" also provides that all affected Federal agencies are to be invited to participate in scoping the environmental issues and to identify the various environmental review and consultation requirements that may apply to the proposed action. Further, Section 1502.25(b) requires that the draft EIS list all the federal permits, licenses and other entitlements that are needed to implement the proposal.

These provisions create an affirmative obligation on federal agencies to inquire early, and to the maximum degree possible, to ascertain whether an applicant is or will be seeking other federal assistance or approval, or whether the applicant is waiting until a proposal has been substantially developed before requesting federal aid or approval.

Thus, a federal agency receiving a request for approval or assistance should determine whether the applicant has filed separate requests for federal approval or assistance with other federal agencies. Other federal agencies that are likely to become involved should then be contacted, and the NEPA process coordinated, to insure an early and comprehensive analysis of the direct and indirect effects of the proposal and any related actions. The agency should inform the applicant that action on its application may be delayed unless it submits all other federal applications (where feasible to do so), so that all the relevant agencies can work together on the scoping process and preparation of the EIS.

10a. **Limitations on Action During 30-Day Review Period for Final EIS.** What actions by agencies and/or applicants are allowed during EIS preparation and during the 30-day review period after publication of a final EIS?

A. No federal decision on the proposed action shall be made or recorded until at least 30 days after the publication by EPA of notice that the particular EIS has been filed with EPA. *Sections 1505.2 and 1506.10*. Section 1505.2 requires this decision to be stated in a public Record of Decision.

Until the agency issues its Record of Decision, no action by an agency or an applicant concerning the proposal shall be taken which would have an adverse environmental impact or limit the choice of reasonable alternatives. *Section 1506.1(a).* But this does not preclude preliminary planning or design work which is needed to support an application for permits or assistance. *Section 1506.1(d).*

When the impact statement in question is a program EIS, no major action concerning the program may be taken which may significantly affect the quality of the human environment, unless the particular action is justified independently of the program, is accompanied by its own adequate environmental impact statement and will not prejudice the ultimate decision on the program. *Section 1506.1(c).*

10b. Do these **limitations on action** (described in Question 10a) apply to **state or local agencies** that have statutorily delegated responsibility for preparation of environmental documents required by NEPA, for example, under the HUD Block Grant program?

A. Yes, these limitations do apply, without any variation from their application to federal agencies.

11. **Limitations on Actions by an Applicant During EIS Process.** What actions must a lead agency take during the NEPA process when it becomes aware that a non-federal applicant is about to take an action within the agency's jurisdiction that would either have an adverse environmental impact or limit the choice of reasonable alternatives (e.g., prematurely commit money or other resources towards the completion of the proposal)?

A. The federal agency must notify the applicant that the agency will take strong affirmative steps to insure that the objectives and procedures of NEPA are fulfilled. *Section 1506.1(b).* These steps could include seeking injunctive measures under NEPA, or the use of sanctions

available under either the agency's permitting authority or statutes setting forth the agency's statutory mission. For example, the agency might advise an applicant that if it takes such action the agency will not process its application.

12a. **Effective Date and Enforceability of the Regulations.** What actions are subject to the Council's new regulations, and what actions are grandfathered under the old guidelines?

A. The effective date of the Council's regulations was July 30, 1979 (except for certain HUD programs under the Housing and Community Development Act, 42 U.S.C. 5304(h), and certain state highway programs that qualify under Section 102(2)(D) of NEPA for which the regulations became effective on November 30, 1979). All the provisions of the regulations are binding as of that date, including those covering decisionmaking, public participation, referrals, limitations on actions, EIS supplements, etc. For example, a Record of Decision would be prepared even for decisions where the draft EIS was filed before July 30, 1979.

But in determining whether or not the new regulations apply to the preparation of a particular environmental document, the relevant factor is the date of filing of the draft of that document. Thus, the new regulations do not require the redrafting of an EIS or supplement if the draft EIS or supplement was filed before July 30, 1979. However, a supplement prepared after the effective date of the regulations for an EIS issued in final before the effective date of the regulations would be controlled by the regulations.

Even though agencies are not required to apply the regulations to an EIS or other document for which the draft was filed prior to July 30, 1979, the regulations encourage agencies to follow the regulations "to the fullest extent practicable," i.e., if it is feasible to do so, in preparing the final document. *Section 1506.12(a).*

12b. Are **projects authorized by Congress before** the effective date of the Council's regulations grandfathered?

A. No. The date of Congressional authorization for a project is not determinative of whether the Council's regulations or former Guidelines apply to the particular proposal. No incomplete projects or proposals of any kind are grandfathered in whole or in part. Only certain environmental documents, for which the draft was issued before the effective date of the regulations, are grandfathered and [46 FR 18030] subject to the Council's former Guidelines.

12c. **Can a violation of the regulations give rise to a cause of action?**

A. While a trivial violation of the regulations would not give rise to an independent cause of action, such a cause of action would arise from a substantial violation of the regulations. *Section 1500.3.*

13. **Use of Scoping Before Notice of Intent to Prepare EIS.** Can the scoping process be used in connection with preparation of an **environmental assessment,** i.e., before both the decision to proceed with an EIS and publication of a notice of intent?

A. Yes. Scoping can be a useful tool for discovering alternatives to a proposal, or significant

impacts that may have been overlooked. In cases where an environmental assessment is being prepared to help an agency decide whether to prepare an EIS, useful information might result from early participation by other agencies and the public in a scoping process.

The regulations state that the scoping process is to be preceded by a Notice of Intent (NOI) to prepare an EIS. But that is only the minimum requirement. Scoping may be initiated earlier, as long as there is appropriate public notice and enough information available on the proposal so that the public and relevant agencies can participate effectively.

However, scoping that is done before the assessment, and in aid of its preparation, cannot substitute for the normal scoping process after publication of the NOI, unless the earlier public notice stated clearly that this possibility was under consideration, and the NOI expressly provides that written comments on the scope of alternatives and impacts will still be considered.

14a. **Rights and Responsibilities of Lead and Cooperating Agencies.** What are the respective rights and responsibilities of lead and cooperating agencies? What letters and memoranda must be prepared?

A. After a lead agency has been designated (Sec. 1501.5), that agency has the responsibility to solicit cooperation from other federal agencies that have jurisdiction by law or special expertise on any environmental issue that should be addressed in the EIS being prepared. Where appropriate, the lead agency should seek the cooperation of state or local agencies of similar qualifications. When the proposal may affect an Indian reservation, the agency should consult with the Indian tribe. *Section 1508.5.* The request for cooperation should come at the earliest possible time in the NEPA process.

After discussions with the candidate cooperating agencies, the lead agency and the cooperating agencies are to determine by letter or by memorandum which agencies will undertake cooperating responsibilities. To the extent possible at this stage, responsibilities for specific issues should be assigned. The allocation of responsibilities will be completed during scoping. *Section 1501.7(a)(4).*

Cooperating agencies must assume responsibility for the development of information and the preparation of environmental analyses at the request of the lead agency. *Section 1501.6(b)(3).* Cooperating agencies are now required by Section 1501.6 to devote staff resources that were normally primarily used to critique or comment on the Draft EIS after its preparation, much earlier in the NEPA process -- primarily at the scoping and Draft EIS preparation stages. If a cooperating agency determines that its resource limitations preclude any involvement, or the degree of involvement (amount of work) requested by the lead agency, it must so inform the lead agency in writing and submit a copy of this correspondence to the Council. *Section 1501.6(c).*

In other words, the potential cooperating agency must decide early if it is able to devote any of its resources to a particular proposal. For this reason the regulation states that an agency may reply to a request for cooperation that "other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental

impact statement." (Emphasis added). The regulation refers to the "action," rather than to the EIS, to clarify that the agency is taking itself out of all phases of the federal action, not just draft EIS preparation. This means that the agency has determined that it cannot be involved in the later stages of EIS review and comment, as well as decisionmaking on the proposed action. For this reason, cooperating agencies with jurisdiction by law (those which have permitting or other approval authority) cannot opt out entirely of the duty to cooperate on the EIS. See also Question 15, relating specifically to the responsibility of EPA.

14b. How are **disputes resolved between lead and cooperating agencies** concerning the scope and level of detail of analysis and the quality of data in impact statements?

A. Such disputes are resolved by the agencies themselves. A lead agency, of course, has the ultimate responsibility for the content of an EIS. But it is supposed to use the environmental analysis and recommendations of cooperating agencies with jurisdiction by law or special expertise to the maximum extent possible, consistent with its own responsibilities as lead agency. *Section 1501.6(a)(2).*

If the lead agency leaves out a significant issue or ignores the advice and expertise of the cooperating agency, the EIS may be found later to be inadequate. Similarly, where cooperating agencies have their own decisions to make and they intend to adopt the environmental impact statement and base their decisions on it, one document should include all of the information necessary for the decisions by the cooperating agencies. Otherwise they may be forced to duplicate the EIS process by issuing a new, more complete EIS or Supplemental EIS, even though the original EIS could have sufficed if it had been properly done at the outset. Thus, both lead and cooperating agencies have a stake in producing a document of good quality. Cooperating agencies also have a duty to participate fully in the scoping process to ensure that the appropriate range of issues is determined early in the EIS process.

Because the EIS is not the Record of Decision, but instead constitutes the information and analysis on which to base a decision, disagreements about conclusions to be drawn from the EIS need not inhibit agencies from issuing a joint document, or adopting another agency's EIS, if the analysis is adequate. Thus, if each agency has its own "preferred alternative," both can be identified in the EIS. Similarly, a cooperating agency with jurisdiction by law may determine in its own ROD that alternative A is the environmentally preferable action, even though the lead agency has decided in its separate ROD that Alternative B is environmentally preferable.

14c. What are the specific responsibilities of federal and state **cooperating agencies to review draft EISs**?

A. Cooperating agencies (i.e., agencies with jurisdiction by law or special expertise) and agencies that are authorized to develop or enforce environmental standards, must comment on environmental impact statements within their jurisdiction, expertise or authority. *Sections 1503.2, 1508.5.* If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should simply comment accordingly. Conversely, if the cooperating agency determines that a draft EIS is incomplete, inadequate or inaccurate, or it has other comments, it should promptly make such comments, conforming to the requirements

of specificity in section 1503.3.

14d. How is the lead agency to treat the comments of another agency with jurisdiction by law or special expertise which has **failed or refused to cooperate or participate in scoping or EIS preparation**?

A. A lead agency has the responsibility to respond to all substantive comments raising significant issues regarding a draft EIS. *Section 1503.4*. However, cooperating agencies are generally under an obligation to raise issues or otherwise participate in the EIS process during scoping and EIS preparation if they reasonably can do so. In practical terms, if a cooperating agency fails to cooperate at the outset, such as during scoping, it will find that its comments at a later stage will not be as persuasive to the lead agency.

15. **Commenting Responsibilities of EPA.** Are EPA's responsibilities to review and comment on the environmental effects of agency proposals under **Section 309 of the Clean Air Act** independent of its responsibility as a cooperating agency?

A. Yes. EPA has an obligation under Section 309 of the Clean Air Act to review and comment in writing on the environmental impact of any matter relating to the authority of the Administrator contained in proposed legislation, federal construction projects, other federal actions requiring EISs, and new regulations. *42 U.S.C. Sec. 7609*. This obligation is independent of its role as a cooperating agency under the NEPA regulations.

16. **Third Party Contracts.** What is meant by the term "third party contracts" in connection with the preparation of an EIS? See Section 1506.5(c). When can "third party contracts" be used?

A. As used by EPA and other agencies, the term "third party contract" refers to the preparation of EISs by contractors paid by the applicant. In the case of an EIS for a National Pollution Discharge Elimination System (NPDES) permit, the applicant, aware in the early planning stages of the proposed project of the need for an EIS, contracts directly with a consulting firm for its preparation. See 40 C.F.R. 6.604(g). The "third party" is EPA which, under Section 1506.5(c), must select the consulting firm, even though the applicant pays for the cost of preparing the EIS. The consulting firm is responsible to EPA for preparing an EIS that meets the requirements of the NEPA regulations and EPA's NEPA procedures. It is in the applicant's interest that the EIS comply with the law so that EPA can take prompt action on the NPDES permit application. The "third party contract" method under EPA's NEPA procedures is purely voluntary, though most applicants have found it helpful in expediting compliance with NEPA.

If a federal agency uses "third party contracting," the applicant may undertake the necessary paperwork for the solicitation of a field of candidates under the agency's direction, so long as the agency complies with Section 1506.5(c). Federal procurement requirements do not apply to the agency because it incurs no obligations or costs under the contract, nor does the agency procure anything under the contract.

17a. **Disclosure Statement to Avoid Conflict of Interest.** If an EIS is prepared with the assistance of a consulting firm, the firm must execute a disclosure statement. What criteria

must the firm follow in determining whether it has any "financial or other interest in the outcome of the project" which would cause a conflict of interest?

A. Section 1506.5(c), which specifies that a consulting firm preparing an EIS must execute a disclosure statement, does not define "financial or other interest in the outcome of the project." The Council interprets this term broadly to cover any known benefits other than general enhancement of professional reputation. This includes any financial benefit such as a promise of future construction or design work on the project, as well as indirect benefits the consultant is aware of (e.g., if the project would aid proposals sponsored by the firm's other clients). For example, completion of a highway project may encourage construction of a shopping center or industrial park from which the consultant stands to benefit. If a consulting firm is aware that it has such an interest in the decision on the proposal, it should be disqualified from preparing the EIS, to preserve the objectivity and integrity of the NEPA process.

When a consulting firm has been involved in developing initial data and plans for the project, but does not have any financial or other interest in the outcome of the decision, it need not be disqualified from preparing the EIS. However, a disclosure statement in the draft EIS should clearly state the scope and extent of the firm's prior involvement to expose any potential conflicts of interest that may exist.

17b. If the firm in fact has no promise of future work or other interest in the outcome of the proposal, **may the firm later bid** in competition with others for future work on the project if the proposed action is approved?

A. Yes.

18. **Uncertainties About Indirect Effects of A Proposal.** How should uncertainties about indirect effects of a proposal be addressed, for example, in cases of disposal of federal lands, when the identity or plans of future landowners is unknown?

A. The EIS must identify all the indirect effects that are known, and make a good faith effort to explain the effects that are not known but are "reasonably foreseeable." *Section 1508.8(b).* In the example, if there is total uncertainty about the identity of future land owners or the nature of future land uses, then of course, the agency is not required to engage in speculation or contemplation about their future plans. But, in the ordinary course of business, people do make judgments based upon reasonably foreseeable occurrences. It will often be possible to consider the likely purchasers and the development trends in that area or similar areas in recent years; or the likelihood that the land will be used for an energy project, shopping center, subdivision, farm or factory. The agency has the responsibility to make an informed judgment, and to estimate future impacts on that basis, especially if trends are ascertainable or potential purchasers have made themselves known. The agency cannot ignore these uncertain, but probable, effects of its decisions.

19a. **Mitigation Measures.** What is the scope of mitigation measures that must be discussed?
A. The mitigation measures discussed in an EIS must cover the range of impacts of the proposal. The measures must include such things as design alternatives that would decrease

pollution emissions, construction impacts, esthetic intrusion, as well as relocation assistance, possible land use controls that could be enacted, and other possible efforts. Mitigation measures must be considered even for impacts that by themselves would not be considered "significant." Once the proposal itself is considered as a whole to have significant effects, all of its specific effects on the environment (whether or not "significant") must be considered, and mitigation measures must be developed where it is feasible to do so. *Sections 1502.14(f), 1502.16(h), 1508.14.*

19b. How should an EIS treat the subject of available mitigation measures that are (1) **outside the jurisdiction** of the lead or cooperating agencies, or (2) **unlikely** to be adopted or enforced by the responsible agency?

A. All relevant, reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agencies, and thus would not be committed as part of the RODs of these agencies. *Sections 1502.16(h), 1505.2(c).* This will serve to [46 FR 18032] alert agencies or officials who can implement these extra measures, and will encourage them to do so. Because the EIS is the most comprehensive environmental document, it is an ideal vehicle in which to lay out not only the full range of environmental impacts but also the full spectrum of appropriate mitigation.

However, to ensure that environmental effects of a proposed action are fairly assessed, the probability of the mitigation measures being implemented must also be discussed. Thus the EIS and the Record of Decision should indicate the likelihood that such measures will be adopted or enforced by the responsible agencies. *Sections 1502.16(h), 1505.2.* If there is a history of nonenforcement or opposition to such measures, the EIS and Record of Decision should acknowledge such opposition or nonenforcement. If the necessary mitigation measures will not be ready for a long period of time, this fact, of course, should also be recognized.

20. **Worst Case Analysis**. [Withdrawn.]

21. **Combining Environmental and Planning Documents.** Where an EIS or an EA is combined with another project planning document (sometimes called **"piggybacking"**), to what degree may the EIS or EA refer to and rely upon information in the project document to satisfy NEPA's requirements?

A. Section 1502.25 of the regulations requires that draft EISs be prepared concurrently and integrated with environmental analyses and related surveys and studies required by other federal statutes. In addition, Section 1506.4 allows any environmental document prepared in compliance with NEPA to be combined with any other agency document to reduce duplication and paperwork. However, these provisions were not intended to authorize the preparation of a short summary or outline EIS, attached to a detailed project report or land use plan containing the required environmental impact data. In such circumstances, the reader would have to refer constantly to the detailed report to understand the environmental impacts and alternatives which should have been found in the EIS itself.

The EIS must stand on its own as an analytical document which fully informs decisionmakers and the public of the environmental effects of the proposal and those of the reasonable alternatives. *Section 1502.1.* But, as long as the EIS is clearly identified and is self-supporting, it can be physically included in or attached to the project report or land use plan, and may use attached report material as technical backup.

Forest Service environmental impact statements for forest management plans are handled in this manner. The EIS identifies the agency's preferred alternative, which is developed in detail as the proposed management plan. The detailed proposed plan accompanies the EIS through the review process, and the documents are appropriately cross-referenced. The proposed plan is useful for EIS readers as an example, to show how one choice of management options translates into effects on natural resources. This procedure permits initiation of the 90-day public review of proposed forest plans, which is required by the National Forest Management Act.

All the alternatives are discussed in the EIS, which can be read as an independent document. The details of the management plan are not repeated in the EIS, and vice versa. This is a reasonable functional separation of the documents: the EIS contains information relevant to the choice among alternatives; the plan is a detailed description of proposed management activities suitable for use by the land managers. This procedure provides for concurrent compliance with the public review requirements of both NEPA and the National Forest Management Act.

Under some circumstances, a project report or management plan may be totally merged with the EIS, and the one document labeled as both "EIS" and "management plan" or "project report." This may be reasonable where the documents are short, or where the EIS format and the regulations for clear, analytical EISs also satisfy the requirements for a project report.

22. **State and Federal Agencies as Joint Lead Agencies.** May state and federal agencies serve as joint lead agencies? If so, how do they resolve law, policy and resource conflicts under NEPA and the relevant state environmental policy act? How do they resolve differences in perspective where, for example, national and local needs may differ?

A. Under Section 1501.5(b), federal, state or local agencies, as long as they include at least one federal agency, may act as joint lead agencies to prepare an EIS. Section 1506.2 also strongly urges state and local agencies and the relevant federal agencies to cooperate fully with each other. This should cover joint research and studies, planning activities, public hearings, environmental assessments and the preparation of joint EISs under NEPA and the relevant "little NEPA" state laws, so that one document will satisfy both laws.

The regulations also recognize that certain inconsistencies may exist between the proposed federal action and any approved state or local plan or law. The joint document should discuss the extent to which the federal agency would reconcile its proposed action with such plan or law. *Section 1506.2(d).* (See Question 23).

Because there may be differences in perspective as well as conflicts among [46 FR 18033] federal, state and local goals for resources management, the Council has advised participating

agencies to adopt a flexible, cooperative approach. The joint EIS should reflect all of their interests and missions, clearly identified as such. The final document would then indicate how state and local interests have been accommodated, or would identify conflicts in goals (e.g., how a hydroelectric project, which might induce second home development, would require new land use controls). The EIS must contain a complete discussion of scope and purpose of the proposal, alternatives, and impacts so that the discussion is adequate to meet the needs of local, state and federal decisionmakers.

23a. **Conflicts of Federal Proposal With Land Use Plans, Policies or Controls.** How should an agency handle potential **conflicts** between a proposal and the objectives of Federal, state or local land use plans, policies and controls for the area concerned? See Sec. 1502.16(c).

A. The agency should first inquire of other agencies whether there are any potential conflicts. If there would be immediate conflicts, or if conflicts could arise in the future when the plans are finished (see Question 23(b) below), the EIS must acknowledge and describe the extent of those conflicts. If there are any possibilities of resolving the conflicts, these should be explained as well. The EIS should also evaluate the seriousness of the impact of the proposal on the land use plans and policies, and whether, or how much, the proposal will impair the effectiveness of land use control mechanisms for the area. Comments from officials of the affected area should be solicited early and should be carefully acknowledged and answered in the EIS.

23b. What constitutes a **"land use plan or policy"** for purposes of this discussion?

A. The term "land use plans," includes all types of formally adopted documents for land use planning, zoning and related regulatory requirements. Local general plans are included, even though they are subject to future change. Proposed plans should also be addressed if they have been formally proposed by the appropriate government body in a written form, and are being actively pursued by officials of the jurisdiction. Staged plans, which must go through phases of development such as the Water Resources Council's Level A, B and C planning process should also be included even though they are incomplete.

The term "policies" includes formally adopted statements of land use policy as embodied in laws or regulations. It also includes proposals for action such as the initiation of a planning process, or a formally adopted policy statement of the local, regional or state executive branch, even if it has not yet been formally adopted by the local, regional or state legislative body.

23c. What options are available for the decisionmaker when **conflicts with such plans** or policies are identified?

A. After identifying any potential land use conflicts, the decisionmaker must weigh the significance of the conflicts, among all the other environmental and non-environmental factors that must be considered in reaching a rational and balanced decision. Unless precluded by other law from causing or contributing to any inconsistency with the land use plans, policies or controls, the decisionmaker retains the authority to go forward with

the proposal, despite the potential conflict. In the Record of Decision, the decisionmaker must explain what the decision was, how it was made, and what mitigation measures are being imposed to lessen adverse environmental impacts of the proposal, among the other requirements of Section 1505.2. This provision would require the decisionmaker to explain any decision to override land use plans, policies or controls for the area.

24a. **Environmental Impact Statements on Policies, Plans or Programs.** When are EISs required on policies, plans or programs?

A. An EIS must be prepared if an agency proposes to implement a specific policy, to adopt a plan for a group of related actions, or to implement a specific statutory program or executive directive. *Section 1508.18.* In addition, the adoption of official policy in the form of rules, regulations and interpretations pursuant to the Administrative Procedure Act, treaties, conventions, or other formal documents establishing governmental or agency policy which will substantially alter agency programs, could require an EIS. *Section 1508.18.* In all cases, the policy, plan, or program must have the potential for significantly affecting the quality of the human environment in order to require an EIS. It should be noted that a proposal "may exist in fact as well as by agency declaration that one exists." *Section 1508.23.*

24b. When is an **area-wide or overview EIS** appropriate?

A. The preparation of an area-wide or overview EIS may be particularly useful when similar actions, viewed with other reasonably foreseeable or proposed agency actions, share common timing or geography. For example, when a variety of energy projects may be located in a single watershed, or when a series of new energy technologies may be developed through federal funding, the overview or area-wide EIS would serve as a valuable and necessary analysis of the affected environment and the potential cumulative impacts of the reasonably foreseeable actions under that program or within that geographical area.

24c. What is the function of **tiering** in such cases?

A. Tiering is a procedure which allows an agency to avoid duplication of paperwork through the incorporation by reference of the general discussions and relevant specific discussions from an environmental impact statement of broader scope into one of lesser scope or vice versa. In the example given in Question 24b, this would mean that an overview EIS would be prepared for all of the energy activities reasonably foreseeable in a particular geographic area or resulting from a particular development program. This impact statement would be followed by site-specific or project-specific EISs. The tiering process would make each EIS of greater use and meaning to the public as the plan or program develops, without duplication of the analysis prepared for the previous impact statement.

25a. **Appendices and Incorporation by Reference.** When is it appropriate to use appendices instead of including information in the body of an EIS?

A. The body of the EIS should be a succinct statement of all the information on environmental impacts and alternatives that the decisionmaker and the public need, in order to make the decision and to ascertain that every significant factor has been examined. The EIS must

explain or summarize methodologies of research and modeling, and the results of research that may have been conducted to analyze impacts and alternatives.

Lengthy technical discussions of modeling methodology, baseline studies, or other work are best reserved for the appendix. In other words, if only technically trained individuals are likely to understand a particular discussion then it should go in the appendix, and a plain language summary of the analysis and conclusions of that technical discussion should go in the text of the EIS.

The final statement must also contain the agency's responses to comments on the draft EIS. These responses will be primarily in the form of changes in the document itself, but specific answers to each significant comment should also be included. These specific responses may be placed in an appendix. If the comments are especially voluminous, summaries of the comments and responses will suffice. (See Question 29 regarding the level of detail required for responses to comments.)

25b. How does an **appendix** differ from **incorporation by reference?**

A. First, if at all possible, the appendix accompanies the EIS, whereas the material which is incorporated by reference does not accompany the EIS. Thus the appendix should contain information that reviewers will be likely to want to examine. The appendix should include material that pertains to preparation of a particular EIS. Research papers directly relevant to the proposal, lists of affected species, discussion of the methodology of models used in the analysis of impacts, extremely detailed responses to comments, or other information, would be placed in the appendix.

The appendix must be complete and available at the time the EIS is filed. Five copies of the appendix must be sent to EPA with five copies of the EIS for filing. If the appendix is too bulky to be circulated, it instead must be placed in conveniently accessible locations or furnished directly to commentors upon request. If it is not circulated with the EIS, the Notice of Availability published by EPA must so state, giving a telephone number to enable potential commentors to locate or request copies of the appendix promptly.

Material that is not directly related to preparation of the EIS should be incorporated by reference. This would include other EISs, research papers in the general literature, technical background papers or other material that someone with technical training could use to evaluate the analysis of the proposal. These must be made available, either by citing the literature, furnishing copies to central locations, or sending copies directly to commenters upon request.

Care must be taken in all cases to ensure that material incorporated by reference, and the occasional appendix that does not accompany the EIS, are in fact available for the full minimum public comment period.

26a. **Index and Keyword Index in EISs.** How detailed must an EIS index be?

A. The EIS index should have a level of detail sufficient to focus on areas of the EIS of

reasonable interest to any reader. It cannot be restricted to the most important topics. On the other hand, it need not identify every conceivable term or phrase in the EIS. If an agency believes that the reader is reasonably likely to be interested in a topic, it should be included.

26b. Is a **keyword index** required?

A. No. A keyword index is a relatively short list of descriptive terms that identifies the key concepts or subject areas in a document. For example it could consist of 20 terms which describe the most significant aspects of an EIS that a future researcher would need: type of proposal, type of impacts, type of environment, geographical area, sampling or modeling methodologies used. This technique permits the compilation of EIS data banks, by facilitating quick and inexpensive access to stored materials. While a keyword index is not required by the regulations, it could be a useful addition for several reasons. First, it can be useful as a quick index for reviewers of the EIS, helping to focus on areas of interest. Second, if an agency keeps a listing of the keyword indexes of the EISs it produces, the EIS preparers themselves will have quick access to similar research data and methodologies to aid their future EIS work. Third, a keyword index will be needed to make an EIS available to future researchers using EIS data banks that are being developed. Preparation of such an index now when the document is produced will save a later effort when the data banks become operational.

27a. **List of Preparers.** If a consultant is used in preparing an EIS, must the list of preparers identify members of the consulting firm as well as the agency NEPA staff who were primarily responsible?

A. Section 1502.17 requires identification of the names and qualifications of persons who were primarily responsible for preparing the EIS or significant background papers, including basic components of the statement. This means that members of a consulting firm preparing material that is to become part of the EIS must be identified. The EIS should identify these individuals even though the consultant's contribution may have been modified by the agency.

27b. Should agency staff involved in reviewing and editing the EIS also be included in the **list of preparers?**

A. Agency personnel who wrote basic components of the EIS or significant background papers must, of course, be identified. The EIS should also list the technical editors who reviewed or edited the statements.

27c. How much information should be included on each person listed?

A. The list of preparers should normally not exceed two pages. Therefore, agencies must determine which individuals had primary responsibility and need not identify individuals with minor involvement. The list of preparers should include a very brief identification of the individuals involved, their qualifications (expertise, professional disciplines) and the specific portion of the EIS for which they are responsible. This may be done in tabular form to cut down on length. A line or two for each person's qualifications should be sufficient.

28. **Advance or Xerox Copies of EIS.** May an agency file xerox copies of an EIS with EPA pending the completion of printing the document?

A. Xerox copies of an EIS may be filed with EPA prior to printing only if the xerox copies are simultaneously made available to other agencies and the public. Section 1506.9 of the regulations, which governs EIS filing, specifically requires Federal agencies to file EISs with EPA no earlier than the EIS is distributed to the public. However, this section does not prohibit xeroxing as a form of reproduction and distribution. When an agency chooses xeroxing as the reproduction method, the EIS must be clear and legible to permit ease of reading and ultimate microfiching of the EIS. Where color graphs are important to the EIS, they should be reproduced and circulated with the xeroxed copy.

29a. **Responses to Comments.** What response must an agency provide to a comment on a draft EIS which states that the EIS's methodology is inadequate or inadequately explained? For example, what level of detail must an agency include in its response to a simple postcard comment making such an allegation?

A. Appropriate responses to comments are described in Section 1503.4. Normally the responses should result in changes in the text of the EIS, not simply a separate answer at the back of the document. But, in addition, the agency must state what its response was, and if the agency decides that no substantive response to a comment is necessary, it must explain briefly why.

An agency is not under an obligation to issue a lengthy reiteration of its methodology for any portion of an EIS if the only comment addressing the methodology is a simple complaint that the EIS methodology is inadequate. But agencies must respond to comments, however brief, which are specific in their criticism of agency methodology. For example, if a commentor on an EIS said that an agency's air quality dispersion analysis or methodology was inadequate, and the agency had included a discussion of that analysis in the EIS, little if anything need be added in response to such a comment. However, if the commenter said that the dispersion analysis was inadequate because of its use of a certain computational technique, or that a dispersion analysis was inadequately explained because computational techniques were not included or referenced, then the agency would have to respond in a substantive and meaningful way to such a comment. If a number of comments are identical or very similar, agencies may group the comments and prepare a single answer for each group. Comments may be summarized if they are especially voluminous. The comments or summaries must be attached to the EIS regardless of whether the agency believes they merit individual discussion in the body of the final EIS.

29b. How must an agency respond to a comment on a draft EIS that raises a **new alternative not previously considered** in the draft EIS?

A. This question might arise in several possible situations. First, a commenter on a draft EIS may indicate that there is a possible alternative which, in the agency's view, is not a reasonable alternative. *Section 1502.14(a).* If that is the case, the agency must explain why the comment does not warrant further agency response, citing authorities or reasons that support the agency's position and, if appropriate, indicate those circumstances which would trigger agency

reappraisal or further response. *Section 1503.4(a).* For example, a commentor on a draft EIS on a coal fired power plant may suggest the alternative of using synthetic fuel. The agency may reject the alternative with a brief discussion (with authorities) of the unavailability of synthetic fuel within the time frame necessary to meet the need and purpose of the proposed facility.

A second possibility is that an agency may receive a comment indicating that a particular alternative, while reasonable, should be modified somewhat, for example, to achieve certain mitigation benefits, or for other reasons. If the modification is reasonable, the agency should include a discussion of it in the final EIS. For example, a commenter on a draft EIS on a proposal for a pumped storage power facility might suggest that the applicant's proposed alternative should be enhanced by the addition of certain reasonable mitigation measures, including the purchase and setaside of a wildlife preserve to substitute for the tract to be destroyed by the project. The modified alternative including the additional mitigation measures should be discussed by the agency in the final EIS.

A third slightly different possibility is that a comment on a draft EIS will raise an alternative which is a minor variation of one of the alternatives discussed in the draft EIS, but this variation was not given any consideration by the agency. In such a case, the agency should develop and evaluate the new alternative, if it is reasonable, in the final EIS. If it is qualitatively within the spectrum of alternatives that were discussed in the draft, a supplemental draft will not be needed. For example, a commenter on a draft EIS to designate a wilderness area within a National Forest might reasonably identify a specific tract of the forest, and urge that it be considered for designation. If the draft EIS considered designation of a range of alternative tracts which encompassed forest area of similar quality and quantity, no supplemental EIS would have to be prepared. The agency could fulfill its obligation by addressing that specific alternative in the final EIS.

As another example, an EIS on an urban housing project may analyze the alternatives of constructing 2,000, 4,000, or 6,000 units. A commentor on the draft EIS might urge the consideration of constructing 5,000 units utilizing a different configuration of buildings. This alternative is within the spectrum of alternatives already considered, and, therefore, could be addressed in the final EIS.

A fourth possibility is that a commenter points out an alternative which is not a variation of the proposal or of any alternative discussed in the draft impact statement, and is a reasonable alternative that warrants serious agency response. In such a case, the agency must issue a supplement to the draft EIS that discusses this new alternative. For example, a commenter on a draft EIS on a nuclear power plant might suggest that a reasonable alternative for meeting the projected need for power would be through peak load management and energy conservation programs. If the permitting agency has failed to consider that approach in the Draft EIS, and the approach cannot be dismissed by the agency as unreasonable, a supplement to the Draft EIS, which discusses that alternative, must be prepared. (If necessary, the same supplement should also discuss substantial changes in the proposed action or significant new circumstances or information, as required by Section 1502.9(c)(1) of the Council's regulations.)

If the new alternative was not raised by the commentor during scoping, but could have been,

commenters may find that they are unpersuasive in their efforts to have their suggested alternative analyzed in detail by the agency. However, if the new alternative is discovered or developed later, and it could not reasonably have been raised during the scoping process, then the agency must address it in a supplemental draft EIS. The agency is, in any case, ultimately responsible for preparing an adequate EIS that considers all alternatives.

30. **Adoption of EISs.** When a cooperating agency with jurisdiction by law intends to adopt a lead agency's EIS and it is not satisfied with the adequacy of the document, may the cooperating agency adopt only the part of the EIS with which it is satisfied? If so, would a cooperating agency with jurisdiction by law have to prepare a separate EIS or EIS supplement covering the areas of disagreement with the lead agency?

A. Generally, a cooperating agency may adopt a lead agency's EIS without recirculating it if it concludes that its NEPA requirements and its comments and suggestions have been satisfied. *Section 1506.3(a), (c).* If necessary, a cooperating agency may adopt only a portion of the lead agency's EIS and may reject that part of the EIS with which it disagrees, stating publicly why it did so. *Section 1506.3(a).*

A cooperating agency with jurisidiction by law (e.g., an agency with independent legal responsibilities with respect to the proposal) has an independent legal obligation to comply with NEPA. Therefore, if the cooperating agency determines that the EIS is wrong or inadequate, it must prepare a supplement to the EIS, replacing or adding any needed information, and must circulate the supplement as a draft for public and agency review and comment. A final supplemental EIS would be required before the agency could take action. The adopted portions of the lead agency EIS should be circulated with the supplement. *Section 1506.3(b).* A cooperating agency with jurisdiction by law will have to prepare its own Record of Decision for its action, in which it must explain how it reached its conclusions. Each agency should explain how and why its conclusions differ, if that is the case, from those of other agencies which issued their Records of Decision earlier. An agency that did not cooperate in preparation of an EIS may also adopt an EIS or portion thereof. But this would arise only in rare instances, because an agency adopting an EIS for use in its own decision normally would have been a cooperating agency. If the proposed action for which the EIS was prepared is substantially the same as the proposed action of the adopting agency, the EIS may be adopted as long as it is recirculated as a final EIS and the agency announces what it is doing. This would be followed by the 30-day review period and issuance of a Record of Decision by the adopting agency. If the proposed action by the adopting agency is not substantially the same as that in [46 FR 18036] the EIS (i.e., if an EIS on one action is being adapted for use in a decision on another action), the EIS would be treated as a draft and circulated for the normal public comment period and other procedures. *Section 1506.3(b).*

31a. **Application of Regulations to Independent Regulatory Agencies.** Do the Council's NEPA regulations apply to independent regulatory agencies like the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission?

A. The statutory requirements of NEPA's Section 102 apply to "all agencies of the federal government." The NEPA regulations implement the procedural provisions of NEPA as set

forth in NEPA's Section 102(2) for all agencies of the federal government. The NEPA regulations apply to independent regulatory agencies, however, they do not direct independent regulatory agencies or other agencies to make decisions in any particular way or in a way inconsistent with an agency's statutory charter. *Sections 1500.3, 1500.6, 1507.1, and 1507.3.*

31b. Can an Executive Branch agency like the Department of the Interior **adopt an EIS** prepared by an independent regulatory agency such as FERC?

A. If an independent regulatory agency such as FERC has prepared an EIS in connection with its approval of a proposed project, an Executive Branch agency (e.g., the Bureau of Land Management in the Department of the Interior) may, in accordance with Section 1506.3, adopt the EIS or a portion thereof for its use in considering the same proposal. In such a case the EIS must, to the satisfaction of the adopting agency, meet the standards for an adequate statement under the NEPA regulations (including scope and quality of analysis of alternatives) and must satisfy the adopting agency's comments and suggestions. If the independent regulatory agency fails to comply with the NEPA regulations, the cooperating or adopting agency may find that it is unable to adopt the EIS, thus forcing the preparation of a new EIS or EIS Supplement for the same action. The NEPA regulations were made applicable to all federal agencies in order to avoid this result, and to achieve uniform application and efficiency of the NEPA process.

32. **Supplements to Old EISs.** Under what circumstances do old EISs have to be supplemented before taking action on a proposal?

A. As a rule of thumb, if the proposal has not yet been implemented, or if the EIS concerns an ongoing program, EISs that are more than 5 years old should be carefully reexamined to determine if the criteria in Section 1502.9 compel preparation of an EIS supplement.

If an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, a supplemental EIS must be prepared for an old EIS so that the agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposal. *Section 1502.9(c).*

33a. **Referrals.** When must a referral of an interagency disagreement be made to the Council?

A. The Council's referral procedure is a pre-decision referral process for interagency disagreements. Hence, Section 1504.3 requires that a referring agency must deliver its referral to the Council not later than 25 days after publication by EPA of notice that the final EIS is available (unless the lead agency grants an extension of time under Section 1504.3(b)).

33b. May a **referral** be made after this issuance of a Record of Decision?

A. No, except for cases where agencies provide an internal appeal procedure which permits simultaneous filing of the final EIS and the record of decision (ROD). *Section 1506.10(b)(2).* Otherwise, as stated above, the process is a pre-decision referral process. Referrals must be

made within 25 days after the notice of availability of the final EIS, whereas the final decision (ROD) may not be made or filed until after 30 days from the notice of availability of the EIS. *Sections 1504.3(b), 1506.10(b).* If a lead agency has granted an extension of time for another agency to take action on a referral, the ROD may not be issued until the extension has expired.

34a. **Records of Decision.** Must Records of Decision (RODs) be made public? How should they be made available?

A. Under the regulations, agencies must prepare a "concise public record of decision," which contains the elements specified in Section 1505.2. This public record may be integrated into any other decision record prepared by the agency, or it may be separate if decision documents are not normally made public. The Record of Decision is intended by the Council to be an environmental document (even though it is not explicitly mentioned in the definition of "environmental document" in Section 1508.10). Therefore, it must be made available to the public through appropriate public notice as required by Section 1506.6(b). However, there is no specific requirement for publication of the ROD itself, either in the Federal Register or elsewhere.

34b. May the **summary section** in the final Environmental Impact Statement substitute for or constitute an agency's Record of Decision?

A. No. An environmental impact statement is supposed to inform the decisionmaker before the decision is made. *Sections 1502.1, 1505.2.* The Council's regulations provide for a 30-day period after notice is published that the final EIS has been filed with EPA before the agency may take final action. During that period, in addition to the agency's own internal final review, the public and other agencies can comment on the final EIS prior to the agency's final action on the proposal. In addition, the Council's regulations make clear that the requirements for the summary in an EIS are not the same as the requirements for a ROD. *Sections 1502.12 and 1505.2.*

34c. What provisions should **Records of Decision** contain pertaining to **mitigation and monitoring**?

A. Lead agencies "shall include appropriate conditions [including mitigation measures and monitoring and enforcement programs] in grants, permits or other approvals" and shall "condition funding of actions on mitigation." *Section 1505.3.* Any such measures that are adopted must be explained and committed in the ROD.

The reasonable alternative mitigation measures and monitoring programs should have been addressed in the draft and final EIS. The discussion of mitigation and monitoring in a Record of Decision must be more detailed than a general statement that mitigation is being required, but not so detailed as to duplicate discussion of mitigation in the EIS. The Record of Decision should contain a concise summary identification of the mitigation measures which the agency has committed itself to adopt.

The Record of Decision must also state whether all practicable mitigation measures have

been adopted, and if not, why not. *Section 1505.2(c).* The Record of Decision must identify the mitigation measures and monitoring and enforcement programs that have been selected and plainly indicate that they are adopted as part of the agency's decision. If the proposed action is the issuance of a permit or other approval, the specific details of the mitigation measures shall then be included as appropriate conditions in whatever grants, permits, funding or other approvals are being made by the federal agency. *Section 1505.3 (a), (b).* If the proposal is to be carried out by the [46 FR 18037] federal agency itself, the Record of Decision should delineate the mitigation and monitoring measures in sufficient detail to constitute an enforceable commitment, or incorporate by reference the portions of the EIS that do so.

34d. What is the **enforceability of a Record of Decision?**

A. Pursuant to generally recognized principles of federal administrative law, agencies will be held accountable for preparing Records of Decision that conform to the decisions actually made and for carrying out the actions set forth in the Records of Decision. This is based on the principle that an agency must comply with its own decisions and regulations once they are adopted. Thus, the terms of a Record of Decision are enforceable by agencies and private parties. A Record of Decision can be used to compel compliance with or execution of the mitigation measures identified therein.

35. **Time Required for the NEPA Process.** How long should the NEPA process take to complete?

A. When an EIS is required, the process obviously will take longer than when an EA is the only document prepared. But the Council's NEPA regulations encourage streamlined review, adoption of deadlines, elimination of duplicative work, eliciting suggested alternatives and other comments early through scoping, cooperation among agencies, and consultation with applicants during project planning. The Council has advised agencies that under the new NEPA regulations even large complex energy projects would require only about 12 months for the completion of the entire EIS process. For most major actions, this period is well within the planning time that is needed in any event, apart from NEPA.

The time required for the preparation of program EISs may be greater. The Council also recognizes that some projects will entail difficult long-term planning and/or the acquisition of certain data which of necessity will require more time for the preparation of the EIS. Indeed, some proposals should be given more time for the thoughtful preparation of an EIS and development of a decision which fulfills NEPA's substantive goals.

For cases in which only an environmental assessment will be prepared, the NEPA process should take no more than 3 months, and in many cases substantially less, as part of the normal analysis and approval process for the action.

36a. **Environmental Assessments (EA).** How long and detailed must an environmental assessment (EA) be?

A. The environmental assessment is a concise public document which has three defined

functions. (1) It briefly provides sufficient evidence and analysis for determining whether to prepare an EIS; (2) it aids an agency's compliance with NEPA when no EIS is necessary, i.e., it helps to identify better alternatives and mitigation measures; and (3) it facilitates preparation of an EIS when one is necessary. *Section 1508.9(a).*

Since the EA is a concise document, it should not contain long descriptions or detailed data which the agency may have gathered. Rather, it should contain a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted. *Section 1508.9(b).*

While the regulations do not contain page limits for EA's, the Council has generally advised agencies to keep the length of EAs to not more than approximately 10-15 pages. Some agencies expressly provide page guidelines (e.g., 10-15 pages in the case of the Army Corps). To avoid undue length, the EA may incorporate by reference background data to support its concise discussion of the proposal and relevant issues.

36b. Under what circumstances is a **lengthy EA** appropriate?

A. Agencies should avoid preparing lengthy EAs except in unusual cases, where a proposal is so complex that a concise document cannot meet the goals of Section 1508.9 and where it is extremely difficult to determine whether the proposal could have significant environmental effects. In most cases, however, a lengthy EA indicates that an EIS is needed.

37a. **Findings of No Significant Impact (FONSI).** What is the level of detail of information that must be included in a finding of no significant impact (FONSI)?

A. The FONSI is a document in which the agency briefly explains the reasons why an action will not have a significant effect on the human environment and, therefore, why an EIS will not be prepared. *Section 1508.13.* The finding itself need not be detailed, but must succinctly state the reasons for deciding that the action will have no significant environmental effects, and, if relevant, must show which factors were weighted most heavily in the determination. In addition to this statement, the FONSI must include, summarize, or attach and incorporate by reference, the environmental assessment.

37b. What are the criteria for deciding whether a **FONSI** should be made available for **public review** for 30 days before the agency's final determination whether to prepare an EIS?

A. Public review is necessary, for example, (a) if the proposal is a borderline case, i.e., when there is a reasonable argument for preparation of an EIS; (b) if it is an unusual case, a new kind of action, or a precedent setting case such as a first intrusion of even a minor development into a pristine area; (c) when there is either scientific or public controversy over the proposal; or (d) when it involves a proposal which is or is closely similar to one which normally requires preparation of an EIS. *Sections 1501.4(e)(2), 1508.27.* Agencies also must allow a period of public review of the FONSI if the proposed action would be located in a floodplain or wetland. E.O. 11988, Sec. 2(a)(4); E.O. 11990, Sec. 2(b).

38. **Public Availability of EAs v. FONSIs.** Must (EAs) and FONSIs be made public? If so,

how should this be done?

A. Yes, they must be available to the public. Section 1506.6 requires agencies to involve the public in implementing their NEPA procedures, and this includes public involvement in the preparation of EAs and FONSIs. These are public "environmental documents" under Section 1506.6(b), and, therefore, agencies must give public notice of their availability. A combination of methods may be used to give notice, and the methods should be tailored to the needs of particular cases. Thus, a Federal Register notice of availability of the documents, coupled with notices in national publications and mailed to interested national groups might be appropriate for proposals that are national in scope. Local newspaper notices may be more appropriate for regional or site-specific proposals.

The objective, however, is to notify all interested or affected parties. If this is not being achieved, then the methods should be reevaluated and changed. Repeated failure to reach the interested or affected public would be interpreted as a violation of the regulations.

39. **Mitigation Measures Imposed in EAs and FONSIs.** Can an EA and FONSI be used to impose enforceable mitigation measures, monitoring programs, or other requirements, even though there is no requirement in the regulations in such cases for a formal Record of Decision?

A. Yes. In cases where an environmental assessment is the appropriate environmental document, there still may be mitigation measures or alternatives that would be desirable to consider and adopt even though the impacts of the proposal will not be "significant." In such cases, the EA should include a discussion of these measures or alternatives to "assist [46 FR 18038] agency planning and decisionmaking" and to "aid an agency's compliance with [NEPA] when no environmental impact statement is necessary." *Section 1501.3(b), 1508.9(a)(2).* The appropriate mitigation measures can be imposed as enforceable permit conditions, or adopted as part of the agency final decision in the same manner mitigation measures are adopted in the formal Record of Decision that is required in EIS cases.

40. **Propriety of Issuing EA When Mitigation Reduces Impacts.** If an environmental assessment indicates that the environmental effects of a proposal are significant but that, with mitigation, those effects may be reduced to less than significant levels, may the agency make a finding of no significant impact rather than prepare an EIS? Is that a legitimate function of an EA and scoping?

[**N.B.:** Courts have disagreed with CEQ's position in Question 40. The 1987-88 CEQ Annual Report stated that CEQ intended to issue additional guidance on this topic. Ed. note.]

A. Mitigation measures may be relied upon to make a finding of no significant impact only if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. As a general rule, the regulations contemplate that agencies should use a broad approach in defining significance and should not rely on the possibility of mitigation as an excuse to avoid the EIS requirement. *Sections 1508.8, 1508.27.*

If a proposal appears to have adverse effects which would be significant, and certain

mitigation measures are then developed during the scoping or EA stages, the existence of such possible mitigation does not obviate the need for an EIS. Therefore, if scoping or the EA identifies certain mitigation possibilities without altering the nature of the overall proposal itself, the agency should continue the EIS process and submit the proposal, and the potential mitigation, for public and agency review and comment. This is essential to ensure that the final decision is based on all the relevant factors and that the full NEPA process will result in enforceable mitigation measures through the Record of Decision.

In some instances, where the proposal itself so integrates mitigation from the beginning that it is impossible to define the proposal without including the mitigation, the agency may then rely on the mitigation measures in determining that the overall effects would not be significant (e.g., where an application for a permit for a small hydro dam is based on a binding commitment to build fish ladders, to permit adequate down stream flow, and to replace any lost wetlands, wildlife habitat and recreational potential). In those instances, agencies should make the FONSI and EA available for 30 days of public comment before taking action. *Section 1501.4(e)(2).*

Similarly, scoping may result in a redefinition of the entire project, as a result of mitigation proposals. In that case, the agency may alter its previous decision to do an EIS, as long as the agency or applicant resubmits the entire proposal and the EA and FONSI are available for 30 days of review and comment. One example of this would be where the size and location of a proposed industrial park are changed to avoid affecting a nearby wetland area.

ENDNOTES

The first endnote appeared in the original Federal Register. The other endnotes are for information only.

1. References throughout the document are to the Council on Environmental Quality's Regulations For Implementing The Procedural Provisions of the National Environmental Policy Act. 40 CFR Parts 1500-1508.
2. [46 FR 18027] indicates that the subsequent text may be cited to 48 Fed. Reg. 18027 (1981). Ed Note.
3. Q20 Worst Case Analysis was withdrawn by final rule issued at 51 Fed. Reg. 15618 (Apr. 25. 1986); textual errors corrected 51 F.R. p. 16,846 (May 7, 1986). The preamble to this rule is published at ELR Admin. Mat. 35055.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

January 14, 2011

MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

FROM: NANCY H. SUTLEY
Chair

SUBJECT: Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact

The Council on Environmental Quality (CEQ) is issuing this guidance for Federal departments and agencies on establishing, implementing, and monitoring mitigation commitments identified and analyzed in Environmental Assessments, Environmental Impact Statements, and adopted in the final decision documents. This guidance also clarifies the appropriate use of mitigated "Findings of No Significant Impact" under the National Environmental Policy Act (NEPA). This guidance is issued in accordance with NEPA, 42 U.S.C. § 4321 et seq., and the CEQ Regulations for Implementing the Procedural Provisions of NEPA (CEQ Regulations), 40 CFR Parts 1500-1508.[1] The guidance explains the requirements of NEPA and the CEQ Regulations, describes CEQ policies, and recommends procedures for agencies to use to help them comply with the requirements of NEPA and the CEQ Regulations when they establish mitigation planning and implementation procedures.[2]

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[1] The Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (CEQ Regulations) are available on www.nepa.gov at ceq.hss.doe.gov/ceq_regulations/regulations.html.

[2] CEQ is issuing this guidance as an exercise of its duties and functions under section 204 of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4344, and Executive Order No. 11,514, 35 Fed. Reg. 4,247 (Mar. 5, 1970), as amended by Executive Order No. 11,991, 42 Fed. Reg. 26,927 (May 24, 1977). This guidance is not a rule or regulation, and the recommendations it contains may not apply to a particular situation based upon the individual facts and circumstances. This guidance does not change or substitute for any law, regulation, or other legally binding requirement and is not legally enforceable. The use of language such as "recommend," "may," "should," and "can" is intended to describe CEQ policies and recommendations. The use of mandatory terminology such as "must" and "required" is intended to describe controlling requirements under the terms of NEPA and the CEQ Regulations, but this document does not independently establish legally binding requirements.

NEPA was enacted to promote efforts that will prevent or eliminate damage to the human environment.[3] Mitigation measures can help to accomplish this goal in several ways. Many Federal agencies and applicants include mitigation measures as integral components of a proposed project's design. Agencies also consider mitigation measures as alternatives when developing Environmental Assessments (EA) and Environmental Impact Statements (EIS). In addition, agencies have increasingly considered mitigation measures in EAs to avoid or lessen potentially significant environmental effects of proposed actions that would otherwise need to be analyzed in an EIS.[4] This use of mitigation may allow the agency to comply with NEPA's procedural requirements by issuing an EA and a Finding of No Significant Impact (FONSI), or "mitigated FONSI," based on the agency's commitment to ensure the mitigation that supports the FONSI is performed, thereby avoiding the need to prepare an EIS.

This guidance addresses mitigation that an agency has committed to implement as part of a project design and mitigation commitments informed by the NEPA review process. As discussed in detail in Section I, below, agencies may commit to mitigation measures considered as alternatives in an EA or EIS so as to achieve an environmentally preferable outcome. Agencies may also commit to mitigation measures to support a mitigated FONSI, so as to complete their review of potentially significant environmental impacts without preparing an EIS. When agencies do not document and, in important cases, monitor mitigation commitments to determine if the mitigation was implemented or effective, the use of mitigation may fail to advance NEPA's purpose of ensuring informed and transparent environmental decisionmaking. Failure to document and monitor mitigation may also undermine the integrity of the NEPA review. These concerns and the need for guidance on this subject have long been recognized.[5] While

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[3] 42 U.S.C. § 4321 (stating that the purposes of NEPA include promoting efforts which will prevent or eliminate damage to the environment).

[4] This trend was noted in CEQ's Twenty-Fifth Anniversary report on the effectiveness of NEPA implementation. *See* CEQ, "NEPA: A Study of its Effectiveness After Twenty-Five Years" 20 (1997), *available at* ceq.hss.doe.gov/nepa/nepa25fn.pdf.

[5] *See, e.g.*, CEQ, 1987-1988 Annual Report, *available at* www.slideshare.net/whitehouse/august-1987-1988-the-eighteenth-annual-report-of-the-council-on-environmental-quality (stating that CEQ would issue guidance on the propriety of an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) rather than requiring an Environmental Impact Statement (EIS) when the environmental effects of a proposal are significant but mitigation reduces those impacts to less than significant levels). In 2002, CEQ convened a Task Force on Modernizing NEPA Implementation, which recommended that CEQ issue guidance clarifying the requirements for public involvement, alternatives, and mitigation for actions that warrant longer EAs including those with mitigated FONSIs. CEQ NEPA Task Force, "Modernizing NEPA Implementation" 75 (2003), *available at* ceq.hss.doe.gov/ntf/report/totaldoc.html. NEPA experts and public stakeholders have expressed broad support for this recommendation, calling for consideration of monitoring and public involvement in the use of mitigated FONSIs. CEQ, "The Public and Experts'

this guidance is designed to address these concerns, CEQ also acknowledges that NEPA itself does not create a general substantive duty on Federal agencies to mitigate adverse environmental effects.[6]

Accordingly, in conjunction with the 40th Anniversary of NEPA, CEQ announced that it would issue this guidance to clarify the appropriateness of mitigated FONSIs and the importance of monitoring environmental mitigation commitments.[7] This new guidance affirms CEQ's support for the appropriate use of mitigated FONSIs, and accordingly amends and supplements previously issued guidance.[8] This guidance is intended to enhance the integrity and credibility of the NEPA process and the information upon which it relies.

CEQ provides several broad recommendations in Section II, below, to help improve agency consideration of mitigation in EISs and EAs. Agencies should not commit to mitigation measures considered in an EIS or EA absent the authority or expectation of resources to ensure that the mitigation is performed. In the decision documents concluding their environmental reviews, agencies should clearly identify any mitigation measures adopted as agency commitments or otherwise relied upon (to the extent consistent with agency authority or other legal authority), so as to ensure the integrity of the NEPA process and allow for greater transparency.

Review of the National Environmental Policy Act Task Force Report 'Modernizing NEPA Implementation'" 7 (2004), *available at* ceq.hss.doe.gov/ntf/CEQ_Draft_Final_Roundtable_Report.pdf; *see also* CEQ, "Rocky Mountain Roundtable Report" 8 (2004), *available at* ceq.hss.doe.gov/ntf/RockyMtnRoundTableReport.pdf (noting that participants in a regional roundtable on NEPA modernization identified "developing a means to enforce agency commitments to monitoring and mitigation" as one of the top five aspects of NEPA implementation needing immediate attention); "Eastern Round Table Report" 4 (2003), *available at* ceq.hss.doe.gov/ntf/EasternRoundTableReport.pdf (reporting that, according to several panelists at a regional roundtable, "parties responsible for monitoring the effects of . . . mitigation measures are rarely identified or easily held accountable," and that a lack of monitoring impedes agencies' ability to address the cumulative effects of EA actions).

[6] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989).

[7] CEQ, "New Proposed NEPA Guidance and Steps to Modernize and Reinvigorate NEPA" (Feb. 18, 2010), *available at* www.whitehouse.gov/administration/eop/ceq/initiatives/nepa.

[8] This previous guidance is found in CEQ, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," 46 Fed. Reg. 18,026 (Mar. 23, 1981), *available at* ceq.eh.doe.gov/nepa/regs/40/40P1.htm (suggesting that the existence of mitigation measures developed during the scoping or EA stages "does not obviate the need for an EIS").

Section III emphasizes that agencies should establish implementation plans based on the importance of the project and its projected effects. Agencies should create new, or strengthen existing, monitoring to ensure that mitigation commitments are implemented. Agencies should also use effectiveness monitoring to learn if the mitigation is providing the benefits predicted. Importantly, agencies should encourage public participation and accountability through proactive disclosure of, and provision of access to, agencies' mitigation commitments as well as mitigation monitoring reports and related documents.

Although the recommendations in this guidance are broad in nature, agencies should establish, in their NEPA implementing procedures and/or guidance, specific procedures that create systematic accountability and the mechanisms to accomplish these goals.[9] This guidance is intended to assist agencies with the development and review of their NEPA procedures, by specifically recommending:

- How to ensure that mitigation commitments are implemented;
- How to monitor the effectiveness of mitigation commitments;
- How to remedy failed mitigation; and
- How to involve the public in mitigation planning.

Finally, to assist agencies in the development of their NEPA implementing procedures, an overview of relevant portions of the Department of the Army NEPA regulations is appended to this guidance as an example for agencies to consider when incorporating the recommendations of this guidance as requirements in their NEPA programs and procedures.[10]

I. THE IMPORTANCE OF MITIGATION UNDER NEPA

Mitigation is an important mechanism Federal agencies can use to minimize the potential adverse environmental impacts associated with their actions. As described in the CEQ Regulations, agencies can use mitigation to reduce environmental impacts in several ways. Mitigation includes:

- Avoiding an impact by not taking a certain action or parts of an action;
- Minimizing an impact by limiting the degree or magnitude of the action and its implementation;
- Rectifying an impact by repairing, rehabilitating, or restoring the affected environment;
- Reducing or eliminating an impact over time, through preservation and maintenance operations during the life of the action; and

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[9] 40 CFR § 1507.3 (requiring agencies to issue, and continually review, policies and procedures to implement NEPA in conformity with NEPA and CEQ Regulations).

[10] *See id.*; *see also id.* § 1507.2 (requiring agencies to have personnel and other resources available to implement NEPA reviews and meet their NEPA responsibilities).

- Compensating for an impact by replacing or providing substitute resources or environments.[11]

Federal agencies typically develop mitigation as a component of a proposed action, or as a measure considered in the course of the NEPA review conducted to support agency decisionmaking processes, or both. In developing mitigation, agencies necessarily and appropriately rely upon the expertise and experience of their professional staff to assess mitigation needs, develop mitigation plans, and oversee mitigation implementation. Agencies may also rely on outside resources and experts for information about the ecosystem functions and values to be protected or restored by mitigation, to ensure that mitigation has the desired effects and to develop appropriate monitoring strategies. Any outside parties consulted should be neutral parties without a financial interest in implementing the mitigation and monitoring plans, and should have expert knowledge, training, and experience relevant to the resources potentially affected by the actions and—if possible—the potential effects from similar actions.[12] Further, when agencies delegate responsibility for preparing NEPA analyses and documentation, or when other entities (such as applicants) assume such responsibility, CEQ recommends that any experts employed to develop mitigation and monitoring should have the kind of expert knowledge, training, and experience described above.

The sections below clarify practices Federal agencies should use when they employ mitigation in three different contexts: as components of project design; as mitigation alternatives considered in an EA or an EIS and adopted in related decision documents; and as measures identified and committed to in an EA as necessary to support a mitigated FONSI. CEQ encourages agencies to commit to mitigation to achieve environmentally preferred outcomes, particularly when addressing unavoidable adverse environmental impacts. Agencies should not commit to mitigation, however, unless they have sufficient legal authorities and expect there will be necessary resources available to perform or ensure the performance of the mitigation. The agency's own underlying authority may provide the basis for its commitment to implement and monitor the mitigation. Alternatively, the authority for the mitigation may derive from legal requirements that are enforced by other Federal, state, or local government entities (e.g., air or water permits administered by local or state agencies).

A. Mitigation Incorporated into Project Design

Many Federal agencies rely on mitigation to reduce adverse environmental impacts as part of the planning process for a project, incorporating mitigation as integral components of a proposed project design before making a determination about the

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[11] *Id.* § 1508.20 (defining mitigation to include these activities).

[12] *See id.* § 1506.5 (providing that agencies are responsible for the accuracy of environmental information submitted by applicants for use in EISs and EAs, and requiring contractors selected to prepare EISs to execute disclosure statement specifying that they have no financial or other interest in the outcome of the project).

significance of the project's environmental impacts.[13] Such mitigation can lead to an environmentally preferred outcome and in some cases reduce the projected impacts of agency actions to below a threshold of significance. An example of mitigation measures that are typically included as part of the proposed action are agency standardized best management practices such as those developed to prevent storm water runoff or fugitive dust emissions at a construction site.

Mitigation measures included in the project design are integral components of the proposed action, are implemented with the proposed action, and therefore should be clearly described as part of the proposed action that the agency will perform or require to be performed. Consequently, the agency can address mitigation early in the decisionmaking process and potentially conduct a less extensive level of NEPA review.

B. Mitigation Alternatives Considered in Environmental Assessments and Environmental Impact Statements

Agencies are required, under NEPA, to study, develop, and describe appropriate alternatives when preparing EAs and EISs.[14] The CEQ Regulations specifically identify procedures agencies must follow when developing and considering mitigation alternatives when preparing an EIS. When an agency prepares an EIS, it must include mitigation measures (not already included in the proposed action or alternatives) among the alternatives compared in the EIS.[15] Each EIS must contain a section analyzing the environmental consequences of the proposed action and its alternatives, including "[m]eans to mitigate adverse environmental impacts."[16]

When a Federal agency identifies a mitigation alternative in an EA or an EIS, it may commit to implement that mitigation to achieve an environmentally-preferable outcome. Agencies should not commit to mitigation measures considered and analyzed in an EIS or EA if there are insufficient legal authorities, or it is not reasonable to foresee the availability of sufficient resources, to perform or ensure the performance of the mitigation. Furthermore, the decision document following the EA should—and a Record of Decision (ROD) must—identify those mitigation measures that the agency is adopting

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[13] CEQ NEPA Task Force, "Modernizing NEPA Implementation" at 69.

[14] 42 U.S.C. § 4332(2)(C) (mandating that agencies' detailed statements must include alternatives to the proposed action); *id.* § 4332(E) (requiring agencies to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources).

[15] 40 CFR § 1502.14(f) (listing mitigation measures as one of the required components of the alternatives included in an EIS); *id.* § 1508.25(b)(3) (defining the "scope" of an EIS to include mitigation measures).

[16] *Id.* § 1502.16(h).

and committing to implement, including any monitoring and enforcement program applicable to such mitigation commitments.[17]

C. Mitigation Commitments Analyzed in Environmental Assessments to Support a Mitigated FONSI

When preparing an EA, many agencies develop and consider committing to mitigation measures to avoid, minimize, rectify, reduce, or compensate for potentially significant adverse environmental impacts that would otherwise require full review in an EIS. CEQ recognizes the appropriateness, value, and efficacy of providing for mitigation to reduce the significance of environmental impacts. Consequently, when such mitigation measures are available and an agency commits to perform or ensure the performance of them, then these mitigation commitments can be used to support a FONSI, allowing the agency to conclude the NEPA process and proceed with its action without preparing an EIS.[18] An agency should not commit to mitigation measures necessary for a mitigated FONSI if there are insufficient legal authorities, or it is not reasonable to foresee the availability of sufficient resources, to perform or ensure the performance of the mitigation.[19]

Mitigation commitments needed to lower the level of impacts so that they are not significant should be clearly described in the mitigated FONSI document and in any other relevant decision documents related to the proposed action. Agencies must provide for appropriate public involvement during the development of the EA and FONSI.[20]

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[17] *Id.* § 1505.2(c) (providing that a record of decision must state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not; and providing that a monitoring and enforcement program must be adopted and summarized where applicable for any mitigation).

[18] This guidance approves of the use of the "mitigated FONSI" when the NEPA process results in *enforceable* mitigation measures. It thereby amends and supplements previously issued CEQ guidance that suggested that the existence of mitigation measures developed during the scoping or EA stages "does not obviate the need for an EIS." *See* CEQ, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," 46 Fed. Reg. 18,026 (Mar. 23, 1981), *available at* ceq.eh.doe.gov/nepa/regs/40/40P1.htm.

[19] When agencies consider and decide on an alternative outside their jurisdiction (as discussed in 40 CFR § 1502.14(c)), they should identify the authority for the mitigation and consider the consequences of it not being implemented.

[20] 40 CFR § 1501.4(b) (requiring agencies to involve environmental agencies, applicants, and the public, to the extent practicable); *id.* § 1501.4(e)(1) (requiring agencies to make FONSIs available to the affected public as specified in § 1506.6); *id.* § 1501.4(e)(2) (requiring agencies to make FONSIs available for public review for thirty days before making any final determination on whether to prepare an EIS or proceed with an action when the proposed action is, or is closely similar to, one which normally requires the

Furthermore, in addition to those situations where a 30-day public review of the FONSI is required,[21] agencies should make the EA and FONSI available to the public (e.g., by posting them on an agency website). Providing the public with clear information about agencies' mitigation commitments helps ensure the value and integrity of the NEPA process.

II. ENSURING THAT MITIGATION COMMITMENTS ARE IMPLEMENTED

Federal agencies should take steps to ensure that mitigation commitments are actually implemented. Consistent with their authority, agencies should establish internal processes to ensure that mitigation commitments made on the basis of any NEPA analysis are carefully documented and that relevant funding, permitting, or other agency approvals and decisions are made conditional on performance of mitigation commitments.

Agency NEPA implementing procedures should require clear documentation of mitigation commitments considered in EAs and EISs prepared during the NEPA process and adopted in their decision documents. Agencies should ensure that the expertise and professional judgment applied in determining the appropriate mitigation commitments are described in the EA or EIS, and that the NEPA analysis considers when and how those mitigation commitments will be implemented.

Agencies should clearly identify commitments to mitigation measures designed to achieve environmentally preferable outcomes in their decision documents. They should also identify mitigation commitments necessary to reduce impacts, where appropriate, to a level necessary for a mitigated FONSI. In both cases, mitigation commitments should be carefully specified in terms of measurable performance standards or expected results, so as to establish clear performance expectations.[22] The agency should also specify the

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preparation of an EIS under agency NEPA implementing procedures, or when the nature of the proposed action is one without precedent); *id.* § 1506.6 (requiring agencies to make diligent efforts to involve the public in preparing and implementing their NEPA procedures).

[21] *Id.* § 1501.4(e)(2).

[22] In 2001, the Committee on Mitigating Wetland Losses, through the National Research Council (NRC), conducted a nationwide study evaluating compensatory mitigation, focusing on whether the process is achieving the overall goal of "restoring and maintaining the quality of the nation's waters." NRC Committee on Mitigating Wetland Losses, "Compensating for Wetland Losses Under the Clean Water Act" 2 (2001). The study's recommendations were incorporated into the 2008 Final Compensatory Mitigation Rule promulgated jointly by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency. *See* U.S. Army Corps of Engineers & U.S. Environmental Protection Agency, "Compensatory Mitigation for Losses of Aquatic Resources," 73 Fed. Reg. 19,594 (Apr. 10, 2008).

timeframe for the agency action and the mitigation measures in its decision documents, to ensure that the intended start date and duration of the mitigation commitment is clear. When an agency funds, permits, or otherwise approves actions, it should also exercise its available authorities to ensure implementation of any mitigation commitments by including appropriate conditions on the relevant grants, permits, or approvals.

CEQ views funding for implementation of mitigation commitments as critical to ensuring informed decisionmaking. For mitigation commitments that agencies will implement directly, CEQ recognizes that it may not be possible to identify funds from future budgets; however, a commitment to seek funding is considered essential and if it is reasonably foreseeable that funding for implementation of mitigation may be unavailable at any time during the life of the project, the agency should disclose in the EA or EIS the possible lack of funding and assess the resultant environmental effects. If the agency has disclosed and assessed the lack of funding, then unless the mitigation is essential to a mitigated FONSI or necessary to comply with another legal requirement, the action could proceed. If the agency committing to implementing mitigation has not disclosed and assessed the lack of funding, and the necessary funding later becomes unavailable, then the agency should not move forward with the proposed action until funding becomes available or the lack of funding is appropriately assessed (*see* Section III, below).

A. Establishing a Mitigation Monitoring Program

Federal agencies must consider reasonably foreseeable future impacts and conditions in a constantly evolving environment. Decisionmakers will be better able to adapt to changing circumstances by creating a sound mitigation implementation plan and through ongoing monitoring of environmental impacts and their mitigation. Monitoring can improve the quality of overall agency decisionmaking by providing feedback on the effectiveness of mitigation techniques. A comprehensive approach to mitigation planning, implementation, and monitoring will therefore help agencies realize opportunities for reducing environmental impacts through mitigation, advancing the integrity of the entire NEPA process. These approaches also serve NEPA's goals of ensuring transparency and openness by making relevant and useful environmental information available to decisionmakers and the public.[23]

Adaptive management can help an agency take corrective action if mitigation commitments originally made in NEPA and decision documents fail to achieve projected environmental outcomes and there is remaining federal action. Agencies can, in their NEPA reviews, establish and analyze mitigation measures that are projected to result in the desired environmental outcomes, and can then identify those mitigation principles or measures that it would apply in the event the initial mitigation commitments are not implemented or effective. Such adaptive management techniques can be advantageous to both the environment and the agency's project goals.[24] Agencies can also, short of

[23] 40 CFR § 1500.1(b).

[24] *See* CEQ NEPA Task Force, "Modernizing NEPA Implementation" at 44.

adaptive management, analyze specific mitigation alternatives that could take the place of mitigation commitments in the event the commitment is not implemented or effective.

Monitoring is fundamental for ensuring the implementation and effectiveness of mitigation commitments, meeting legal and permitting requirements, and identifying trends and possible means for improvement. Under NEPA, a Federal agency has a continuing duty to ensure that new information about the environmental impact of its proposed actions is taken into account, and that the NEPA review is supplemented when significant new circumstances or information arise that are relevant to environmental concerns and bear on the proposed action or its impacts.[25] For agency decisions based on an EIS, the CEQ Regulations explicitly require that "a monitoring and enforcement program shall be adopted . . . where applicable for any mitigation."[26] In addition, the CEQ Regulations state that agencies may "provide for monitoring to assure that their decisions are carried out and should do so in important cases."[27] Accordingly, an agency should also commit to mitigation monitoring in important cases when relying upon an EA and mitigated FONSI. Monitoring is essential in those important cases where the mitigation is necessary to support a FONSI and thus is part of the justification for the agency's determination not to prepare an EIS.

Agencies are expected to apply professional judgment and the rule of reason when identifying those cases that are important and warrant monitoring, and when determining the type and extent of monitoring they will use to check on the progress made in implementing mitigation commitments as well as their effectiveness. In cases that are less important, the agency should exercise its discretion to determine what level of monitoring, if any, is appropriate. The following are examples of factors that agencies should consider to determine importance:

- Legal requirements of statutes, regulations, or permits;
- Human health and safety;
- Protected resources (e.g., parklands, threatened or endangered species, cultural or historic sites) and the proposed action's impacts on them;
- Degree of public interest in the resource or public debate over the effects of the proposed action and any reasonable mitigation alternatives on the resource; and
- Level of intensity of projected impacts.

Once an agency determines that it will provide for monitoring in a particular case, monitoring plans and programs should be described or incorporated by reference in the

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[25] 40 CFR § 1502.9(c) (requiring supplementation of EISs when there are substantial changes to the proposed action, or significant new information or circumstances arise that are relevant to the environmental effects of the proposed action).

[26] *Id.* § 1505.2(c).

[27] *Id.* § 1505.3.

agency's decision documents.[28] Agencies have discretion, within the scope of their authority, to select an appropriate form and method for monitoring, but they should identify the monitoring area and establish the appropriate monitoring system.[29] The form and method of monitoring can be informed by an agency's past monitoring plans and programs that tracked impacts on similar resources, as well as plans and programs used by other agencies or entities, particularly those with an interest in the resource being monitored. For mitigation commitments that warrant rigorous oversight, an Environmental Management System (EMS), or other data or management system could serve as a useful way to integrate monitoring efforts effectively.[30] Other possible monitoring methods include agency-specific environmental monitoring, compliance assessment, and auditing systems. For activities involving third parties (e.g., permittees or grantees), it may be appropriate to require the third party to perform the monitoring as long as a clear accountability and oversight framework is established. The monitoring program should be implemented together with a review process and a system for reporting results.

Regardless of the method chosen, agencies should ensure that the monitoring program tracks whether mitigation commitments are being performed as described in the NEPA and related decision documents (i.e., implementation monitoring), and whether the mitigation effort is producing the expected outcomes and resulting environmental effects (i.e., effectiveness monitoring). Agencies should also ensure that their mitigation monitoring procedures appropriately provide for public involvement. These recommendations are explained in more detail below.

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[28] The mitigation plan and program should be described to the extent possible based on available and reasonably foreseeable information in cases where the NEPA analysis and documentation are completed prior to final design of a proposed project.

[29] The Department of the Army regulations provide an example of this approach. *See* 32 CFR part 651 App. C. These regulations are summarized in the Appendix to this guidance.

[30] An EMS provides a systematic framework for a Federal agency to monitor and continually improve its environmental performance through audits, evaluations of legal and other requirements, and management reviews. The potential for EMS to support NEPA work is further addressed in CEQ, "Aligning National Environmental Policy Act Processes with Environmental Management Systems" 4 (2007) *available at* ceq.hss.doe.gov/nepa/nepapubs/Aligning_NEPA_Processes_with_Environmental_Management_Systems_2007.pdf (discussing the use of EMSs to track implementation and monitoring of mitigation). In 2001, the Department of the Army announced that it would implement a recognized environmental management standard, ISO 14001, across Army installations. ISO 14001 represents a standardized system to plan, track, and monitor environmental performance within the agency's operations. To learn more about how EMS implementation has resulted in an effective EMS for monitoring purposes at an Army installation, see the Sustainability website for the Army's Fort Lewis installation, *available at* sustainablefortlewis.army.mil.

B. Monitoring Mitigation Implementation

A successful monitoring program will track the implementation of mitigation commitments to determine whether they are being performed as described in the NEPA documents and related decision documents. The responsibility for developing an implementation monitoring program depends in large part upon who will actually perform the mitigation—the lead Federal agency or cooperating agency; the applicant, grantee, or permit holder; another responsible entity or cooperative non-Federal partner; or a combination of these. The lead agency should ensure that information about responsible parties, mitigation requirements, as well as any appropriate enforcement clauses are included in documents such as authorizations, agreements, permits, financial assistance awards, or contracts.[31] Ultimate monitoring responsibility rests with the lead Federal agency or agencies to assure that monitoring is occurring when needed and that results are being properly considered. The project's lead agency can share monitoring responsibility with joint lead or cooperating agencies or other entities, such as applicants or grantees. The responsibility should be clearly described in the NEPA documents or associated decision documents, or related documents describing and establishing the monitoring requirements or expectations.

C. Monitoring the Effectiveness of Mitigation

Effectiveness monitoring tracks the success of a mitigation effort in achieving expected outcomes and environmental effects. Completing environmental data collection and analyses prior to project implementation provides an understanding of the baseline conditions for each potentially affected resource for reference when determining whether the predicted efficacy of mitigation commitments is being achieved. Agencies can rely on agency staff and outside experts familiar with the predicted environmental impacts to develop the means to monitor mitigation effectiveness, in the same way that they can rely on agency and outside experts to develop and evaluate the effectiveness of mitigation (*see* Section I, above).

When monitoring mitigation, agencies should consider drawing on sources of information available from the agency, from other Federal agencies, and from state, local, and tribal agencies, as well as from non-governmental sources such as local organizations, academic institutions, and non-governmental organizations. Agencies should especially consider working with agencies responsible for overseeing land management and impacts to specific resources. For example, agencies could consult with the U.S. Fish and Wildlife and National Marine Fisheries Services (for information to evaluate potential impacts to threatened and endangered species) and with State Historic Preservation Officers (for information to evaluate potential impacts to historic structures).

[31] Such enforcement clauses, including appropriate penalty clauses, should be developed as allowable under the applicable statutory and regulatory authorities.

D. The Role of the Public

Public involvement is a key procedural requirement of the NEPA review process, and should be fully provided for in the development of mitigation and monitoring procedures.[32] Agencies are also encouraged, as a matter of transparency and accountability, to consider including public involvement components in their mitigation monitoring programs. The agencies' experience and professional judgment are key to determining the appropriate level of public involvement. In addition to advancing accountability and transparency, public involvement may provide insight or perspective for improving mitigation activities and monitoring. The public may also assist with actual monitoring through public-private partnership programs.

Agencies should provide for public access to mitigation monitoring information consistent with NEPA and the Freedom of Information Act (FOIA).[33] NEPA and the CEQ Regulations incorporate the FOIA by reference to require agencies to provide public access to releasable documents related to EISs, which may include documents regarding mitigation monitoring and enforcement.[34] The CEQ Regulations also require agencies to involve the public in the EA preparation process to the extent practicable and in certain cases to make a FONSI available for public review before making its final determination on whether it will prepare an EIS or proceed with the action.[35] Consequently, agencies should involve the public when preparing EAs and mitigated FONSIs.[36] NEPA further requires all Federal agencies to make information useful for restoring, maintaining, and

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[32] 40 CFR § 1506.6 (requiring agencies to make diligent efforts to involve the public in preparing and implementing their NEPA procedures).

[33] 5 U.S.C. § 552.

[34] 42 U.S.C. § 4332(2)(C) (requiring Federal agencies to make EISs available to the public as provided by the FOIA); 40 CFR § 1506.6(f) (requiring agencies to make EISs, comments received, and any underlying documents available to the public pursuant to the provisions of the FOIA without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action).

[35] 40 CFR § 1501.4(b) (requiring agencies to involve environmental agencies, applicants, and the public, to the extent practicable); *id.* § 1501.4(e)(1) (requiring agencies to make FONSIs available to the affected public as specified in § 1506.6); *id.* § 1501.4(e)(2) (requiring agencies to make a FONSI available for public review for thirty days before making its final determination on whether it will prepare an EIS or proceed with the action when the nature of the proposed action is, or is similar to, an action which normally requires the preparation of an EIS); *id.* § 1506.6 (requiring agencies to make diligent efforts to involve the public in preparing and implementing their NEPA procedures).

[36] *Id.* § 1501.4.

enhancing the quality of the environment available to States, counties, municipalities, institutions, and individuals.[37] This requirement can include information on mitigation and mitigation monitoring.

Beyond these requirements, agencies are encouraged to make proactive, discretionary release of mitigation monitoring reports and other supporting documents, and to make responses to public inquiries regarding mitigation monitoring readily available to the public through online or print media. This recommendation is consistent with the President's Memorandum on Transparency and Open Government directing agencies to take affirmative steps to make information public without waiting for specific requests for information.[38] The Open Government Directive, issued by the Office of Management and Budget in accordance with the President's Memorandum, further directs agencies to use their web sites and information technology capabilities to disseminate, to the maximum extent practicable, useful information under FOIA, so as to promote transparency and accountability.[39]

Agencies should exercise their judgment to ensure that the methods and media used to provide mitigation and monitoring information are commensurate with the importance of the action and the resources at issue, taking into account any risks of harm to affected resources. In some cases, agencies may need to balance competing privacy or confidentiality concerns (e.g., protecting confidential business information or the location of sacred sites) with the benefits of public disclosure.

III. REMEDYING INEFFECTIVE OR NON-IMPLEMENTED MITIGATION

Through careful monitoring, agencies may discover that mitigation commitments have not been implemented, or have not had the environmental results predicted in the NEPA and decision documents. Agencies, having committed to mitigation, should work to remedy such inadequacies. It is an agency's underlying authority or other legal authority that provides the basis for the commitment to implement mitigation and monitor its effectiveness. As discussed in Section I, agencies should not commit to mitigation considered in an EIS or EA unless there are sufficient legal authorities and they expect the resources to be available to perform or ensure the performance of the mitigation. In some cases, as discussed in Section II, agencies may exercise their authority to make

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[37] 42 U.S.C. § 4332(2)(G).

[38] Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4,683 (Jan. 21, 2009); *accord* DOJ, "Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act" (Mar. 19, 2009), *available at* www.usdoj.gov/ag/foia-memo-march2009.pdf.

[39] Office of Mgmt. & Budget, Executive Office of the President, "Open Government Directive" (Dec. 8, 2009), *available at* www.whitehouse.gov/open/documents/open-government-directive.

relevant funding, permitting, or other agency approvals and decisions conditional on the performance of mitigation commitments by third parties. It follows that an agency must rely on its underlying authority and available resources to take remedial steps. Agencies should consider taking remedial steps as long as there remains a pending Federal decision regarding the project or proposed action. Agencies may also exercise their legal authority to enforce conditions placed on funding, grants, permits, or other approvals.

If a mitigation commitment is simply not undertaken or fails to mitigate the environmental effects as predicted, the responsible agency should further consider whether it is necessary to prepare supplemental NEPA analysis and documentation.[40] The agency determination would be based upon its expertise and judgment regarding environmental consequences. Much will depend upon the agency's determination as to what, if any, portions of the Federal action remain and what opportunities remain to address the effects of the mitigation failure. In cases where an EIS or a supplementary EA or EIS is required, the agency must avoid actions that would have adverse environmental impacts and limit its choice of reasonable alternatives during the preparation of an EIS.[41]

In cases where there is no remaining agency action to be taken, and the mitigation has not been fully implemented or has not been as effective as predicted, it may not be appropriate to supplement the original NEPA analysis and documentation. However, it would be appropriate for future NEPA analyses of similar proposed actions and relevant programs to consider past experience and address the potential for environmental consequences as a result of mitigation failure. This would ensure that the assumed environmental baselines reflect true conditions, and that similar mitigation is not relied on in subsequent decisions, at least without more robust provisions for adaptive management or analysis of mitigation alternatives that can be applied in the event of mitigation failure.

IV. CONCLUSION

This guidance is intended to assist Federal agencies with the development of their NEPA procedures, guidance, and regulations; foster the appropriate use of Findings of No Significant Impact; and ensure that mitigation commitments are appropriately and effectively documented, implemented, and monitored. The guidance also provides Federal agencies with recommended actions in circumstances where mitigation is not

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[40] 40 CFR § 1502.9(c) (requiring an agency to prepare supplements to draft or final EISs if the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts).

[41] *Id.* § 1506.1(a) (providing that until an agency issues a Record of Decision, no action concerning the proposal may be taken that would have an adverse environmental impact or limit the choice of reasonable alternatives).

implemented or fails to have the predicted effect. Questions regarding this guidance should be directed to the CEQ Associate Director for NEPA Oversight.

APPENDIX

Case Study: Existing Agency Mitigation Regulations & Guidance

A number of agencies have already taken actions to improve their use of mitigation and their monitoring of mitigation commitments undertaken as part of their NEPA processes. For example, the Department of the Army has promulgated regulations implementing NEPA for military installations and programs that include a monitoring and implementation component.[42] These NEPA implementing procedures are notable for their comprehensive approach to ensuring that mitigation proposed in the NEPA review process is completed and monitored for effectiveness. These procedures are described in detail below to illustrate one approach agencies can use to meet the goals of this Guidance.

a. *Mitigation Planning*

Consistent with existing CEQ guidelines, the Army's NEPA implementing regulations place significant emphasis on the planning and implementation of mitigation throughout the environmental analysis process. The first step of mitigation planning is to seek to avoid or minimize harm.[43] When the analysis proceeds to an EA or EIS, however, the Army regulation requires that any mitigation measures be "clearly assessed and those selected for implementation will be identified in the [FONSI] or the ROD," and that "[t]he proponent must implement those identified mitigations, because they are commitments made as part of the Army decision."[44] This is notable as this mitigation is a binding commitment documented in the agency NEPA decision. In addition, the adoption of mitigation that reduces environmental impacts below the NEPA significance threshold is similarly binding upon the agency.[45] When the mitigation results in a FONSI in a NEPA analysis, the mitigation is considered legally binding.[46] Because these regulations create a clear obligation for the agency to ensure any proposed mitigation adopted in the environmental review process is performed, there is assurance that mitigation will lead to a reduction of environmental impacts in the implementation stage and include binding mechanisms for enforcement.

Another important mechanism in the Army's regulations to assure effective mitigation results is the requirement to fully fund and implement adopted mitigation. It is acknowledged in the regulations that "unless money is actually budgeted and manpower

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[42] The Department of the Army promulgated its NEPA implementing procedures as a regulation.

[43] *See* 40 CFR § 1508.2.

[44] 32 CFR § 651.15(b).

[45] *Id.* § 651.35(g)

[46] *Id.* § 651.15(c).

assigned, the mitigation does not exist."[47] As a result, a proposed action cannot proceed until all adopted mitigation is fully resourced or until the lack of funding is addressed in the NEPA analysis.[48] This is an important step in the planning process, as mitigation benefits are unlikely to be realized unless financial and planning resources are committed through the NEPA planning process.

b. *Mitigation Monitoring*

The Army regulations recognize that monitoring is an integral part of any mitigation system.[49] The Army regulations require monitoring plans and implementation programs to be summarized in NEPA documentation, and should consider several important factors. These factors include anticipated changes in environmental conditions or project activities, unexpected outcomes from mitigation, controversy over the selected alternative, potential impacts or adverse effects on federally or state protected resources, and statutory permitting requirements.[50] Consideration of these factors can help prioritize monitoring efforts and anticipate possible challenges.

The Army regulations distinguish between implementation monitoring and effectiveness monitoring. Implementation monitoring ensures that mitigation commitments made in NEPA documentation are implemented. To further this objective, the Army regulations specify that these conditions must be written into any contracts furthering the proposed action. In addition, the agency or unit proposing the action is ultimately responsible for the performance of the mitigation activities.[51] In a helpful appendix to its regulations, the Army outlines guidelines for the creation of an implementation monitoring program to address contract performance, the role of cooperating agencies, and the responsibilities of the lead agency.[52]

The Army's effectiveness monitoring addresses changing conditions inherent in evolving natural systems and the potential for unexpected environmental mitigation outcomes. For this monitoring effort, the Army utilizes its Environmental Management System (EMS) based on the standardized ISO 14001 protocols.[53] The core of this

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[47] *Id.* § 651.15(d).

[48] *Id.* § 651.15(d).

[49] *Id.* § 651.15(i).

[50] *Id.* §§ 651.15(h)(1)-(4) Appendix C to 32 CFR § 651, 67 Fed. Reg. 15,290, 15,326-28 (Mar. 29, 2002).

[51] *Id.* § 651.15(i)(1).

[52] *See* Appendix C to 32 CFR § 651, 67 Fed. Reg. 15,290, 15,326-28 (Mar. 29, 2002).

[53] *See also* CEQ, "Aligning NEPA Processes with Environmental Management Systems" (2007), *available at*

program is the creation of a clear and accountable system for tracking and reporting both quantitative and qualitative measures of the mitigation efforts. An action-forcing response to mitigation failure is essential to the success of any mitigation program. In the context of a mitigated FONSI, the Army regulations provide that if any "identified mitigation measures do not occur, so that significant adverse environmental effects could be reasonably expected to result, the [agency actor] must publish a [Notice of Intent] and prepare an EIS."[54] This is an essential response measure to changed conditions in the proposed agency action. In addition, the Army regulations address potential failures in the mitigation systems indentified through monitoring. If mitigation is ineffective, the agency entity responsible should re-examine the mitigation and consider a different approach to mitigation. However, if mitigation is required to reduce environmental impacts below significance levels are found to be ineffective, the regulations contemplate the issuance of a Notice of Intent and preparation of an EIS.[55]

The Army regulations also provide guidance for the challenging task of defining parameters for effectiveness monitoring. Guidelines include identifying a source of expertise, using measurable and replicable technical parameters, conducting a baseline study before mitigation is commenced, using a control to isolate mitigation effects, and, importantly, providing timely results to allow the decision-maker to take corrective action if necessary.[56] In addition, the regulations call for the preparation of an environmental monitoring report to determine the accuracy of the mitigation impact predictions made in the NEPA planning process.[57] The report is essential for agency planning and documentation and promotes public engagement in the mitigation process.

c. *Public Engagement*

The Army regulations seek to integrate robust engagement of the interested public in the mitigation monitoring program. The regulations place responsibility on the entity proposing the action to respond to inquiries from the public and other agencies regarding the status of mitigation adopted in the NEPA process.[58] In addition, the regulations find that "concerned citizens are essential to the credibility of [the] review" of mitigation

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ceq.hss.doe.gov/nepa/nepapubs/Aligning_NEPA_Processes_with_Environmental_Management_Systems_2007.pdf.

[54] 32 CFR § 651.15(c).

[55] *See id.* § 651.35(g) (describing the implementation steps, including public availability and implementation tracking, that must be taken when a FONSI requires mitigation); *id.* § 651.15(k).

[56] *See* subsections (g)(1)-(5) of Appendix C to 32 CFR § 651, 67 Fed. Reg. at 15,327.

[57] 32 CFR § 651.15(l).

[58] *Id.* § 651.15(b).

effectiveness.[59] The Army specifies that outreach with the interested public regarding mitigation efforts is to be coordinated by the installation's Environmental Office.[60] These regulations bring the public a step closer to the process by designating an agency source responsible for enabling public participation, and by acknowledging the important role the public can play to ensure the integrity and tracking of the mitigation process. The success of agency mitigation efforts will be bolstered by public access to timely information on NEPA mitigation monitoring.

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[59] *Id.* § 651.15(k).

[60] 32 CFR § 651.15(j).

Title: Documentation of Mitigation Commitments
Date: August 2016
SOP No.: 12
Issued by the Office of Planning and Environment (TPE)

1. Purpose

This document provides guidance on capturing the mitigation commitments for impacts identified through the environmental review process.

2. Applicability/Scope

This guidance applies to the consideration, development, and documentation of commitments to mitigate adverse environmental and community impacts as assessed during the environmental review process. Per 40 CFR 1508.20, mitigation includes:

- Avoiding an impact by not taking a certain action or parts of an action;
- Minimizing an impact by limiting the degree or magnitude of the action and its implementation;
- Rectifying an impact by repairing, rehabilitating, or restoring the affected environment;
- Reducing or eliminating an impact over time, through preservation and maintenance operations during the life of the action; and,
- Compensating for an impact by replacing or providing substitute resources or environments.

FTA considers mitigation measures for all adversely affected resources and communities identified as part of the environmental review process for proposed projects. For resources that do not have a specific mitigation requirement, FTA may still recommend project sponsors mitigate adverse environmental effects to comply with the intent of the National Environmental Policy Act (NEPA), which may also streamline the environmental review process by alleviating public controversy and/or shorten the consultation process with other resource agencies.

This SOP is applicable to all levels of environmental review as FTA documents mitigation commitments in the categorical exclusion (CE) determination, finding of no significant impact (FONSI), combined final environmental impact statement/record of decision (FEIS/ROD), FEIS (23 CFR 771.133), or re-evaluation. Grants are made conditional on the performance of these commitments.

3. Responsibilities

FTA Regional staff is responsible for managing the environmental review process. FTA Regional staff is also responsible for tracking and monitoring mitigation commitments following completion of the environmental review process as part of the grant oversight process, while the actual responsibility for performing the mitigation usually lies with the applicant.

The Office of Chief Counsel (TCC) reviews mitigation that is a condition of the FTA grant, and that function is usually assigned to the Regional Counsel. Regional Counsel also provides advice on whether the mitigation is an eligible expense.

FTA Headquarters staff in the Office of Environmental Programs (TPE-30) and TCC may advise on mitigation commitments for a particular project when the Region requests assistance.

4. Standard Procedures

4.1. Regulations/guidance. Regional staff should review the proposed project to ensure compliance with all relevant environmental requirements identified in the environmental review process as well as adequacy and reasonableness of mitigation commitments. Most environmental laws require the consideration of mitigation of adverse environmental or community impacts. But the statutory and regulatory directives on the consideration of mitigation are not all the same, and FTA may suggest mitigation for impacts when there are no statutory or regulatory directives in place to meet the intent of NEPA and/or streamline the environmental review process.

The mitigation measures should be clearly identified in environmental documents as well as in the grant. In addition, Regional staff should ensure the proposed mitigation measures are allowable FTA expenses. For example, FTA is prohibited from awarding funding to pay for incremental costs of incorporating art or non-functional landscaping into facilities (49 U.S.C § 5323(h)(2)). In order for landscaping to be considered "functional," it would need to be done to offset a particular environmental impact.

4.2. Content and structure of mitigation measures. Consistent with CEQ guidance on mitigation and monitoring, FTA Regional staff should ensure that the environmental document clearly identifies the impact(s) to be mitigated and carefully specifies any relied-upon mitigation "in terms of measureable performance standards or expected results, so as to establish clear performance expectations" ("Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact," 2011). FTA Regional staff should also recommend as a mitigation measure, particularly for complex projects, that a project sponsor identify specific individuals early in the design process as responsible for making sure mitigation measures are incorporated into the project. Lastly, FTA Regional staff should ensure that timing of the mitigation measures is addressed.

Regional staff should also ensure that mitigation commitments are not overly detailed. Instead, these may be written to allow the project sponsor some flexibility to develop a tailored solution to an overall goal. This is consistent with CEQ guidance allowing for adaptive management in mitigation, and is particularly important when the project sponsor does not have the ultimate responsibility or authority to approve or implement the mitigation measure (e.g., a project sponsor may identify and commit to funding traffic-related improvements around new stations, but often city or State departments of transportation have the ultimate authority on how traffic intersections are configured). Similarly, environmental documents should list the permits that will need to be obtained by the project sponsor and provide evidence that the project sponsor will be able to obtain a needed permit, but should avoid providing overly specific mitigation commitments to allow for some flexibility during final design. Prior to publishing environmental documents with mitigation measures, FTA Regional staff should recommend that the project sponsor have an individual with appropriate transportation construction experience review the mitigation measures so that the proposed measures are practical and enforceable during construction.

4.3. Detail of mitigation measures in environmental documents. FTA makes grants conditional on the performance of mitigation commitments outlined in the environmental document. The project sponsor is responsible for implementing the identified mitigation measures, because

they are commitments made as part of the Federal project. Information below addresses the different levels of detail for mitigation measures in different levels of environmental documents.

4.3.1. Draft Environmental Impact Statements (DEIS). In a DEIS, it is appropriate to discuss a number of alternative strategies for mitigating an adverse impact. For example, a DEIS may consider quiet zones, noise walls, alignments variations, vehicle skirts, etc., to mitigate noise impacts. The effectiveness of each measure in reducing or eliminating the impacts, the cost, and any additional impacts (e.g., right-of-way acquisition) should be presented.

4.3.2. Final Environmental Impact Statements (FEIS). After taking into account mitigation-related comments by the public and other agencies on the DEIS, FTA should incorporate mitigation into the preferred alternative presented in the FEIS. The FEIS should present the mitigation measures as commitments as specified in 23 CFR 771.109(b) and in 23 U.S.C. § 139(c)(4). Occasionally, comments on the FEIS result in FTA's inclusion in the ROD of additional mitigation not fully described in the FEIS.[1] Please see below for information in the ROD and combined FEIS/ROD.

4.3.3. Combined FEIS/ROD. The FEIS must contain a detailed description of mitigation measures. RODs should include a summary of the mitigation measures incorporated into the project [23 CFR 771.127(a)], but should reference the FEIS for a more detailed description of the mitigation measures. The mitigation summary in the ROD is presented in the form of an attached summary table that is subsequently used by the FTA Regional oversight office and the project management oversight contractor (PMOC) to monitor compliance during final design and construction.

4.3.4. Environmental Assessments (EA)/FONSI. Mitigation measures are included in the EA: (1) to satisfy other environmental laws and requirements; (2) to avoid, minimize, rectify, reduce, or compensate for potentially significant adverse environmental impacts that would otherwise require full review in an EIS and/or, (3) to mitigate potentially non-significant impacts. FTA can use proposed mitigation measures of potentially significant adverse environmental impacts within the EA to issue a "mitigated FONSI." When FTA issues a FONSI based on the incorporation of mitigation into the project, CEQ recommends in its mitigation and monitoring guidance that FTA specify which mitigation measures reduce an environmental impact below a significant level (CEQ, 2011).[2] Additionally, the draft FONSI must be available for public review for 30 days before FTA makes any final determination on whether to prepare an EIS or proceed with the FONSI (40 CFR 1501.4(e)(2)). Mitigation measures outlined in the FONSI become binding and must be implemented by the project sponsor.

4.3.5. Categorical Exclusion (CE). CEs sometimes include mitigation measures, such as measures/conditions/best practices to avoid and/or minimize impacts that do not warrant

[1] This process is only available when a project releases two separate documents for the FEIS and ROD. Separate publication of FEIS and ROD documents is only allowed when the project meets the conditions outlined in 23 U.S.C. §139(n).

[2] If the project sponsor does not fulfill these specific mitigation commitments, there could be NEPA compliance implications, such as requiring a re-evaluation or a new environmental review.

consideration of alternative sites. Examples may include the following, which is not meant to be an exhaustive list:

- Stipulations in a Section 106 Agreement;
- The mitigation or enhancements needed to support a Section 4(f) *de minimis* impact determination;
- Designing a bus maintenance facility so the building itself stands between the noise-generating maintenance activities and nearby noise-sensitive receptors, and blocks the noise; or
- Construction practices that limit the generation of dust and stormwater runoff during the construction of a transit facility on a brownfield.

4.4. Mitigation contingent upon further, post-NEPA analysis. There may be situations where compliance with all applicable environmental requirements and consultations and the associated mitigation commitments cannot be completed in time for inclusion in the decision document. In these instances, "the final EIS or FONSI should document compliance with requirements of all applicable environmental laws, Executive orders, and other related requirements. If full compliance is not possible by the time the final EIS or FONSI is prepared, the final EIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met..." (23 CFR 771.133). The decision to publish a decision document in this state should be considered carefully on a case-by-case basis by Regional staff and in consultation with the Regional Counsel.

4.5. Mitigation monitoring. FTA Regional staff is responsible for mitigation monitoring after the environmental review process. FTA's monitoring of the implementation of the mitigation commitments during final design and construction is addressed in many FTA Circulars. Changes in mitigation during final design and construction may require a re-evaluation or supplemental environmental review. For example, if substantial changes to the mitigation measure or findings are made after a ROD, a revised ROD shall be subject to review, per 23 CFR 771.127.

5. References

- Efficient environmental reviews for project decisionmaking, 23 U.S.C. § 139
- Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact, (CEQ, 2011)
- CEQ regulations implementing NEPA, 40 CFR parts 1500-1508
- FTA Environmental Impact and Related Procedures, 23 CFR part 771
- Full Funding Grant Agreement Guidance, FTA Circular 5200.1A
- Grant Management Requirements, FTA Circular 5010.1D
- FTA Award Management Requirements (proposed), FTA Circular 5010.1E
- FTA's Project Management Oversight regulations, 49 CFR part 633
- Section 4(f) regulations, 23 CFR 774
- Section 106 regulations, 36 CFR part 800

APPROVAL: _____

Christopher S. Van Wyk
Director, Office of Environmental Programs

DATE: 8/11/2016

MEMORANDUM

Date: December 16, 2016

To: Diridon Station Joint Policy Advisory Board

From: Bill Ekern, City of San Jose Diridon Project Manager

Re: Parking Analysis and Strategy: 2017-2025

Recommendation:

1. Direct staff to refine the analysis for development of three sites for use as interim surface parking supply in support of ongoing transit and business operations in the Diridon Area.

2. Direct staff to explore options for uses of the properties owned by the Successor Agency to the Redevelopment Agency to the City of San Jose as interim surface parking supply in support of ongoing transit and business operations in the Diridon Area.

3. Direct staff to proceed with preparation of a Memorandum of Understanding that outlines how the transit agencies and the City of San Jose will coordinate the development and operation of the aforementioned surface parking supply.

Discussion:

The impacts of the Trammell Crow development, the VTA/BART Phase 2 Project and California High Speed Rail construction projects on the public parking supply proximate to San Jose Diridon Station were recognized by the Board in June. Since that meeting, staff and the consulting firm of Kimley-Horn identified eight potential sites for consideration to serve as interim parking during the construction period. The initial eight sites were evaluated against a criteria matrix that looked at ease of vehicle ingress and egress, pedestrian accessibility to destinations, distance to destinations, and availability of the property. From this first pass, four sites were agreed to meet the overall goals and needs of the transit operators (VTA/BART, Caltrain, and High Speed Rail), the City, and the SAP Center. (Attachment A provides a description of the sites and their analysis; Exhibit A shows the original eight sites; Exhibit B shows the final four.)

The staff represented Caltrain, VTA/BART Phase 2, High Speed Rail, the Sharks, and the City of San Jose. The goal of the analysis was to identify potential solutions to a likely

parking shortage between 2017 and 2025. This timeframe is important as it reflects the anticipated construction by Trammell Crow of its San Jose Diridon project (on the San Jose Water site at Santa Clara Street and Delmas Avenue) and the construction of the BART Phase 2 project to Diridon Station and the construction of High Speed Rail into Diridon Station. Both transit projects are anticipated to begin construction between 2019 and 2020, with completion and operation by 2025. It is possible that a parking supply of as many as 1,500 spaces will be lost proximate to Diridon Station by these construction projects. The exact number and timing of loss will depend upon station access planning, construction project mitigations, and the extent of parking availability in the future Trammell Crow development.

The loss of publicly available parking spaces is critical to the operations of the San Jose Diridon Station and the surrounding businesses. For example, it is estimated that approximately 25% of Caltrain's 4,000 daily boarders park at or near the station. Further, the City of San Jose has a long-standing contractual commitment to the Sharks to maintain a supply of 3,175 available parking spaces within 1/3 mile of the SAP Center. This parking study was not intended to solve for this entire loss, nor to resolve any issues solely tied to the SAP Center operations. The study was intended to identify potential sites on which parking could be provided for this interim construction period and that, should the various agencies agree, could evolve into longer term or permanent parking solutions.

It is important to note and consider that two of the proposed properties remain subject to purchase options associated with the proposed baseball stadium. These properties are to be transferred from the Successor Agency to the Redevelopment Agency (SARA) to the City upon execution of a Compensation Agreement by the affected taxing agencies. What this means for interim, as well as long-term use, is that these taxing agencies could find common ground for their constituents and missions through appropriate economic development.

The aim of all parties was to find a cost-effective agreement as to a solution that would provide support for the various users in the Diridon Area until the transit construction is generally done. The long-term goal of the property acquisition is its future development potential associated with and supportive of the new Intermodal Station activities.

The long-term solution to parking, pursuant to the Diridon Station Area Plan, will be inclusive of publicly accessible parking in development sites within the Plan Area. The parties are working on identifying long term solutions to station access. The first step is

the completion a station access plan that will identify the types and quantity of each mode of access (bus, shuttle, pedestrian, bike, and automobile) will be needed in the future, assuming full development of the station area.

Anticipated Costs

Depending on how project costs are assumed and developed, it is anticipated that site acquisition, site clearance and preparation, and project development will be the basic cost centers. It appears that project costs for the recommended properties could range from $2M to $20M in current dollars, though specific cost estimating has not begun. It is also worth noting here that there are assumptions that land is bought for this project, but given that much of the property is owned by either the City or SARA, leases may make the most sense to the other agencies.

Conclusion

To effectuate the use of any of the SARA properties, coordination and agreement between the affected taxing agencies and the City of San Jose must be obtained. The rules and obligations of the Oversight Board and the Successor Agency clearly require the sale of these properties with the intent to provide maximum benefit to the various taxing entities. Because the need for the interim parking supply benefits all the transit agencies, as well as the City, there is economic benefit to the taxing agencies by putting them to productive use during this construction period. The value of the land for development is anticipated to increase substantially with the arrival of High Speed Rail and BART, consequently there is a meaningful argument to delaying the sale of the sites until the construction is complete and the rail services are in place. As an element of the recommended Memorandum of Understanding, agreement for lease of the property would provide a revenue stream for the taxing agencies and demonstrate the cooperation of the transit agencies and the City for creating appropriate development in the Diridon Station Area.

ALTERNATIVES:

The Board may direct staff to pursue other potential sites for interim parking.

The Board may direct staff to work with the private sector to provide additional paid parking on the identified as well as other sites.

DUBLIN/PLEASANTON BART GARAGE EXPANSION ADDENDUM

San Francisco Bay Area Rapid Transit District

December 20, 2016

URBAN PLANNING PARTNERS INC.

PROJECT DESCRIPTION

1. **Project Title:** Dublin/Pleasanton BART Garage Expansion

2. **Lead Agency Name and Address:**
   San Francisco Bay Area Rapid Transit District (BART)
   300 Lakeside Drive, 21st Floor
   Oakland, CA 94612

3. **Contact Person and Phone Number:**
   Ryan Greene-Roesel, Principal Planner
   RGreene@BART.gov
   510-287-4797

4. **Project Location:**
   The Proposed Project site is located immediately northeast of the Dublin/Pleasanton BART Station (Dublin/Pleasanton Station) and adjacent to Interstate 580 (I-580), within the Dublin Transit Center (DTC) project area, in the City of Dublin, Alameda County (APN #986-34-19).

5. **Project Sponsor's Name and Address:**
   San Francisco Bay Area Rapid Transit District
   300 Lakeside Drive, 21st Floor
   Oakland, CA 94612

6. **General Plan Designation:**
   The Proposed Project site is designated Public/Semi-Public.

7. **Zoning:**
   The Proposed Project site is zoned Planned Development.

8. **Description of Project:**
   The following describes the Proposed Project background, site location, surrounding land uses, Proposed Project components, and regulatory requirements to complete the project as proposed.

Background

In November 2002, the City of Dublin City Council certified an EIR for and adopted the DTC project.

DTC Project

The DTC area is comprised of approximately 91 acres immediately north of the Dublin/Pleasanton station. In 2002, the Dublin City Council approved the DTC project and certified the DTC EIR. The approvals included a General Plan/Eastern Dublin Specific Plan Amendment, Stage 1 Planned Development Zoning, and Vesting Tentative Map. These approvals established the land use and development standards for up to 1,800 residential units on DTC-

designated Sites A, B, C, and E-1; 1.7-million square feet of campus office on Sites D and E-2; and 70,000 square feet of ancillary retail uses to be dispersed between Sites B though E and adjacent to the BART parking structure. The approval also included 12.20 gross acre park located on Site F and a one-acre Village Green located between Sites B and C. Site F has since been removed from the DTC project. The DTC project also includes 8.65 gross acres of public/semi-public uses, including the BART parking structure (Phase I and the proposed Phase II expansion) and surface parking lots for BART patrons and BART employees.

The approved DTC project included a multi-level BART parking structure to replace surface parking throughout the Dublin Transit Center area. The parking structure as approved was to be constructed in two phases:

1. Phase I: a seven-level, 1,528-space structure, to be constructed by ACSPA on property owned by ACSPA.
2. Phase II: a six-level, 655-space expansion, to be constructed by BART[1] on BART property

In October 2005, the Dublin City Council approved site development review for both phases of the BART parking structure.[2]

The Phase I parking structure was constructed by ACSPA in 2007. The Phase I parking structure is accessed by Iron Horse Parkway to the northwest and Altamirano Avenue to the south. It contains 1,512 parking spaces – slightly less than the number approved – and is generally seven levels (except for the elevator shaft on the southwest corner of the structure, which extends an additional level and provides roof access).

BART has developed preliminary plans for the 655-space Phase II Parking Structure Expansion, and is now proposing to adopt the Phase II expansion of the parking structure component of the DTC project, herein referred to as the "Parking Structure Expansion" or "Proposed Project". The Proposed Project would provide additional parking for BART patrons adjacent to the Dublin/Pleasanton Station. This Addendum considers the potential environmental consequences of BART's proposed implementation of the Phase II parking structure.

The DTC EIR determined that the DTC project's impacts to the following resources would be reduced to a less-than-significant level with the implementation of the following mitigation measures: aesthetics; biological resources; cultural resources; hazards and hazardous materials; hydrology and water quality; geology, soils and seismicity; noise; and public services and utilities.

The DTC EIR found that the DTC project would result in significant and unavoidable impacts related to air quality, specifically, emissions of criteria pollutants during operation would have a significant and unavoidable impact on regional air quality, and no feasible mitigation measures

[1] Dublin City Council agenda packet for October 18, 2005, page 4 of 15.

[2] Ordinance of the City Council of the City of Dublin Amending the Zoning Map to Rezone Property and Approving a Related Stage 2 Development Plan; Resolution of the City Council of the City of Dublin Approving the Site Development Review, October 18, 2005.

could be developed to reduce this impact. The DTC EIR also found that the DTC project would result in significant and unavoidable traffic impacts, specifically:

- Unacceptable levels of service would result at two intersections – Dougherty Road and Dublin Boulevard and Hacienda Drive/I-580 westbound off-ramp,
- The Dublin Boulevard and Dougherty Road intersection would experience congested conditions that would exceed the threshold of significance, and
- In 2025 I-580 mainline volumes would exceed thresholds of significance

Due to the potential for significant unavoidable impacts, a Statement of Overriding Considerations was adopted as part of the City's approvals.

The DTC EIR remains relevant and retains informational value for evaluation of the Parking Structure Expansion because the project area is substantially the same as described in the DTC EIR and development that has occurred is consistent with DTC project evaluated in the EIR. No changes to the project as considered in the DTC EIR and 2005 project approval are proposed, with the exception of the variable display message sign. New, project-specific analysis has been completed in this Addendum which confirms that the DTC EIR remains relevant and its analysis, impacts, and mitigation measures are still applicable and adequate.

Project Location

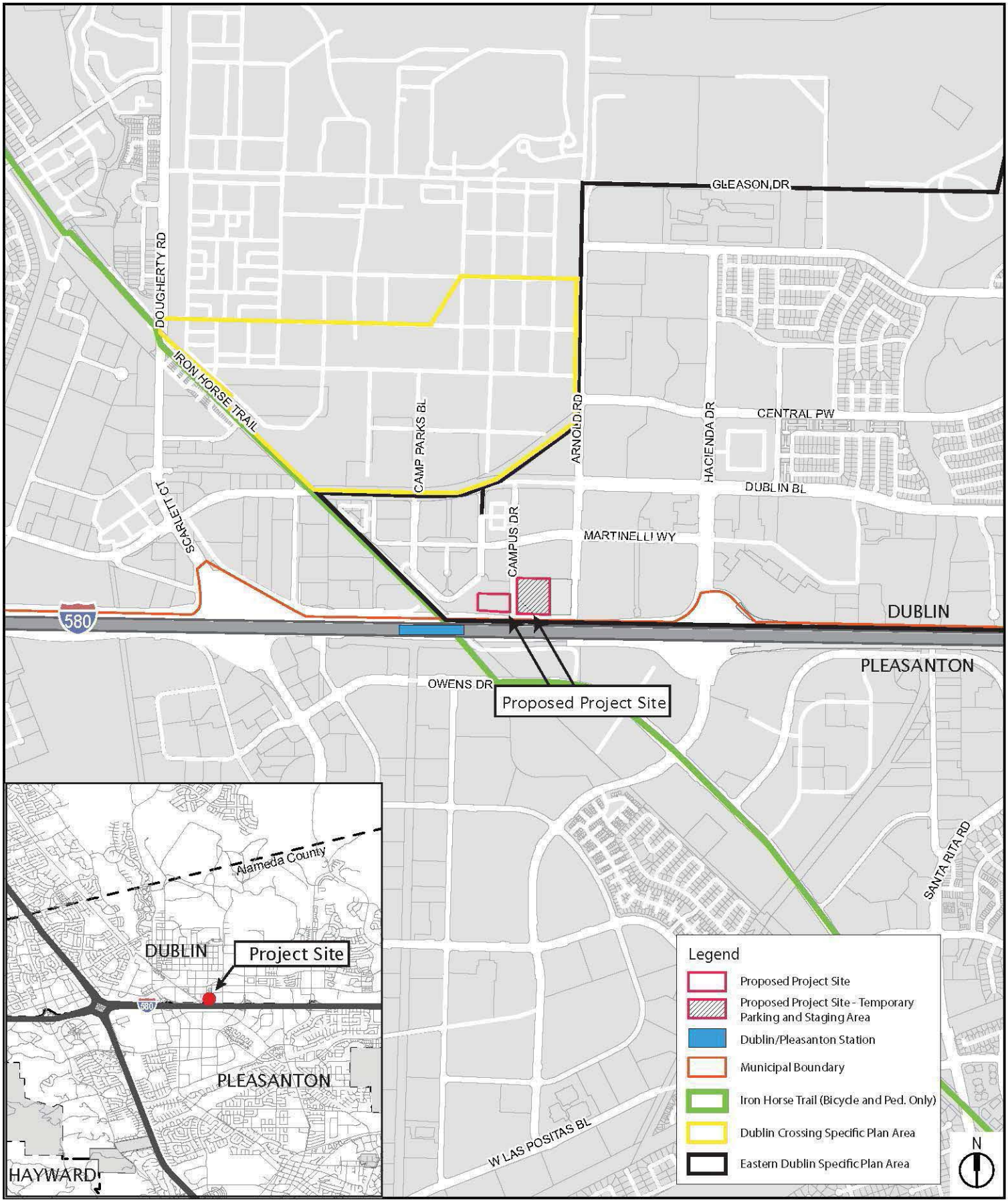
The Parking Structure Expansion Project site is located in the City of Dublin, immediately north of I-580 and northeast of the Dublin/Pleasanton Station, as shown in Figure 1. Local arterials in the project vicinity include Dougherty Road to the west, Dublin Boulevard to the north and Hacienda Drive to the east. The Proposed Project site is located on Site P/SP within the DTC area, as shown in Figure 2. Site P/SP is owned by BART and designated in the DTC plan for BART station parking. Site P/SP is currently developed with the Phase I structure, surface parking and ancillary BART structures.

Project Purpose and Need

The Parking Structure Expansion is proposed to address an existing demand for parking at the Dublin/Pleasanton Station.

The Phase I parking structure is open to BART patrons seven days a week. On an average weekday, all 2,886 parking spaces (both surface and structured) at the Dublin/Pleasanton Station are at 100 percent occupancy. All spaces are typically filled by approximately 7:30 a.m.[3] which limits the ability of additional patrons to access the system, reducing potential BART ridership and increasing commute vehicle traffic on Bay Area roadways as commuters forego transit for automobile travel. The purpose of the Proposed Project is to provide additional parking for BART patrons, improving access to the system.

[3] BART parking and entry and exit data, June 2016.



Not to Scale
Source: Alameda County, 2016, Urban Planning Partners, 2016

Figure 1
Project Vicinity

Dublin/Pleasanton BART Garage Expansion

XVI. TRANSPORTATION/TRAFFIC

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated (from DTC EIR)	Less Than Significant Impact	No Impact
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	❒	❒	■	❒
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	❒	❒	■	❒
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location which results in substantial safety risks?	❒	❒	❒	■
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	❒	❒	■	❒
e) Result in inadequate emergency access?	❒	❒	■	❒
f) Conflict with adopted polices, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	❒	❒	■	❒

DTC EIR FINDINGS

The DTC EIR evaluated transportation and traffic issues in the project area and vicinity to assess any potential impacts. The following impacts were identified:

> Impact 4-11-1: Significant and unacceptable levels of service would result at two intersections – Dougherty Road and Dublin Boulevard and Hacienda Drive/I-580 westbound off-ramp. (*significant*)

Impact 4.11-2 Traffic would increase on local streets, but not unacceptably (*less than significant)*

Impact 4.11-3 Use of BART and LAVTA facilities would increase, but not significantly *(less than significant)*

Impact 4.11-4 BART patrons could utilize on-street and nearby private parking, resulting in insufficient parking for these facilities (*significant impact with mitigation required)*

Impact 4.11-5 The Dublin Boulevard and Dougherty Road intersection would experience congested conditions (*significant and unavoidable, full mitigation not feasible)*

Impact 4.11-6 Hacienda Drive between Central Parkway and Gleason Drive would exceed 15,600 vehicles per day. The future extension of Scarlett Drive between Dublin Boulevard and Dougherty Road would approach maximum volumes. *(significant impact with mitigation required)*

Impact 4.11-7 In 2025 I-580 mainline volumes will exceed thresholds of significance *(significant and unavoidable, mitigation not feasible since freeway improvement is not under the jurisdiction of the City of Dublin.)*

As shown above, even with the implementation of mitigation measures, Impact 4.11-5 and Impact 4.11-7 remain significant and unavoidable. To reduce potential impacts to the extent feasible, the DTC EIR identified the following mitigation measures. Many of these mitigation measures have already been implemented by the City of Dublin, or are in progress. The current status of each mitigation measure improvement is provided in bold italics.

DTC EIR Mitigation Measure 4.11-1 (external intersection impacts): The following improvements shall be undertaken to reduce impacts to external intersections to a less-than-significant level:

(a) Construct the Scarlett Drive extension between Dougherty Road and Dublin Boulevard ***(2016 Status: The Scarlett Drive extension is currently being designed and is expected to be constructed within approximately three years.)***

(b) Add specified lanes to the Dublin/Dougherty intersection ***(2016 Status: The specified lanes have been constructed and are operational.)***

(c) Add specified lanes to the Hacienda/I-580 Westbound Off-ramp intersection ***(2016 Status: The northbound improvements have been made; widening the off-ramp to five lanes has not been accomplished.)***

(d) Add specified lanes to the Dougherty/Scarlett intersection ***(2016 Status: The specified lanes are currently under construction as part of the Dougherty Road improvement project.)***

(e) Add specified lanes to the Dublin/Scarlett intersection ***(2016 Status: The specified lanes [slightly modified based on more recent studies] are being designed as part of the project (a) described above. Construction is expected to occur within three years.)***

DTC EIR Mitigation Measure 4.11-2 (parking): Post all nearby streets for short term parking and ensure that future development projects are designed to discourage unauthorized BART parking. ***(2016 Status: All nearby streets are posted for short term parking and all private parking prohibits BART parkers.)***

DTC EIR Mitigation Measure 4.11-3 (cumulative traffic impacts): Add specified lanes to the Dublin/Dougherty intersection and monitor intersection volumes periodically. ***(2016 Status: With minor modification, all specified lanes have been installed. The City of Dublin monitors this intersection frequently.)***

DTC EIR Mitigation Measure 4.11-4 (roadway segment impacts) Hacienda Drive should be widened to four travel lanes between Central Parkway and Gleason Drive and the Scarlett Drive extension shall be constructed with four lanes prior to buildout of the Transit Center. ***(2016 Status: Hacienda Drive has been widened to two lanes northbound; in the southbound direction widening will be easily accomplished by a planned narrowing of the median if and when the second southbound lane is needed. The planned construction of the Scarlett Drive extension within three years will be as a four lane street.)***

As presented above, two of the DTC mitigation measures have been fully implemented: **DTC EIR Mitigation Measure 4.11-2** (parking) and **DTC EIR Mitigation Measure 4.11-3** (cumulative traffic impacts). **DTC EIR Mitigation Measure 4.11-1**(external intersection impacts) and **DTC EIR Mitigation Measure 4.11-4** (roadway segment impacts) have been partially implemented. As described below, none of these mitigation measures are applicable to the Proposed Project given the Proposed Project's transportation impacts would be less than significant and its contribution to intersections found to be impacted under the DTC project would be negligible.

If You Can't Park, You Can't Ride / For a BART commuter in the suburbs, every workday morning begins with a race to claim one of the precious spots in the transit system's inadequate parking lots

By Michael Cabanatuan, San Francisco Chronicle

Published 4:00 am, Sunday, January 28, 2001

It's 7:45 a.m. -- witching hour at the BART parking lot in Orinda -- but Lark Hilliard is stuck a mile away in molasses-slow traffic on Moraga Way while the last available spaces are vanishing.

Hilliard, chief financial officer for a San Francisco architectural firm, tries to arrive early enough to find a spot in the BART lot but life sometimes gets in the way. On this rainy morning, for instance, trouble with her daughter's carpool forced Hilliard to shuttle the freshman through stop-and-go traffic to Miramonte High School before fighting her way back to BART.

By the time she arrives just after 8 a.m., there's little hope but Hilliard quickly circles the lot anyway before deciding to try her second option, a city park-and-ride lot a half-mile away across Highway 24 and up a hill. She arrives as the last spaces fill. Finally, around the corner, she finds a space on a steep side street just beyond signs limiting parkers to four hours. From there, it's a brisk 10-minute walk to the BART station.

"If I can't find a space, I end up driving," she said. "And I hate driving to San Francisco."

BART's parking shortage is fast becoming the transit agency's most pressing problem. At all but three of the 29 stations that offer parking, the spaces are gone by 8 a.m. To make matters worse, many communities with BART stations have imposed commuter-hostile parking limits on streets anywhere within walking distance.

With demand for parking growing along with ridership, but money to build lots and garages scarce, BART is slowly moving toward a future in which it will charge for parking for the first time in its 28-year history. Not all parking, perhaps, but some.

A recent survey shows that BART is putting a lot of would-be passengers on the highway because they can't find parking at its stations, and is likely to lose even more if it doesn't deal with the problem.

BART surveyed 602 customers who have ridden BART regularly and parked at the stations since 1998. It found that 17 percent of those riders stay in their cars and drive to their destinations

when BART lots are full. The rest park on neighborhood streets, get rides to BART, try to find spaces at other stations or figure out another way to get to the station. And if the parking shortage worsens, 27 percent said they would stop riding BART.

While BART is poised to begin small-scale experiments with paid reserved parking, satellite lots and commuter shuttles, it has no plans, no intent and no money to do what many commuters want: build big new lots or parking garages at every BART station whose lots fill early each morning.

BART's parking shortage is nearly universal. Most of the 41,666 spaces at the 29 stations with parking fill early each weekday. By 8 a.m., just three stations -- North Concord/Martinez, Richmond and Coliseum -- have empty spaces, according to a recent BART study.

BART stations have small reserves of parking spots they save for "midday" parkers that open at 10 a.m. But desperate commuters who could not find parking spots earlier in the morning often begin circling the lots or lining up outside well before the hour.

Several obstacles -- political, financial and philosophical -- stand in the way of more parking at BART.

Building parking is a pricey proposition, with a surface lot costing about $10,000 a space and a parking garage about $20,000 a space. Maintenance and security costs add up to about $1 a space per year, BART officials estimate.

With government funds for parking lots scarce and BART's board of directors averse to charging for parking, that leaves BART the option of raising fares or coming up with creative solutions, such as joint ventures with private developers.

While BART directors aren't ready to start charging for every space at BART, they are moving toward levying parking fees at new lots or stations but not charging for existing parking, which has always been free.

Sometime next year, BART will test the waters with a reserved parking program at a handful of stations. In return for paying a monthly or weekly fee, a BART user will be guaranteed a parking space close to the station.

In another program, BART and the Contra Costa cities of Orinda and Moraga are considering a shuttle bus service that would pick up patrons at church and park-and-ride lots and take them to and from the Orinda station.

BART is also preparing to see if it can interest developers in either building or leasing new parking garages on BART property -- and charging whatever they want.

Travelers bound for San Francisco International Airport on BART once the extension opens in a little more than a year may also be charged to leave their cars behind. BART officials, fearing fliers could tie up valuable parking spaces for days while they travel, are leaning toward opening

some long-term lots that would charge a fee. The matter of parking charges at airport extension stations has not been determined.

BART Director Dan Richard said the board seems to be headed toward a future in which it will build more parking but charge for it -- along with special parking services including reserved, long-term, perhaps even valet parking -- while existing lots and garages would remain free.

"The new parking is going to have to be provided on a different basis," Richard said.

But that's not enough for some BART directors like Roy Nakadegawa, who argues that people who don't drive to BART are paying higher fares and subsidizing the parking places for those who do. Nakadegawa would like to charge everyone who parks at BART and use the money to maintain parking -- and subsidize better transit to stations.

"The fact is, people will start paying when there is a demand," Nakadegawa said. "Why don't we take the big leap forward and just put in paid parking without putting in any additional parking?"

But Richard, voicing an opinion held by a majority of BART directors, believes it would be a mistake to start charging for parking that has always been free. "I think we'd have a revolt on our hands if we tried to take away something we have already given people," he said.

Joel Keller, a director who represents eastern Contra Costa County, contends commuters from the end-of-the-line Pittsburg/Bay Point station already pay excessive fares and can't afford an added parking charge.

"(Eastern Contra Costa) BART riders pay more for their trip than any other riders in the Bay Area," said Keller. "Any increased cost would be unfair." But Hilliard, whose last-resort parking spot was a couple of weeks later posted with a two-hour limit, says she would gladly pay for a place to leave her car.

"I wouldn't mind paying if I knew I would have a space," she said. "In fact, I'd pay almost anything."

http://www.sfgate.com/bayarea/article/If-You-Can-t-Park-You-Can-t-Ride-For-a-BART-2958316.php

BART parking spaces filling up quickly

By Kelli Phillips | Bay Area News Group
PUBLISHED: March 25, 2008 at 9:17 am | UPDATED: August 17, 2016 at 4:01 am

A sign is posted at the Pittsburg – Bay Point BART station for additional parking at the North Concord / Martinez BART station on Wednesday, February 27, 2008, in Pittsburg, Calif. BART riders have a hard time finding parking at the stations closest to their homes and find themselves driving to other stations. (Bob Larson/Contra Costa Times)

Jessica Morgan wants to take her mind and her car off the road, but she can't find parking.

The Walnut Creek resident enjoys riding BART to work in San Francisco, but finding an empty space at nearby stations has become increasingly difficult.

"Lately, there are times when I've just given up and got on the freeway," Morgan said. "Once I drove from Walnut Creek to Lafayette and then Orinda, and there wasn't a single parking space."

On weekdays, more than half of BART's 46,392 parking spaces are filled by 8 a.m., and it jumps to at least 73 percent by 8:45 a.m., according to BART parking data analyzed by MediaNews.

Parking is an issue at several stations, and while a few lot expansions are in the works, BART says just building more parking lots and garages is a costly and impractical solution.

With 441 spaces, the West Oakland station is the first to fill on weekdays at 6 a.m., while Concord (2,367 spaces) and San Bruno (1,083 spaces) are the last to reach capacity at

8:45 a.m.

Pleasant Hill, which has the most parking at 3,011 spaces, is full by 8:30 a.m.

The West Dublin station, slated to open in 2009, will add another 1,200 parking spaces along the Dublin-Pleasanton line, and the Richmond, Ashby, Pittsburg-Bay Point and West Oakland stations are negotiating for additional parking over the next several years.

But the cost is significant.

The 1,200-space garage scheduled to open this spring at the Dublin-Pleasanton station carries a $42 million price tag — or $28,000 per parking space, BART spokesman Linton Johnson said.

"Having more parking in general will encourage people to live further out, which means they have to drive further back in," Johnson said.

"It's really environmental, cost and land planning. It's not just BART, but there are state-mandated goals to reduce greenhouse gases, and you do that by getting people out of their vehicles," he said.

Transit-oriented development, such as the transit village in Fruitvale or proposed sites in Pleasant Hill and Walnut Creek, are putting the land around BART stations to better use, Johnson said.

"There are people who say they don't want to live in a transit village, but there are people who would," he said. "That frees up a parking spot for those in the suburbs because (transit village residents) don't have to drive to the station."

Marci McKillian of Pinole takes public transportation to hiking-club activities around the Bay Area. During a recent trip to the El Cerrito del Norte station, McKillian found parking in a nearby neighborhood.

"I parked 41/2 blocks away because all the closer streets were either full or four-hour parking," she wrote via e-mail. "It was no problem to walk down to the station, but after hiking for almost five miles, another 41/2 blocks up El Cerrito hills was a bit much for an 83-year-old."

The Walnut Creek station's 2,089 spaces and Lafayette's

1,509 are taken by 8 a.m., and the 1,406-space lot in Orinda reaches capacity 30 minutes later.

Lots are filling faster each morning, but it's not deterring patrons. The transit agency saw a ridership increase of 23,000 between this February and last.

"Our parking hasn't increased that much, but we're seeing lots and lots of new riders," Johnson said. "The cost and convenience of commuting drives our ridership, and gas prices are one of the most volatile factors."

With a gallon of unleaded going for $3.50 or higher, more people are turning to BART instead of turning the ignition.

BART's average weekday ridership is about 360,000 people, up from 301,000 three years ago. "Even with this monstrous ridership increase, people are finding other ways to get to BART," Johnson said.

The transit agency is also encouraging those who can to carpool, walk or bike to nearby stations. BART is installing more than 2,000 electronic bike lockers systemwide, and it's working with County Connection and AC Transit to better inform riders of the "Bus to BART" option.

"There are only a couple of routes that don't hit a BART station," said County Connection spokeswoman Mary Burdick.

The bus agency is working to produce schedules that are more user-friendly to BART riders.

"There's a perception that our schedules don't mesh," Burdick said. "We're not going to meet every train, but to make (the schedule) more understandable, we've added the train (times) our buses are scheduled to meet."

AC Transit has 14 park-and-ride lots where BART riders can catch a bus to stations in Castro Valley, Fremont, Oakland and Richmond. "Part of our plan is to provide an available service for riders to get to BART," AC Transit spokesman Clarence Johnson said.

Linton Johnson said BART is trying to devise "all kinds of ways to help those who don't have to take their car to BART," but the agency realizes it's crazy to expect people to just "ditch their cars."

Some motorists, such as Jonathon Peacock, have found ways around the parking issue, at least for now.

The Pittsburg resident lives 10 minutes from the Pittsburg-Bay Point station, but he doesn't bother looking for a space because the lot is full by 7:40 a.m. "I don't leave until about 9 a.m., and parking is long gone by the time I'm looking," he said.

Instead, Peacock, who takes BART to the Montgomery station in San Francisco, slugs through Highway 4 traffic to the North Concord-Martinez station.

The detour adds 15 minutes to his commute, but it guarantees him an empty spot. But, even there, the number of available spaces is shrinking, he says.

"It's getting bad lately," Peacock said. "The lower lot is in three pieces. I was finding a space in the middle of the second portion, but now I find myself parking three-fourths of the way down the third portion. I'm going to have to start leaving earlier."

For those who have to drive, BART does offer a limited number of "single-day parking permits" at 11 stations and "monthly parking permits" at those stations and 21 others.

Monthly permits range from $30 to $115.50 per month, while single-day permits go for $3 to $6.

On Thursday, monthly permits were sold out at 22 of the 32 stations, including all seven in Contra Costa County, and single-day permits for the Walnut Creek station were sold out through April 2.

These permits guarantee the user a parking space at a specific location before 10 a.m. Monday through Friday.

Some motorists become so frustrated with parking that they risk a ticket by parking illegally. BART's Board of Supervisors voted March 13 to raise fines for permit violations from $25 to $40.

"A $25 fine is a bargain. It's cheaper than paying the bridge toll and trying to park in downtown San Francisco," Linton Johnson said. "We're hoping the higher fines will eliminate some parking poachers."

Reach Kelli Phillips at 925-945-4745 or kphillips@bayareanewsgroup.com.

http://www.eastbaytimes.com/2008/03/25/bart-parking-spaces-filling-up-quickly/

Barriers Stop BART Overflow Parkers From Using Stoneridge Lot

Posted:.Thursday, April 16, 2015 12:00 am

Stoneridge Mall has begun chaining off its parking lot each night after business hours, and opening it up again after 9:30 a.m. the next day in an effort to better control parking spaces for its customers and employees.

The mall lot is located close to the Pleasanton side of the West Dublin/Pleasanton BART station. Commuters have been using the Stoneridge lot when parking fills up in the BART parking ramp before 10 a.m. Spaces tend to be available after 10 a.m. in the BART structure.

Mall manager Mike Short said in a prepared statement to The Independent that convenient parking is "an amenity we want to preserve for those who are actively doing business at the center. A controlled parking program ensures the best spaces are available for Stoneridge shoppers and employees anytime of the day, any day of the week."

Short said, "There are signs posted indicating Stoneridge Shopping Center is private property. These signs have always been there."

A Pleasanton resident told The Independent that when her daughter, who goes to law school in San Francisco, showed up at BART on the morning of April 6, she found chains across the Stoneridge parking entrances. She drove on to San Francisco, and paid a high parking fee there. Subsequently, the daughter has been getting rides to BART from her mother.

The mother contacted Pleasanton Vice-mayor Karla Brown, who passed the mother's e-mail on to BART, and sent one of her own. Brown said that she, too, has has been unable to find parking in the BART lots, and "had to resort to driving to San Francisco in my car."

"I know many other drivers that have been stuck in the same position, and used their car instead of the preferred BART transportation," said Brown.

BART district secretary Kenneth Duron replied to Brown that he will share the e-mails with the board, and ask the BART Office of External Affairs and the Customer Access Department to investigate and respond.

The Independent talked to BART spokesperson Jim Allison on April 10. He said that he was not aware of the situation, but would look into it.

Allison said that BART averages 400,000 riders daily. Parking spaces are provided for fewer than 10 percent of that number.

"It's a natural tension. People want to drive to the station. Could we build a space for all, or encourage ride-sharing, cycling, buses, by limiting the amount of parking. It's a debate that goes on at the nine-member BART board, which has members from downtown San Francisco and the suburbs," said Allison.

BART tracks parking usage every six months, and reevaluates it at every station. BART looks at permit spots, and daily fees. There is a $3 cap at all stations, except West Oakland, where it is $7.

At the West Dublin station, there are 722 parking spaces inside the Dublin structure, and 468 on the Pleasanton side. The structures are split between daily users and monthly permit holders. It's possible to buy a permit for a specific day for $6 on-line, said Allison. He said that "guarantees" a parking spot in the rush time up to 10 a.m.

If vehicles are illegally parked in the permit area, BART checks regularly for violators, said Allison.

***Comment*:**

BART Parking

Ann Reichert, Livermore | Posted: Thursday, April 30, 2015 12:00 am

I loved your article about the Stoneridge Mall preventing BART riders from using its parking lot. You can't blame the Mall. It was surprising that it took this long for the barricades to go up.

The situation is entirely BART's fault. You can't have 400,000 riders and only provide parking for less than 10% of those riders and think everything is okay. Jim Allison gives the standard BART answer that he wasn't aware of the problems. Wouldn't that be his job to be aware? BART is never aware of the problems. I guess BART thinks that if you ignore problems they will somehow go away.

http://www.independentnews.com/news/barriers-stop-bart-overflow-parkers-from-using-stoneridge-lot/article_5c4602ba-e42b-11e4-a776-938a45e20df2.html

Pleasanton Working with BART, Stoneridge on Parking Possibilities

Posted: Wednesday, July 1, 2015 12:00 am

By Ron McNicoll, the Independent

BART and the owner of Stoneridge Mall have been talking separately to Pleasanton staff about the problem that some morning commuters find in trying to find a parking place on the Pleasanton side of the West Dublin/Pleasanton BART station.

BART passengers had been using the Stoneridge Mall lot across from BART when they could not find a parking place in the BART parking structure on Stoneridge Mall Road, the ring road around the mall.

However, in May, commuters found posts and chains blocking the way into all of the driveway lanes going into mall parking. The chains were hooked up every night after store hours; then removed after 9:30 a.m. the next day. More parking becomes available in the BART structure after 10 a.m.

Pleasanton residents communicated with vice-mayor Karla Brown, who forwarded their e-mails to the BART board.

The short-term result was removal of the chain barriers in much of the mall's huge lot.

The city used its leverage. Most of the mall had not gone through design review with the city for the chain modifications. "We told them to cease and desist," said City Manager Nelson Fialho.

Although the chains are gone from much of the mall parking lot, it is still private property. Motorists should be aware that mall security can order cars towed, although they cannot issue citations. BART also cannot issue citations there, since it is private property.

The anchor tenants control the parking next to their stores. The city allowed Nordstrom to continue to chain off the area next to its store, but a long-term solution clearly is needed, said Fialho. The Nordstrom lot is the closest one to the BART station.

The solution will require funding and investment, whoever solves it, added Fialho.

There is some vacant land east of the BART parking structure. It is owned by BART, and was zoned for housing at 15 units per acre. The housing was never built.

BART has given a 99-year lease on the land to Workday, which will use the land for a private parking garage. Fialho said that Workday has been cooperative in taking part in discussions with the city about its leased land.

The only apparent solution that could be controlled by BART would be to add two more floors to its existing structure to match the height of the garage on the Dublin side of the station, said Fialho.

Also, there may be a win/win solution with the mall if BART could explore permit parking in the mall lot for BART riders. BART could pay for it, or administer it, said Fialho.

Fialho said another possible tool is the park-and-ride lot at Stoneridge and Johnson drives in Pleasanton. It is across the street from the DSRSD waste-water treatment plant. The lot is used now by carpoolers who travel the freeways, but there is potential that Wheels might be able to run a shuttle to BART from there.

Brown is a member of the LAVTA board , which operates Wheels. She said that a study of routes is underway. The idea would be a good subject to add to the study.

Fialho said that in talking to other cities at the end of BART lines, he found that lack of parking is a common problem. Livermore could learn something for its BART extension from the current Pleasanton problem, declared Fialho.

"They need to be mindful of mistakes of the past. Parking needs to be adequate not only for Livermore, but also for the commute shed for the area. Right now East Dublin/Pleasanton is launch point for riders from Modesto and Tracy. The two stations (including West Dublin/Pleasanton) can easily be overrun with demand."

Talks will continue, with the city as a broker with BART, Workday and the mall, said Fialho.

http://www.independentnews.com/news/pleasanton-working-with-bart-stoneridge-on-parking-possibilities/article_338670e6-202e-11e5-922a-bbcad4a32df7.html

BART Pauses Planning for Dublin Parking Garage

Posted: Thursday, February 16, 2017 12:00 am

The BART Board of Directors voted to delay a decision on a proposed parking garage at the East Dublin Station. If it were to move forward, the garage would provide an additional 540 parking spaces adjacent to the current parking garage.

The vote was unanimous. Staff has 90 days to return with a report.

Directors decided they wanted to look at other options, such as finding nearby surface lots.

There were also questions about whether or not funding was in place to pay for the garage estimated to cost $37.1 million. Of that total, $8.6 million would be needed to pay to design the structure. Directors suggested that before spending the design money, they would like more information on where the $28.5 million to build the garage would come from.

The proposed six-story garage would replace a current surface parking lot of 118 spots, netting 540 more spaces.

John McPartland, who represents the Tri-Valley on the board, stated, "I really want to build this thing today. Arguments to look at other options are reasonable. I don't think surface parking is there."

He stated, that if the motion to delay the process passes, that doesn't mean the parking structure is dead; it's on pause for 90 days.

Director Nick Josefowitz, who made the motion to pause the process, suggested that more work needs to be done. He said that the agency should reach out to nearby neighbors, such as Oracle, who have parking available, to see if BART could lease some of the available spaces. He said he visited the area during a weekday and found over 1000 spaces that were not occupied.

He and other directors also wanted to look at multi-modal access for cars, buses, and bikes, not just cars. Josefowitz said, "There are real access needs in the Tri-Valley that we are not meeting. We need to strive to do so."

Director Joel Keller said that if BART could achieve the parking goals using less taxpayer money, it has an obligation to do so. Among the options would be surface parking away from the station with a shuttle to take passengers to the station.

Funding for the design portion is expected to come from the Metropolitan Transportation Commission and the Alameda County Transportation Commission.

BART General Manager Grace Crunican said it was her understanding that the MTC and ACTC would put in a "substantial amount" of money toward the project, but also want to make sure BART is contributing.

During the public hearing, Dublin Councilmember Don Biddle stated there is an immediate demand for parking in Dublin. He noted that statistics show a wait list for parking permits of 3,000 for the eastside station and 3700 for the station on the westside of the city. "If people don't arrive at the stations by 7:30 or 8 a.m. they are out of luck."

Cindy Chin from Assemblywoman Catharine Baker's office read a letter from Baker supporting the project. It echoed comments made by Biddle and others in support of the garage. The letter concluded, "The need is not going away."

BART TO LIVERMORE

The BART board also received an update on the BART extension to Livermore. It was noted that completion of the I-580 express lanes had eliminated the median.

There is $533 million in funding committed to the Livermore extension. While it would be cheaper to build in the median, there is no median. It will be necessary to widen the freeway 40 to 45 feet to make room for the extension.

It is anticipated that the draft EIR would be released in this spring and a project adopted in late 2017. If the board were to choose a capital intensive project, a federal environmental impact statement would be required. The final impact statement would be expected in 2020. Construction could be completed in 2026.

Capital intensive options include regular BART, a diesel multiple unit or electric multiple unit (similar to eBART), or enhanced bus service. The enhanced bus service would include direct access to the trains, necessitating construction of new infrastructure.

In looking at ridership, the board was told that extending to Isabel means that those from the Central Valley would park there, rather than at Dublin. This would provide slots in Dublin and Pleasanton for those who have been unable to park there.

http://www.independentnews.com/news/bart-pauses-planning-for-dublin-parking-garage/article_2a4c396c-f3c6-11e6-b3b1-bf671dbbe3ef.html

Response to Comment Letter P84

Sharks Sports & Entertainment LLC (SSE)

P84-1 Comment in support of the BART Extension is noted. Refer to responses to specific comments on the evaluation of impacts and proposed mitigation measures provided below.

P84-2 Mass transit, including BART, is part of the access solution for attendees of events at the SAP Arena as it provides a modal alternative to the automobile. This would reduce parking demand. As discussed in Volume I, Chapter 1, *Purpose and Need,* the purpose of the project is to improve public transit service and support transportation solutions that will maintain the economic vitality and continuing development of Silicon Valley by expanding multimodal options and reducing reliance on single auto commute trips. See Master Response 3, *Diridon Station Long-Term Parking,* for a discussion of parking demand at the SAP Center and comparative analysis of BART usage for special event access.

P84-3 Refer to Master Response 2, *Diridon Station Short-Term Parking* and Master Response 3, *Diridon Station Long-Term Parking,* regarding parking impacts during construction and operation of the Diridon Station.

Also refer to Section 5.5.1, *Construction Outreach Management Program,* and the associated mitigation measures that will be implemented to minimize and reduce construction-related transportation impacts and inform the public and other stakeholders of the construction schedule and associated activities.

P84-4 This is a general comment regarding SSE's prior efforts to raise concerns regarding the BART Extension. It does not raise any specific issues.

P84-5 The Scoping Letter from SSE was presented to the VTA Board of Directors in March 2015 and included in the *Environmental Scoping Summary Report,* which became the foundation for assessing impacts in the SEIS/SEIR. This report can be accessed at: http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/FINAL-ScopingReport_5.18.15.pdf.

The scoping comments have been addressed in the various topical sections of the SEIS/SEIR. The transportation and parking analysis from the 2010 FEIS has been reviewed and was updated in the 2016 SEIS/SEIR in Chapter 3, *NEPA and CEQA Transportation Operation Analysis,* Chapter 5, *NEPA Alternatives Analysis of Construction,* and Chapter 6, *CEQA Alternatives Analysis of Construction and Operations*. The update was required to address new ridership projections, including mode of access and station configurations. As a result of the updated analysis prepared for the 2016 Draft SEIS/SEIR, a parking garage at the Diridon Station was determined to be no longer necessary. Table 3-16, *2035 Forecast*

Year Mode of Access by BART Extension Station, identifies the major modes of access to Diridon Station as walk/bike, heavy rail, and light rail with auto park-and-ride of less than 1 percent. Refer to Master Response 3, *Diridon Station Long-Term Parking,* and Chapter 3, Section 3.5.2.12, under the subheading, *Diridon Station,* regarding long-term parking impacts at Diridon Station for more details on why a parking garage is not included at the Diridon Station. 2010 FEIS Mitigation Measure CNST-TR-1 addressing parking demand management is no longer pertinent to the project.

The differences in ridership between the 2010 EIS and the 2016 Draft SEIS/SEIR analysis are attributed to the differences in the Association of Bay Area Governments (ABAG) land use assumptions and demographic inputs to the FTA-approved Travel Demand Model. The 2010 EIS utilized the 2007 ABAG forecasts for population, housing, and jobs along the 16-mile project alignment (Phase I and Phase II). The 2016 Draft SEIS/SEIR utilized the 2013 ABAG demographics (contained in Bay Area Plan Projections 2013: http://www.abag.ca.gov/planning/housing/projections13.html), which showed less overall growth percentages for population, housing, and jobs along the 6-mile Phase II alignment. The ABAG Projections 2013 demographics are the most current source of data for the project alignment and included projections through 2040.

P84-6 The SEIS/SEIR does address parking and transportation impacts in the Diridon Station area; see Chapters 3, *NEPA and CEQA Transportation Operation Analysis,* and 5 *NEPA Alternatives Analysis of Construction*. The comment regarding other environmental documents having considered parking in the Diridon Area is noted; some of these relevant and foreseeable projects mentioned in the comment, such as the Caltrain Electrification and Diridon Station Area Plan, are considered in the cumulative analysis presented in Chapter 7, *Other NEPA and CEQA Considerations*.

In addition refer to Master Response 2, *Diridon Station Short-Term Parking,* regarding parking impacts during construction of the Diridon Station, and Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station.

P84-7 VTA will continue to coordinate with the City of San Jose on parking specifically related to the SAP Center. As noted in the attached comment memo, the City is responsible for soliciting Arena Management's comments on any parking analysis. Also refer to Master Response 2, *Diridon Station Short-Term Parking,* and Section 5.5.2.7, *Diridon Station (South and North Options),* regarding parking impacts during construction of the Diridon Station, and Master Response 3, *Diridon Station Long-Term Parking,* and Section 3.5.2.12, *Impact BART Extension TRA-8: Parking,* regarding long-term parking impacts at Diridon Station.

P84-8 VTA is not a party to the City's obligation for maintaining vehicular access and parking for the SAP Center. Refer to response to comment P84-2 regarding projected BART ridership during events and Master Response 2, *Diridon Station Short-Term Parking*, regarding parking impacts during construction of the Diridon Station, and Master Response 3, *Diridon Station Long-Term Parking*, regarding long-term parking impacts at Diridon Station.

The SEIS/SEIR identifies a significant and unavoidable impact for degraded access for vehicular, pedestrian, and bicycle modes in the vicinity of Diridon Station during construction in Chapter 5, Section 5.5.2, *Transportation*, as well as construction impacts. Refer to response to comment P84-2 regarding the offsetting of long-term parking impacts with a BART Station across the street.

Refer to Master Response 3, *Diridon Station Long-Term Parking*, for a discussion of parking impacts at the Diridon Station, including details on why a parking garage is not included at the Diridon Station.

P84-9 The City of San Jose in the Diridon Station Area Plan has stated that it wants to encourage multi-modal and multiple transit uses at Diridon and also support transit-oriented development (TOJD). BART has had plans for extending service to the Downtown San Jose area since the early 2000s, which has been documented in public environmental documents. Mass transit, including BART, is part of the access solution for attendees of events at the SAP Arena as it provides a modal alternative to the automobile. Refer to Master Response 3, *Diridon Station Long-Term Parking*, regarding parking impacts during operation of the Diridon Station.

P84-10 As stated in the SEIS/SEIR, the construction activities for the BART Extension would result in significant impacts on vehicular, pedestrian, and bicycle traffic during construction near the Diridon Station. With collaborative efforts between the City of San Jose, VTA, and SSE, it is VTA and BART's belief that inconvenience to patrons at SAP can be minimized. VTA is committed to minimizing disruptions to businesses in the Downtown San Jose and Diridon areas. Chapter 5, Section 5.5.1, *Construction Outreach Management Program*, commits VTA to four mitigation measures designed to reduce disruptions and economic damage during construction: Mitigation Measures TRA-CNST-A: Develop and Implement a Construction Education and Outreach Plan, TRA-CNST-B: Develop and Implement a Construction Transportation Management Plan, TRA-CNST-C: Develop and Implement a Parking Management Plan, and AQ-CNST-D: Minimize Idling Times.

As part of Mitigation Measure TRA-CNST-A, VTA is committed to working with the property and business owners in the station areas to maintain access to businesses during construction. VTA would develop and distribute promotional and marketing materials to encourage customers at businesses during

construction. A large number of businesses in Downtown San Jose fronting West Santa Clara Street are restaurants that cater to local office goers, commuters, and residents. The BART Extension would not result in displacement of offices and residents such that the customer base would be lost.

Similarly, in the Diridon Station area, the businesses (except SAP Center) cater mostly to local offices, residents, and commuters. Only one residence in the Diridon area would be displaced as result of the BART Extension Alternative, which would not substantially affect the customer base for Diridon businesses. Refer to response to comment L3-7 regarding parking strategies during construction and in the long term around the Diridon Station area. Refer to Master Response 2, *Diridon Station Short-Term Parking,* regarding parking impacts during construction of the Diridon Station.

P84-11 The SEIS/SEIR provides an explanation of parking and traffic impacts during construction and operation in Chapter 3, *NEPA and CEQA Transportation Operation Analysis*; Chapter 5, *NEPA Alternatives Analysis of Construction*; and Chapter 6, *CEQA Alternatives Analysis of Construction and Operations*. In addition, given that several projects are planned for the Diridon Station area, mitigation measures focus on collaboration with existing and future transit operators, the City of San Jose, and SSE to determine parking solutions; and VTA is committed to contributing towards any parking impacts of VTA projects. Refer to Master Response 2, *Diridon Station Short-Term Parking,* regarding parking impacts during construction of the Diridon Station, and Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station.

Under NEPA, transit projects can affect the availability and location of parking spaces and can be a local concern. Potential parking impacts include consequences of, or impacts from, new parking lots constructed to serve transit facilities, changes in parking demand as a result of transit facility construction/service expansion, and changes to on- and off-street parking during construction and operation of a project. The Federal Transit Administration's (FTA's) guidance states that environmental documents for transit projects should identify anticipated parking impacts and provide ways to avoid, minimize, and mitigate any adverse effects on nearby residential or business communities. (Federal Transit Administration, Transportation Impacts webpage, available at: https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/transportation-impacts-0).

Parking conditions evolve over time as people alter their modes and patterns of travel in response to changing land uses and transportation options. The parking spaces impacted by themselves or the generation of parking demand by itself is not considered a direct significant impact on the physical environment in this

document. However, parking impacts caused by a project or parking demand generated by a project in excess of the parking provided could result in a significant indirect impact on the environment if drivers circling for parking cause significant secondary effects on traffic operations or air quality. However, as described in Master Response 2, *Diridon Station Short-Term Parking*, and Master Response 3, Diridon Station Long-Term Parking, there are on-street and off-street parking opportunities available that would offset the need to travel substantially greater distances for parking and thereby, result in greater air quality impacts. The SEIS/SEIR assesses traffic operation and air quality impacts. Mitigation measures are also provided for managing the traffic flow through construction areas and providing advance information to drivers, as outlined in Mitigation Measures TRA-CNST-A through TRA-CNST-D, described in Chapter 5, Section 5.5.1, *Construction Outreach Management Program*.

Therefore, the SEIS/SEIR provides adequate analysis of traffic and parking in accordance with CEQA and NEPA regulations.

P84-12 The proposed TOJD is not included in the NEPA Build Alternative because it is a proposed independent action by VTA and no federal action is involved. The proposed TOJD serves a separate purpose and need than the BART Extension Alternative and has independent utility. It is included under CEQA to support local and regional land use planning. The proposed TOJD may be constructed at the same time as the BART Extension Alternative or later in time, dependent on the availability of funding and subject to market forces. However, the design of the stations and structures would not preclude TOJD. No private developer has been identified at this time, and the proposed TOJD by VTA may be subject to refinement once a private developer is identified. Any proposed TOJD by VTA, should the Board decide to implement this alternative, would be separately funded and would not include federal funding. In early 2018, VTA staff will bring this project to VTA's Board of Directors, seeking the Board's certification of the Final SEIR and approval of one of the three CEQA Alternatives: the No-Build Alternative, BART Extension Alternative, or the BART Extension with TOJD Alternative. The proposed TOJD would be carried forward for implementation if VTA's Board of Directors approves the BART Extension with TOJD Alternative.

The TOJD component does not require discretionary approval by the FTA and therefore is not within the scope of the project under NEPA (i.e., a federal agency must have discretionary authority over the project for NEPA to apply [40 Code of Federal Regulations (CFR)] 1502.4, 1508.18 (a)).

Per 40 CFR 1508.18, NEPA applies to a broad range of government activities, including:

- New and continuing federal activities that are entirely or partially proposed, financed, assisted, or conducted by a federal agency.

- New and continuing nonfederal activities that are entirely or partially financed, assisted, authorized, permitted, or otherwise approved by a federal agency.
- New or revised federal agency rules, regulations, plans, policies and procedures.
- Proposals for legislation.

The TOJD component does not meet the above-listed government activities.

Because no federal action is involved, VTA's TOJD, which is intended to be consistent with the general plans and approved area plans of the cities of San Jose and Santa Clara, as applicable, is considered in the cumulative background conditions for NEPA purposes. The SEIS/SEIR assessed the overall cumulative impact of the action proposed (NEPA Build Alternative) and considered TOJD in the cumulative analysis in Chapter 7, Section 7.1, *Cumulative Impacts under NEPA and CEQA*.

P84-13 Volume I, Chapter 2, Section 2.3.3, *CEQA BART Extension with TOJD Alternative*, explains the delivery of the TOJD, the permits and approval necessary, and that TOJD is considered in the NEPA cumulative analysis. Additionally, Section 2.5, *Required Permits and Approvals*, list the permits and approvals required for the BART Extension with TOJD Alternative. No federal agency discretionary permits or approvals are required. Refer also to response to comment P84-12.

P84-14 The comments raised in Exhibit C are addressed in responses to comments P84-53 through P84-91.

P84-15 The SEIS/SEIR describes differences in impacts of the options for station locations—Diridon Station South and North Options—and also options for tunnel construction methodology—Twin-Bore versus Single-Bore—where such differences exist. When the impacts are the same or similar, the SEIS/SEIR states that. The *Executive Summary* provides additional detail regarding significant/adverse impacts for each of the options. Table ES-3, *Comparison of Adverse Effects After Mitigation for Tunnel Construction Methodology Options (Twin-Bore and Single-Bore) for NEPA BART Extension Alternative*, describes the difference in impacts for the Twin-Bore and Single-Bore options.

Chapter 5, Section 5.5.2, *Transportation*, provides a detailed description of impacts on transit, pedestrians and bicyclists, vehicular traffic, and parking for Diridon Station (South and North Options). Given the proximity of the Diridon Station South and North options, the construction-period impacts on the surrounding transportation network are similar. Mitigation measures TRA-CNST-

A through TRA-CNST-D, described in Chapter 5, Section 5.5.1, *Construction Outreach Management Program*, would apply.

Chapter 5, Section 5.5.2.7, *Diridon Station (South and North Options),* states that with the Single-Bore Option the impacts on transit, pedestrians and bicyclists, and vehicular traffic would be less than the with the Twin-Bore Option, but would still be *significant and unavoidable* under CEQA and *adverse* under NEPA.

P84-16 Refer to response to comment P84-5 regarding the 2010 transportation analysis and the updated analysis contained in the current SEIS/SEIR. Refer to Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station.

P84-17 Refer to Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station; parking is not being provided consistent with BART's policy on parking.

P84-18 Refer to Master Response 3, *Diridon Station Long-Term Parking*, for a discussion of parking impacts at the Diridon Station and response to comment L3-7 regarding parking strategies in the long-term around the Diridon Station area. Because Diridon Station is projected to function more as a destination station in the AM commute direction, as patrons travel to nearby activity centers, than an origin station, the parking demand at this station would be less than at stations that primarily function as origins in the AM commute direction. The BART users who elect to drive and park would need to use available public parking in the area or park at Santa Clara Station, which is one stop away. Parking is currently restricted in surrounding neighborhoods; so parking in those areas would not be an option for BART users. Refer to the last paragraph of Section 3.5.2.12, *Impact BART Extension TRA-8: Parking*, for a discussion of indirect impacts, which concludes that there would be no adverse effects under NEPA, and impacts would be less than significant under CEQA; therefore, no mitigation is required.

P84-19 Refer to Master Response 2, *Diridon Station Short-Term Parking,* regarding parking impacts during construction of the Diridon Station.

P84-20 Refer to Master Response 2, *Diridon Station Short-Term Parking,* regarding parking impacts during construction of the Diridon Station and the interim parking study.

P84-21 Refer to Master Response 2, *Diridon Station Short-Term Parking,* and Response to Comment L3-107. Section 5.5.1, *Construction Outreach Management Program,* has been revised, including revisions to the mitigation measures' performance standards, to clarify that VTA will work closely with the Cities of San Jose and Santa Clara to develop Master Cooperative Agreements with both cities that will direct coordination between VTA and the Cities during construction. The Master Cooperative Agreements will include many elements,

one of which will be the Construction Outreach Management Program, which will include Transportation Management Plans to be developed in coordination with the Cities. These will be incorporated into the plans and specifications of all contracts through which the BART Extension will be implemented. Refer to Section 5.5.1. *Construction Outreach Management Program,* for more information. This is a large, complicated construction project with the need for roadway and lane closures during construction in addition to many construction vehicles traveling on adjacent streets for up to 8 years; therefore, the project's impact has been determined to be adverse and significant. VTA will work with the Cities to minimize impacts to traffic during construction to the extent feasible with the implementation of Traffic Management Plans. However, these impacts have been determined to remain adverse and significant after implementation of these mitigation measures.

P84-22 Refer to Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station. Master Response 3 also explains how the characteristics of Diridon Station match the characteristics of an urban station.

P84-23 Refer to response to comment P84-5 and P84-18. Also refer to Master Response 3, *Diridon Station Long-Term Parking*, regarding parking impacts during operation of the Diridon Station.

P84-24 See response to comment P84-5. Refer to Master Response 2, *Diridon Station Short-Term Parking,* regarding parking impacts during construction of the Diridon Station. Refer to Master Response 3, *Diridon Station Long-Term Parking*, regarding long-term parking impacts at Diridon Station. Refer to the last paragraph of Section 3.5.2.12, Impact BART Extension TRA-8: *Parking*, for a discussion of indirect impacts.

P84-25 Refer to Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station.

P84-26 The Dublin Transit Center parking facility was in a suburban location and designed to provide long-range commuters with an option for riding BART. The Diridon Station is an urban downtown destination station and is not similar in setting to the Dublin Transit Center, and, therefore, conditions are not comparable.

P84-27 Refer to Master Response 2, *Diridon Station Short-Term Parking,* regarding parking impacts during construction of the Diridon Station. Refer to Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station.

Also, Mitigation Measures TRA-CNST-A: Develop and Implement a Construction Education and Outreach Plan and TRA-CNST-B: Develop and

Implement a Transportation Management Plan, described in Chapter 5, Section 5.5.1, *Construction Outreach Management Program*, have been revised.

The socioeconomic impacts of construction on local residents, businesses, and commuters are addressed in Chapter 5, Section 5.5.15, *Socioeconomics*.

P84-28 Refer to Master Response 3, *Diridon Station Long-Term Parking*, regarding long-term parking impacts at Diridon Station.

P84-29 The situation at the Dublin Transit Center is not comparable to the Diridon Station. Refer to Master Response 3, *Diridon Station Long-Term Parking*, regarding long-term parking impacts at Diridon Station. In addition, BART's adopted System Expansion Policy (described in Chapter 7, Section 7.1.3.2, *Area Plans/Studies*, under the subheading, *Core Modification Study*) discusses the potential to add BART parking as station improvements are implemented, but also consider alternatives to driving to stations, such as improvements to station access encouraging carpool, transit, and bicycle and pedestrian access.

P84-30 Refer to Master Response 3, *Diridon Station Long-Term Parking*, regarding long-term parking impacts at Diridon Station.

Based on the FTA approved modeled ridership for the Draft SEIS/SEIR, the nominal increase in ridership (an additional 19 riders) did not warrant the infrastructure cost to build a BART transit-specific parking structure. This is consistent with BART's adopted System Expansion Policy that lists adding parking as the least desirable option for accommodating ridership.

P84-31 The SEIS/SEIR has been revised (in Chapter 6, Section 6.2, *Transportation*, of the SEIS/SEIR) to state that some events occur during weekday daytime hours, as suggested in the comment. Also refer to Master Response 2, *Diridon Station Short-Term Parking*, regarding parking impacts during construction of the Diridon Station and Master Response 3, *Diridon Station Long-Term Parking*, regarding long-term parking impacts at Diridon Station. In addition, it is very likely that some employees will ride BART to work at the SAP Center.

Text in Chapter 6, Section 6.2.2.2, *BART Extension Alternative*, under *Impact BART Extension CNST-TRA-7: Interfere with activities at event centers*, has been revised as follows:

> There are two major event facilities along the alignment: the SAP Center and Avaya Stadium. The SAP Center is across West Santa Clara Street from the Diridon Station. The SAP Center holds a substantial number of events throughout the year, ~~primarily~~ on weekends <u>and weekdays</u>. The Avaya Stadium, which is the home of the San Jose Earthquakes soccer team, is at Coleman Avenue and Newhall Drive near the San Jose/Santa Clara City limit

line. It is also close to the Newhall Maintenance Facility and Santa Clara Station.

This is a clarification and does not alter any analysis in the SEIS/SEIR.

P84-32 The comment cites a policy that is no longer applicable because it has been superseded by BART's Station Access Policy, adopted June 9, 2016. Refer to Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station for information about the 2016 BART updated parking policy.

P84-33/34

Diridon Station is not the end-of-the-line station and is considered an urban station based on BART mode of access policy (refer to Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station). The classification of Diridon Station as an urban station is consistent with the City of San Jose's mode shift goal outlined in the Diridon Station Area Plan as detailed in Master Response 3.

Diridon Station is an existing multi-modal transportation center located within the City of San Jose's downtown urban core. Diridon Station is now, and will continue to be, served by several transit modes including VTA's Light Rail and express and local bus service, ACE, Amtrak, Capitol Corridor, and regional bus lines to Alameda and Santa Cruz County. This station is well connected within the City's and County's regional bicycle network and is well-served with pedestrian facilities. Therefore, this station is well-served by many multi-modal options for SAP customers and transit riders to access the station. BART service will only add to the many multi-modal options available to travelers with Diridon Station as their intended destination.

In contrast, Santa Clara Station is the end-of-the–line station for the BART Phase II Extension Project and, as such, provides parking.

P84-35 In accordance with CEQA and NEPA, the SEIS/SEIR examines the environmental impacts of the alternatives and design options (station location options for Downtown San Jose and Diridon Station and tunnel construction options: Twin-Bore and Single-Bore). While these projects are not fully designed, the level of detail provided in the SEIS/SEIR is sufficient to address the environmental impacts at a level required by NEPA and CEQA. VTA's TOJD is intended to be consistent with the general plans and approved area plans of the cities of San Jose and Santa Clara, as applicable, and is considered in the cumulative background conditions for NEPA purposes. See Volume I, Chapter 2, *Alternatives,* for additional detail on the approach to the analysis of the alternatives in accordance with NEPA and CEQA.

The VTA Board of Directors will make a decision on the recommended project options in 2018 after consideration of public comments received on the Draft SEIS/SEIR. The Final SEIS/SEIR Section 2.A.3, *CEQA Recommended Project*, includes a VTA–staff, CEQA-recommended project, including the recommended options. Any subsequent project approvals will be made in accordance with the requirements of CEQA and/or NEPA, as applicable.

P84-36 All construction staging areas proposed for use were identified in Figures 5-2 through 5-11. Chapter 5, Section 5.2.4.1, *Construction Staging Areas*, identifies the types of activities that are construction, construction vehicle parking, construction equipment storage and usage, materials storage, and assembly that would be undertaken at the construction staging areas.

Chapter 5, Section 5.2.4.1, identifies the construction staging areas (East and West Tunnel Portals) that will be used for Tunnel Boring Machine (TBM) launch and for extraction of material for both Twin-Bore and Single-Bore tunneling. Chapter 5, Section 5.3.1.2, *Tunnel Construction*, provides further clarification regarding tunnel construction scenarios if one or more TBMs are used. The SEIS/SEIR provides information on possible construction scenarios, and the decision regarding the number of TBMs to be used would be made during the engineering phase and procurement.

P84-37 Chapter 5, *NEPA Alternatives Analysis of Construction*, addresses the environmental impacts of 18 topical areas. For example, the air quality, greenhouse gas, and noise analysis assumes that the East and West Tunnel Portals will be used for TBM launch and for extraction of material for both Twin-Bore and Single-Bore tunneling options.

The air quality emissions are identified in detail in Table 5-3, *Construction Emissions Related to the BART Extension*. The table clearly identifies the extraction of materials (muck) at the portals for Twin-Bore and Single-Bore Options. The greenhouse gas emissions calculations were also similarly calculated in Section 5.5.10, *Greenhouse Gas Emissions*. The noise analysis for the East and West Portals in Section 5.5.13.1, *Noise Impacts*, provides the noise levels associated with the TBM. Also, noise analysis for the muck train is provided in that section under the subheading, *Tunnel Construction: Muck Train*. In addition to noise, TBMs also have the potential to result in vibration impacts. These are discussed in detail in Section 5.5.13.2, *Vibration Impacts*, under the subheading, *Tunnel Construction: TBM*. Specific noise and vibration mitigation measures are provided to address tunnel construction impacts. See Section 5.5.13.3, *Noise and Vibration Mitigation Measures*, specifically, NV-CNST-I: Perform Preconstruction Ambient Noise Measurements at East and West Portal CSAs, NV-CNST-R: Implement a Preconstruction and Post-Construction Building

Condition Surveys for Vibration, and NV-CNST-S: Implement Measures to Reduce Vibration from Muck Extraction and Supply Trains.

Therefore, the SEIS/SEIR also considers the impacts near construction staging areas that will be used for TBM launch and extraction of materials.

In addition to specific mitigation measures identified by topical area, Sections 5.5.1, *Construction Outreach Management Program*, and 5.5.2.7, *Diridon Station (South and North Options)*, provide four additional mitigation measures: TRA-CNST-A: Develop and Implement a Construction Education and Outreach Plan, TRA-CNST-B: Develop and Implement a Construction Transportation Management Plan, TRA-CNST-C: Prepare and Implement an Emergency Services Coordination Plan, and TRA-CNST-D: Provide Temporary Replacement Parking at Diridon Station.

P84-38 The comment is incorrect in stating that the traffic disruption impacts due to construction would be reduced to a less-than-significant level with mitigation. The SEIS/SEIR acknowledges that traffic disruptions during construction at Downtown San Jose and Diridon Stations would be significant and unavoidable under CEQA (see *Executive Summary* and Chapter 7, Section 7.5, *Significant Unavoidable Impacts under CEQA*).

Revised Mitigation Measures TRA-CNST-A: Develop and Implement a Construction Education and Outreach Plan, and TRA-CNST-B: Develop and Implement a Construction Transportation Management Plan, described in Chapter 5, Section 5.5.1, *Construction Outreach Management Program*, would reduce impacts, but not to the level of *less than significant*. The revised mitigation measures represent a commitment to mitigation on the part of VTA and contain performance standards to ensure effectiveness. This meets the requirements for the proper deferral of mitigation measure details, as set out in *Sacramento Old City Assoc. v. City Council of Sacramento* (1991) 229 Cal.App.3rd 1011 and subsequent decisions.

P84-39 The air quality analysis assumes a trip length of 50 miles for the excavation materials to be hauled away based on available material recovery and landfill facilities available. Spoils generated due to tunneling operations are unlikely to be categorized as California or federal hazardous waste due to depth of tunneling operations. Availability of each landfill to accept waste depends on their annual fill capacity and is always subject to change, and will be decided by the contractor. Though it is impossible to identify which landfill/s the Contractor will be using at the time of construction off haul, VTA has identified the following local landfill facilities which can accept excess spoils from the Phase II Project:

- Dumbarton Landfill, Fremont
- Altamont Landfill, Livermore
- Kirby Canyon, Morgan Hill
- Tri-Cities Landfill, Fremont
- Vasco Road Landfill, Livermore
- Ox Mountain Landfill, Half Moon Bay
- Newby Island Landfill, Milpitas

In addition, other construction projects in the region may require fill materials, which may be another option for disposal. In the event that spoils are categorized as hazardous waste, they would be disposed of at the appropriate federal or state facility for RCRA and/or California hazardous waste material. These facilities are located either at Buttonwillow or Kettleman Hills.

P84-40 See response to P84-39 above.

P84-41 See responses to comments P84-35 and P84-36. The BART Extension Alternative options are described in detail in Volume I, Chapter 2, *Alternatives*. In addition, the options are analyzed in each of the impact sections of the SEIS/SEIR. The descriptions of the options are consistent throughout the SEIS/SEIR. The alternatives described in the SEIS/SEIR are not so different from one another that the public and decisionmakers have not been fully informed of the potential impacts of the alternatives or would be confused over what constitutes the project being considered. The alternatives and the options within the alternatives are concisely described in Volume I, Section ES.2, *Overview*, at the beginning of the SEIS/SEIR and consistently thereafter in more detail in Volume I, Chapter 2, *Alternatives*. CEQA allows projects to include options as long as the impacts of all options are considered in the SEIS/SEIR. Volume I, Sections 2.A.2, *NEPA Recommended Project*, and 2.A.3, *CEQA Recommended Project*, define the project descriptions for the federal and state environmental clearances, and Section 2.A.4, *Timeline for Future Option Decisions*, describes the timelines and processes for future decisions on options. The recommended project descriptions select options that were fully evaluated in the Draft and Final SEIS/SEIR and therefore provide a well-defined project description. If there are substantial project changes that occur after the certification of the environmental document, those would be subject to additional environmental review.

P84-42 See response to comment P84-15.

P84-43 Section 6.2.2.2, *BART Extension Alternative*, under the subheading, *Impact BART Extension CNST-TRA-7*, has been revised as follows to delete the sentence mentioned in the comment:

> There are two major event facilities along the alignment: the SAP Center and Avaya Stadium. The SAP Center is across Santa Clara Street from the Diridon Station. The SAP Center holds a substantial number of events throughout the year, ~~primarily~~ on weekends <u>and weekdays</u>. The Avaya Stadium, which is the home of the San Jose Earthquakes soccer team, is at Coleman Avenue and Newhall Drive near the San Jose/Santa Clara City limit line. It is also close to the Newhall Maintenance Facility and Santa Clara Station. ~~Because potential interference with activities at event centers is not included in Appendix G of the State CEQA Guidelines, as listed in Chapter 3, Section 3.2.2, *Thresholds of Significance*, this discussion is provided for informational purposes for CEQA.~~

Impacts on event centers such as the SAP Center and Avaya Stadium during operation of the BART Extension Alternative are discussed in Chapter 3, Section 3.5.2.11, *Impact BART Extension TRA-7: Interfere with Activities at Event Centers*. The analysis concludes that during operation the BART Extension would result in no adverse effect under NEPA and a less-than-significant impact under CEQA. Similarly Chapter 5, Section 5.5.2.7, *Diridon Station (South and North Options)*, addresses transportation impacts at Diridon Station, which would also apply to the SAP Center. Chapter 6, Section 6.2, *Transportation*, has been similarly updated.

P84-44 Section 5.5.1, *Construction Outreach Management Program*, has been revised, including the mitigation measures, to clarify that VTA will work closely with the Cities of San Jose and Santa Clara to develop Master Cooperative Agreements with both cities that will direct coordination between VTA and the Cities during construction. The Master Cooperative Agreements will include many elements, one of which will be the Construction Outreach Management Program, which will include Transportation Management Plans to be developed in coordination with the Cities. These will be incorporated into the plans and specifications of all contracts through which the BART Extension will be implemented. These performance standards meet the requirements for adequate mitigation. Refer to Section 5.5.1. *Construction Outreach Management Program*, for more information.

This is a large, complicated construction project with the need for roadway and lane closures during construction in addition to many construction vehicles traveling on adjacent streets for up to 8 years; therefore, the project's impact has been determined to be adverse and significant. We will work with the Cities to minimize impacts to traffic during construction to the extent feasible with the

implementation of Traffic Management Plans. However, these impacts have been determined to remain adverse and significant after implementation of these mitigation measures.

P84-45 The text in Chapter 5, Section 5.5.2.7, *Diridon Station (South and North Options)*, under *Pedestrian and Bicyclists*, first paragraph, third sentence has been rewritten as follows:

> The Diridon Station North Option would also require ~~lane~~ sidewalk closures and intermittent bicycle lane closures on the south side of West Santa Clara Street between Stockton Avenue and Autumn Street. No vehicular lane closures are planned on West Santa Clara Street.

In addition, Mitigation Measure TRA-CNST-B: Develop and Implement a Construction Transportation Management Plan includes minimum requirements for pedestrian and bicyclists to provide safe travel corridors in the Traffic Control Plans (TCP) for each site. The Diridon Station TCP will address pedestrian and bicyclist impacts along West Santa Clara Street.

P84-46 CEQA requires that an EIR examine a range of reasonable alternatives that are potentially feasible, meet most or all of a project's objectives, and reduce one or more of its significant effect. (State CEQA Guidelines Section 15126.6). CEQA does not mandate that an EIR examine a given number of alternatives, other than to require analysis of the no-project alternative. This is a subsequent EIR, and prior documents dating back to 2004 addressed various alignment alternatives that have previously been withdrawn. See Volume I, Chapter 2, Section 2.4, *Alternatives Considered and Withdrawn*, and Chapter 7, Section 7.6, *Environmentally Superior Alternative under CEQA*.

P84-47 Chapter 7, Section 7.6, *Environmentally Superior Alternative under CEQA*, provides a comparison of alternatives considered. The BART Extension Alternative results in reduced significant impacts when compared to the BART Extension with TOJD Alternative. The BART Extension Alternative would not result in operational significant and unavoidable impacts related to transportation (De La Cuz Boulevard and Central Expressway intersection), air quality (reactive organic gases emissions), and greenhouse gas emissions (inconsistent with Executive Orders S-3-05 and B-30-15). Over the years, VTA has considered various alternatives for alignment and station locations and construction methodologies as detailed in Volume I, Chapter 2, Section 2.4, *Alternatives Considered and Withdrawn*. One of the factors considered in the overall consideration of alternatives has been the potential for environmental impacts. As described in response to comment P84-49, the current alternatives and options reduce some of the significant effects identified in the project's prior environmental documents.

Also refer to response to comment P84-46.

P84-48 A certified EIR does not become "obsolete" as claimed in the comment. A subsequent document is prepared for the purpose of examining subsequent changes or refinements in the project to determine whether they have new or substantially more severe environmental impacts. Refer to responses to comments P84-46, P84-47, and P84-49.

P84-49 Although the locally preferred alternative was originally selected in 2001, VTA has been working with the local stakeholders through the community working groups and other avenues. The design of the preferred alternative has been refined since 2001.

The SEIS/SEIR examines the refinements to the preferred alternative since consideration of the original design. See Volume I, Section ES.3, *Why Supplemental EIS and Subsequent EIR Document*, and Chapters 1, *Purpose and Need*, and 2, *Alternatives*, for a full discussion of the history and evolution of the project. The inclusion of Single-Bore Tunnel Construction Methodology was not part of the original design; it was added to address the need to avoid extensive cut-and-cover construction impacts at the Downtown San Jose and Diridon Stations. The station designs have changed since 2001 to incorporate comments from the local stakeholders. This has resulted in changes, for example, in the entrance options and locations of systems facilities to reduce environmental impacts. There is strong support for extending BART to the Silicon Valley and through Downtown San Jose to help revitalize and revive Downtown San Jose. The SEIS/SEIR provides information on existing and regulatory conditions as of 2015 (at the time of the Notice of Preparation for the SEIR), and the impacts of the BART Phase II project have been analyzed with these changed conditions as baseline.

By its very nature, subsequent analysis relies on previously prepared environmental documents. Prior environmental documents are not "obsolete." In fact, they provide the foundation on which the subsequent analysis is based. The subsequent analysis focuses on the potential effects of modifications to the project and changes in circumstances in light of the conclusions in the prior environmental documents. (See *Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5th 937).

P84-50 Refer to responses to comments P84-47, P85-48, and P85-49. The alternative locations or options for the Downtown San Jose and Diridon Stations are provided in the SEIS/SEIR. Alignment options were previously considered in prior documents, and the current alignment was chosen as the locally preferred alternative, as discussed in Volume I, Chapter 2, Section 2.4, *Alternatives Considered and Withdrawn*.

P84-51 Refer to Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station. Also refer to response to comment P84-26 regarding the differences when comparing the Diridon Station to other BART stations.

P84-52 In Section 5.5.1, *Construction Outreach Management Program,* mitigation measures have been revised to provide more specificity. The mitigation measures in the SEIS/SEIR will be enforceable through an adopted Mitigation Monitoring and Reporting Plan. The proposed mitigation measures are summarized in the *Executive Summary*.

P84-53 This is a general, summary comment. The SAP Center and Diridon Station are recognized as important developments in the City of San Jose. Mass transit, including BART, is part of the access solution for attendees of events at the SAP Center as it provides a modal alternative to the automobile. In addition, BART's adopted System Expansion Policy (described in Chapter 7, Section 7.1.3.2, *Area Plans/Studies,* under the subheading, *Core Modification Study*) encourages alternatives to driving to stations, such as improvements to station access encouraging carpool, transit, and bicycle and pedestrian access. Please see responses to specific concerns in the letter below. Refer to Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station.

P84-54 The sub-comments presented in the summary comments are addressed below:

B.1: Refer to response to comment P84-15.

B.2: Refer to response to comment P84-5 and Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station.

B.3: Refer to responses to comments P84-2 and P84-5, and Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station.

B.4: Refer to response to comment P84-2 and Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station.

B.5: Refer to Master Response 2, *Diridon Station Short-Term Parking,* regarding parking impacts during construction of the Diridon Station.

B.6: Impacts on transportation during Diridon Station construction are discussed in Chapter 5, Section 5.5.2.7, *Diridon Station (South and North Options)* including mitigation measures. Refer also to Master Response 2, *Diridon Station Short-Term Parking,* regarding parking impacts during construction of the Diridon Station.

P84-55 Appendix C, *BART Station Site Plan Concepts*, provides graphic illustrations of the draft conceptual plans for the options analyzed in the SEIS/SEIR. The options are described in Volume I, Chapter 2, *Alternatives*, and analyzed in the impact sections of the SEIS/SEIR. Refer to responses to comments P84-15 and P84-41.

P84-56 Refer to Master Response 2, *Diridon Station Short-Term Parking*, regarding parking impacts during construction of the Diridon Station and Master Response 3, *Diridon Station Long-Term Parking*, regarding long-term parking impacts at Diridon Station.

P84-57 See response to comment P84-45. There are no plans for vehicular lane closures on West Santa Clara Street for any of the options. There is no on-street parking on West Santa Clara Street; therefore, parking would not be effected.

P84-58 There would be intermittent bicycle lane closures on West Santa Clara Street between Stockton Avenue and Autumn Street during construction activities. No vehicular lane closures are planned on West Santa Clara Street.

P84-59 See responses to comments P84-45 and P84-58.

Revisions are for clarification and do not alter any analysis in the SEIS/SEIR.

P84-60 The comment does not explain how the SAP Center would be adversely impacted by the SEIS/SEIR locations of the eastern entrance and Traction Power Substation. However, the Diridon Station North Option Single-Bore Tunnel eastern entrance location has been relocated to the east side of Montgomery Street to facilitate access and circulation by creating greater separation between the two entrances. VTA has also relocated the Traction Power Substation (as requested in the comment) but to a new location west of the railroad tracks and on White Street. Neither of these design changes results in a new significant environmental impact. Refer to the revised Draft Conceptual Diridon Station North Option Single-Bore Option site plan in Appendix C.

P84-61 Refer to Master Response 2, *Diridon Station Short-Term Parking*, regarding parking impacts during construction of the Diridon Station and Master Response 3, *Diridon Station Long-Term Parking*, regarding long-term parking impacts at Diridon Station.

P84-62 See responses to comments P84-45, P84-57, and P84-58.

P84-63 There are no plans for vehicular lane closures on West Santa Clara Street for either the Diridon Station North Option or Diridon Station South Option. However, there would be intermittent bicycle lane closures on West Santa Clara Street between Stockton Avenue and Autumn Street. Also refer to response to comment P84-45.

P84-64 See responses to comments P84-45 and P84-58.

P84-65 Refer to Master Response 2, *Diridon Station Short-Term Parking,* regarding parking impacts during construction of the Diridon Station. Refer to Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station.

P84-66 See responses to comments P84-45, P84-57, and P84-58.

P84-67 See response to comment P84-45 and P84-58.

P84-68 The 2010 FEIS included three alternatives: No Build, Berryessa Extension Project Alternative, and the Silicon Valley Rapid Transit Project Alternative. Diridon Station—including a 1,300-space parking garage—was a component of the Silicon Valley Rapid Transit Project Alternative. However, FTA issued a Record of Decision on the 10-mile Berryessa Extension Project Alternative, which terminates near U.S. 101 south of Mabury Road and did not include a BART station at Diridon Station. The project has changed since the 2010 environmental document evaluated a 1,300-space parking garage at Diridon Station, as explained in Master Response 3. The disposition of the 2010 alternatives is discussed in Volume I, Chapter 2, Section 2.4., *Alternatives Considered and Withdrawn*.

See responses to comments P84-2 and P84-5.

P84-69 Refer to Master Response 2, *Diridon Station Short-Term Parking,* regarding parking impacts during construction of the Diridon Station. Refer to Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station. Also refer to responses to comments P84-2 and P84-5.

Table 3-16, *2035 Forecast Year Mode of Access by BART Extension Station*, rounds the mode of access numbers to the nearest percentage and "not applicable" does not mean 0 percent. No more that 0.5 percent or 68 average weekday BART riders are projected to access the Diridon Station by automobile and then park-and-ride in 2035. Those accessing the Diridon Station would require public or private parking facilities.

P84-70 Refer to Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station.

P84-71 The Santa Clara Station, not Diridon Station, is the end of the line for the BART Phase II Extension Project and as such provides parking. Because it is only one stop away from the Diridon Station, Santa Clara Station provides an alternative for those who desire to park and ride BART. Diridon Station is considered an urban station based on BART's mode of access policy definition. The classification of the Diridon BART Station as an urban station is consistent with the City of San Jose's mode shift goal outlined in the Diridon Station Area Plan. The comment states that the Millbrae Station park-and-ride share is currently 67 percent and has transfers to/from BART with Caltrain and regional transit

services. Diridon Station is unlike Millbrae Station, because, as shown in Table 3-16, *2035 Forecast Year Mode of Access by BART Extension Station*, the park-and-ride share is less than 1 percent and heavy and light rail share is 52 percent. Also refer to response to comment P84-17.

P84-72 Refer to Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station. Master Response 3 also explains how the characteristics of Diridon Station match the characteristics of an urban station.

P84-73 See response to comment P84-5.

As discussed in Volume I, Chapter 1, *Purpose and Need,* the purpose of the project is to improve public transit service and support transportation solutions that will maintain the economic vitality and continuing development of Silicon Valley by expanding multimodal options and reducing reliance on single auto commute trips. Based on the current modeled ridership, the nominal increase in ridership (an additional 19 riders) did not warrant the infrastructure cost to build a BART transit-specific parking structure.

P84-74 The statement regarding the difference on Diridon Station parking demand between the Diridon Station Area Plan and the SEIS/SEIR is noted. The Diridon Station Area Plan was approved in June 2014, and includes forecasts of 2030 BART ridership and mode split based on unconstrained modeling that was conducted prior to that date. The Diridon Station Area Plan emphasizes that its estimates of transit parking demand are preliminary estimates and subject to change. The SEIS/SEIR constrained modeling of 2035 ridership and mode split was conducted later and includes updated assumptions. Refer to responses to comments P84-2 and P84-5, and Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station.

Based on the current modeled ridership, the nominal increase in ridership (an additional 19 riders) did not warrant the infrastructure cost to build a BART transit-specific parking structure.

As discussed in Volume I, Chapter 1, *Purpose and Need,* the purpose of the project is to improve public transit service and support transportation solutions that will maintain the economic vitality and continuing development of Silicon Valley by expanding multimodal options and reducing reliance on single auto commute trips.

P84-75 Refer to Master Response 2, *Diridon Station Short-Term Parking,* regarding parking impacts during construction of the Diridon Station. Refer to Master Response 3, *Diridon Station Long-Term Parking,* regarding long-term parking impacts at Diridon Station. These responses support the decision not to provide parking.

P84-76 Refer to Master Response 2, *Diridon Station Short-Term Parking*, regarding parking impacts during construction of the Diridon Station. Refer to Master Response 3, *Diridon Station Long-Term Parking*, regarding long-term parking impacts at Diridon Station. Also refer to responses to comments P84-2 and P84-5.

Operational impacts on parking are addressed in Chapter 3, Section 3.5.2.12, *Impact BART Extension TRA-8: Parking*. Diridon Station is considered an urban station based on BART mode of access policy. The classification of the Diridon BART Station as an urban station is consistent with the City of San Jose's mode shift goal outlined in the Diridon Station Area Plan. Based on the current modeled ridership, the nominal increase in ridership (an additional 19 riders) did not warrant the infrastructure cost to build a BART transit-specific parking structure.

P84-77 As discussed in Volume I, Chapter 1, *Purpose and Need*, the purpose of the project is to improve public transit service and support transportation solutions that will maintain the economic vitality and continuing development of Silicon Valley by expanding multimodal options and reducing reliance on single-auto commute trips. Some of the SAP Center employees may choose to take BART to work instead of driving. Refer to Master Response 3, *Diridon Station Long-Term Parking*, and Section 3.5.2.12 regarding long-term parking impacts at Diridon Station. Also refer to responses to comments P84-2 and P84-5.

P84-78 Refer to Master Response 3, *Diridon Station Long-Term Parking*, and Section 3.5.2.12, *Impact BART Extension TRA-8: Parking*, regarding long-term parking impacts at Diridon Station. The project is not expected to result in adverse effects on parking and, therefore, no mitigation is necessary.

P84-79 Refer to responses to comments P84-76 through P84-78 above.

P84-80 Refer to Master Response 2, *Diridon Station Short-Term Parking*, regarding parking impacts during construction of the Diridon Station.

P84-81 Refer to Master Response 2, *Diridon Station Short-Term Parking*, regarding parking impacts during construction of the Diridon Station.

P84-82 Refer to Master Response 2, *Diridon Station Short-Term Parking*, regarding parking impacts during construction of the Diridon Station.

P84-83 Refer to Master Response 2, *Diridon Station Short-Term Parking*, regarding parking impacts during construction of the Diridon Station.

The SEIS/SEIR acknowledges that traffic disruptions during construction at Diridon Station would be significant and unavoidable under CEQA (see *Executive Summary* and Chapter 7, Section 7.5, *Significant Unavoidable Impacts under CEQA*). Revised Mitigation Measures TRA-CNST-A: Develop and Implement a Construction Education and Outreach Plan, and TRA-CNST-B: Develop and Implement a Construction Transportation Management Plan, described in

Chapter 5, Section 5.5.1, *Construction Outreach Management Program*, would reduce impacts, but not to the level of *less than significant*. The revised mitigation measures represent a commitment to mitigation on the part of VTA and contain performance standards to ensure effectiveness. This meets the requirements for the proper deferral of mitigation measure details, as set out in *Sacramento Old City Assoc. v. City Council of Sacramento* (1991) 229 Cal.App.3rd 1011 and subsequent decisions. The mitigation measures provided would reduce the impacts; however with the implementation of mitigation, the level impact would remain *adverse* under NEPA and *significant* under CEQA.

P84-84 Refer to Master Response 2, *Diridon Station Short-Term Parking*, regarding parking impacts during construction of the Diridon Station. SEIS/SEIR Section 5.5.2.7, *Diridon Station (South and North Options)*, has been revised to more fully describe the parking situation, including interim parking.

P84-85 Refer to responses to comments P84-80 through P84-84.

P84-86 The comment provides links to FTA guidance for assessing transportation impacts and providing mitigation, which is noted. Impacts on transportation during Diridon Station construction are discussed in revised SEIS/SEIR Section 5.5.2.7, *Diridon Station (South and North Options)*, including mitigation measures. Refer also to Master Response 2, *Diridon Station Short-Term Parking*, regarding parking impacts during construction of the Diridon Station.

P84-87 The comment is correct in stating that even with the mitigation measures, adverse impacts result during construction. Refer to Master Response 2, *Diridon Station Short-Term Parking*, regarding parking impacts during construction of the Diridon Station.

P84-88 The comments summarize information from the SEIS/SEIR, but do not raise an environmental concern. Revised Mitigation Measures TRA-CNST-A: Develop and Implement a Construction Education and Outreach Plan, and TRA-CNST-B: Develop and Implement a Construction Transportation Management Plan, described in Chapter 5, Section 5.5.1, *Construction Outreach Management Program*, would reduce impacts, but not to the level of *less than significant*. The revised mitigation measures represent a commitment to mitigation on the part of VTA and contain performance standards to ensure effectiveness. This meets the requirements for the proper deferral of mitigation measure details, as set out in *Sacramento Old City Assoc. v. City Council of Sacramento* (1991) 229 Cal.App.3rd 1011 and subsequent decisions.

P84-89 Chapter 5, Section 5.5.1, *Construction Outreach Management Program*, as revised, provides mitigation measures designed to reduce impacts on transit, pedestrians and bicyclists, vehicular traffic, and parking for the Diridon Station (South and North Options). Given the proximity of the Diridon Station North and

South Options, the construction-period impacts on the surrounding transportation network are similar. The SEIS/SEIR identifies a significant and unavoidable impact for degraded access for vehicular, pedestrian, and bicycle modes in the vicinity of Diridon Station during construction.

Refer to response to comment P84-45 regarding lane closures. The mitigation measures in Section 5.5.1 would be applied equally to both Twin-Bore and Single-Bore Options and Diridon Station South and North Options.

Truck haul routes have been identified based on the City of San Jose and City of Santa Clara's designated truck routes. The cities have identified these as truck haul routes based on capacity and safety considerations. Based on information provided in Chapter 5, Section 5.2.4.2, *Truck Haul Routes*, and on Figure 5-12, *Truck Haul Routes*, the truck routes are designed to minimize travel on local streets and would be included in the contract specifications. Any changes to these truck haul routes would be subject to approval by the local city.

See Table 5-1, *Haul Road Volumes and Number of Truck Trips for the BART Extension Alternative*. Given that the BART Extension is a 6-mile linear project with stations at Alum Rock/28th Street, Downtown San Jose, Diridon, and Santa Clara, the truck haul routes are spread over the alignment area as shown in Figure 5-12, *Truck Haul Routes*.

P84-90 Refer to Master Response 2, *Diridon Station Short-Term Parking*, regarding parking impacts during construction of the Diridon Station. Also refer to response to comment P84-38.

P84-91 See responses to comments P84-86 through P84-90.