

Appendix F

Draft Programmatic Agreement

PROGRAMMATIC AGREEMENT
among the
Federal Transit Administration
and
The California State Historic Preservation Officer
and
The Advisory Council on Historic Preservation
for the
construction
of the
Silicon Valley Rapid Transit Corridor Project
in
Alameda and Santa Clara counties, California

Pursuant to Section 106 of the National Historic Preservation Act of 1966

The following Programmatic Agreement is being reviewed by the Federal Transit Administration and the California State Historic Preservation Officer, two of the parties that will sign the document, and the Santa Clara Valley Transportation Authority, an invited signatory. Subsequent review and agreement will be requested from the Advisory Council on Historic Preservation, the third signatory of the document. The Programmatic Agreement will be signed by all parties prior to the Record of Decision for this project.

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WHEREAS, the U.S. Department of Transportation Federal Transit Administration (FTA) may provide funds for the design and construction of the Berryessa Extension Project (BEP) Alternative or the Silicon Valley Rapid Transit Project (SVRTP) Alternative of the Silicon Valley Rapid Transit Corridor Project (Undertaking), a proposed extension of the Bay Area Rapid Transit's (BART) system from Alameda County, California, to Santa Clara County, California; and

WHEREAS, the Santa Clara Valley Transportation Authority (VTA), on behalf of FTA, has consulted with the California State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f); and

WHEREAS, upon full execution of this Programmatic Agreement (PA), VTA, which has participated in this consultation and is an invited signatory of the document, will administer the Undertaking under the authority of FTA; and

WHEREAS, VTA, in consultation with the SHPO, has established the Archaeological Area of Potential Effects (APE) and Historic Architectural APE for the Undertaking; and

WHEREAS, properties eligible for inclusion in the National Register of Historic Places (NRHP) are referred to in this PA as "historic properties," "historic archaeological properties," or "historic architectural properties," and

WHEREAS, VTA, in consultation with the SHPO, has elected to complete the process of identifying and evaluating historic archaeological properties that may be affected by the Undertaking in the phased manner authorized by 36 CFR 800.4(b)(2); and

WHEREAS, due to the size and location of the Undertaking and the quantity of potential resources within the Archaeological APE, VTA and the SHPO concede that this Undertaking may adversely affect currently unidentified subsurface historic archaeological properties within the Undertaking's APE; and

WHEREAS, VTA, in consultation with the SHPO, has determined that the Undertaking's SVRTP Alternative will adversely affect the San Jose Downtown Commercial Historic District (District) and a contributor to the District by constructing a station entrance at either the Bank of Italy/Bank of America building at 8-14 South First Street or the Moderne

Drug/Western Dental building at 42-48 East Santa Clara Street, all considered historic architectural properties, depending on the station entrance option selected for the Downtown San Jose Station;

WHEREAS, VTA, in consultation with the SHPO, has determined that the Undertaking's SVRTP Alternative will adversely affect the Santa Clara Caltrain Station (Station) and related Tower and Sheds, all considered historic architectural properties, by relocating the Tower and Sheds to another location within the setting of the historic Station; and

WHEREAS, VTA has consulted with local government offices, historical organizations, and individuals interested in historic preservation about the Undertaking and its effects on historic properties and have taken all comments received from these parties into account; and

WHEREAS, VTA has consulted the Native American Heritage Commission and interested Native American groups and individuals about the Undertaking and shall ensure that these groups and individuals continue to be consulted and are provided with the opportunity to participate in the implementation of this PA and of the Undertaking; and

WHEREAS, the Peninsula Corridor Joint Powers Board, City of San Jose, City of Santa Clara, and the South Bay Historical Railroad Society have participated in this consultation and have been invited to concur in this PA; and

NOW, THEREFORE, FTA, the SHPO, the Council, and VTA agree that, upon FTA's decision to proceed with the implementation of the Undertaking, FTA shall ensure that Undertaking is implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on any known or prospective historic properties and further agree that these stipulations shall govern the Undertaking and all of its parts until this PA expires or is terminated.

1. STIPULATIONS

FTA and VTA shall ensure that the following stipulations are implemented.

I. Standards

- A. **Professional Standards.** All activities regarding history and archaeology that are carried out by VTA, on behalf of FTA, pursuant to this PA shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the Secretary of the Interior's Professional Qualification Standards in these disciplines.
- B. **Historic Preservation Standards.** Historic preservation activities carried out by VTA, on behalf of FTA, pursuant to this PA shall meet the *Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines [As Amended and Annotated]* as well as standards and guidelines for historic preservation activities established by the SHPO. VTA shall ensure that all reports prepared pursuant to this PA shall be provided to the signatories to this PA and shall ensure that all such reports meet published standards of the SHPO, specifically, *Preservation Planning Bulletin Number 4(a), "Archaeological Resources Management Reports (ARMR): Recommended Contents and Format"* (December 1989).
- C. **Curation and Curation Standards.** VTA, on behalf of FTA, shall ensure that, to the extent permitted under §5097.98 and §5097.991 of the California Public

Resources Code, the materials and records resulting from the historic preservation work stipulated in this PA are curated, if required, in accordance with 36 CFR Part 79.

II. Historic Archaeological Properties

- A. **Identifying and Evaluating Historic Archaeological Properties.** VTA, on behalf of FTA, shall use a phased process to conduct identification and evaluation pursuant to 36 CFR 800.4(b)(2). As specific aspects of the Undertaking are refined and access to the APE is gained, VTA shall proceed with the identification and evaluation of historic properties in accordance with 36 CFR 800.4(b) and (c). The process for phased identification and evaluation will be set forth in the Cultural Resources Treatment Plan (CRTP).
- B. **Concurrence with Determinations.** Failure of any party consulted pursuant to 36 CFR 800.4(c) to respond within 30 calendar days after receipt of a VTA request for comments on evaluations for NRHP eligibility may be considered by VTA to constitute concurrence with VTA's proposed determinations. Only historic properties, cultural resources listed in or determined eligible for inclusion in the NRHP, will be subject to further consideration under the terms of this PA.
- C. **Assessment of the Effects of the Undertaking.** VTA, on behalf of FTA, shall determine the effects of the Undertaking on identified historic properties in accordance with 36 CFR 800.5.
- D. **Avoiding Effects.** VTA, on behalf of FTA, shall make every reasonable effort to ensure that potential effects of any Undertaking activity on identified historic properties are avoided. Where such avoidance will be ensured, VTA may proceed with the Undertaking activity in accordance with any conditions or restrictions that may be needed to ensure avoidance.
- E. **Resolution of Adverse Effects.** If VTA, on behalf of FTA, determines that the effects of any Undertaking activity on historic properties cannot be avoided and that such effects will be adverse, then the adverse effects will be resolved by implementing and completing the data recovery program prescribed by and set forth in the CRTP. VTA may proceed with the Undertaking activity after the adverse effect of the Undertaking activity on the historic property has been resolved.
- F. **Cultural Resources Treatment Plan.** VTA shall prepare a comprehensive Cultural Resources Treatment Plan (CRTP) for the Undertaking prior to the start of construction of the Undertaking. The CRTP, together with this PA, evidence compliance with Section 106 of the NHPA for historic archaeological properties.
 1. The CRTP will specify the NRHP criteria that will be applicable, the procedures to be used to implement the Section 106 process in the field, and the standards of evaluation that will be appropriate given the locations and kinds of cultural properties predicted.
 2. The CRTP will also present methods that combine pre-testing where possible (i.e., on open lots or undeveloped lands); testing after demolition of extant structures but before new ground-disturbing construction begins; construction-phase monitoring where appropriate; and standards for data recovery.

3. Areas within the APE where potential resources have been identified, or that are designated as highly or moderately sensitive, will be field investigated, concentrating on, but not confined to, the area of direct effect.
 4. The CRTP will meet the Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines [As Amended and Annotated] and take into account the Council's publication, Treatment of Archaeological Properties: A Handbook (Advisory Council on Historic Preservation 1980), as well as standards and guidelines established by the SHPO..
 5. Upon completion in draft form, VTA shall submit the draft CRTP to the signatories to this PA for a 30-calendar day review period. VTA will incorporate any comments received during this review period into the final CRTP. If any signatory fails to submit their comments within the review period, VTA shall assume that signatory's concurrence with the draft CRTP and proceed to finalize the CRTP and implement it.
 6. The CRTP shall be appended to this PA.
 7. Any signatory to this PA may, in writing, propose to the other signatories that the CRTP be amended. Thereupon, the signatories to this PA will proceed to address the amendment proposal.
 8. Amendment of the CRTP will not require amendment of this PA.
- G. Discovery of Resources Without Integrity.** If at any time during implementation of the Undertaking archaeological resources are encountered which VTA determines do not possess enough integrity to qualify for inclusion in the NRHP, VTA will promptly notify the SHPO of its determination and, at its discretion, may terminate any further consideration of such resources.
- H. Reporting Requirements.** VTA shall prepare the following reports relating to historic archaeological properties.
1. **Semi-Annual Reports.** VTA shall prepare and distribute to all of the signatories to this PA a semi-annual report documenting the activities carried out to comply with the measures set forth in this stipulation relating to historic archaeological properties. The semi-annual reports will be prepared following the start of the fieldwork phases and will continue until the fieldwork phases set forth in this stipulation have been completed.
 2. **Comprehensive Technical Report.** Upon completion of field investigations, a comprehensive technical report resulting from implementation of the CRTP and from the treatment of resources not specifically addressed in the CRTP (if any are encountered) shall be prepared that integrate the important archaeological data recovered through excavation with the information gathered through archival research and address relevant research considerations. VTA shall ensure that the technical report prepared pursuant to this PA is provided to the consulting parties and shall ensure that the report meets the published standards of the California Office of Historic Preservation, specifically, *Preservation Planning Bulletin Number 4(a), "Archaeological Resources Management Reports (ARMR): Recommended Contents and*

3. **Popular Report.** If major archaeological findings are discovered and treated as a result of the Undertaking, the findings shall be presented in a popular report. The popular report shall include archaeological findings only if data recovery of an NRHP-eligible resource took place. The popular report shall be prepared to interpret major archaeological findings to the public and shall be distributed to the signatories, interested parties, and the California Historical Resources Information System/Northwest Information Center.
4. **Public Exhibits and Materials.** In addition to the popular report, major archaeological findings may be interpreted through public exhibits and materials prepared and displayed under direction by VTA.

I. Native American Consultation and Treatment of Native American Remains and Artifacts.

1. VTA, on behalf of FTA, shall ensure that the consultations with the Native American community continue during the implementation of the terms of this PA and the Undertaking.
2. VTA, on behalf of FTA, shall ensure that the expressed wishes of Native Americans are taken into consideration when decisions are made relating to the disposition of other Native American archaeological materials and records.
3. Native American burials and related items discovered during the implementation of the Undertaking shall be treated in accordance with the requirements of §7050.5(b) of the California Health and Safety Code. If, pursuant to §7050.5(c) of the California Health and Safety Code, the county coroner/medical examiner determines that the human remains are or may be of Native American origin, then the discovery shall be treated in accordance with the provisions of §5097.98(a)-(d) of the California Public Resources Code.

- J. Confidentiality.** Confidentiality regarding the nature and location of any archaeological sites discussed in this PA shall be maintained on a “need to know” basis limited to appropriate personnel and consultants of VTA, FTA, the SHPO, and the Council involved in the planning, reviewing and implementing this PA consistent with Section 304 of the NHPA.

III. Historic Architectural Properties

- A. San Jose Downtown Commercial Historic District.** VTA, on behalf of FTA shall ensure that the measures described in Stipulation III.C are completed to resolve adverse effects on the historic District and contributing elements of the District

- B. Santa Clara Caltrain Station, Tower and Sheds.** VTA, on behalf of FTA, shall ensure that the measures described in Stipulation III.C are completed to resolve adverse effects on the historic Station, Tower, and Sheds related to the Undertaking's SVRTP Alternative.
- C. Measures to Resolve Adverse Effects.** VTA, on behalf of FTA shall ensure that the measures described below are completed to resolve, to the extent possible, adverse effects on the District and Station.
- 1. Design Standards and Guidelines.** The features of the SVRTP Alternative affecting the District and contributing element of the historic District will be designed to be compatible with the historic and architectural qualities of the affected building(s) and surrounding District in terms of scale, massing, color, and materials in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings* (U.S. Department of the Interior, National Park Service, 1995) (Secretary of the Interior's Standards), the California Historical Building Code (CHBC), or equivalent mitigation measures that provide an equivalent level or protection for historic architectural properties. The relocation of the Tower and Sheds will also be designed in accordance with the Secretary of the Interior's Standards to maintain the relationship and physical linkage between the Depot, Tower, and Sheds.
 - 2. Protective Measures.** VTA, in consultation with the owners of the contributing elements of the District and with the Peninsula Corridor Joint Powers Board and the South Bay Historical Railroad Society for the Station, will develop and implement measures to protect the contributing elements of the District and Station from damage by any aspect of the Undertaking's SVRTP Alternative. Such measures will include, but are not necessarily limited to, a pre-construction structural survey and/or photo-documentation to determine the integrity of the historic properties. This survey would be used to finalize detailed construction techniques along the alignment and as the baseline for monitoring adverse construction effects during and following construction. During construction, VTA would monitor the historic properties for movement and, if movement is detected, take immediate action to control the movement.
 - 3. Repair of Inadvertent Damage.** VTA shall ensure that any damage to contributing elements of the District and Station resulting from the Undertaking shall be repaired, to the extent possible, in accordance with The Secretary of the Interior's Standards or the CHBC. The condition of the affected properties shall be documented and photographed prior to the start of the Undertaking to establish the baseline condition for assessing damage. A copy of this documentation will be provided to the property owners and will be retained on file by VTA.

4. **Recordation.** VTA shall ensure that the buildings to be altered or relocated are recorded to Historic American Buildings Survey/Historic American Engineering Record (HABS/HAER) standards prior to any construction activities. Recordation of the adversely affected historic properties is recommended to ensure a permanent record of the properties' present appearance and context. The HABS/HAER documentation will be filed with the SHPO and the HABS/HAER collection in the Library of Congress, the National Park Service, and copies provided to local historical agencies.
5. **Interpretive Display, Museum Exhibit, and/or Historic Image Reproduction.** VTA shall, in consultation with appropriate local history organizations, develop displays of photographs produced in the HABS/HAER documentation for public exhibition. The interpretive display may include, but is not necessarily limited to, an interpretive display that discusses the changes to the affected property over time, a mural, or other depiction of the property, existing historic photographs and/or historic documentary footage that includes information about the construction and operation of the adversely affected historic properties, or other interpretive materials. Copies could be provided to City of San Jose, Preservation Action Council of San Jose, City of Santa Clara, South Bay Historical Railroad Society, and other interested historical groups.
6. **Reevaluation of the District and Station.** Within 180 days after VTA determines that the Undertaking has been completed, VTA, in consultation with SHPO, shall re-evaluate the District, the contributing element affected by the selected station entrance option, and the Station, Tower, and Sheds, properties listed or eligible for listing in the NRHP, and determine whether the NRHP nominations should be amended or whether the properties no longer qualify for listing and should be removed from the NRHP. As appropriate, VTA shall prepare and submit to the SHPO either amended nominations or petitions for removal, to be processed according to the procedures set forth in 36 CFR Part 60 (60.14 and 60.15).

D. **Annual Report.** VTA shall prepare an annual report describing the status of its efforts to comply with the measures set forth in this stipulation relating to historic architectural properties. The annual report will be prepared following the end of each fiscal year (July 1 to June 30) and will be distributed by VTA to the signatories to this PA until VTA determines that the applicable mitigation measures set forth in this stipulation have been completed.

IV. **Amendment or Addendum to this Agreement**

The signatories to this PA may request that it be amended or recommend an addendum, whereupon the signatories shall consult to consider such amendment or addendum. Any amendment or addendum shall be executed in the same manner as the original PA.

V. **Dispute Resolution**

Unless otherwise specified in this PA, should any party object within 30 calendar days to actions pursuant to this PA, VTA, on behalf of FTA, shall consult with the objecting party to resolve the objection. If VTA determines that the objections cannot be resolved, VTA

shall forward all documentation relevant to the dispute to FTA and the Council. Within 30 calendar days after receipt of all pertinent documentation, the Council will either:

- a. provide VTA with recommendations, which VTA will take into account in reaching a final decision regarding the dispute; or
- b. notify VTA that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by VTA in accordance with 36 CFR 800.6(c)(2) with reference to the subject of the dispute.

Any recommendation or comments provided by the Council will be understood to pertain only to the subject of the dispute; FTA's and VTA's responsibilities to carry out all actions under the PA that are not the subject of the dispute will remain unchanged.

VI. Public Objection

At any time during the implementation of the measures stipulated in this PA, should an objection to any such measure or its implementation be raised by a member of the public, VTA, on behalf of FTA, shall take the objection into account and consult with the objecting party, FTA, the SHPO, and the Council, as needed, for no more than 30 calendar days to resolve the objection. Within 30 calendar days following closure of the consultation period, VTA will render a decision regarding the objection and notify all parties of this decision in writing. In reaching a decision, VTA shall take comments from all parties into account. No provision of this stipulation will preclude VTA from continuing to implement any provision of the PA that is subject to public objection.

VII. Termination of this Programmatic Agreement

1. If FTA or VTA determines that it cannot implement the terms of this PA or if the SHPO or the Council determines that the PA is not being properly implemented, the FTA, the SHPO, the Council, or VTA may propose to the other consulting parties that this PA be terminated.
2. The signatory proposing to terminate this PA shall notify all consulting parties explaining the reasons for termination and affording them at least 30 calendar days, but not more than 60 calendar days, to consult and seek alternatives to termination.
3. Should such consultation fail and the PA be terminated, VTA, on behalf of FTA, shall either:
 - a. consult in accordance with Section 106 of the NHPA to develop a new PA; or
 - b. request the comments of the Council in accordance with Section 106 of the NHPA.

Execution of this PA and implementation of its terms are evidence that the FTA has afforded the Council an opportunity to comment on the Undertaking and on the Undertaking's effects on historic properties and that the FTA has taken into account the effects of the Undertaking on historic properties.

VIII. Scope of Agreement

This PA is limited in scope to the SVRTC's BEP and SVRTP alternatives as described in the Silicon Valley Rapid Transit Corridor Project Environmental Impact Statement and is entered into solely for that purpose.

IX. Duration

- 1. Reconsideration.** If construction of the Undertaking has not been initiated within ten years following execution of this PA, the signatories shall consult to reconsider its terms. Reconsideration may include continuation of the PA as originally executed, amendment, or termination.
- 2. Terms Fulfilled.** Upon a determination by VTA, on behalf of FTA, in consultation with the SHPO, that all of the terms of this PA have been satisfactorily fulfilled, this PA will terminate and have no further force or effect. VTA will promptly provide the other signatories with written notice of its determination and of termination of this PA.

Signatories:

Federal Transit Administration

By: _____ Date: _____
Title: _____

California State Historic Preservation Officer

By: _____ Date: _____
Title: _____

Advisory Council on Historic Preservation

By: _____ Date: _____
Title: _____

Invited Signatory:

Santa Clara Valley Transportation Authority

By: _____ Date: _____
Title: _____

Concurring Parties:

Peninsula Corridor Joint Powers Board

By: _____ Date: _____
Title: _____

City of San Jose

By: _____ Date: _____
Title:

City of Santa Clara

By: _____ Date: _____
Title:

South Bay Historical Railroad Society

By: _____ Date: _____
Title:

ATTACHMENT: Cultural Resources Treatment Plan (to be attached when completed)

DRAFT