Case No. S222472

IN THE SUPREME COURT OF CALIFORNIA

Friends of the Eel River and Californians for Alternatives to Toxics,
Plaintiffs and Appellants

v.

North Coast Railroad Authority and Board of Directors of North Coast Railroad Authority,
Defendants and Respondents

Northwestern Pacific Railroad Company,
Real Party in Interest and Respondent

After a Decision by the First District Court of Appeal
First Appellate District, Division One
Case Nos. A139222, A139235

Appeal from the Marin County Superior Court,
Case Nos. CIV11-03605, CIV11-03591
Honorable Roy Chernus, Judge

MOTION REQUESTING JUDICIAL NOTICE BY MADERA COUNTY FARM BUREAU AND MERCED COUNTY FARM BUREAU; DECLARATION OF JASON W. HOLDER; PROPOSED ORDER

Exhs. A-J

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IN THE SUPREME COURT OF CALIFORNIA

Friends of the Eel River, et al. v. North Coast Railroad Auth., et al.

Supporting Evidence for Farm Bureau Amicus Brief

Exhibits A – J

Case No. S222472

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Supporting Evidence for Farm Bureau Amicus Brief

Exhibit A

SUMMARY

S.1 INTRODUCTION AND BACKGROUND

The California High Speed Rail Authority (Authority) proposes a high-speed train (HST) system for intercity travel in California between the major metropolitan centers of Sacramento and the San Francisco Bay Area in the north, through the Central Valley, to Los Angeles and San Diego in the south. The HST system is projected to carry as many as 68 million passengers annually by the year 2020. The Authority adopted a final business plan (Business Plan) in June 2000, which examined the economic viability of a train system capable of speeds in excess of 200 miles per hour (mph) (322 kilometers per hour [kph]) on a fully grade-separated track, with state-of-the-art safety, signaling, and automated control systems. Following the adoption of the Business Plan, the Authority initiated this environmental review process for compliance with state and federal laws, in particular the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA).

The Authority is the project sponsor and the lead agency for purposes of the state CEQA requirements. The Federal Railroad Administration (FRA) is the federal lead agency for compliance under NEPA. The Federal Highway Administration (FHWA), U.S. Environmental Protection Agency (EPA), U.S. Army Corps of Engineers (USACE), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), and U.S. Fish and Wildlife Service (USFWS) are cooperating agencies for the federal environmental review process. The Authority and the FRA, in consultation with the cooperating agencies, have determined that a program-level, or first tier, environmental review and document is appropriate for a statewide project of this scope. The program environmental impact report/environmental impact statement (Program EIR/EIS) addresses the potential environmental impacts of the proposed HST system at a conceptual and planning level.

If the Authority should decide to proceed with the proposed HST system after the completion of this Program EIR/EIS process, the Authority envisions seeking possible future federal financial support for the system that may be provided through the FRA, which is within the U.S. Department of Transportation (DOT). The FRA and the DOT have several loan and loan guarantee programs that might be potential sources of future financial assistance. Although no existing grant or federal bond financing programs currently provide such support, several proposals to create such programs are pending before Congress. In addition to possible funding, a Rule of Particular Applicability may be required from the FRA to establish safety standards for the proposed HST system for operating at speeds over 200 mph (322 kph) and for operations in shared-use rail corridors.

This Final Program EIR/EIS analyzes a proposed HST Alternative and compares it with a No Project/No Action (No Project) Alternative and a Modal Alternative (potential improvements to the highways and airports serving the same intercity travel demand as the HST Alternative). This Final Program EIR/EIS is being made available to the public in accordance with CEQA implementing guidelines and NEPA implementing regulations. In this Final Program EIR/EIS, the Authority has identified and the FRA has concurred with preferred HST corridors/general alignments, general station locations, recommended mitigation strategies, recommended design practices and further measures to guide development of the HST system at the project level to avoid and minimize potential adverse environmental impacts. Should the Authority advance the HST to the next stage of analysis, decisions made at the conclusion of the Program EIR/EIS process would focus subsequent phases of project development and environmental review on those alignment and station option most likely to yield acceptable site-specific solutions that best meet overall objectives for the proposed HST system.

S.2 Studies Leading to the Program EIR/EIS

Efforts to consider potential impacts on the environment from a proposed HST system were started as early as 1994 by the High Speed Rail Commission. The Authority started its environmental effort in 1998 with feasibility studies and community outreach to identify a wide range of technology and corridor alternatives to meet intercity travel needs linking major metropolitan areas in California.

The Notice of Preparation (NOP) for this Program EIR/EIS was released April 6, 2001, and the Notice of Intent (NOI) was published in the Federal Register on May 2, 2001. The scoping process was followed by a systematic screening analysis to define and narrow the range of alternatives to be considered in the Program EIR/EIS. For the HST system, a wide range of alignment and station options were assessed using criteria reflective of the general purpose and need for the project and consistent with the Clean Water Act Section 404 alternatives analysis process. Key criteria included:

- Maximize ridership and revenue potential by serving key population centers.
- Maximize intermodal connections with other transportation facilities.
- Maximize compatibility with existing and planned land uses.
- Minimize travel time to be competitive with other modes of travel.
- Minimize operating and capital costs.
- Minimize impacts on natural resources (such as wetlands, wildlife corridors, habitat for special-status species, and floodplains) and farmlands.
- Minimize adverse social and economic impacts.
- Minimize impacts on parks and cultural resources.
- Avoid areas with geologic/seismic and soils constraints.
- Avoid areas with potential hazardous materials.

Constructability and practicability of alignments were also considered in terms of the extent of tunneling, construction issues, capital costs, and right-of-way constraints.

The system-wide alternatives carried forward for environmental evaluation in the EIR/EIS are the No-Project, Modal and HST Alternatives. The screening process identified the HST corridors, alignment options, and station locations to be removed from further analysis and those to carry forward for analysis in this Program EIR/EIS.

S.3 Purpose of and Need for a High-Speed Train System in California

The purpose of the proposed HST system is to provide a reliable mode of travel, which links the major metropolitan areas of the state and delivers predictable and consistent travel times. Further objectives are to provide an interface with commercial airports, mass transit, and the highway network and to relieve capacity constraints of the existing transportation system as intercity travel demand in California increases, in a manner sensitive to and protective of California's unique natural resources. The system needs to be practicable and feasible as well as economically viable. The system should maximize the use of existing transportation corridors and rights-of-way, be implemented in phases, and be completed by 2020.

The number of passengers traveling between cities in California is forecasted to increase up to 63% over the next 20 years, from 155 million passengers to as many as 253 million passengers. The state's population is projected to increase by 31% by 2020, with the highest growth rate expected in the Central

3 AFFECTED ENVIRONMENT, ENVIRONMENTAL CONSEQUENCES, AND MITIGATION STRATEGIES

3.0 INTRODUCTION

This chapter addresses potential impacts to environmental resources, treating each of these resources in a separate subsection. CEQA encourages state agencies to prepare joint CEQA-NEPA documents and also encourages agencies to rely on EISs prepared for compliance with NEPA to satisfy CEQA requirements where possible and appropriate. The Co-lead agencies have used their best judgment in preparing this combined Program EIR/EIS to satisfy both CEQA and NEPA requirements, and as a result, it contains more information than that which is mandated by either the federal or State statutory and regulatory requirements. Including this information is appropriate due to the complex and unusual nature of, and the technical issues involved in, the project, the proposed HST system. While some sections in this chapter may appear to focus more on NEPA terminology than CEQA, the information and environmental analyses provided fully satisfy the requirements of both NEPA and CEQA. In addition Chapter 7 includes summary information on certain CEQA requirements discussed in this Chapter.

Each environmental area (sections of this chapter) includes potential mitigation strategies that would be applied in general for the HST system. Each subsequent section of this chapter also outlines specific design features that will be applied to the implementation of the HST system to avoid, minimize, and mitigate potential impacts.

The Authority has focused on avoiding and minimizing potential impacts through rigorous planning and thoughtful design. The Authority has minimized overall impact potential by defining alignments to stay within existing public and railroad rights-of-way to the extent feasible while still accommodating the appropriate features and design standards for the alternatives. While the Program level of environmental analysis has provided a means to avoid and minimize impacts in the selection of corridor options for further consideration, it does not identify specific impacts or mitigation. Most of the potential impacts associated with the implementation of the proposed HST system are highly site-specific in nature. These site-specific issues would be addressed during subsequent project level environmental review, based on more precise information regarding location and design of the facilities proposed (e.g., physical configuration {elevated, at-grade}, specific location, right of way footprint, catenary design features, fencing type and station access configuration, etc.). The level of engineering detail associated with the project level environmental analysis would enable the Authority to further investigate ways to avoid, minimize and mitigate potential impacts. Only after the alignment is refined and the facilities are fully defined through project level analysis, and site-specific avoidance and minimization efforts have been exhausted, would specific impacts and mitigation measures be addressed.

3.0.1 Purpose and Content of this Chapter

This purpose of this chapter is to describe existing environmental conditions in the areas that would be affected by the proposed high-speed train (HST) system and alternatives; evaluate potential environmental impacts associated with constructing and operating the HST alternative or the Modal Alternative; and present potential program-level mitigation strategies to avoid or reduce those impacts. The analysis presented in this chapter addresses the general effects of a program of actions that would make up the proposed statewide HST project. This chapter describes the general differences in potential environmental consequences between the No Project/No Action (No Project) Alternative, the Modal Alternative, and the HST Alternative. The analysis also identifies key differences between the potential impacts associated with the various HST station and alignment options, to support the selection of preferred alignment and station options for the system.

B. GENERAL DISCUSSION OF TRAFFIC AND CIRCULATION

This analysis only considers the primary highways and roadways that serve the transportation study area. Although this level of analysis is appropriate for a program-level environmental document, variations in traffic conditions on smaller transportation facilities such as arterials and roadways are not included in the study area. Many of these smaller facilities are currently congested, and their operation is projected to worsen under the No Project Alternative. Operation on these facilities could indirectly benefit from implementation of the Modal or HST Alternative. The capacity improvements of the Modal Alternative could keep long-distance trips off local roads, while the HST Alternative could reduce demand such that long-distance trips would not be forced onto local streets. The potential impact of the proposed Modal and HST system on these smaller facilities would be examined as part of any subsequent and more detailed project-level environmental analyses.

Currently, the study area highway and roadway corridors considered in this analysis represent some of the worst traffic conditions in the nation. Highways are heavily congested during both the morning and evening peak hours in and around urban centers such as San Francisco, Sacramento, Los Angeles, and San Diego. Although the peak periods have a shorter duration, congestion affects many traditional rural and suburban communities in the Central Valley. This congestion is caused mostly by regional and urban commute traffic. Commute trips (to and from work) make up the majority of highway trips during the peak periods; the intercity trips considered in this analysis represent only a small proportion of highway traffic. The Southern California Association of Governments (SCAG) has estimated that, during morning peak-hour traffic in some of the most congested corridors in southern California, the average speed is less than 20 miles per hour (mph) (32 kilometers per hour [kph]) in the congested direction. In 2002, traffic congestion cost motorists in California $20.4 billion annually in lost time and fuel. Los Angeles and the San Francisco-Oakland area were rated as the nation's two most congested regions, and 6 out of the 25 most congested urban regions were in California (Texas Transportation Institute 2003).

Traffic conditions throughout northern and southern California are expected to worsen, and only limited improvements to transportation facilities are funded and programmed for implementation by 2020. Steadily increasing regional and urban traffic affects intercity commutes by delaying travelers where capacity is constrained. For example, according to the *Bay Area Regional Transportation Plan* (Metropolitan Transportation Commission 1999), regional travel (i.e., travel between different regions) within the Bay Area is expected to grow by 46%, and intraregional travel (i.e., travel within a region) is projected to grow by 115% by 2020. Intercity travel that competes with regional and intraregional travel for use of the same facilities is directly affected by these conditions. For instance, an intercity trip between Los Angeles and San Francisco is likely to be affected by congestion in the heavily traveled regional and intraregional travel corridors in southern and northern California, and in certain segments of the Central Valley.

C. TRAFFIC AND CIRCULATION RESOURCES BY REGION

The following section briefly describes the transportation facilities, highways, and roadways in each of the five regions analyzed.

Bay Area to Merced

This region includes central California from the San Francisco Bay Area (San Francisco and Oakland) south to the Santa Clara Valley and east across the Diablo Range to the Central Valley. The primary airports in the Bay Area are San Francisco International (SFO), Oakland Metropolitan International (OAK), and Norman Y. Mineta San Jose International (SJC). As defined in Chapter 2, *Alternatives*, only OAK and SJC were considered for airport-related improvements under the Modal Alternative. The primary north-south highways in the Bay Area are US-101 and I-280 on the Peninsula, and I-880 and I-680 in the East Bay. I-80 links San Francisco and Oakland via the Bay Bridge and continues to Sacramento. I-580, I-205, and SR-152 provide access to I-5 in the

- Minimize closure of any proximate freight or passenger rail line or highway facility during construction.

Based on the analysis above, and considering the CEQA Appendix G thresholds of significance for traffic, the HST system alternative would have a positive effect when viewed on a system-wide basis, particularly by reducing traffic on highways and around airports to the extent that intercity trips are diverted to the HST system (see Table 3.1-4) and by eliminating delays at existing at-grade crossings where the HST system would provide grade separation. Around station areas an increase in traffic and congestion is expected with the proposed HST. At this programmatic level of analysis it is not possible to know precisely the location, extent, and particular characteristics of such increased traffic and congestion. For now, at the programmatic level of analysis, because of this uncertainty, the impact is significant. Mitigation strategies, as well as design practices discussed in Section 3.1.5, will be applied to reduce this impact.

The above mitigation strategies are expected to substantially lessen or avoid impacts around station areas in most circumstances. Planning multi-modal stations, coordinating with transit services, providing accessible locations and street improvements, and encouraging transit-oriented development in station areas, all will help to ease traffic constraints in station areas. At the second-tier, it is expected that for various projects involving HST stations impacts will be mitigated to a less than significant level, but it is possible that for some stations impacts will not be mitigated to the less than significant level. Sufficient information is not available at this programmatic level to conclude with certainty that the above mitigation strategies will reduce impacts around stations to a less than significant level in all circumstances. This document therefore concludes that traffic impacts around station areas may be significant, even with the application of mitigation strategies. Additional environmental assessment will allow a more precise evaluation in the second-tier, project-level environmental analyses. The co-lead agencies will work closely with local government agencies at the project-level to implement mitigation strategies.

3.1.7 Subsequent Analysis

If the HST Alternative is selected, subsequent multimodal access and circulation studies could be conducted at proposed station areas along proposed alignments as plans for alignments, stations, and operations are refined. Additional environmental analysis would be required in conjunction with these studies to ascertain the exact locations of potential project-generated traffic impacts and potential parking demand impacts and the potential effects on existing bus and rail transit ridership. Station area circulation studies would be expected as part of project-level environmental documentation.

of the 773 route miles (214 of the 1,244 route km) with GPI. With mitigation applied to both high- and medium-rated segments, the HST potential impacts would be reduced further below the Modal Alternative, including noise mitigation (barrier walls) for 144 and 369 route miles (232 and 594 route km), for the LPI and GPI, respectively.

Table 3.4-2
Potential Length and Cost of Noise Mitigation[a] by Alternative

Alternative	Mitigation length in miles (km)	Noise Barrier Cost (millions)
MODAL—highway component (high level only)	210 (338)	$315
HST mitigating (high levels only)	8–133 (13–214)	$12–$200[b]
HST mitigating (high and medium levels)	144–369[b] (232–594)	$216–$554[b]

[a] Mitigation refers to barrier walls only.
[b] Range for LPI and GPI.

Not included in the costs for the Modal Alternative are noise abatement measures at airports that may involve extensive programs of sound insulation of homes. A typical sound insulation program limits the costs to approximately $30,000 per home. Referring to tables in Appendix 3.4-D where the number of people impacted by aviation noise is shown as approximately 12,000 people, and assuming there are four people to a house, the cost for noise mitigation around airports associated with the Modal Alternative could be an additional $90 million.

B. VIBRATION MITIGATION

Vibration mitigation is less predictable at a program level of analysis due to the site-specific nature of vibration transmission through soil conditions along the alignment. However, an estimate can be made of the length of corridor where special mitigation may need to be considered by totaling the segments with potential vibration impact rating of high. The results are shown in Appendix 3.4-E. The range is 10 to 60 mi (16 to 97 km) to be considered for mitigation depending on which alignment is chosen.

C. CONSTRUCTION MITIGATION

Potential mitigation strategies for construction noise impacts associated with the HST Alternative are listed below.

- Construction noise could be reduced by using enclosures or walls to surround noisy equipment, installing mufflers on engines, substituting quieter equipment or construction methods, minimizing time of operation and locating equipment farther from sensitive receptors.
- Construction operations could be suspended between 7:00 p.m. and 7:00 a.m. or on weekends or holidays in residential areas.
- Contractors could be required to comply with all local sound control and noise level rules, regulations and ordinances.
- Ensure that each internal combustion engine would be equipped with a muffler of a type recommended by the manufacturer.
- Other measures that should be considered include the following:
- Specifying the quietest equipment available would reduce noise by 5 to 10 dBA.
- Turning off construction equipment during prolonged periods of non-use would eliminate noise from construction equipment during those periods.

- Requiring contractors to maintain all equipment and train their equipment operators would reduce noise levels and increase efficiency of operation.
- Locating stationary equipment away from noise sensitive receptors would decrease noise impact from that equipment in proportion to the increased distance.

The above mitigation strategies are expected to reduce the short-term and long-term noise impacts of the HST alternative to a less-than-significant level. Additional environmental assessment will allow a more precise evaluation in the second-tier project-level environmental analyses.

3.4.7 Subsequent Analysis

A. NOISE ANALYSIS

The FRA provides guidance for two levels of analysis in project environmental review, a general assessment method to further quantify the potential noise impacts in locations identified by the screening procedure, and a detailed analysis procedure for evaluating suggested noise mitigation at locations where further studies show there is potential for significant impacts. The process is designed to focus on problem areas as more detail becomes available during project development. Subsequent analysis would proceed along the following lines.

Ambient noise conditions

The existing ambient noise environment is described by assumptions in the screening procedure. However ambient noise values would be estimated at the project-level analysis based on limited measurements in the general assessment and would be thoroughly measured in the detailed analysis. A measurement program involving both long-term and short-term noise monitoring would be performed at selected locations to document the existing noise environment. As it would be impractical to measure everywhere, the monitoring would be supplemented by estimates of noise environments at locations considered to be typical of others. Guidelines for characterizing the existing conditions are provided by the FRA.

Project Noise Conditions

A generic HST is used in the screening procedure, but a specified train type, speed profile and operation plan would be available for more refined projections of noise levels in the next stage of environmental analysis.

Noise Propagation Characteristics

The screening procedure assumes flat terrain with noise emanating from a source unhindered by landforms and human-made structures. The next stage of analysis would incorporate topography as well as consideration of shielding by buildings, vegetation, and other natural features in a particular corridor.

Impact Criteria

The screening procedure accounts for all noise-sensitive land use categories that may be exposed to noise levels exceeding the threshold of impact. In the next stage of analysis, assessments using the full, three-level FRA impact criteria would be performed (U.S. Department of Transportation 1998). This more detailed assessment would more specifically identify locations where potential impacts may occur and locations where potentially high impact may occur and would provide for consideration of specific mitigation measures where appropriate.

Mitigation

Noise abatement is discussed generally in the screening procedure, and areas are identified where more detailed analysis should be focused in the future to integrate a proposed HST system into the existing environment. As more detail becomes available in the general assessment

phase, there may be many areas that were identified as potentially impacted during screening analysis for which further analysis would not be needed, because they would not be impacted. The detailed analysis would provide information useful for the engineering design of mitigation measures. These measures would be considered in the project-level environmental review, and potential visual and shadow impacts of noise barriers would also be considered.

B. VIBRATION ANALYSIS

The steps involved in the more detailed analysis of ground-borne vibration would be similar to those for noise. The major difference would be the need for study of site-specific ground-borne vibration characteristics. Considerable variation of soil conditions may occur along the corridor, resulting in some locations with significant levels of vibration from the HST and other locations at the same distance from the track where vibrations can hardly be perceived. Determining the potential vibration characteristics in the detailed analysis would involve a measurement program performed according to the method described in the FRA guidance manual (U.S. Department of Transportation 1998). This method would allow for the prediction of vibration levels and frequency spectrum information valuable not only in the assessment of impact, but also in the consideration of mitigation measures.

environmental review process to identify potentially significant impacts and to include feasible mitigation measures to avoid or substantially reduce potential impacts. Although some changes would be likely, attempting to estimate such changes would be speculative. Therefore, no additional potential impacts were quantified for the No Project Alternative.

B. NO PROJECT ALTERNATIVE COMPARED TO MODAL AND HIGH-SPEED TRAIN ALTERNATIVES

Land Use Compatibility

The Modal Alternative would be potentially incompatible with existing and planned land use in some segments to a greater extent than the No Project and HST Alternatives, because it would not be consistent with policies that support increased transit alternatives and reduced dependency on the automobile. The highway improvement options would support a dispersed pattern of development and would be inconsistent with local and regional planning objectives that promote transit-oriented higher-density development around transit nodes in order to encourage and increase planned in-fill for more efficient use of land and resources and sustainable growth.

The HST Alternative would include many potential new station locations, which were identified through consultation with local planning agencies and selected to be compatible to the extent possible with future planned land uses. Overall, the proposed HST Alternative would be highly compatible with local and regional plans that support rail systems and transit-oriented development. The HST Alternative would also provide improved inter-modal connectivity with existing local and commuter transit systems.

Communities and Neighborhoods

Similar to the No Project Alternative, the Modal Alternative would generally follow existing transportation corridors and rights-of-way, would not be expected to create new barriers within neighborhoods, and would not be expected to result in potential impacts on community cohesion. Though much of the HST Alternative would follow existing or planned transportation corridors, several alignment options would represent new transportation corridors. Along some of the potential alignments in all regions except the Los Angeles to San Diego via Orange County corridor, there would be potential for localized impacts on community cohesion, which would receive further study during project-level review, if a decision is made to proceed with the proposed HST system, and depending upon the alignments selected in the future.

Property

In the Bay Area to Merced and Los Angeles to San Diego via Orange County regions, potential right-of-way acquisition associated with transportation improvements under the No Project Alternative, such as the expansion of existing facilities and the construction of new facilities, could result in property impacts, which would be addressed in future project-specific environmental analyses prior to the implementation of these improvements. In the Sacramento to Bakersfield, Bakersfield to Los Angeles, and Los Angeles to San Diego via Inland Empire regions, the No Project Alternative is not anticipated to have substantial property impact potential. The No Project Alternative, which includes currently programmed and funded improvements and the mitigation for impacts that would be provided with these improvements as a result of environmental reviews, is the basis for analyzing the potential Modal and HST Alternatives.

Potential property impacts in addition to those under the No Project alternative would be expected to be substantially greater under the Modal Alternative than under the HST Alternative. In urban areas, highways are generally more constrained by denser development (which would have a higher potential for impacts, including residential uses) than railways. Therefore, highway expansion would have greater potential for impacts on land uses than rail expansion. Highways

in urban areas also generally use most, if not all, of their existing right-of-way and would require additional right-of-way for expansion. Under the Modal Alternative, 309 mi (497 km) of highway alignment (20% of total Modal Alternative highway alignment in the region) would potentially affect high-impact land uses, and 289 mi (465 km) of alignment (19% of total Modal Alternative highway alignment) would affect medium-impact land uses.

Under the HST Alternative, between 53 mi (85 km) and 88 mi (142 km) of rail alignment and station locations (between 7% and 11% of total alignment distance) would potentially affect high-impact land uses, and between 92 mi (148 km) and 145 mi (233 km) of track alignment and station locations (between 11% and 17% of alignment distance) would potentially affect medium-impact land uses. Commercial and industrial uses are typically located along railways, and these uses buffer residential development from the railroad. Also, in several of the rail corridors under consideration, rail activity could be expanded within the existing right-of-way and would not require additional right-of-way.

Therefore, the HST Alternative would have less potential to affect high-impact land uses than the Modal Alternative. The Modal Alternative would potentially result in more than three times the mileage of high impacts on land uses than the HST Alternative. This potential for more property acquisition and residential and non-residential relocation, and the costs associated with these activities, represents a significant difference between the Modal and HST Alternatives.

Environmental Justice

Many of the alignments included in the Modal and HST Alternatives would be located in existing transportation corridors, which would serve to reduce potential for significant adverse environmental impacts generally. This broad-scale analysis considers the wide variety of landscape types and land uses, both low-density rural areas and developed communities, which would be adjacent to either the Modal Alternative (which would include nearly 3,000 additional highway lane miles [4,828 km] and certain airport expansions) or the HST Alternative (which includes more than 700 mi [1,127 km] of potential alignment and station options). Considering the alternatives on a system-wide basis, it is not expected that either the Modal or HST Alternatives would result in disproportionate impacts on minority populations or low-income populations. In addition, along with the potential environmental impacts analyzed in this Program EIR/EIS, general mitigation strategies are assessed which would be expected to be used to reduce potential impacts, if a decision were made in the future to proceed with the proposed HST system. If a decision were made to go forward with the proposed HST system, project-level review would include more detailed analysis of any potentially significant environmental impacts and mitigation measures to reduce such impacts. Project-level review would include additional consideration of potential localized impacts on neighborhoods and communities, in addition to potential community enhancements and benefits from the proposed HST system.

3.7.4 Comparison of Alternatives by Region

A. BAY AREA TO MERCED

Land Use Compatibility

Modal Alternative: All of the highway improvement options for US-101, I-880, SR-152, I-80, and I-580 would be constructed within or adjacent to existing transportation corridors. These improvements would be highly incompatible with existing land use in the US-101 and I-880 corridors, which are immediately adjacent to many residential neighborhoods and commercial businesses.

The airport improvement options at SJC would occur mostly on existing transportation, industrial, and commercial properties. However, the potential construction of runways on the eastern side

High-Speed Train Alignment Options Comparison

For the HST Alternative, the alternative routing options for high-speed rail between LAUS and Irvine present approximately the same potential for impacts related to land use. Because both options would occur within existing right-of-way, both options would have a low potential for impacts on existing land use. These impacts would be similar to those of conventional rail in this alignment. The LOSSAN corridor alignment would have higher potential connectivity and accessibility and compatibility with existing and planned development.

3.7.5 Design Practices

The Authority is committed to utilizing existing transportation corridors and rail lines in for the proposed high-speed rail system in order to minimize the need for additional rights -of -way and the associated potential property impacts. Nearly 70% percent of the adopted preferred HST alignments are either within or adjacent to a major existing transportation corridor (existing railroad or highway right-of-way). To a large extent, these existing transportation corridors already present barriers and impose other impacts on existing communities. Although the HST system would often introduce an additional (fenced) barrier, the HST systems would at least maintain and in many cases improve existing access conditions through the grade separation of existing services. Moreover, portions of the alignment would be on aerial structure or in tunnel, allowing for vehicular or pedestrian access across the alignment.

The Authority has also adopted strategies for HST stations that would incorporate transit oriented design and smart growth land use policies as described in Chapter 6B.

3.7.6 CEQA Significance Conclusions and Mitigation Strategies

Based on the analysis above, and considering the CEQA Appendix G thresholds of significance for land use and planning, the HST alternative would have a potentially significant impact on land use compatibility when viewed on a system-wide basis. While every effort has been made to incorporate alignment and station options that are compatible with existing local land use plans and ordinances to the extent feasible, in many cases local plans and ordinances do not address transportation options such as the high speed train system. In addition, many local land use plans and ordinances have not been updated for several years, and may be updated over time to acknowledge and support implementation of a high speed train system. The potential for land use incompatibility is considered significant at this programmatic level due to the uncertainties involved, however, such impacts may not be realized over the 20-year time horizon for implementing the high-speed train system. Regardless, mitigation strategies, as well as the design practices discussed in section 3.7.5, will be applied to reduce this impact, and the lead agencies will work closely with local government agencies in implementing these strategies.

The analysis in this Program EIR/EIS compares potential impacts from the alternatives and the HST alignment, station, and maintenance options. Potential impacts have been considered on a broad scale and on a system-wide basis. If a decision is made in the future to proceed with the proposed HST system, project-level review would analyze the potential for localized impacts.

A. LAND USE COMPATIBILITY

Local land use plans and ordinances would be further considered in the selection of alignments and station locations. Project-level review would consider consistency with existing and planned land use, neighborhood access needs, and multi-modal connectivity opportunities.

Potential mitigation strategies to alleviate or minimize land use related impacts associated with the HST Alternative might include, but are not limited to the following:

- Coordinate with the cities and counties in each region to ensure that project facilities would be consistent with land use planning processes and zoning ordinances.
- Establish requirements for station area plans and opportunities for transit oriented development. See Chapter 6B.

B. COMMUNITIES AND NEIGHBORHOODS

If a decision is made to go forward with the proposed HST system, alignments would be refined in consultation with local governments and planning agencies, with consideration given to minimizing barrier effects in order to maintain neighborhood integrity. Potential mitigation strategies to reduce the effects of any new barriers would be considered at the project-level environmental review and could include grade separating planned rail lines and streets, new pedestrian crossings, new cross-connection points, improved visual quality of project facilities, and traffic management plans to maintain access during and after construction.

In addition, mitigation measures would also be developed for temporary construction-related impacts on any nearby neighborhoods and communities. Potential mitigation strategies to alleviate or minimize community cohesion related impacts associated with the HST Alternative might include, but are not limited to the following:

- Provide opportunities for community involvement early in project level studies.
- Design workshops shall be held within each affected neighborhood to develop an understanding of key vehicle, bicycle, and pedestrian linkages across the rail corridor so that those linkages can be preserved, including the use of grade-separated crossings.
- Develop facility, landscape, and public art design standards for project corridors that reflect the character of adjacent affected neighborhoods.
- Ensure that connectivity (pedestrian/bicycle and vehicular crossings) across the rail corridor is maintained where necessary to maintain neighborhood integrity.
- Develop traffic management plan to reduce barrier effects during construction.
- To the extent feasible, maintain connectivity during construction.
- Maintain high level of visual quality of project facilities in neighborhood areas by implementing such measures as visual buffers, trees and other landscaping, architectural design and public artwork.

C. PROPERTY

Potential land use displacement and property acquisition (temporary use and/or permanent and non-residential property) are expected to be avoided to the extent feasible by considering further alignment adjustments and design changes in the future at the project level. In addition, analysis at the project level would consider relocation assistance in accordance with the Federal Uniform Relocation and Real Property Acquisition Policies Act of 1970. Design strategies would be developed for application at the project level to avoid or minimize the temporary or permanent acquisition of residential and non-residential property.

Access modifications including possible over or under crossings may be needed to mitigate impacts arising from partial property acquisitions that result in division of a farm or other land use.

D. ENVIRONMENTAL JUSTICE

On a system-wide basis, it is not expected that the proposed HST system would result in disproportionate adverse effects to minority or low-income populations. If a decision is made to

pursue the development of the proposed HST system, additional consideration of environmental justice issues would occur during project-level review, which would include consideration of potential localized impacts and potential benefits to and enhancements for communities along potential HST alignments. Project-level review would include consideration of detailed mitigation measures, including mitigation for temporary construction-related impacts. Project-level review would also include outreach to potentially affected communities as part of the public review process.

Potential mitigation strategies to alleviate or minimize land use related impacts associated with the HST Alternative might include, but are not limited to the following:

EO 12898 requires federal agencies to ensure effective public participation and access to information. Consequently, a key component of compliance with EO 12898 is outreach to the potentially affected minority and/or low-income population to discover issues of importance that otherwise may not be apparent. Outreach to affected communities would be conducted as part of the decision-making process, and this outreach would be documented.

In addition to examining all impacts, specific attention would be given to the permanent impact categories that are commonly of concern for this type of project and to those that previously have been identified as being of concern. These include:

- Air quality
- Noise and vibration
- Public health
- Visual/aesthetics
- Parklands
- Relocation

The above mitigation strategies are expected to reduce the land use compatibility impacts of the HST alternative to a less-than-significant level. Additional environmental assessment will allow a more precise evaluation in the second-tier, project-level environmental analyses.

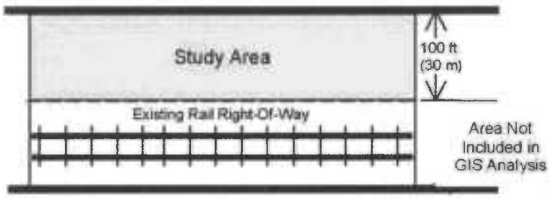
3.7.7 Subsequent Analysis

Should the HST Alternative be selected, the subsequent environmental evaluations and project-level review of proposed segments and facilities would address the need for the following studies.

- Land use studies for specific alignment and station areas potentially impacted, including evaluation of potential land use conversion, potential growth, and potential community benefits.
- Review of localized potential environmental justice issues.
- Relocation impact analysis for potentially displaced housing and businesses.
- Pedestrian and vehicular circulation studies.

High-Speed Train Alternative: The study area for the HST Alternative was developed to address two different potential improvement scenarios. The first scenario was for potential alignment options adjacent to existing rail corridors. In these cases, the study area extended 100 ft (30 m) from the rail right-of-way on the side that was selected for study by the California High Speed Rail Authority (Authority) and its regional study teams based on conceptual engineering studies. This allows the development of an estimate of the area that could be needed for a proposed HST system, and an estimate within that area of the land now in agricultural use that would potentially be affected. This approach is illustrated below in Figure 3.8-2.

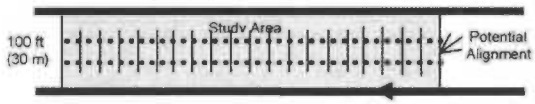
Figure 3.8-2
High-Speed Train Alternative Study Area
(in Existing Railway Areas)



This case represents a conservative approach to quantifying potential impacts, since it would be possible to fit the HST within a 50-ft (15-m) right-of-way in areas of high agricultural impact. Moreover, it may be possible to fit the entire HST line into existing rail corridors, given agreements with private rail operators. To the extent this could be done, it would reduce the potential impacts of the proposed HST Alternative to a nearly negligible level of impact on agricultural lands in existing railway areas.

The second scenario was developed for new alignments in undeveloped areas (i.e., areas outside the urban/metropolitan area that do not have existing rail rights-of-way) that are separate from existing rail corridors. In this scenario, the study area would extend 50 ft (15 m) on both sides of the proposed rail centerline, for a total width of 100 ft (30 m). This is a conservative approach because it would be possible to fit the HST line within a 50-ft (15-m) right-of-way in constrained areas. This approach is illustrated below in Figure 3.8-3.

Figure 3.8-3
High-Speed Train Alternative Study Area
(in Undeveloped Areas)



Analysis of Impacts

To ascertain the possible extent of potential farmland impacts, the Modal and HST Alternative study areas were overlain atop the FMMP farmland GIS shapefile. The GIS then calculated the acreage of farmland that would potentially be converted for the Modal Alternative improvements and the HST Alternative improvements in the study area for each of the FMMP categories. This analysis was performed for each region and used to calculate potential system-wide impacts on farmlands. This analysis accounts for proposed improvements that would expand existing transportation corridors, potential alignments that are adjacent to existing transportation corridors, and potential alignments that would traverse undeveloped areas. The station facilities

that would be included within the proposed HST Alternative are assumed to be located primarily within the study areas considered.

Improvements associated with the Modal Alternative would consist of lane additions to existing roadways, as well as additional runways, gates, and associated improvements at existing airports. Considering this, the Modal Alternative identifies improvements for specific routes as part of the overall system-wide improvement alternative. The HST Alternative represents an alternative with various alignment options within each region. While potential impacts were estimated for each alignment option, the analysis for the HST Alternative was developed to ascertain alignment combinations that would result in the least potential impacts on agricultural land per region (LPI) and alignment combinations that would result in the greatest potential impacts per region (GPI). Alignment combinations other than the LPI and GPI would be expected to have levels of impact between that of the LPI and GPI.

For purposes of this discussion, *farmland severance* is defined as the division of one farmland parcel into two or more areas of operation by the placement of a barrier (in this case rail line) through the parcel. Potential severance locations are discussed qualitatively, not quantitatively, in this program-level document. Parcel-specific information is also not considered in this program-level analysis. Project-level farmland conversion and severance impacts that are determined to be significant adverse impacts would be addressed in subsequent project-level documents.

3.8.2 Affected Environment

The locations of Modal Alternative and HST Alternative improvements in relation to the general locations of existing agricultural resources are shown in Figures 3.8-4A, 3.8-4B, 3.8-5A, and 3.8-5B.

A. STUDY AREA DEFINED

The study area for agricultural lands is defined above in Section 3.8.1 B.

B. GENERAL DISCUSSION OF AGRICULTURAL LANDS

California is the leading agricultural producer and exporter in the U.S. In 2001, California's agricultural production reached $27.6 billion, accounting for approximately 13% of the nation's gross cash receipts. The most recent statistics (2001) indicate that California has approximately 27.7 million acres (ac) (11.2 hectares [ha]) of land in farms, has approximately 88,000 farms (approximately 4% of the nation's total), and produces more than 350 different crop types. Although California has many areas of farmland production, its largest area of agricultural production is the Central Valley. Six out of the top ten California agricultural counties in 2001 were located in the Central Valley. (American Farmland Trust 2003, California Department of Food and Agriculture 2002.)

Urban growth frequently results in the conversion of agricultural land to non-agricultural uses. According to an estimate in a May 2001 report by the University of California Agricultural Issues Center, California lost approximately 497,000 ac (201,000 ha) of farmland by urbanization in the decade between 1988 and 1998, a loss rate of approximately 49,700 ac (20,100 ha) per year (Kuminoff, Sokolow, and Sumner 2001).

C. AGRICULTURAL LANDS BY REGION

Bay Area to Merced

This region includes central California from the San Francisco Bay Area (San Francisco and Oakland) south to the Santa Clara Valley and east across the Diablo Range to the Central Valley.

High-Speed Train Alternative
The Los Angeles to Orange County coastal region runs primarily along the southern California coastal areas through Los Angeles and Orange County. This region includes alignment options from central Los Angeles to LAX, and from the central Los Angeles area to Irvine. The existing UPRR Santa Ana Branch would be an HST alignment option. The existing LOSSAN alignment from Los Angeles to Irvine is being considered for shared HST and conventional passenger train service. The HST alignment options that would be developed primarily within the existing LOSSAN corridor right-of-way and no farmland resources would be impacted.

High-Speed Train Alternative Alignment Option Comparison
The HST alignment options that would be developed in the existing LOSSAN corridor right-of-way would only require development of bypasses; no farmland resources would be impacted. See Appendix 3.8-A for potential impacts associated with each HST alignment option in all regions.

3.8.5 Design Practices

The Authority is committed to utilizing existing transportation corridors and rail lines in the proposed high-speed rail system in order to minimize the need to encroach onto additional agricultural lands. Nearly 70% percent of the preferred HST Alternative is either within or adjacent to a major existing transportation corridor (existing railroad or highway right-of-way). These existing transportation corridors, along which the HST system would be placed, have already divided properties and agricultural lands. Moreover, portions of the alignment would be on aerial structure or in tunnel, allowing for vehicular or pedestrian access across the alignment. Only 24% percent of the preferred HST overall preferred alignment would be in new at-grade rail corridors (not on aerial structure and not in tunnel) and not within or adjacent to an existing transportation right-of way), where there would be the potential to divide or sever properties. For the HST system, underpasses or overpasses would be constructed at reasonable intervals to provide property access, and/or appropriate severance payments would be made to the property owners whose land is severed. The Authority would work directly with land owners during the final design of the system regarding the location(s) for access passages (overpasses or underpasses) to enable adequate property access.

To minimize the potential impact to agricultural lands, the HST right-of-way width could potentially be reduced to 50 ft (15 m) in constrained areas. In addition, the Authority is committed to pursuing agreements with existing owners/rail operators to place the HST alignment within existing rail rights-of-way, which would avoid and /or minimize potential impacts to agricultural resources.

3.8.6 CEQA Significance Conclusions and Mitigation Strategies

Based on the analysis above, and considering the CEQA Appendix G thresholds of significance for agricultural lands, the HST alternative would have a significant impact to agricultural lands when viewed on a system-wide basis. Some direct conversion of agricultural lands to other non-agricultural uses would be expected. The HST alternative may also result in changes such as the severance of agricultural parcels that could indirectly contribute to agricultural land conversion. At this programmatic level of analysis it is not possible to know precisely the location, extent, and particular characteristics of agricultural lands that would be involved, or the precise impacts on those lands. The impact is therefore considered significant. Mitigation strategies, as well as the design practices discussed in section 3.8.5, will be applied to reduce this impact.

Mitigation of potentially major impacts on farmland (i.e., by conversion to other uses) would be based first on avoidance. The strategy followed beginning early in the conceptual design stage of the project was to avoid farmland wherever feasible. Throughout the initial screening of alternatives, a number of potential alignment options were eliminated due to the high potential for farmland impacts as well as other impacts (i.e., potential new alignments in the foothills of the Central Valley). Where potential

impacts on farmland would occur, the effort would focus on reducing the potential impact. Potential system-wide impacts have been reduced by sharing existing rail rights-of-way wherever feasible or by alignment immediately adjacent to them.

Site-specific impacts would need to be assessed and evaluated in project-level environmental review, and specific farmland mitigation measures would be considered, such as access modifications. Potential mitigation strategies would focus on securing easements, participation in mitigation banks, and local planning measures to increase the permanent protection of farmlands, open space and habitat lands.

The Authority would coordinate these efforts with other mitigation initiatives such as the California Farmland Conservancy Program (California Public Resources Code section 10222 et seq.), which is managed by the California Department of Conservation. This program provides grant funding for the purchase of agricultural easements and grants for farmland policy and planning projects. The Authority would review what this program is doing and the areas in which it has identified needs for farmland preservation. During project-level review where the co-lead agencies determine that farmland mitigation is required to address site-specific impacts from the HST system, one strategy may be to support easements that further this existing conservation program.

The Authority would coordinate with private agricultural land trusts, local programs, mitigation banks, and other agricultural stewardship programs to help identify needs for farmland protection.

The Authority would also coordinate with Resource Conservation Districts to identify additional measures to limit impacts to or otherwise to protect farmlands.

The feasibility of any mitigation strategy would have to be evaluated at the project-specific level and would depend on such factors as an assessment of the land under the state LESA model or other significance criteria, the number of voluntary participants in local or regional programs, and the cost of acquiring easements. Possible mitigation strategies for severance impacts could include alternative access, HST realignment, or over-crossings at select locations.

The Authority has established policies regarding the use of smart growth and transit oriented development strategies for station areas (see Chapter 6B), which will help to avoid secondary growth impacts on agricultural lands.

The above mitigation strategies are expected to substantially lessen or avoid impacts to agricultural lands in many circumstances. Sufficient information is not available at this programmatic level, however, to conclude with certainty that the above mitigation strategies will reduce impacts to agricultural lands to a less than significant level in all circumstances. This document therefore concludes that impacts to agricultural lands would remain significant, even with the application of mitigation strategies. Additional environmental assessment will allow a more precise evaluation in the second-tier project-level analysis.

3.8.7 Subsequent Analysis

As indicated earlier, the above analysis does not provide a parcel-specific potential impact analysis for farmland. Subsequent project-level analysis would address local issues once the potential alignments are defined in more detail, assuming a decision is made to proceed with the HST Alternative. Subsequent project-level environmental documentation would include more detailed information on potential severance impacts insofar as it potentially impacts a working landscape, and on potential impacts on FMMP-listed farmland, farmland under Williamson Act contracts, and farmland easements.

Project nor the Modal Alternative would provide these opportunities for improving the aesthetic environment.

3.9.5 Photo Simulations of Alternatives in Selected Scenic Areas

Figures 3.9-16 to 3.9-21 are photo simulations that illustrate what the Modal or HST Alternatives (expanded highways or HST) may look like in typical landscapes described for each of the regions, using existing conditions as the baseline. These simulations do not include potential changes to the existing landscapes that could occur between the time of this analysis and the year 2020 from other projects and urban development. These simulations are meant to illustrate how the existing dominant landscape features would be potentially changed with the implementation of the proposed alternatives. Below is a brief description of the photo simulations.

- Figure 3.9-16A and 3.9-16B: Historic Gilroy station with and without HST station. These figures illustrate how the proposed HST station could be integrated with an existing historic structure. The Gilroy station is representative of historic stations, predominantly of those in the Central Valley areas (Bay Area to Merced and Sacramento to Bakersfield).
- Figures 3.9-17A and 3.9-17B: Pixley with and without HST alignment. These figures illustrate how the proposed HST alignment could potentially impact a traditional small urban community. It should be noted, however, that this particular area is already impacted by US-99, which is located adjacent to the proposed HST alignment, the viewpoint from which the picture without HST was taken. Under the Modal Alternative, the visual impact would be a widening of US-99 into the area where the proposed HST alignment is pictured and on the other side of the highway.
- Figures 3.9-18A and 3.9-18B: Soledad Canyon with and without the proposed HST alignment in cut configuration. These figures illustrate how a scenic resource could potentially be impacted by HST alignment in a cut configuration. It should be noted that this impact could potentially be avoided or mitigated by placing the HST alignment in tunnel or by using other construction and landscaping techniques to reduce visual impact.
- Figures 3.9-19A and 3.9-19B: I-15 corridor in San Diego with and without the proposed HST alignment. These figures illustrate how the proposed HST alignment could be integrated alongside an existing highway alignment. It should be noted that along this alignment, the HST alignment in some portions would be in tunnel and would not be visible from the highway or the surrounding area. Under the Modal Alternative, the visual impact would be a widening of I-15 into the area where the HST alignment is pictured and on the other side of the highway (Figure 3.19-C).
- Figures 3.9-20A and 3.9-20B: I-5 corridor in La Jolla with and without the highway widening improvements proposed under the Modal Alternative. These figures illustrate how the addition of one through lane in each direction affects the ramps (moving them into the hillsides) and overcrossing structure (reconstructing the abutments). The improvements would be visible from the highway, and in the case of the ramps visible from the surrounding hillsides as well.
- Figures 3.9-21A and 3.9-21B: Little Italy, downtown San Diego, water view with and without HST alignment. These figures illustrate how the HST system could be integrated into a developed urban region. The potential impact of the HST alignment would be relative to the position of the viewer. For instance, in this case the potential impact would be greatest closest to the alignment, while from the location where the picture was taken, the proposed HST alignment blends into the built area.

3.9.6 Design Practices

It would be speculative to address specific aesthetic treatments at the conceptual level of design of this program level study. However, the Authority is committed to working with local agencies and communities during subsequent project level environmental review to develop context sensitive aesthetic

designs and treatments for HST infrastructure (bridges, tunnel portals, overhead catenary systems, stations, etc.).

3.9.7 CEQA Significance Conclusions and Mitigation Strategies

Based on the analysis above, and considering the CEQA Appendix G thresholds of significance for aesthetics, the HST alternative would have a potentially significant impact on aesthetics when viewed on a system-wide basis. The HST alternative would create construction-related short-term visual changes. The HST alternative would also create long-term visual changes from introduction of a new transportation system. While the significance of the changes is dependent on the sensitivity of the landscape and compatibility with existing landscape features, at least some changes would occur in highly scenic areas of the state and are expected to be significant. Mitigation strategies, as well as the design practices discussed in Section 3.9.5, will be applied to reduce this impact. See also Section 3.7.6, Part B, mitigation for communities and neighborhoods.

General mitigation strategies would include the design of proposed facilities that are attractive in their own right and that would integrate well into landscape contexts, so as to reduce potential view blockage, contrast with existing landscape settings, light and shadow effects, and other potential visual impacts. Further consultation with local and regional agencies and with the public would help the Authority and the FRA refine these general mitigation strategies during the following stage of environmental review. The following measures could be considered during subsequent review and design development to enhance project appearance and minimize project visual impacts.

In the development of the final design for the project, there is a need to generate design solutions that lead to development of project facilities that are attractive in their own right and that integrate into landscape contexts in a way that minimizes view blockage, contrast with settings, light and shadow effects, and other visual impacts. Some of the potential mitigation strategies that could enhance project appearance and minimize project visual impacts include:

- Bridges and elevated guideways could be designed with graceful lines and with minimal apparent bulk and potential shading effects. Features that could be considered include use of contoured, rounded edges for columns and other structural elements.
- Elevated guideway, station, and parking structures could be designed with sensitivity to the context. Exterior materials, colors, textures, and design details could be used that are compatible with patterns in the surrounding natural and built environments and that minimize the contrast of the structures with their surroundings.
- Exterior finishes for catenary support structures could be chosen that have neutral colors, are context-appropriate, and have dulled finishes that minimize reflectivity.
- Aesthetically appropriate fencing could be installed along rights-of-way. In residential and city center areas, decorative fencing may be appropriate. In all contexts, the fencing could be dark and non-reflective to reduce its visual contrast.
- Where at-grade or depressed route segments pass through or along the edge of residential areas or heavily traveled roadways, landscape treatments could be installed along the edge of the right-of-way such as trees, shrubs, and groundcover to provide partial screening and to visually integrate the right-of-way into the residential context.
- Night lighting at stations should be the minimum required for operations and safety. All lights should be hooded and directed to the area where the lighting is required. For lights that are not required to be on all the time, sensors and timers should be specified.
- In the project-level review of proposed stations, the potential shadow impacts on adjacent pedestrian areas, parks, and residential areas should be taken into account.

- Areas outside of the operating rail trackbed that are disturbed by cut, fill or grading will be seeded or planted, as feasible, such that these areas will blend with the surrounding vegetated areas. Native vegetation will be placed in appropriate locations and densities to fit adjacent natural settings. Appropriate native or ornamental species will be used adjacent to developed and landscaped areas. Steep areas of cut in rock may not be able to support plants.
- In areas where elevated guideways are close to residential areas, parks, and public open spaces, use of strategic plantings of fast-growing trees to provide partial or full screening of the structures.
- Where at-grade or depressed route segments pass through or along the edge of residential areas or heavily traveled roadways, landscape the edge of the right-of-way with trees, shrubs, and groundcovers to provide partial screening and to visually integrate the right-of-way into the residential context.
- Where elevated guideways are located down the median strips or along the edge of freeways or other major roadways, use appropriate landscaping of the area under the guideway. The landscaping should make use of attractive shrubs and groundcovers that provide a high level of visual interest. The emphasis should be on the use of low-growing species to minimize any additional shadow effects or blockage of views.
- In the development of the final site plans for stations, shadow impacts on adjacent pedestrian areas, parks, and residential areas should be taken into account, and all structures should be sited in a way that minimizes shadow effects on sensitive portions of the surrounding areas.
- New outdoor lighting associated with the project can be shielded to minimize both the glare from any new light source and the spillover of light onto developed and undeveloped areas outside of the right-of-way.

The above mitigation strategies are expected to substantially lessen or avoid impacts to aesthetics in many circumstances. Sufficient information is not available at this programmatic level, however, to conclude with certainty that the above mitigation strategies will reduce impacts to aesthetics to a less than significant level in all circumstances. This document therefore concludes that impacts to aesthetics could remain significant, even with the application of mitigation strategies. Additional environmental assessment will allow a more precise evaluation in the second tier project-level environmental analyses.

3.9.8 Subsequent Analysis

Specific analyses that would be appropriate for project-specific environmental evaluation are discussed below.

- Detailed analyses should be performed along each corridor, particularly in areas with elevated structures, to identify potential visual intrusions into residential and park and open space areas. These analyses should focus on identifying the potential for blockage of valued views; the areas where shadows would be cast on residential and open space lands; and the areas where the scale, form, line, and color of project facilities would substantially alter the existing character and quality of the setting. In addition to producing a detailed inventory of area-specific impacts, this analysis would serve as the basis for identifying areas where project siting adjustments and design modifications, landscaping, and other mitigation measures may be incorporated to reduce potentially considerable impacts to a low level.
- Review of local urban design plans and policies should be conducted to take into account local design objectives. The analyses would provide a basis for considering specific design measures that would modify the impacts of the project in ways that would make the project design more consistent with local urban design goals.
- An analysis should focus on the segments of alignment that would be located adjacent to and down the median strip of freeways.

- For each of the proposed station sites, further analyses should be conducted in consultation with local agencies to develop an understanding of the relationship of the proposed station architecture, parking lots, lighting systems, and other features to the surrounding natural and built setting and historic context of the surrounding landscape setting. The analyses should identify the potential for blockage of valued views; the areas where shadows would be cast; and the areas where the scale, form, line, and color of project facilities could be designed to blend with the surrounding landscape. The analyses would be used to provide a basis for considering specific measures that could be integrated into the final station designs to reduce the visual impacts of the stations on their surroundings.

with one or more electrical power stations. In the Mira Mesa to San Diego segment, two of the three alignment options (both I-15 to the coast alignment options) would potentially conflict with a power station. There would be no potential conflicts with any wastewater treatment plants.

High-Speed Train Alignment Option Comparison

Each alignment option in the Los Angeles to San Diego via Inland Empire region, except the I-15 to Qualcomm Stadium option, would potentially impact fixed electrical facilities. The UPRR Riverside Line to San Bernardino option has the greatest potential for impacts, with seven conflicts with electrical substations. Both the UPRR Colton Line to San Bernardino and UPRR Riverside/UPRR Colton Line options would potentially impact four electrical substations.

The fourth alignment option in the Los Angeles to March ARB segment is the UPRR Colton Line, which would potentially impact one electrical substation. Additionally, each of the alignment options in this segment would result in similar numbers of conflicts with electrical transmission lines, natural gas pipelines, and wastewater pipelines.

Each alignment option in the March ARB to Mira Mesa segment would potentially impact one fixed electrical facility and have similar numbers of conflicts with other public utilities infrastructure.

From Mira Mesa to San Diego, each I-15 to the coast alignment option would potentially impact one fixed electrical facility, while the I-15 to Qualcomm Stadium would not impact any fixed facilities and have relatively few potential conflicts with other public utility infrastructure (four natural gas pipelines and one wastewater treatment pipeline).

E. LOS ANGELES TO SAN DIEGO VIA ORANGE COUNTY

Modal Alternative

There are 26 locations in which the corridor is crossed by 230-kV transmission lines. No electrical substations or power plants were identified within the 100-ft (30-m) study area of I-5. High-pressure natural gas pipelines cross the I-5 corridor in 45 locations. Water treatment facilities crossing the I-5 corridor include two treated wastewater ocean outfalls in the Camp Pendleton segment and two major sewer trunk lines, one in the I-5/805 to SR-52 segment and another in the SR-52 to Santa Fe Depot segment.

High-Speed Train Alternative

There would be no impacts on fixed facilities in the LAUS to LAX alignment option. The potential conflicts for this option include six electrical transmission lines and 41 natural gas pipelines. Each alignment option from LAUS to Irvine would potentially impact an electrical substation. The LOSSAN option would result in slightly more potential conflicts with other utility infrastructure (49 conflicts) than the UPRR Santa Ana Branch option (44 conflicts). There are no impacts on wastewater facilities within the HSR corridor.

3.10.5 Design Practices

The public utilities impact analysis is programmatic and addresses only representative utilities; it does not address all utilities and does not address local details. Project-level analysis would address all utilities and local issues once the alignments are more defined. The Authority plans to avoid these potential conflicts to the extent feasible and practical, as well as to greatly limit any potential additional costs or disruption. It is common practice to coordinate onsite with utility representatives during construction in the vicinity of critical infrastructure such as high-voltage overhead/underground transmission lines, high-pressure gas pipelines, or aqueduct canals. Also, future transportation or utility improvements would be

analyzed at the project-level environmental review along with feasible measures to mitigate potentially significant adverse environmental impacts.

3.10.6 Mitigation Strategies and CEQA Significance Conclusions

Proposed general mitigation strategies for potential utility conflicts should first focus on avoidance of the potential conflicts. If such conflicts are unavoidable, the next strategy should focus on reducing and minimizing the potential impact. The mitigation strategies are similar for all regions and would be refined during subsequent project-specific review.

For large utilities, such as wastewater treatment facilities, electrical substations, and pipelines, the strategy would be first to avoid crossing or using any of the utility right-of-way or facility footprint as the project-specific review proceeds and as engineering designs are refined. Avoidance opportunities should include consideration of modifying both the horizontal and vertical profiles of the proposed transportation improvements.

If avoidance is not feasible, and adjustment of alignments has not removed potential conflict, then in close consultation and coordination with the utility owner, relocation/reconstruction/restoration of the utility should be considered as a second mitigation strategy. This type of mitigation could include combining several utilities into a single utility corridor, or relocation or reconstruction. Where feasible and cost-effective, consolidating several utilities, primarily underground electrical and communications utilities, into one conduit should be considered during utility relocation planning.

Potential strategies to avoid and/or mitigate potential utility conflicts associated with the HST Alternative include but are not limited to the following:

- Make adjustments to the HST alignments and profiles to avoid major utility lines or facilities.
- Relocate transmission lines or substations.
- The co-lead agencies would comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 in the acquisition of all property necessary for the proposed HST system.
- During final design, the Authority would consult with each utility provider/owner to avoid or reduce potential impacts on existing and planned utilities through design refinements. Should impacts be unavoidable, all affected facilities would be relocated or protected in place prior to, during or after construction, as appropriate, and in accordance with the methods and designs approved by the affected utility provider/owner.

Based on the analysis above, and considering the CEQA Appendix G thresholds of significance for public utilities and service systems, the HST system alternative would not be expected to result in a significant effect on utilities and utility services when viewed on a system-wide basis. The proposed location of the HST system largely within existing transportation corridors reduces the systemwide potential to affect utility operations. In locations where a proposed HST alignment would intersect or be in close proximity to existing utility pipelines or facilities, design modifications and avoidance strategies would be applied to avoid and to limit impacts to utilities. Opportunities for utility relocation and coordination would also help avoid utility impacts. Design practices and mitigation strategies would be applied also to avoid even temporary curtailment of services during construction. Because the proposed HST system, as analyzed in Chapter 5, would not contribute significantly to statewide population growth, it is not expected to result in a significant increase in demand for public utility services, and thus, viewed on a system-wide basis it would have a less-than-significant effect on these services.

The above mitigation strategies are expected to reduce impacts of the HST system alternative to utilities to a less-than-significant level. Additional environmental assessment will allow a more precise evaluation in the second-tier of environmental analyses.

3.10.7 Subsequent Analysis

As previously mentioned, the public utilities impact analysis is programmatic and addresses only representative utilities; it does not address all utilities and does not address local details. Project-level analysis would address all utilities and local issues once the alignments are more defined. Project-level environmental documentation and subsequent planning documents should include more detailed information on the following utilities.

- Water supply lines.
- Wastewater conveyance lines.
- Wastewater and water pump stations.
- Storm drains.
- Fiber-optic lines.
- Telecommunication lines.
- Other utilities, and pipelines likely to be crossed or conflict with the various alternative alignments, including liquid petroleum, crude oil, etc.

- Federal National Priorities List/Superfund: This U.S. Environmental Protection Agency-developed database lists sites that pose an immediate public health hazard, and where an immediate response to the hazard is necessary. These listings are also found in the CERCLA database, also known as CERCLIS (Title 42 U.S.C. Chapter 103).
- State Priority List: Sites listed in this DTSC and RWQCB database are priority sites that were compiled from AWP and CAL-SITE databases, and sites where Preliminary Endangerment Assessments were conducted by the California Environmental Protection Agency (CEPA). The AWP database lists contaminated sites authorized for cleanup under the Bond Expenditure Plan developed by the California Department of Health Services as a site-specific expenditure plan to support appropriation of Hazardous Substance Cleanup Bond Act funds.
- State of California Solid Waste Landfills: The landfill sites listed in this database generally have been identified by the state as accepting solid wastes. This database includes open, closed, and inactive solid waste disposal facilities and transfer stations pursuant to the Solid Waste Management and Resource Recovery Act of 1972 and is maintained by the California Integrated Waste Management Board. The locations of the disposal facilities are primarily identified through permit applications and local enforcement agencies.

Methods of Analysis

The hazardous materials and wastes analysis for this Program EIR/EIS entailed a qualitative comparison of potential impacts on humans and the natural environment from exposure to hazardous materials or wastes that could result from proximity to or potential disturbance of sites containing these materials due to the No Project Alternative, the Modal Alternative, or the proposed HST Alternative. As described above, the analysis was based on the results of a database search (Environmental Data Resources 2003) for a study area that included the potential HST and Modal alignment corridors as well as proposed station locations and existing airports, as described below in Section 3.11.2. For this program-level broad analysis of potential impacts related to known priority hazards sites, the analysis was limited to hazardous materials sites and hazardous waste sites listed on the NPL, SPL, and SWLF databases. Other types of sites, such as sites with leaking underground storage tanks (LUSTs), would be considered in a subsequent phase of analysis, when site-specific analysis could be tied to more detailed alignment plans and profiles. No site-specific investigations were conducted for this analysis. Because of the large area covered, such analyses would not be cost-effective at this program-level analysis.

Potential impacts of the Modal and HST Alternatives were compared to conditions under the No Project Alternative. This assessment assumed that impacts related to hazardous materials/hazardous waste exposure could occur both during project construction and during project operation. It was based on the anticipated difference between No Project conditions and conditions under the Modal and HST Alternatives, in terms of the estimated area of the proposed improvements described in Chapter 2, *Alternatives*, which guided the identification of study area boundaries. Particular attention was paid to the extent of improvements that would occur outside existing rights-of-way. This analysis focused on the number of identified NPL, SPL, and SWLF sites within the study area. The program-level comparison of alternatives in this section assesses the relative degree to which known hazardous material and waste sites could constrain the alternatives by requiring costly disposal conditions and site cleanup and remediation. The number of sites gives some indication of an overall level of potential impact; more sites generally imply more potential impact. In this comparative analysis, each type of listing (NPL, SPL, and SWLF) was given equal weight. The program-level analysis does not include a detailed assessment of the nature or extent of any hazardous materials or wastes that may be present at identified sites, or the degree or specific nature of potential impacts under the various alternatives. The analysis and identification of potential hazards within the study area of

alternative corridors and alignments is useful in comparing alternatives and in identifying areas where avoidance may be possible in subsequent project-level review.

3.11.2 Affected Environment

A. STUDY AREA DEFINED

The Modal and HST Alternatives would result in substantial improvements to existing highway, aviation, and rail infrastructure within or adjacent to existing rights-of-way, in addition to the No Project transportation improvements. Therefore, the study area for the presence of hazardous materials and wastes includes existing transportation corridors, new HST corridors, and areas where passenger stations, airport expansions, and HST storage and maintenance facilities are being considered. The study area consisted of a 500 ft-wide (152 mm-wide) (250 ft [76 m] on either side of the centerline or the facility) corridor along each rail and highway alignment identified for the Modal and HST Alternatives, and a 250-ft (76-m) radius around each airport and station facility. The study area boundaries were based on the distance within which a hazardous material or waste site could impact the possible location of a transportation improvement under the Modal or HST Alternative.

B. HAZARDOUS MATERIALS AND WASTE SITES BY REGION

Most of the hazardous materials and hazardous waste sites in the study area are relatively minor in extent and could be effectively mitigated through typical design and construction practices. Fewer major sites are known to be located in the vicinity of the proposed HST system alignment options than near existing highway alignments. Figure 3.11-1 shows the general locations of hazardous materials and hazardous waste sites identified through the database search. Additional information on the results of the database search is presented in Appendix 3.11-A and in the hazardous materials and hazardous wastes technical evaluation documents prepared for each region (Environmental Data Resources 2003).

3.11.3 Environmental Consequences and Comparison of Alternatives by Region

The potential severity of impacts from hazardous material or waste releases on the construction, operations, and maintenance of the proposed alternatives would depend on two factors: the nature and severity of contamination, and the construction and operations/maintenance activities that are likely to occur near the sites. The sites that pose the greatest concern are those with soil or groundwater contamination within or adjacent to the right-of-way, and those with groundwater contamination near areas where excavation down to groundwater would be necessary. For example, dewatering during excavation, trenching, or tunneling could alter local subsurface hydraulic gradients and draw groundwater contamination into excavated areas, trenches, or tunnels. In addition, fuel or chemical vapors could move through the vadose zone[1] to excavated areas (during construction), or to underground structures associated with the rail line such as vaults and manholes (during project operation).

A. EXISTING CONDITIONS COMPARED TO NO PROJECT ALTERNATIVE

The description of existing conditions in the study area was based on the known hazardous materials sites in the vicinity of the transportation infrastructure that exists in 2003. The No Project Alternative would incorporate local, state, and interstate transportation system improvements designated in existing plans and programs. This analysis assumed that no additional hazardous material or waste impacts would occur beyond those already addressed or those that would be addressed in the environmental documents for those improvement projects, and that any such impacts would largely

[1] The *vadose zone* comprises the region between the land surface and underlying groundwater aquifers and is the geologic zone through which pollutants and contaminants travel prior to entering groundwater (INEEL National Vadose Zone Project 2002).

be mitigated as part of those projects. For the purpose of this analysis, existing hazardous materials sites and hazardous waste sites identified in the available databases were treated as the baseline for comparison. While the future conditions for the No Project Alternative may result in some additional hazardous materials or waste impacts, they cannot be predicted or estimated for purposes of this program-level analysis. Similarly, it can be presumed that during the next 17 years some of the existing hazardous waste sites would be cleaned up or remediated as part of CEPA and RWQCB efforts.

Projects included under the No Project Alternative would be completed before construction of the Modal or HST Alternative. Construction associated with the No Project Alternative, compared to existing conditions, would vary depending on the region being analyzed. As identified in the hazardous materials and hazardous wastes technical evaluation documents prepared for each region (Environmental Data Resources 2003), in the Bay Area to Merced and the Los Angeles to San Diego via Inland Empire regions, the difference between existing conditions and the No Project Alternative would likely be greater than that between the No Project Alternative and the Modal or HST Alternative. The opposite is expected to be the case in the Sacramento to Bakersfield, Bakersfield to Los Angeles, and Los Angeles to San Diego via Orange County (LOSSAN) regions. This assumption and assessment of potential impacts is based on the estimated land area of the anticipated improvements and particularly on the amount of improvements that would likely occur outside of existing right-of-way. This assumption does not take into account the dollar value or complexity of the anticipated improvements.

B. NO PROJECT ALTERNATIVE COMPARED TO MODAL AND HIGH-SPEED TRAIN ALTERNATIVES

As described above, the No Project Alternative was used as a proxy for the baseline 2020 condition; the impact from any improvements associated with the Modal or HST Alternatives would be in addition to the impacts from the 2020 No Project Alternative. Table 3.11.3-1 compares the number of potential hazardous material and waste sites identified under the Modal and HST Alternatives, based on more detailed information presented in Appendix 3.11-A.[2]

As shown in Table 3.11.3-1, the number of sites identified for the HST Alternative varies widely depending on which alignment and station options are selected, ranging from 31 (less than under the Modal Alternative) to 75 (more than twice the number of sites identified under the Modal Alternative). The numbers of sites identified for the HST Alternative in the Bakersfield to Los Angeles; Los Angeles to San Diego via Inland Empire; and LOSSAN, including Los Angeles Union Station to Los Angeles International Airport segments are greater for any alignment option than those identified for the Modal Alternative. The Bay Area to Merced and Sacramento to Bakersfield segments are the only regions in which fewer sites were identified for at least one HST Alternative alignment than for the Modal Alternative, probably because the HST Alternative alignment, depending on alignment option, would follow a route with fewer SWLFs than the Modal Alternative.

Assuming that a larger number of identified hazardous materials and hazardous waste sites increases the potential for hazardous materials and hazardous waste impacts, under the HST Alternative the extent of cleanup or remediation required depends on the alignment and station options selected—and, depending on the route and station locations, the HST Alternative could have either a greater or a lesser potential for such impacts than the Modal Alternative. The extent of cleanup or remediation would translate into additional costs for construction, which could make a major difference in practicality or feasibility of an alternative. As described above, this analysis was limited to searches

[2] Appendix 3.11-A shows the number of identified NPL, SPL, and SWLF sites associated with the HST and Modal Alternatives. For the Modal Alternative, the number of sites includes those identified along the roadway alignments and around airport improvements. For the HST Alternative, the number of sites includes those identified along the alignment options, stations, and storage and maintenance facilities.

of standard databases listing known sites and did not incorporate information on other smaller sites that could contribute to risk on a local basis and would be studied at the project-specific level, if the proposed HST system is pursued. In addition, because neither site-specific investigations nor onsite fieldwork was performed, little or no information is available about the nature and severity of contamination at the sites identified, or the schedule or program for cleanup, if any, so the comparison above represents a "site-count" approximation and may not fully divulge potential risk levels. Finally, much of both the Modal and HST Alternative alignments would be within existing right-of-way, and these alignments have a land-use history under which additional unknown contamination (e.g., spills or accidental releases) would be a possibility. Consequently, although no unavoidable hazardous materials and hazardous waste impacts are expected under either the Modal Alternative or HST Alternative, hazardous materials and hazardous waste information available at the program level is not sufficient to distinguish the two alternatives.

Table 3.11.3-1
Potential Hazardous Material and Waste Sites Comparison Modal and High-Speed Train Alternatives

Region	Modal Alternative	HST Alternative	
		Fewest Identified Sites	Most Identified Sites
Bay Area to Merced	5	3	11
Sacramento to Bakersfield	16	8	24
Bakersfield to Los Angeles	8	13	23
Los Angeles to San Diego via Inland Empire	4	7	14
Los Angeles to San Diego via Orange County	2	5	5
Total Sites*	33	31	72

* Totals presented do not include the identified LOSSAN sites because this segment is not a part of the HST Alternative defined for the representative demand.

Source: Environmental Data Resources 2003.

3.11.4 Design Practices

At this programmatic level of study it is not possible to identify specific hazardous material impacts, determine the nature and severity of contamination, or the construction and operations/maintenance activities that are likely to occur near specific sites. However, the Authority is committed to avoiding and minimizing potential impacts through design refinement at the project level as well as the use of best practices to avoid potential impacts during construction.

3.11.5 Mitigation Strategies and CEQA Significance Conclusions

Mitigation for impacts related to hazardous materials and/or hazardous wastes depends on detailed site-specific investigations (environmental site assessments) that have not been performed at this programmatic level of analysis. More detailed analysis and specific mitigation measures would be included in subsequent project-level analysis. Mitigation strategies could include realignment of the HST corridor or relocation of associated features such as stations to avoid an identified site, and remediation of identified hazardous material/waste contamination.

In addition, potential mitigation strategies would include, but are not limited to, the following:

- Investigate soils for contamination and prepare environmental site assessments (ESA) when necessary.

- Prior to demolition of buildings for project construction, survey for lead-based paint and asbestos-containing materials.
- Acquire necessary permits if ground dewatering is required
- When indicated by project level ESA's, perform a Phase II ESA (e.g., hydrogeologic investigation) to identify specific mitigation measures. Perform Phase II ESA's in conformance with the ASTM Standards Related to the Phase II Environmental Site Assessment Process (E1903-01)
- Prepare a Site Management Program/Contingency Plan (SMP/CP) prior to construction to address known and potential hazardous material issues SMP/CP including:
  - Measures to address management of contaminated soil and groundwater
  - Site-specific Health and Safety Plan (HASP) including measures to protect construction workers and general public
  - Procedures to protect workers and the general public in the event that unknown contamination or buried hazards are encountered

Based on the analysis above, and considering CEQA Appendix G thresholds of significance and the standards described in paragraph 3.11 for hazardous materials and hazardous wastes, the proposed HST alternative would have a potentially less than significant effect on hazardous materials and hazardous waste when viewed on a systemwide basis. At this programmatic level of review, it is not possible to identify specific hazardous material impacts, or the nature and severity of contamination at specific sites. However, the Co-lead agencies' commitment of using design practices to minimize impacts, and the use of best practices and mitigation strategies for remediation of hazardous sites, are expected to substantially lessen or avoid impacts to hazardous materials and wastes. With the second-tier, project-level review, specific impacts to sites with hazardous materials will be identified, and mitigation measures based on these mitigation strategies will be applied on a site-specific basis. Additional environmental assessment will allow more precise evaluation in the second-tier, project-level environmental analyses.

3.11.6 Subsequent Analysis

Specific studies that would be required for project-level environmental documentation include environmental site assessments, which would study the identified hazardous materials and hazardous waste sites in more detail to evaluate the nature and level of contamination and allow thorough analysis of potential impacts in accordance with applicable regulatory requirements. Tasks to be performed as part of the project-level environmental site assessment would be expected to include the following.

- Environmental database search. This would include additional databases (e.g., Cortese list, LUST list, other sites, etc.).
- Review of historical land use for all alignment options or corridor alternatives carried forward for detailed analysis.
- Site reconnaissance.
- Review of agency records and agency consultation.
- Data analysis and report preparation.

Traditional Cultural Properties

Traditional cultural properties are places associated with the cultural practices or beliefs of a living community that are rooted in that community's history and are important in maintaining the continuing cultural identity of the community. Examples include locations "associated with the traditional beliefs of a Native American group about its origins, its cultural history, or the nature of the world" and locations "where Native American religious practitioners have historically gone, and are known or thought to go today, to perform ceremonial activities in accordance with traditional cultural rules of practice" (Parker and King 1990). Traditional cultural properties are identified by consulting with Native American groups that have a history of using an area, as well as the Native American Heritage Commission, the Sacred Lands File, and tribal representatives.

Paleontological Resources

Paleontological resources are the fossilized remains of animals and plants. They are typically found in sedimentary rock units, and they provide information about the evolution of life on earth over the past 500 million years or more.

C. CULTURAL RESOURCES BY REGION

Archaeological Resources by Region

As described above, information on the numbers, kinds, and locations of archaeological sites for this Program EIR/EIS was obtained from CHRIS Information Centers. For the most part, the data from CHRIS Information Centers provide archaeological site information only for areas that have been previously surveyed by archaeologists. No archaeological field surveys were conducted for this Program EIR/EIS. However, surveys would be a part of the next stage of environmental review in the project-level EIR/EIS (see Section 3.12-6).

Bay Area to Merced: This region includes central California from the San Francisco Bay Area (San Francisco and Oakland) south to the Santa Clara Valley and east across the Diablo Range to the Central Valley. Archaeological evidence places prehistoric people in California as early as 8,000 to 12,000 years ago; however, in the Bay Area to Merced region, the last 2,000 to 4,000 years are best documented. The regional chronological sequence of time periods (PaleoIndian; Early, Middle, and Late Archaic; and Protohistoric) reflects changes in land use that were influenced by population growth (e.g., shift from small camps to village sites), technological innovation (e.g., shift from use of the spear to bow and arrow), and resource intensification (e.g., the intensive use of mortars and pestles and bedrock milling features for acorn processing). Change also resulted from population movements and displacements, and from outside influences such as climate change and rise in sea level.

The records search for the project APE in the Bay Area to Merced region identified 109 archaeological sites: 95 prehistoric sites, 13 historic sites, and one site with both prehistoric and historic archaeological components. Half of the prehistoric sites are habitation sites, variously referred to as shell mounds, shell middens, and large flaked and ground stone scatters[3] with midden[4] accumulations, but also including sites where house pits were noted. Many of these habitation sites (the shell mounds around San Francisco Bay in particular) contain Native American burials. Burials are noted on the site records for more than 15% of the sites within the APE. Other types of sites identified in the APE include bedrock mortars, lithic scatters,[5] ground

[3] *Ground stone scatter* refers to a site containing milling equipment, including handstones, mortars, and pestles.

[4] *Midden* refers to a mound or deposit containing shells, animal bones, and other refuse that indicates the site of a human settlement.

[5] *Lithic scatter* refers to a site containing general utility implements such as projectile points, bifaces, expedient flake tools, and debitage.

- The San Mateo Formation at Camp Pendleton, with horse, camel, peccary, llama, sea cow, fur seal, walrus, sea otter, sea bird, whale, dolphin, shark, ray, bony fish, and marine invertebrate fossils.
- The Capistrano Formation from Irvine to San Juan Capistrano, Dana Point, San Clemente, Camp Pendleton, Oceanside, and Carlsbad, with whale, walrus, sea cow, fur seal, sea bird, shark, ray, bony fish, and kelp fossils.
- The Niguel Formation from Irvine to San Juan Capistrano, with marine mollusk and marine vertebrate fossils.
- The San Diego Formation along SR-52 to San Diego, with shark, ray, bony fish, marine invertebrate, sea bird, walrus, fur seal, cow, whale, dolphin, terrestrial mammal, wood, and leaf fossils.
- The Lindavista Formation along I-5/I-805, with marine invertebrate, shark, and whale fossils.
- The Bay Point Formation along SR-52 to San Diego, with shark, ray, bony fish, and mollusk fossils.
- Unnamed marine terrace deposits from Camp Pendleton through Encinitas and Solana Beach to the Santa Fe Depot in San Diego, with marine invertebrate, shark, ray, bony fish, and terrestrial mammal fossils.

3.12.3 Environmental Consequences

A. EXISTING CONDITIONS COMPARED TO NO PROJECT ALTERNATIVE

The No Project Alternative is composed of transportation projects other than the proposed HST system that are projected to be completed between the time of this Program EIR/EIS and 2020, including local, state, and interstate transportation system improvements designated in existing plans and programs. No additional impacts on cultural resources would occur under No Project beyond those addressed in environmental documents for those projects.

Because it was not realistically feasible for this Program EIR/EIS to identify or quantify all the statewide impacts on or mitigation activities for cultural resources associated with all of the projects considered as part of the No Project Alternative, it is assumed that the existing condition is representative of No Project conditions. It is possible that other transportation projects (not including the Modal or HST Alternatives) may impact some existing cultural resources by 2020, and that these changes to the baseline would be described and quantified in subsequent environmental analysis and reflected in future database information. This Program EIR/EIS addresses the general potential for the proposed project to affect or impact cultural resources as they exist at present and uses this information to compare the potential for impacts from the alternatives evaluated.

B. NO PROJECT ALTERNATIVE COMPARED TO MODAL AND HIGH-SPEED TRAIN ALTERNATIVES

This section compares the predicted sensitivity or potential for the alternatives to cause adverse effects or impacts to archaeological, historic, and/or paleontological properties/resources, and which would require mitigation. No new inventory or evaluation surveys of properties/resources were conducted for this Program EIR/EIS because that identification and evaluation work would be conducted as part of the next stage of environmental review in the project-level EIR/EIS (see Section 3.12.6).

The Modal Alternative would potentially affect or impact cultural resources (archaeological and historic properties/resources) as a result of expanding freeway rights-of-way to add lanes and as a result of airport expansion (new runways). Systemwide, the Modal Alternative is ranked as medium in terms of its potential impact on cultural resources Cumulative effects and impacts are likely

could be informed by the documentation prepared under HABS/HAER standards. It would be necessary for an architectural historian or a historical architect to advise the structural designers on appropriate architectural treatments that could serve as mitigation. SHPO and other agencies would review draft design guidelines and provide comment on the guidelines as well as on proposed design changes.

Interpretive / Educational Materials and Popular Report. The lead agency could prepare interpretive and/or educational materials and programs regarding the affected historic properties/resources. The focus of this mitigation would be the historic themes related to these resources. Such materials and/or programs could include: a popular report; documentary videos, booklets, interpretive signage, additional interpretive information made available to state and local agencies. These materials could also include salvage items, historic drawings, interpretive drawings, current and historic photographs, models, and oral histories. Assistance could also be provided for archiving or digitizing the documentation of cultural resources affected, as well as for the dissemination of the material to appropriate repositories.

Relocation. Historic properties/resources that would be otherwise demolished because of the project could be relocated and rehabilitated. The lead agency would ensure that these buildings or structures were recorded to HABS standards prior to their removal and in consultation with NPS. The lead agency / project proponent would prepare a removal plan, including site plans for the new locations and placing them on new foundations and to conditions consistent with those that existed prior to the move.

Monitoring (Architectural / Cultural Landscape). The project construction documents and new construction would be monitored to ensure they conform to the design guidelines and any other treatment procedures agreed to by the consulting parties. A professional architectural historian and a professional historical landscape architect, who meet the Secretary of the Interior's *Professional Qualifications Standards* (48 FR 44738-9), would monitor construction to identify conditions that could conflict with the mitigation measures. The lead agency would take steps to correct these conflicts.

Minor Repairs and Reconstruction. The lead agency would ensure that inadvertent damage to historic properties/resources would be repaired in accordance with the Secretary of the Interior's *Standards for Treatment of Historic Properties.*

Salvage. The lead agency would ensure that selected decorative or architectural elements of the adversely affect historic properties/resources would be reviewed for feasibility of salvage in order to mitigate their loss or destruction. Where possible, these elements would be retained and incorporated into the new construction. Where re-use was not possible, selected salvaged elements could be made available for use in interpretive displays either near the affected resources or at an appropriate museum, for example.

C. PALEONTOLOGICAL RESOURCES

Mitigation measures for paleontological resources would be developed and implemented at the project level. The following measures may be included.

- Educate workers.
- Recover fossils identified during the field reconnaissance.
- Monitor construction.
- Develop protocols for handling fossils discovered during construction, likely including temporary diversion of construction equipment so that the fossils could be recovered; identified; and

prepared for dating, interpreting, and preserving at an established, permanent, accredited research facility.

The above mitigation strategies, including implementation of a programmatic agreement addressing historic resources and continued consultation and coordination with tribal representatives, are expected to substantially lessen or avoid impacts to cultural and historic resources in most circumstances. At the second-tier, project-level review it is expected that for proposed HST alignments which would result in impacts to cultural and historic resources, most of the impacts will be mitigated to a less-than-significant level, but it is possible that for some impacts will be significant. Sufficient information is not available at the program level to conclude with certainty that the above mitigation strategies will reduce impacts to affected resources to a less than significant effect in all circumstances. Therefore, potential impacts to cultural and historic resources are considered significant at the program level even with the application of mitigation strategies. Additional environmental assessment will allow more precise evaluation in the second-tier, project-level environmental analyses.

3.12.7 Subsequent Analysis

The following paragraphs describe the procedures that would be necessary at the next stage of environmental review (a Tier-2 study) to determine appropriate and feasible mitigation measures in consultation with the SHPO, if a decision is ultimately made to go forward with the proposed HST system. These procedures would satisfy the NHPA and also satisfy CEQA requirements.

As allowed under 36 C.F.R. § 800.4(b)(2), a phased approach to identification of historic properties can be used when the proposed undertaking involves corridors. As indicated by the results of this study, FRA and the Authority have determined that historic properties likely exist in various corridor segments, through background research, consultation, and abbreviated field reconnaissance. Once alternatives have been refined, full identification efforts may proceed. Under NHPA Section 106 and implementing regulations (36 C.F.R. § 800), the procedures would include identifying resources with the potential to be affected; evaluating their significance under NRHP and CEQA; and identifying any substantial adverse effects, and then evaluating potential mitigation.

In the interest of identifying archaeological sites within the APE, a field survey of the APE should be completed which will identify those sites evident on the surface, geomorphological maps and studies should be reviewed to assess the potential for corridor segments to contain significant buried sites, and historic maps and an historic overview or context should be developed in the interest of identifying potential historical archaeology sites within the APE.

Additional efforts must also be made to consult with appropriate Tribes and individuals knowledgeable about the nature and locations of potential traditional cultural properties.

Identifying potentially affected archaeological and historical properties/resources would require identification and evaluation within a more specifically defined APE that would include the area where direct and indirect impacts from construction could occur (including locations of easements and construction-related facilities, such as equipment staging areas, borrow and disposal areas, access roads, and utilities) and the area(s) where the settings of any eligible historic buildings and structures, or the buildings and structures themselves, could be materially or significantly altered.

All identified resources would then be evaluated using NRHP and CRHR eligibility criteria. Evaluating archaeological sites may require preparing test plans for archaeological resources that contain regionally relevant research questions. The Authority and the FRA would consult with the SHPO on any test plans and determinations of eligibility for evaluated resources. The impacts of a proposed specific project on resources determined eligible would be analyzed. An impact analysis report may then be reviewed with the SHPO. Mitigation measures needed to address impacts on specific resources could then be

developed and incorporated in an MOA between the SHPO, the Advisory Council on Historic Preservation, the FRA, and the Authority during the preparation of project-specific environmental evaluation. The mitigation measures in the MOA would then be incorporated into project-specific environmental documentation and project approvals.

A paleontological resource assessment program would also be completed as part of the subsequent analysis for a project-level EIR/EIS. The assessment program would include field reconnaissance to identify exposed paleontological resources and more precisely determine potential paleontologic sensitivity for the project. A paleontological resources treatment plan would be prepared by a qualified paleontologist. The plan would be included in project approval and would address the treatment of paleontological resources discovered prior to and during construction.

Further consultation would also occur at the project level with the Native American Heritage Commission as necessary, and with Native American groups when traditional territories may be close to APEs for the project. Additionally, more specific information related to traditional cultural sites of concern would be obtained as necessary.

High-Speed Train Alternative
Several active faults are located in the immediate vicinity of the proposed HST segments and the HST stations; consequently, this alternative ranked high for seismic hazards. The significant faults include the Elysian Park, Rialto-Colton-Claremont, San Jacinto, Murrieta Hot Springs, Whittier-Elsinore, and Newport-Inglewood-Rose Canyon faults. In addition, three active faults cross the proposed HST segments in this region, including the southern San Bernardino, the Temecula, and, in San Diego, the La Jolla. This alternative would also encounter areas of difficult excavation in tunneled sections due to fractured rock.

High-Speed Train Alignment Options Comparison
There is not a significant difference among the proposed HST Alternative alignment options in this region based on geology.

E. LOS ANGELES TO SAN DIEGO VIA ORANGE COUNTY

Modal Alternative
In the LOSSAN region, the Modal Alternative ranked high for impacts related to seismic hazards between LAUS and Irvine, San Juan Capistrano and Camp Pendleton, and SR-52 and Santa Fe Depot in San Diego.[2] Overall, about half of the Modal Alternative would traverse areas of high seismic hazard. Additionally, the Modal alignment crosses three active faults in the southern portion of the region.

High-Speed Train Alternative
In the LOSSAN region, the HST Alternative ranked high for potential impacts related to seismic hazards along the route between LAX and LAUS. It also crosses two active faults in this area. The HST Alternative also ranked high for potential impacts related to seismic hazards between LAUS and Irvine) and proposed station sites except the Irvine station site.

3.13.5 Design Practices

The Authority has specifically avoided or minimized potential effects related to major geologic hazards such as major fault crossings, oil fields, and landslide areas throughout extensive alignment studies completed prior to and as part of the program EIR/EIS process. The Authority's objective is to avoid fault crossings in tunnel or aerial sections, and this has been carried through the development of the alternatives. Any impacts that remain at the conclusion of project level environmental review would be mitigated through specific design and construction practices described in the following mitigation section.

3.13.6 CEQA Significance Conclusions and Mitigation Strategies

Based on the analysis above, and considering the CEQA Appendix G thresholds of significance for geology and soils, the HST alternative would have potentially significant impacts when viewed on a system-wide basis. In some alignment segments there would be potential for increased soil disturbance due to slope instability. The HST alternative would involve some seismic hazards along alignment segments being susceptible to ground motion. The proposed HST system would reduce exposure to seismic risk by crossing any known active faults at grade. Mitigation strategies, as well as the design practices discussed in section 3.13.5, will be applied to reduce these impacts.

This document contains a broad program analysis that generally identifies the locations of potential geologic impact areas for the proposed alternatives. These are areas that would need further study in environmental documentation at the project level.

[2] No Modal Alternative improvement is proposed between LAX and LAUS.

Mitigation for potential impacts related to geologic and soils conditions must be developed on a site-specific basis, based on the results of more detailed (design-level) engineering geologic and geotechnical studies. Consequently, geologic and geotechnical mitigation would be identified in subsequent, project-level analysis rather than at the program level. Following is an overview of general approaches to possible geologic and geotechnical mitigation.

A. GROUND SHAKING

The potential for traffic safety issues related to ground shaking during a large earthquake cannot be mitigated completely; this holds true for most vehicle transportation systems throughout California. However, some strategies are available to reduce hazards, including the following.

- The potential for collapse or toppling of superstructures such as bridges or retaining structures due to strong ground motion can be routinely mitigated by designing structures to withstand the estimated anticipated ground motions. Designs typically include additional redundancy and ductility in the structure. The design needed to withstand a certain magnitude of earthquake would be determined during subsequent stages of design and development of proposed facilities. Temporary facilities, such as shoring, would be designed considering a lower probability of seismic events.
- The potential for structural damage and resulting traffic hazard as a result of liquefaction can be mitigated through site-specific methods such as ground modification methods (soil densification) to prevent liquefaction, or structural design (e.g., deep foundations) to accommodate/resist the liquefiable zones.
- It is unlikely that the potential for HST derailment during a peak event could be mitigated by designing a track-wheel system capable of withstanding the potential ground motions in most of the project area. Existing train systems throughout California face the same challenge. However, a network of strong motion instruments has been installed throughout California and additional monitoring stations are proposed. These stations provide ground motion data that could be used with the HST instrumentation and controls system to temporarily shut down the HST operations during or after an earthquake. The system would then be inspected for damage due to ground motion and/or ground deformation and then returned to service when appropriate. This type of seismic protection is already used for many rapid transit systems in seismically active areas and has been proven effective.

B. FAULT CROSSINGS

The potential for ground rupture along active faults is one of the few geologic hazards that can rarely be fully mitigated. However, known active faults are typically monitored, and in some cases fault creep is mitigated with routine maintenance, which could include repaving or minor track re-alignment. Project design could provide for the installation of early warning systems triggered by strong ground motion associated with ground rupture. Linear monitoring systems such as time domain reflectometers (TDRs) could be installed along major highways and rail lines within the zone of potential ground rupture. These devices emit electronic information that is processed in a centralized location and could be used to temporarily control traffic and trains, thus reducing accidents. In addition, the HST Alternative has been modified in mountain crossing areas where tunnels are proposed to avoid crossing known or mapped active faults within the tunnel.

C. SLOPE STABILITY/LANDSLIDES

The potential for failure of natural and/or temporary construction slopes and retention structures can be mitigated through geotechnical investigation and review of proposed earthwork and foundation excavation plans and profiles. Based on investigation and review, recommendations would be provided for temporary and permanent slope reinforcement and protection, as needed. These

recommendations would be incorporated into the construction plans. Additionally, during construction, geotechnical inspections would be performed to verify that no new, unanticipated conditions are encountered, and to verify the proper incorporation of recommendations. Slope monitoring may also be incorporated in final design where warranted.

D. AREAS OF DIFFICULT EXCAVATION

The potential for difficult excavation in areas of hard rock and faults cannot be fully mitigated, but it can be anticipated so that safety is assured, potential environmental impacts are addressed, and project schedule problems are avoided to the extent possible. This includes focusing future geotechnical engineering and geologic investigations in these areas and incorporating the findings into project construction documents, communicating with the contractors during the bid process, and monitoring actual conditions during and after construction.

E. HAZARDS RELATED TO OIL AND GAS FIELDS

Hazards related to potential migration of hazardous gases due to the presence of oil fields, gas fields, or other subsurface sources can be mitigated by following strict federal and state Occupational Safety & Health Administration (OSHA/CalOSHA) regulatory requirements for excavations, and consulting with other agencies as appropriate, such as the Department of Conservation (Division of Oil and Gas) and the Department of Toxic and Substances Control regarding known areas of concern. Mitigation measures would include using safe and explosion-proof equipment during construction and testing for gases regularly. Active monitoring systems and alarms would be required in underground construction areas and facilities where subsurface gases are present. Gas barrier systems have also been used effectively for subways in the Los Angeles area. Installing gas detection systems can monitor the effectiveness of these systems.

F. MINERAL RESOURCES

In some cases, mineral resources sites may represent valuable sources of materials that should either be completely developed prior to use for another purpose or should be avoided by proposed facilities to the extent feasible. This practice could result in realignment of proposed alignments and/or proposed relocation or modification of other proposed facilities. To mitigate the potential for significant project redesign, important mineral sites should be identified as early as possible.

Mitigation strategies to address seismic hazards such as liquefaction, seismically induced settlement and landslides as well as long-term settlement along oil fields may include, but would not be limited to:

- Design and engineer all structures for earthquake activity - Seismic design for the structures would be based on the Caltrans Seismic Design Criteria
- Design and install foundations resistant to soil liquefaction and settlement.
- Identify potential serpentinite bedrock disturbance areas and implement a safety plan
- Apply the requirements of Section 19 (Earthwork) of the most current Caltrans Standard Specifications to ensure geotechnically stable slopes are planned and created.
- Subsurface gases: Install passive or active gas venting systems and gas collection systems in areas where subsurface gases are identified.
- Remove corrosive soil and use corrosion protected materials in infrastructure.
- Address erosive soils through soil removal and replacement, geosynthetics, vegetation, and/or rip rap, where warranted.

- Remove or moisture condition shrink-swell soils, where necessary.
- Utilize stone columns, grouting, and deep dynamic compaction in areas of potential liquefaction
- Utilize buttress berms, flattened slopes, drains, and/or tie-backs in areas of slope instability.
- Avoid settlement through preloading, use of stone columns, deep dynamic compaction, grouting, and/or special foundation designs.

The above mitigation strategies are expected to reduce the geologic and soils impacts of the HST alternative to a less-than-significant level. Additional environmental assessment will allow a more precise evaluation in the second-tier, project-level of environmental analyses.

3.13.7 Subsequent Analysis

As described in *Method of Evaluation of Impacts* above, this analysis was performed generally on the basis of existing data available in GIS format. The data provided in this section are intended for planning purposes, are not meant to be definitive for specific sites, and have not been independently confirmed. More detailed geological studies would be required at the project level, and would likely include subsurface exploration, laboratory testing, and engineering analyses to support detailed alignment design and mitigation of potential impacts associated with geologic and soils conditions, including seismic hazards.

State Laws and Regulations

California Department of Fish and Game Code (§ 1601–1603 [Streambed Alteration]): Under Sections 1601-1603 of the Fish and Game Code, agencies are required to notify the California Department of Fish and Game (CDFG) prior to implementing any project that would divert, obstruct, or change the natural flow or bed, channel, or bank of any river, stream, or lake.

Porter-Cologne Water Quality Act (Water Code § 13000 *et seq.*): The Porter-Cologne Act is the basic water quality control law for California, and it provides for the State Water Resources Control Board (SWRCB) to implement the CWA for California.

Cobey-Alquist Flood Plain Management Act (Water Code § 8400 *et seq.*): The California Reclamation Board provides policy direction and coordination for the flood control efforts of state and local agencies along the Sacramento and San Joaquin Rivers and their tributaries in cooperation with USACE. It cooperates with various federal, state, and local government agencies in establishing, planning, constructing, operating, and maintaining flood-control works. The California Reclamation Board also exercises regulatory authority to maintain the integrity of the existing flood-control system and designated floodways by issuing permits for encroachments.

B. METHOD FOR EVALUATION OF IMPACTS

Impact Evaluation

Potential impacts on hydrologic resources, floodplains, and water quality were evaluated using a combination of both qualitative and quantitative assessment methods. The existing conditions as described for the No Project Alternative provide the primary basis of comparison. Appendix 3.14-B provides a discussion of the impact ratings and summarizes the potential impacts.

Qualitative Assessment

A qualitative assessment was used to compare the alternatives when discussing issues such as runoff rates, sedimentation, or other items that would ultimately require a more detailed analytic approach (i.e., at the project level if the decision is made to proceed with the proposed HST system) than appropriate for a program-level analysis. For these items, the differences in impacts between the Modal and HST Alternatives are explained in general, qualitative terms.

Quantitative Assessment

For the quantitative assessment, readily available information on wetland areas, stream locations, existing water quality problem areas, flood zones, and general soil information was used to estimate the magnitude of the potential areas of impacts for the alternatives. The following steps were followed to estimate the potential areas of impact for floodplains and water quality from the No Project, Modal, and HST Alternatives.

- Acreage of floodplains defined as Special Flood Hazard Areas, as defined by FEMA on Flood Insurance Rate Maps, in the study area was identified and estimated to evaluate the area of floodplain potentially impacted by the alternatives.
- Acreage of surface waters (lakes) and the linear feet of surface waters (rivers and streams) in the study area was estimated, using U.S. Geologic Survey (USGS) 1:24,000 scale digital line graphs of blueline streams, including ephemeral streams. The linear feet of surface water was calculated based on the flow-path length of rivers and streams in the study area to evaluate areas potentially affected by the alternatives. Lake surface areas represent the impoundment at maximum capacity.
- Waters with impaired water quality, i.e., waters identified on the Section 303(d) CWA list distributed by SWRCB, in the study area were identified.

3.14.3 Environmental Consequences

Potential impacts on hydrology and water resources which may result from the alternatives or the proposed HST system alignment and station options include potential encroachment on or location in a floodplain, potential impacts on water quality, potential increased/decreased runoff and stormwater discharge due to changes in the amount of paved surfaces, potentially increased or decreased contribution of nonpoint-source contamination from automobiles, and potential impacts on groundwater from dewatering or reduction of groundwater recharge.

A. EXISTING CONDITIONS COMPARED TO NO PROJECT ALTERNATIVE

The existing conditions assume that the effects of the current built environment on hydrologic resources and water quality would continue. The No Project Alternative assumes that in addition to existing conditions, planned and programmed transportation improvements would be constructed and operational by 2020. The potential impacts of the No Project Alternative on hydrologic resources and water quality are assumed to be limited because typical design and construction practices would need to meet permit conditions. However, some impacts on hydrologic resources would likely result from the implementation of the projects under the No Project Alternative, such as increased runoff from added lanes of paved surface and new columns for expanded bridges over rivers and streams. However, attempting to estimate these potential changes would be speculative. It is assumed that project-level environmental documents and permits would be prepared by project proponents for future projects that would affect hydrologic resources and water quality. These project-level documents would identify and analyze, and avoid, minimize, or mitigate potential impacts on hydrology and water quality to the extent feasible.

It is assumed that existing conditions would not change substantially, and thus the existing conditions serve as the baseline to which the impacts from the Modal Alternative and HST Alternative would be added.

B. NO PROJECT ALTERNATIVE COMPARED TO MODAL AND HST ALTERNATIVES

It is assumed that any improvements associated with the Modal and HST Alternatives would be in addition to those included in the No Project Alternative. Based on available information for the study area, there is a substantial difference in the estimated acreage and linear feet of hydrologic resources that would potentially be crossed by the Modal Alternative compared to the HST Alternative (as shown in Table 3.14-1). These estimated areas of potential impacts on hydrologic resources and water quality would not provide a primary means of differentiating among the potential impacts of alternatives, because neither alternative presents significant potential impacts that cannot be substantially avoided, minimized, or mitigated through conventional design and construction processes, and compliance with permits and best management practices (BMPs) required for project permits. For instance, it is expected that streams and rivers would largely be spanned by bridges (culverts also can be used) to minimize potential impacts on the flow and water quality of these hydrologic resources. Further, potential impacts on water quality from surface runoff or erosion during project construction would be identified during the project-specific analysis and the design phase, and standard BMPs would be used to minimize potential impacts. The primary difference between alternatives would be the cost to bridge over streams and rivers, tunnel under wetland areas, or construct elevated guideways to minimize potential impacts on surface flow.

Areas with identified sensitive habitat, such as the Don Edwards San Francisco Bay National Wildlife Refuge (National Wildlife Refuge), the San Francisco Bay and salt marshes, and the Diablo/Pacheco Pass area near Gilroy, are discussed in Section 3.15, *Biological Resources and Wetlands*. These areas have streams and wetlands that provide potential habitat to special-status species. Avoiding or minimizing impacts on hydrologic resources and riparian corridors would be an important factor in

selecting a corridor as a preferred alternative that is expected to include a least environmentally damaging alternative.

Table 3.14-1 summarizes the potential area of the various hydrologic resources within the potentially affected areas that were examined as part of this evaluation. In most cases, the area and extent of the potential direct impacts would be a function of an alternative's alignment, or alignment option in the case of the HST Alternative.

To represent the potential for direct impact to water and biological resources for the System Alternative (Modal and HST), a GIS analysis has been completed for the approximate footprint of the alternative facilities. For the HST Alternative, this analysis identified and quantified potential direct impacts based on the representative alignments within the broader GIS envelopes used to identify the potentially affected resources. For the Modal Alternative, this analysis identified and quantified potential direct impacts for the highway improvements only. The quantifications are representative of the unmitigated potential for direct impacts that could occur within the corridor. See Table 3.14-1A. This analysis focused on non-wetland waters (streams/rivers and lakes/other bodies of water). Subsequent project level engineering and environmental studies would focus on avoidance and minimization of potential impacts.

Table 3.14-1
Summary of Hydrologic Resource within Potentially Affected Areas

Region	Floodplains in Acres (Hectares)	Streams in Linear Feet (Meters)	Lakes[a] in Acres (Hectares)	Erosion in Acres (Hectares)	Groundwater in Acres (Hectares)
Modal Alternative					
Bay Area to Merced	2,872 (1,162)	2,039,748 (621,715)	663 (268)	2,954 (1,195)	14,128 (5717)
Sacramento to Bakersfield	2,235 (905)	161,599 (49,255)	17 (7)	[b]	16,642 (6,735)
Bakersfield to Los Angeles	125 (51)	46,362 (14,131)	32 (13)	3,016 (1,221)	1,276 (516)
Los Angeles to San Diego via Inland Empire	238 (96)	118,210 (36,030)	14 (6)	615 (249)	[b]
Los Angeles to San Diego via Orange County (HST corridor equivalent)	115 (47)	1,410 (430)	0	95 (38)	0
Los Angeles to San Diego via Orange County (conventional rail corridor equivalent)	95 (38)	6,915 (2,108)	5 (2)	1,335 (540)	Low
Modal System-wide Totals[d]	5,540 (2,242)	2,367,329 (721,562)	726 (594)	6,680 (2,703)	32,046 (12,969)
High-Speed Train Alternative					
Bay Area to Merced	305–781 (123–316)	270,057–453,248 (82,313–138,150)	80–226 (32–91)	1,698–2,797 (687–1,132)	2,621–3,995 (1,061–1,617)

specific design and construction standards for stream crossings, including, but not limited to, maintaining open surface (bridged versus closed culvert) crossings, infrastructure setbacks, erosion control measures, sediment controlling excavation/fill practices, and other Best Management Practices.

There is also potential for impacts to groundwater in areas of the system where tunneling or substantial excavation would be necessary. For the portions of the HST system in tunnel, geologic exploration including groundwater sampling would be completed prior to constructing the proposed tunnels. The geologic/soils/groundwater conditions would be evaluated prior to and monitored during construction to aid in the development of construction techniques and measures to minimize effects to ground- and surface water resources. Based on available geologic information and previous tunneling projects in proximity to proposed tunnels the Authority plans to fully line tunnels with impermeable material to prevent infiltration of ground- or surface waters. Infiltration of ground and surface waters into tunnels is undesirable for operations and maintenance reasons as well as the potential for adverse impacts to ground and surface waters. All reasonable measures would be taken to avoid water infiltration. In addition, it is assumed that tunnel boring machines would be appropriately equipped with shielding to minimize the infiltration of higher pressure groundwater during the boring process.

3.14.6 Mitigation Strategies and CEQA Significance Conclusions

Based on the analysis above, and considering the CEQA Appendix G thresholds of significance for hydrology and water quality, and considering the sophisticated design, engineering, and construction practices that would be used (and required in order to obtain permits), the proposed HST system alternative would have a potentially less than significant effect on hydrology and water quality when viewed on a systemwide basis. Placing the conceptual corridors for the HST system alternative within or along existing transportation corridors reduces the potential for adverse effects to these water resources, and engineering and design practices further reduce potential adverse impacts to these water resources (e.g., avoiding encroachments on water resources, use of tunnels lined with impermeable surfaces, infrastructure setbacks from surface waters, using permeable surfaces and structures to reduce flow and drainage obstructions). Additional avoidance and mitigation strategies, as well as the design practices discussed in section 3.14.5, will be applied to reduce these impacts in the second-tier, project-level analyses and in obtaining permits for facilities included in the HST system, should a decision be made to pursue its development.

Proposed general mitigation strategies would be fairly similar for all regions. These strategies are described as general policies that could be adopted and developed in detail at the project-specific level of environmental analysis. First, measures designed to avoid or limit impacts would be considered. If avoidance measures were not feasible, then mitigation measures directed at reconstruction, restoration, or replacement of the resource, in close coordination with state and federal resource agencies, would be considered as part of subsequent project planning, environmental review, and design. Potential mitigation strategies are listed below by resource.

A. FLOODPLAINS

Mitigation for potential impacts on floodplains would include consideration of the following strategies.

- As part of the future project-level analysis, floodplain hydrology/hydraulics would be analyzed to evaluate the impacts of specific designs on water surface elevations and flood conveyance and to evaluate potential flooding risk. Where feasible, avoid or minimize construction of facilities within floodplains. Where feasible, restore the floodplain, if impacted by construction, so it can again operate as before. Where no practicable alternative to avoid construction in the floodplain exists, minimize the footprint of facilities within the floodplain, e.g., by use of aerial structures or tunnels.
- As part of the future project-level analysis, all opportunities for facility redesign or modification to minimize flooding risk and potential harm to or within the floodplain would be assessed.

- Where feasible, avoid construction of facilities within floodplains; where infeasible, minimize the footprint of facilities within the floodplain.

B. SURFACE WATERS, RUNOFF, AND EROSION

Mitigation strategies for potential impacts on surface waters would include consideration of the following.

- As part of the future project-level analysis, conduct studies and evaluate potential alteration in coastal hydrology/hydraulics in tidal lagoons, bays, and marshes from specific construction methods or facility designs. Construction methods or facility designs to minimize potential impacts would be considered and used to the extent feasible.
- Permit requirements as part of project-level review would include Storm Water Pollution Prevention Plans (SWPPPs) and National Pollutant Discharge Elimination System (NPDES) permits. The SWPPP would include BMPs to minimize potential short-term increases in sediment transport caused by construction, including erosion control requirements, stormwater management, and channel dewatering for all stream and lake crossings. Regional NPDES permit requirements would be followed and BMPs, as required for new developments, would be implemented. These may include measures to provide permeable surfaces where feasible and to retain and treat stormwater onsite using catch basins and treatment (filtering) wet basins. Other measures to manage the overall amount and quality of stormwater runoff to regional systems would be detailed as part of SWPPP.
- Apply for and obtain appropriate permits under Sections 404 and 401 of CWA and comply with mitigation measures required in the permits. Other mitigation measures may include habitat restoration, reconstruction onsite, or habitat replacement offsite to compensate for loss of native habitats and wetlands. The ultimate goal of the mitigation would be to ensure minimal impact on surface water quality.
- Under the requirements of the NPDES Caltrans Statewide Storm Water Permit and the Construction General Permit, a Storm Water Pollution Prevention Plan (SWPPP) would be developed during construction and implemented to reduce pollutants in storm water discharges and the potential for erosion and sedimentation
- Implement best management practices (BMP's) which would include:
    - Practices to minimize the contact of construction materials, equipment, and maintenance supplies with storm water
    - Practices to reduce erosion of exposed soil including soil stabilization, watering for dust control, perimeter silt fences, placement of rice straw bales, and sediment basins, and
    - Practices to maintain water quality including infiltration systems, detention systems, retention systems, constructed wetland systems, filtration systems, biofiltration/bioretention systems, grass buffer strips, ponding areas, organic mulch layers, planting soil beds, sand beds, and vegetated systems (biofilters) such as vegetated swales and grass filter strips that are designed to convey and treat either shallow flow (swales) or sheetflow (filter strips) runoff.
- Work around various surface water bodies would be required to follow Sections 401 and 404 of the Clean Water Act and applicable permit requirements.
- Follow requirements of Section 10 of the Rivers and Harbors Act if work is required around a water body designated as Navigable and applicable permit requirements.

- Work along the banks of various surface water bodies would require an application for a Lake or Streambed Alteration Agreement.
- Implement a spill prevention and emergency response plan to handle potential fuel or other spills.
- Incorporate bio-filtration swales to intercept surface runoff.
- Where feasible, avoid significant development of facilities in areas that may have substantial erosion risk, including areas with erosive soils and steep slopes.

C. GROUNDWATER

Mitigation to reduce potential impacts from construction and operation of project components on groundwater discharge or recharge would include consideration of the following strategies.

- As part of the future project-level analysis, minimize development of facilities in areas that may have substantial groundwater discharge or affect recharge.
- Apply for and obtain waste discharge requirements, where needed (e.g., for de-watering), as part of project-level review.
- As part of the future project-level analysis, develop facility designs that are elevated, or at a minimum are permeable, and would not affect recharge potential where construction is required in areas of potentially substantial groundwater discharge or recharge.
- Apply for and obtain a SWPPP under NPDES permit requirements for grading, and describe BMPs that would control release of contaminants near areas of surface water or groundwater recharge (include constraining fueling and other sensitive activities to alternative locations, providing drip pans under some equipment, and providing daily checks of vehicle condition).
- Include consideration of use and retention of native materials with high infiltration potential at the ground surface in areas that are critical to infiltration for groundwater recharge.

The above mitigation strategies, which include further study leading to refinement of site-specific mitigation measures and Best Management Practices, are expected to substantially lessen or avoid impacts to hydrology and water quality. At the second-tier, project-level review, applications of these mitigation strategies are expected to reduce impacts to hydrology and water quality to a less-than-significant level. Additional environmental assessment will allow more precise evaluation in the second-tier, project-level environmental analyses.

3.14.7 Subsequent Analysis

Subsequent analysis to further identify potential impacts on water quality and hydrologic resources would be required as project development, environmental review, and facility design are pursued, if a decision is made to go forward with the proposed HST system. This subsequent analysis may include the following.

- Further analysis and assessment of potential facility impacts on floodplains, specifically on flood elevations, as specific locations and facility designs are developed to determine if the proposed facility is in the base floodplain (that area which has a 1% or greater chance of flooding in any given year). The analysis would identify potential encroachment on study-area floodplains as defined in Executive Order 11998 for Floodplain Management (23 C.F.R. § 650[a]) and DOT Order 5650.2, or location of facilities in a 100-year floodplain without adequate mitigation measures.

- Further analysis (hydrologic modeling of flow rates) of potential construction and facility impacts on surface hydrology in coastal areas and tidal marshes and lagoons, and on other surface waters.
- Analysis of potential construction and facility impacts on surface hydrology in areas that are characterized as wetlands and that were not included in this analysis because field verification and wetland delineation was not part of this program-level evaluation. (See Section 3.15, *Biological Resources and Wetlands*, for discussion of wetlands.)
- Field surveys of potential surface water impacts to further analyze potential impacts on water quality and to seek required permits from the appropriate agencies.
- Identification of potentially substantial alteration in water-flow and drainage patterns, including increased storm water runoff, or increased groundwater discharge or reduction of groundwater recharge.
- Evaluation of potential impacts of the alternatives on groundwater recharge and infiltration systems.
- Identification and study of areas of shallow groundwater to determine possible dewatering impacts resulting from construction.
- Analysis of how the different alignment options would contribute to total additional impervious surface and the subsequent potential additional impacts on surface runoff. This analysis would also identify potential mitigation measures, including onsite retention facilities.
- Field geotechnical studies to evaluate the potential for erosion and associated risks.
- Field surveys of groundwater discharge or recharge conditions. Additional supplemental analysis of groundwater conditions with information from other geotechnical studies.

used as the primary source for delineation of vegetation communities along the HST and Modal Alternatives. However, the classification is based on Holland (1986). The most recent vegetation classification for California (Swayer and Keeler-Wolf 1995) was not used, as this data is not available in geospatial contexts. Geospatial data for threatened and endangered species and special-status species was obtained from the California Natural Diversity Data Base (CNDDB) (California Department of Fish and Game 2002). Information on wildlife movement corridors was obtained from the *Missing Linkages* report prepared by the California Wilderness Coalition (2000).

The type and extent of jurisdictional wetlands within the study areas came from the National Wetland Inventory (NWI) maintained by the U.S. Fish and Wildlife Service (USFWS) to provide information on the characteristics, extent, and status of the nation's wetlands and deepwater habitats. NWI digital data files are records of wetlands location and classification as developed by the USFWS. The federal Geographic Data Committee adopted this classification system as a national classification standard in 1996. The location of the wetlands is mapped on U.S. Geologic Survey (USGS) 7.5-minute topographic quadrangle maps with codes that provide information on the water body type and substrate. The NWI maps do not show all wetlands since the maps are derived from aerial photo interpretation with varying limitations due to scale, photo quality, inventory techniques, and other factors. Consequently, the maps tend to show wetlands that are readily photo-interpreted given consideration of photo and map scale. This level of information, though incomplete for some areas, provides a general overview of areas with potential sensitivity for wetland impacts that is used in the comparison of alternatives and the identification of areas where subsequent field work and wetland delineation would be conducted in the next phase of environmental evaluation, should HST be carried forward for further analysis. Wetland information, where previously mapped, is quantified to estimate the approximate acres potentially affected by the alternatives.

In addition, the Authority pursued further research regarding additional sources of information on wetland and water resources as a response to comments. The research included over 12 agency and organizational data sources. Most of the data sources were based on or included the same information as the NWI and USGS databases. One exception was the California Spatial Information Library's Hydrographic database, which included a more comprehensive coverage of water resources than our previous sources. However, the additional information was still only a marginal increment over the USGS database.

In terms of information on wetlands resources, the co-lead agencies acknowledge the areas of the NWI where wetland resources have yet to be mapped; however, extensive attempts to obtain information in these areas has resulted in very little additional data. In these areas of limited or no wetlands information, the co-lead agencies have determined that water resources are the best indicator of the presence of wetlands for this program level analysis. Comprehensive and complete information exists for the water resources and is readily compared in the Program EIR/EIS for each alignment option to determine those that have the least potential for impacting water resources. Subsequent project level studies will provide field surveys in all areas of potential impact along the alignment options carried forward.

Digitized information for vernal pools was obtained from the California Department of Fish and Game (CDFG) and included USFWS Holland vernal pools coverage with density classes and supporting metadata file; Northern San Joaquin Valley vernal pool complexes identified by California State University, Chico; and a vernal pool species layer showing critical habitat for a suite of vernal pool species.

There were no geospatial data available for riparian corridors. The presence of streams and corresponding riparian vegetation was developed using USGS quadrangle maps, and geospatial results of the California GAP and CNDDB for specific riparian vegetation polygons.

Geographic information systems (GIS) data was exported to excel spreadsheets to show acreages of attributes for each alternative and alignment option.

A detailed description of the data collection methods is provided in Appendix 3.15-C. No field or onsite visits were made for this Program EIR/EIS. GIS files of highway, rail, and airport improvements were digitally overlaid on top of the datasets of biological resources and wetlands to identify locations where the study areas around potential alignments for proposed alternatives might include portions of sensitive biological areas. The study area was defined to encompass both direct and indirect construction-related and operational impacts.

The areas of overlap—wherever the study area included a sensitive vegetation community or habitat—were considered to constitute areas of potential impacts from the proposed alternatives. The number of reported occurrences of a particular biological resource within the study area, the linear contact of the study area with the biological resource, and acreage of the resource within the study area were counted and compiled. These results were processed into a series of frequency distributions that allowed an estimate of high, medium, or low for a potential impact.

There are inevitable inaccuracies and gaps in the statewide and federal datasets and vegetation data layers due to differences in collection methods, dates the data was first collected, changes in habitat conditions, and myriad other factors. For the scale of analysis for this Program EIR/EIS, these available data sources are considered appropriate to identify key differences between proposed alternatives and potential alignment options. Given the datasets, the lack of identification of an impact does not necessarily mean that this portion of the proposed alternative would not result in potential impacts on biological resources, only that location-specific data would be required to make a more precise determination. Likewise, the identification of a potential impact on a specific resource is intended to be conservative and in some instances may be an overstatement, because neither habitat that is sensitive nor species of concern may be found in or near the footprint of the proposed corridor or actual alignment. Verification of potential impacts would require future location-specific study and evaluation to determine the level and extent of potential impact. This level of analysis would be part of a subsequent stage of environmental review.

C. SIGNIFICANCE CRITERIA FOR BIOLOGICAL RESOURCES

The significance criteria for identifying potential impacts on biological resources from proposed projects/actions are based on federal and state guidelines and general indicators of significance, including guidelines or criteria in NEPA, CEQA, CWA, CESA, ESA, and California Fish and Game Code. Project-specific criteria would be applied at the project level of environmental analysis when permits are being sought, if a decision is made to proceed with a proposed HST following this program-level analysis.

Based on the presence or absence of sensitive resources, an alternative may have a considerable impact on biological resources if its implementation would result in any of the following.

- Potential modification or destruction of habitat, movement/migration corridors, or breeding areas of endangered, threatened, rare, or other species as described above.
- Potential loss of a substantial number of any species that could affect the abundance or diversity of that species beyond the level of normal variability.
- Potential impacts on or measurable degradation of protected habitats; sensitive natural vegetation communities; wetlands; or other habitat areas' plans, policies, or regulations.

miles in length. The program-level analysis, utilizing the sightings reported in the CNDDB, indicates that the BNSF alignment is considered San Joaquin kit fox habitat, while the UPRR alignment is not described as habitat. However, this information was not confirmed by biological surveys and appears to be a mapping anomaly of the CNDDB. The habitat indicators for kit fox in the Bakersfield area include annual grassland and salt scrub vegetation within ruderal open space areas [Steve Avery, senior wildlife biologist and San Joaquin kit fox expert, Jones & Stokes]. There is no indication that these habitat indicators differ within the two alignments [Steve Avery]. In addition, the entire area encompassing both alignments is considered habitat for the San Joaquin kit fox according to USFWS [Kit Fox Habitat coverage information provided to FRA on January, 2005; Cheryl Hickman, USFWS]. Therefore, the amount of endangered species habitat affected by the alignments is considered equivalent, with no difference between the two alignments on effects to endangered species.

C. BAKERSFIELD TO LOS ANGELES

Figures 3.15-5 and 3.15-6 show the general locations of sensitive habitat and wetlands in the Bakersfield to Los Angeles region in relationship to Modal Alternative corridors and alignments for the HST Alternative.

The Modal and HST Alternatives would potentially impact a similar number of wildlife movement/migration corridors in this area. Based on a general assessment of the potential magnitude of the possible impacts, while taking into consideration the relative sensitivity of the resources potentially affected and expected mitigation requirements, the Modal Alternative would have the potential to impact a greater number of sensitive biological resources than the HST Alternative. However, because the HST Alternative would traverse more undeveloped (and possibly more unsurveyed) areas than the Modal Alternative, once the project-level analysis is completed and field surveys of resources are performed, it is possible that the HST Alternative could impact a larger number of special-status species and habitat than has been estimated in this document. The potential to use tunneling and elevated structures and special construction techniques to reduce or avoid impacts of the HST Alternative would be included in the design for the project, should a decision be made to proceed to the next phase of analysis.

Modal Alternative

Implementation of the Modal Alternative would potentially result in impacts on about 140 ac (56.7 ha) of special status species habitat, 10 sensitive species, five wildlife movement/migration corridors, 6.5 ac (2.6 ha) of jurisdictional wetlands, and marine/anadromous fish resources at the Santa Clara River. Most of these impacts would result from the widening of I-5 from SR-99 to SR-14, and of SR-14 from Palmdale to I-5. Extensive cut and fill would be required for the Modal Alternative along I-5 in the Grapevine mountain crossing where biological and wetland resources are shown in existing data sources.

It is expected that the Modal Alternative would result in potential impacts on sensitive biological resources primarily as direct and indirect impacts during construction. Operational impacts are expected to be minor in comparison to construction impacts and would likely consist of indirect impacts such as dust; the introduction and spread of nonnative, invasive plants; stormwater runoff; siltation; and erosion.

High-Speed Train Alternative

Implementation of the proposed HST Alternative would potentially result in impacts on special status species habitat (between 154 ac [62.3 ha] and 238 ac [96.3 ha]), 12 to 14 sensitive species, five wildlife movement/migration corridors, between 2 ac (0.8 ha) and 14 ac (5.7 ha) of wetlands, and marine/anadromous fish resources at the Santa Clara River. Most of these impacts

construction access roads would be greatly limited, and avoided altogether in some segments, by using in-line construction, i.e., by using the new rail infrastructure as it is built to transport equipment to and from the construction site and to transport excavated materials away from the construction area and to appropriate re-use (e.g., as fill material, aggregate for new concrete, etc.) or disposal sites. To avoid creating access roads in sensitive areas, necessary geologic exploration would be accomplished using helicopter transport for drilling equipment and site restoration to minimize surface disruption. Small pilot tunnels would be utilized where more extensive subsurface geology information is needed.

The Authority's design practices emphasize the use or reuse of excavated materials within the confines of the project and avoidance or minimization of any additional impact on sensitive areas from placement of excess material. While the specific uses or the quantity of placement of excavation material cannot be determined at the program level of environmental study, they would be addressed during subsequent project-level environmental analysis. The vast majority of the excavated tunneling material is anticipated to be suitable for reuse in the construction of the proposed HST facilities. Potential uses include aggregate for concrete and fill material for other portions of the line. Balancing the earthwork operations will be a key objective in the subsequent project level engineering. The current conceptual HST alignment designs considered in the Program EIR/EIS use the placement of all materials excavated from tunnels to be used as fill material along adjacent HST alignments.

Uses of excavated materials would, in part, be determined by the timing of project construction. At any point in time, various construction projects (with appropriate environmental permits) will require disposal and re-use of fill material. The Authority would coordinate the exchange of such materials with other ongoing projects to the ultimate benefit of each.

3.15.6 Mitigation Strategies and CEQA Significance Conclusions

Based on the analysis above, and considering the CEQA Appendix G thresholds of significance for biological resources and wetlands, the proposed HST system alternative is considered to have a significant effect when viewed on a systemwide basis. Placing the conceptual corridors for the HST system alternative largely within or along existing transportation corridors reduces the potential for adverse effects to these resources, and engineering and design practices further reduce potential adverse impacts to these resources (e.g., avoiding encroachments on habitat and wetlands, use of aerial structures or tunnels lined with impermeable surfaces to avoid sensitive areas). However, portions of the HST system would be in new corridors and some biological resources and wetlands will likely be adversely affected should a decision be made to develop the proposed HST system. At the programmatic level of analysis, it is not possible to know precisely the location, extent and particular characteristics of impacts to these resources. Mitigation strategies, as well as the design practices discussed in section 3.15.5, will be applied to reduce these impacts.

Potential strategies to mitigate remaining impacts on biological resources would include: (1) field verification of sensitive resources; (2) filling of data gaps; (3) subsequent project-specific analyses of environmental impacts; (4) consultation with appropriate resource agencies to refine avoidance and mitigation measures, and; (5) developing and adopting a mitigation monitoring program.

To the extent practicable, direct and indirect impacts to biological resources will be avoided by refinements to detailed alignments to be developed during the project-level design and environmental evaluation phase. Further possible mitigation measures for consideration at the project level include: (1) project –design changes, e.g., construction on above-ground structures, in a tunnel, or to reduce the impact footprint; (2) participation in or contribution to existing or proposed conservation banks or natural management areas, including possible acquisition, preservation, or restoration of habitats; (3) relocation of sensitive species; and (4) construction of wildlife underpasses, bridges, and/or large culverts, to facilitate known wildlife movement corridors. Wildlife crossings, such as those constructed for bobcat and

mitigation banks or in-lieu fee programs in cases where they result in more regional or watershed benefit than on-site compensatory mitigation. Approved mitigation and in-lieu fee programs would include measures that ensure the no net loss of wetlands policy is met.

The above mitigation strategies, which include further study to obtain additional data and to refine site-specific mitigation measures, are expected to substantially lessen or avoid impacts to biological resources and wetlands. With the second-tier, project-level review and as a result of consultations with wildlife agencies and obtaining required permits for segments of the HST system facilities, and complying with permit terms and conditions, impacts to biological resources and wetlands will be reduced. Sufficient information is not available at the program level to conclude with certainty that mitigation will reduce impacts to affected resources to a less than significant level in all circumstances. Therefore, impacts to biological resources and wetlands are considered significant at the program level even with the application of mitigation strategies. Additional environmental assessment will allow more precise evaluation in the second-tier, project-level environmental analyses.

3.15.7 Subsequent Analysis

Identification of potential impacts on various biological resources for this Program EIR/EIS has primarily relied on the available GIS database, other GIS tools, and review of available literature. These sources encompass a broad range of information that may not exactly correspond to actual field conditions. Project-level studies would be required to obtain more reliable assessments of potential impacts on biological resources in the study area.

The subsequent biological resources analyses required for project environmental documentation would focus on project-specific impacts that reflect more precise definitions of the right-of-way, the proposed facility locations, and the operations. Areas of possible further study include the following.

- Field surveys to determine the extent and type of general and sensitive biological resources, including focused surveys following resource agency protocols for special-status species.
- Mapping of plant communities and sensitive biological resources within and adjacent to the proposed HST system right-of-way/impact footprint to address direct and indirect impacts on biological resources.
- Study of wildlife movement/migration corridors. Major wildlife movement/migration corridors within the study area have been identified. Field studies could identify additional locally significant corridors and provide data to assist in the design of bridges and wildlife crossings at crucial travel route points.
- Delineation of waters and wetlands to determine the extent of USACE and CDFG jurisdiction, and consultation conducted with these agencies regarding appropriate mitigation.
- Hydraulic analysis of lagoon crossings to identify potentially feasible improvements that may help improve tidal hydraulics and remove barriers to floodwaters.
- Consultation with USFWS, as needed, for potential impacts on federally listed plant and wildlife species, including the preparation of a biological assessment or assessments, and biological opinions for each phase of project implementation. Early consultation would help to refine appropriate mitigation strategies. Upon project level initiation of Section 7 consultation, for project study areas the FRA and the Authority would in principle accomplish the steps identified by DOI by: 1) identifying the conservation needs of each listed species with the potential to be impacted by the proposal; 2) identifying the threats to each listed species' conservation related to the proposed action; 3) identifying species conservation or management units and the threats affecting those units; 4) identifying species' conservation goals framed within the context of the HST program; and 5) developing conservation/management unit strategies. The FRA and the Authority would prepare Biological Assessments to address the affected conservation/management units identified.

- Consultation with CDFG regarding potential impacts on state-listed plant and wildlife species and appropriate mitigation for such impacts. Early consultation would help to refine appropriate mitigation strategies.
- Assessment of potential for participation in HCPs.
- Development of a mitigation monitoring plan for environmental compliance during construction.
- Application for necessary permits (USACE Nationwide Permit or Section 404, USFWS Biological Opinion, CDFG consistency determination with USFWS Biological Opinion, and 1600 Streambed Alteration Agreement, RWQCB Section 401).

Comment Letter AF007 Continued

proposed Diablo Direct alignments and Pacheco Pass alignment would be minor when compared to the Altamont Pass alignment, we believe decisions relating to the elimination of alternatives in this regional segment are not ripe. Instead, the Corps requests decisions regarding the Bay Area to Merced segment be deferred until new or supplemental information and analytical analyses could more thoroughly and accurately substantiate the degree and magnitude of impacts associated with each alternative. In doing so, a reasonable range of practicable alternatives would be preserved for the future NEPA analysis, which in turn would better inform the public and decision makers of the direct, indirect, and cumulative losses to the aquatic ecosystem.

Identification of Resources & Evaluation of Impacts to the Aquatic Environment

The Council on Environmental Quality (CEQ) requires the data and analyses in an EIS are commensurate with the importance of the impact (40 C.F.R. § 1502.15). Similarly, the Guidelines emphasize the level of documentation should reflect the significance and complexity of the discharge activity (40 C.F.R. § 230.6). In the context of this Project, the evaluation of impacts presented in Section 3.15 of the Draft PEIR/EIS suggests the proposed alternatives would potentially result in significant adverse impacts to waters of the U.S. For instance, figures presented in Appendix 3.15-D estimate a potential loss of up to 9,627 acres of wetlands within the designated 2,000-foot-wide study area for the San Francisco to San Jose segment. While we recognize this and other acreages presented in Table 3.15-D-1 are likely to be over reported since the evaluation assumed a worse case scenario, the projected magnitude of impacts to aquatic resources justifies the need for a rigorous study and candid disclosure of impacts. To this end, relevant quantitative information should be coalesced in the main report of the Final PEIR/EIS rather than relegated to appendices. Additionally, supplemental data should augment the evaluation, particularly in areas of known sensitivity for which little site-specific data has been collected.

AF007-3 cont

The programmatic environmental evaluation provides a planning-level assessment of the existing environmental resources within a relatively large study area and with a correspondingly broad analysis of potential effects. These landscape-level assessments largely rely upon existing data for inventorying resources. In fact, the primary data source used for identifying wetlands is the National Wetlands Inventory (NWI) maps. Section 3.15 of the Draft PEIR/EIS acknowledges that these maps do not show all wetlands and indicates the level of information is therefore incomplete in some areas. Due to the various shortcomings of NWI maps, the Corps recommends the Final PEIR/EIS incorporate additional existing data to more accurately and thoroughly depict water resources. Furthermore, the Corps recommends the Final PEIR/EIS clearly explain the assumptions and/or more accurately capture the projected direct impacts to biological resources by re-calculating the acreages of impact using a 50- to 100-foot-wide footprint of disturbance, which would more closely correspond to the actual construction and grading limits.

Adverse indirect effects on aquatic resources also are expected to result from the implementation of the alternatives, although they are not entirely disclosed or understood based upon the discussion presented in Section 3.15 of the Draft PEIR/EIS. The loss or degradation of waters of the U.S. must meaningfully be considered in the context of the NEPA and the Guidelines. Based on our regulations and policies, the Corps places high degrees of importance on the functional losses either directly or indirectly caused by the discharge of dredged or fill material into waters of the U.S., including wetlands. Therefore, to the extent practicable for this programmatic document, the Final PEIR/EIS should quantitatively and/or qualitatively address the anticipated indirect effects to aquatic ecosystems in terms of sedimentation (e.g., sediment transport, aggradation, degradation), erosion, hydrologic regime, water quality, floodplain encroachment, and habitat integrity.

AF007-3 cont

Mitigation/Sequencing

The NEPA requires a discussion of mitigation for adverse environmental impacts of alternatives, where mitigation is defined to include avoidance, minimization, restoration and creation of habitats. Section 404 of the CWA also requires consideration of practicable alternatives to avoid and minimize adverse environmental impacts, and further requires that these measures be exhausted before turning to restoration and creation of habitats.
The proposed tunneling of the high-speed train alignments in several segments of the northern mountain crossings and the Tehachapi Mountains in southern California would likely avoid or reduce the direct impacts to surface water resources, which is important in terms of demonstrating that the Project has taken appropriate and practicable steps to minimize potential adverse impacts of the discharge on the aquatic ecosystem (40 C.F.R. 230.10(d)). We support the implementation of tunneling and any other design features that would further avoid or minimize impacts to the aquatic environment so long as such engineering techniques are proven to be otherwise environmentally compatible.

AF007-4

The Corps strongly encourages the FRA and HSRA to make the most of the timely mitigation planning opportunities afforded at this stage of the environmental process by leveraging the resources of local, State, Federal, and non-profit entities to help with watershed-wide identification of areas suitable for wetlands enhancement, restoration and/or in-perpetuity preservation. In this vein, the Final PEIR/EIS should propose a more meaningful suite of mitigation strategies that would avoid and minimize impacts and/or compensate for any unavoidable adverse impacts to aquatic resources.

Data Needs

Albeit a landscape-level analysis, disclosure of the degree and magnitude of impacts is necessary for soliciting meaningful public input as well as for making informed decisions. As a matter of efficacy, Section 3.15 of the Draft PEIR/EIS should include a summary of the major

AF007-5

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Comment Letter AF007 Continued

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impacts to water resources with accompanying aerial or topographic maps of sufficient scale that geo-spatially illustrate the potential direct and indirect effects associated with the discharge of dredged or fill material into waters of the U.S. We found Figures 3.15-2, 3.15-4A, 3.15-4B, 3.15-6, 3.15-8 and 3.15-10 to be deficient for such purposes.

Although not all-inclusive, the following list comprises a general overview of the potential data needs and analyses for identifying and assessing waters of the U.S. during the project-level, or Tier 2, environmental evaluation.

- A delineation of all wetlands, which could be affected by the proposed Project. The delineation must follow the procedures set forth in the 1987 Wetlands Delineation Manual and include the data support forms.
- A delineation of other waters of the U.S. as follows:
  - For tidal waters, the high tide line shall be determined as described at 33 C.F.R. § 328.3(d);
  - For non-tidal waters, the ordinary high water mark shall be determined as described at 33 C.F.R § 328.3(e).
- All plant and animal taxa encountered during site visits;
- A detailed assessment of the functions and values of wetlands and other waters of the U.S. Functions are the physical, chemical and biological attributes of a wetland/waters without regard to their importance to society. Examples of functions include flood storage, wildlife habitat, and grounder water recharge. Values are those wetlands/waters functions that generally are regarded as beneficial to society, such as recreation, aesthetics, and wildlife viewing. The functional assessment should determine which functions are performed by the wetlands/waters, the value of those functions, and how the project will affect the continued performance of the identified functions. The precise assessment methodology for characterizing the functions and values of aquatic resources should be determined in close consultation with the Corps.
- A detailed assessment of project impacts on special aquatic sites and other waters as follows:
  - A detailed description of the project impacts, including the type of impact (e.g., habitat removal, fragmentation, introduction of exotic species) and its magnitude. These effects must be evaluated in the appropriate local or regional context.
- A detailed purpose and need statement, coordinated with the appropriate agencies. It is noteworthy to mention the Corps is solely responsible for the final approval of the overall project purpose used to conduct the 404(b)(1) alternatives analysis.
- A feasibility study of candidate mitigation sites
- Maps showing the occurrences of all associated sensitive species that have been identified within the survey area in relation to project features, including federally listed endangered and threatened species and designated critical habitat.
  - The size of the population(s) in terms of numbers of individuals and habitat occupied

AF007-5 cont

-8-

  - The portion of the population(s) to be directly affected by each project alternative
  - The portion of the population to be indirectly affected by each alternative
  - The amount of suitable habitat to be directly or indirectly affected under each alternative

AF007-5 cont

F134510

Response to Comments of Aaron O. Allen, Acting Chief Regulatory Branch – U.S. Army Corps of Engineers, August 31, 2004 (Letter AF007)

AF007-1

The FRA acknowledges the MOU between the FRA and cooperating federal agencies for this program environmental process and the general framework for the integration of NEPA and Clean Water Act Section 404 issues.

AF007-2

The FRA acknowledges the regulatory context and expectations for future steps to satisfy Clean Water Act Section 404 permitting requirements.

AF007-3

3a. Regarding the Northern Mountain Crossing, please see Standard Response 6.3.1. The Program EIR/EIS is based on available data bases and information, and now further study is planned in a separate program EIR/EIS considering a broad corridor including Pacheco Pass generally in the south and Altamont pass generally in the north before identifying a preferred alignment for the proposed HST system to connect the Central Valley to the Bay Area. The FRA consulted with Council on Environmental Quality (CEQ) on this approach and CEQ found that it appears to be consistent with NEPA and CEQ regulations (letter from Horst Greczmiel dated January 24, 2005). The referenced designation of "aquatic resources of national importance" (which is not a statutory designation) occurred in conjunction with the approval of the first phase of the extensive Diablo Grande residential and commercial development, was based on a broad literature review, and was not based on field review of resources in the area, parts of which have been in long term ranching and grazing use.

3b. Comment: "relevant quantitative information should be coalesced in the main report of the Final PEIR/EIS rather than relegated to appendices."

To represent the potential for direct impact to water and biological resources for the System Alternatives (Modal and HST), additional GIS analysis has been completed for the approximate footprint of the alternative facilities. The quantifications are representative of the unmitigated potential for direct impacts that could occur within the corridor. The analysis is included in Section 3.15 of the Final Program EIR/EIS with the appropriate summary information included in Chapter 6: HST Alignment Options Comparison and the Summary.

3c. Comment: "Additionally, supplemental data should augment the evaluation, particularly in areas of known sensitivity for which little site-specific data has been collected." ..... "incorporate additional data to more accurately and thoroughly depict water resources."

The Authority and FRA are confident that all available and relevant information, commensurate with the level of decisions being made, has been considered in the preparation of the Final Program EIR/EIS. (See the following description of information sources applied to the analysis.) In addition, the Authority pursued further research regarding additional sources of information on wetland and water resources as a response to this and other similar comments. The research included over 12 agency and organizational data sources. Most of the data sources were based on or included the same information as the NWI and USGS databases. One exception was the California Spatial Information Library's Hydrographic database, which included a more comprehensive coverage of water resources than our previous sources. However, the additional information was still only a marginal increment over the USGS database previously applied.

In terms of information on wetlands resources, the co-lead agencies acknowledge the areas of the NWI where wetland resources have yet to be mapped; however, extensive attempts to obtain information in these areas has resulted in very little additional data.

Soczka, Ernie. NRG Cabrillo Power. 2002. Personal communication. November 1, 2002.

Soczka, Ernie. NRG Cabrillo Power. 2003. Personal communication. January 6, 2003.

State Coastal Conservancy and the City of Del Mar. 1979. San Dieguito Lagoon Resource Enhancement Program.

Wootten, Ron. 2002. Buena Vista Lagoon Restoration Feasibility Analysis – Request for Proposals. Prepared for the Buena Vista Lagoon Foundation. April 8, 2002.

www.ceres.ca.gov/wetlands/geo_info/so_cal/agua_hedionda. 2002. Obtained information on Agua Hedionda Lagoon. October 29, 2002

www.epa.gov/owow/wetlands/restore/5star/fy02grants. 2002. Obtained information on lagoon restoration activities. October 29, 2002.

www.nwi.fws.gov. 2003. National Wetlands Inventory. U.S. Fish and Wildlife Service.

www.torreypine.org/tplagn. 2002. Los Peñasquitos Marsh Natural Preserve and Lagoon. Written by Carl L. Hubbs, Thomas W. Whitaker, and Freda M. H. Reid. Torrey Pines Association. Website visited October 28, 2002.

3d. To represent the potential for direct impact to water and biological resources for the System Alternatives (Modal and HST), additional GIS analysis has been completed for the approximate footprint of the alternatives to clarify the information concerning potential impacts. For the HST Alternative this analysis identified and quantified potential direct impacts based on the representative Draft Program EIR/EIS alignments within the broader GIS envelopes used to identify the potentially affected resources. For the Modal Alternative this analysis identified and quantified potential direct impacts for the highway improvements only. Airport improvements represented a relatively minor portion of the additional right of way required and were not included for this additional analysis. The quantifications are representative of the unmitigated potential for direct impacts that could occur within the corridor. Subsequent project level engineering and environmental studies would focus on avoidance and minimization of potential impacts. The analysis is included in Section 3.14, Section 3.15, Chapter 6 and the Summary of the Final Program EIR/EIS.

3e. Comment: "to the extent practicable for this programmatic document, the Final PEIR/EIS should quantitatively and/or qualitatively address the anticipated indirect effects to aquatic ecosystems in terms of sedimentation (e.g., sediment transport, aggradation, degradation), erosion, hydrologic regime, water quality, floodplain encroachment, and habitat integrity."

Section 3.17 of the Final Program EIR/EIS addresses the anticipated indirect effects to aquatic ecosystems in general qualitative terms as they relate to the construction and operation of the facilities proposed in the HST and Modal Alternatives. The description of design practices addresses features included in the proposed HST system to reduce and avoid potential adverse environmental impacts and how the proposed HST system design would be further refined and developed to minimize and avoid direct and indirect impacts to aquatic and biological resources has been added to Section 3.14.5, and Section 3.15.5 of the Final Program EIR/EIS.

AF007-4

Each environmental area (sections of Chapter 3) has been modified to include more specific mitigation strategies that would be applied generally for the HST system. Each section of Chapter 3 also outlines specific design features that will be applied to the implementation of the HST system to avoid, minimize, and mitigate potential impacts.

AF007-5

Please see response AF007-3d. Inclusion of more detailed mapping in the Program EIR/EIS is not feasible because of the vast geographic scale of the alternatives at this point in the planning environmental process. Please see the Final Program EIR/EIS Section 3.14.3 and Section 3.15.3 regarding a discussion of the

representative levels of impacts to waters of the U.S. from the HST Alternative. Moreover, additional mitigation measures for minimization of impacts to waters of the U.S. have been added to Section 3.14.6 and 3.15.6.

The Co-lead agencies agree with the list of information and analyses that would be needed for the project-level or Tier 2 environmental evaluation.

Comment Letter AF008

AF008

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

August 31, 2004

Mark Yachmetz
Associate Administrator of Railroad Development
Federal Railroad Administration
1120 Vermont Avenue, NW, MS 20
Washington, D.C. 20590

Subject: California High Speed Train System Draft Programmatic Environmental Impact Report/Environmental Impact Statement (CEQ# 040056)

Dear Mr. Yachmetz:

The Environmental Protection Agency (EPA) has reviewed the Draft Programmatic Environmental Impact Report/Environmental Impact Statement (Draft PEIS) for the California High Speed Train System. Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. EPA provided comments to the Federal Railroad Administration (FRA) and the California High Speed Rail Authority (CHSRA) regarding a portion of this Draft PEIS in a previous letter dated February 27, 2004. Our detailed comments on the entire Draft PEIS are enclosed.

EPA is supportive of a high speed train system for California and the potential for this project to reduce motor vehicle and airplane emissions. EPA requested to be a cooperating agency in this NEPA process and has been working with FRA and CHSRA to address the potential environmental impacts of the project as outlined in an April 2003 Interagency Memorandum of Understanding (MOU). According to the MOU, the Draft PEIS is a "Tier 1," or programmatic environmental review document, providing a landscape-level analysis of the potential environmental impacts. The Tier 1 process is expected to eliminate alternatives from further consideration. Future "Tier 2," or project-level analyses, will address site-specific environmental impacts of the remaining alternatives. EPA's comments focus on issues we would like addressed before a Tier 1 Record of Decision is signed and seek to alert FRA to the potential consequences of these decisions on future Tier 2 analyses. AF008-1 AF008-2

The MOU also outlines a process for integrating the requirements of NEPA and Clean Water Act (CWA) Section 404 to streamline the environmental review process. A federal permit from the Army Corps of Engineers under CWA Section 404 will be required for this project at Tier 2 due to anticipated fill of waters of the United States. The MOU seeks to ensure that the alignments advanced to Tier 2 are most likely to contain the "least environmentally damaging practicable alternative," a determination that is required for a CWA Section 404 permit. FRA and CHSRA must also demonstrate avoidance and minimization of impacts to waters of the United States prior to obtaining a CWA Section 404 permit. EPA and the Army Corps of Engineers have been working with FRA and CHSRA to provide guidance regarding the least environmentally damaging practicable alternatives and will continue to work with both agencies through the project-level analysis for the high speed train system. AF008-7

Through this coordination and review, EPA has identified a potential for significant adverse effects within some portions of the proposed high speed train system that could be corrected by project modification or other feasible alternatives, as well as additional information and analyses that should be included in the Final PEIS. EPA has identified potential impacts to aquatic resources of national importance (CWA Section 404(q), 33 U.S.C. 1344(q)), wetlands and water quality, wildlife habitat, and endangered species that would result from the alternative alignments presented for the Diablo Direct and Pacheco alignments within the Bay Area to Merced region. The proposal for a high speed train route following the Diablo Direct alignments presents federal permitting challenges because it would fragment the Diablo Range, bisect aquatic resources of national importance (including Orestimba Creek), and impact state parks, wilderness, and private, state, and federal conservation and mitigation lands. Based on the information available to date, EPA would have difficulty concurring on a Diablo Direct alignment as the least environmentally damaging practicable alternative. The Draft PEIS identifies that a proposed route through the Pacheco Pass may result in significant impacts to waters of the United States, resulting in similar permitting difficulties. Because of the potentially adverse impacts from the Diablo Direct and Pacheco alignments, we recommend deferring a decision on an alignment connecting the Bay Area to Merced until the information in this analysis can be supplemented to demonstrate to the public and the decision-maker that all variations of an Altamont Pass alternative have been fully evaluated in keeping with the CWA Section 404(b)(1) Guidelines. As a cooperating agency, we look forward to meeting with you to discuss whether this new information would best be presented in a supplemental document or in the Final Tier 1 PEIS. This will help to ensure that the alignment moved forward for future Tier 2 project-level study is most likely to contain the least environmentally damaging practicable alternative connecting the Bay Area to Merced region. AF008-3

Significant impacts to biological resources are also expected from the high speed train system alignments connecting Bakersfield to Los Angeles (Interstate-5 and Soledad Canyon). The Soledad Canyon alignment requires more miles of track, with greater impacts to sensitive biological resources and wildlife movement corridors. If aligned next to the Santa Clara River, this alternative would require substantial cut-and-fill within the sensitive Soledad Canyon region. These significant environmental impacts can be avoided by more closely aligning the high speed train route with existing transportation networks. AF008-4

The high speed train system in the Central Valley includes a series of community bypasses to be constructed in addition to alignments proposed through communities. The extra tracks and system requirements related to the additional bypasses more than doubles the number of acres of converted farmland, increases severance of farm parcels, adds noise and visual impacts from additional tracks, and increases impacts to water and biological resources. Because AF008-5

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Comment Letter AF008 Continued

of the potentially significant impacts that would result from the extra tracks required from community bypasses, we recommend that Final PEIS commit to future Tier 2 project-level analysis comparing the high speed train system with and without bypasses.

AF008-3 cont.

In addition to the potential significant adverse effects identified above, EPA has identified additional information and analyses that should be included in the Final PEIS. The quantities in the Draft PEIS pertaining to impacts to biological and water resources represent an "envelope" approach to estimating impacts. The large values presented do not facilitate an understanding of the potential direct impacts from a high speed train system. As discussed in interagency meetings, this warrants additional information more closely approximating potential direct impacts to biological and water resources. EPA also has concerns regarding the cumulative impacts analysis, potential landscape-level impacts to wildlife species associated with the fully grade-separated portions of the high speed train system, and potential impacts associated with tunneling.

AF008-4

Although EPA is supportive of a high speed train system for California, our rating reflects our specific objections to impacts that would result from the two Bay Area to Merced alignments, an alignment through Soledad Canyon connecting Bakersfield to Los Angeles, and bypasses proposed to supplement routes through communities in the Central Valley. For these reasons, EPA has rated the document as EO-2, Environmental Objections - Insufficient Information. We look forward to working with FRA and CHSRA, as a cooperating agency, to identify ways to address these issues and the other concerns identified in the enclosed detailed comments.

The enclosure further describes the above-listed comments and the additional environmental concerns that EPA identified following our review of the Draft PEIS. A "Summary of Rating Definitions" for further details on EPA's rating system is also provided. We appreciate the opportunity to review the Draft PEIS and believe that a well planned high speed train system can offer great economic and environmental benefits for California's future. We look forward to continuing our coordination with FRA and CHSRA as a cooperating agency and are available to discuss the issues addressed in this letter during upcoming interagency meetings. If you have any questions, please feel free to call me at (415) 972-3843. You can also contact Tim Vendlinski, Wetlands Regulatory Office Supervisor at (415) 972-3464 or Lisa Hanf, Federal Activities Office Manager, at (415) 972-3854.

AF008-7

Sincerely,

Enrique Manzanilla, Director
Cross Media Division

Enclosures: EPA's Detailed Comments
Summary of Rating Definitions

3

cc: Mehdi Morshed, California High Speed Rail Authority
Colonel Alex Dornstauder, Los Angeles Army Corps of Engineers
Wayne White, U.S. Fish and Wildlife Service
Crawford Tuttle, California Resources Agency
James Branham, California Environmental Protection Agency

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F134518

Comment Letter AF008 Continued

EPA DETAILED COMMENTS ON THE CALIFORNIA HIGH SPEED TRAIN SYSTEM DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, AUGUST 31, 2004

Clean Water Act Section 404

The Clean Water Act Section 404(b)(1) Guidelines (Guidelines) at 40 CFR Part 230.10(a) state that "... no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." A practicable alternative is one "available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall project purposes." Alternatives from the NEPA documents (including this Tier 1 Draft PEIS) can serve as the basis for the Section 404 alternatives analysis (40 CFR 230.10(a)). As described in the Interagency Memorandum of Understanding (MOU), EPA and the Army Corps of Engineers are committed to working with the Federal Railroad Administration (FRA) and the California High Speed Rail Authority (CHSRA) to cooperate at the Tier 1 programmatic level to streamline decision-making at the Section 404 permitting phase. As such, it is critical that high speed train alternative alignments moved forward to the Tier 2 stage are most likely to contain the least environmentally damaging practicable alternative and that no alternatives are eliminated without this determination. In addition, prior to obtaining a CWA Section 404 permit, FRA and CHSRA will have to demonstrate that potential impacts to waters of the United States have been avoided and minimized to the maximum extent practicable (40 CFR 230.10(a) and 230.10(d)). AF008-8

Northern Mountain Crossings

Diablo Direct Alignments

EPA has objections to the Diablo Direct alignments because they may cause significant adverse effects to the health of the aquatic ecosystem in the Diablo Mountain Range, including the Henry Coe State Park and Orestimba Wilderness. The Diablo Direct alignments would bisect the Diablo Range, resulting in substantial habitat fragmentation, disruption of important wildlife corridors, and impacts to State and Federal mitigation lands established pursuant to permitting and enforcement agreements with the Diablo Grande Resort. EPA recognizes that tunneling is proposed to mitigate habitat fragmentation in this area; however, it is unclear how effective tunneling would be in minimizing fragmentation. During the permitting process for the Diablo Grande Resort, EPA designated the federally regulated waters in Del Puerto Creek, Salado Creek, Crow Creek, and Orestimba Creek watersheds of the Diablo Range, as *aquatic resources of national importance* under our Memorandum of Agreement (MOA) with the Department of the Army, pursuant to CWA Section 404(q) (33 U.S.C. 1344(q)). (This information has been provided to FRA and CHSRA during our interagency meetings.) These creeks and their surrounding watersheds are characterized by high food-web productivity and physical habitat for fish and wildlife, and also support adjacent wetlands and riffle and pool complexes. Orestimba Creek, in particular, has one of the few remaining Sycamore Alluvial Woodlands in California. As a result, projects requiring a CWA Section 404 permit that would result in unacceptable adverse effects to federally regulated waters within these watershed of the Diablo Range could be candidates for elevation using procedures detailed in the MOA. AF008-9

The Diablo Direct alignments bisect the Diablo Range, encompassing approximately two million acres of relatively intact watersheds in a state where the majority of waterways have been degraded. The streams, wetlands, springs, and surrounding watersheds of the Diablo Range provide intact habitat that protects and supports a collection of plants and animals considered to be part of a biodiversity hotspot of global significance (Myers 2000). Non-governmental organizations and government organizations at all levels have been investing in large-scale acquisitions totaling approximately 300,000 acres for conservation and consider this area to be the last significant unprotected open space between the San Francisco Bay Area and the Central Valley (The Nature Conservancy 2003). Decreasing the aquatic functions directly through discharges to waters in the Diablo Range, or indirectly through degrading upland resources, are impacts that EPA will consider carefully in determining whether any of the Diablo Direct alignments comply with the CWA Section 404(b)(1) Guidelines. AF008-9 cont

The impacts of the Diablo Direct alignments may be considered significant adverse environmental impacts under the Guidelines. Considering the high value aquatic resources and large-scale habitat fragmentation, the Diablo Direct alignments do not appear to exhibit characteristics of the "least environmentally damaging practicable alternative," the only alternative that can be permitted under the binding CWA Section 404 regulations (40 CFR 230.10 (a) and (c)). Therefore, EPA anticipates that there may be significant permitting challenges to these alignments

Pacheco Pass Alignments

As disclosed in the Draft PEIS, the Pacheco Pass alignments may result in substantial impacts to wetlands and other waters and may result in great impacts to jurisdictional waters. EPA has environmental objections to these impacts. The Draft PEIS identifies a potential for over 1,000 acres of impact to wetlands within a 2,000-foot corridor (App. 3.15-D-2). We recognize this overestimates the potential direct impacts that will occur within the 100- or 50-foot high speed train project footprint. A screening tool prepared to determine which alignments would be studied in the Draft PEIS identifies that the Pacheco Pass alignments may impact between 289 and 394 acres of wetlands (Table 2-H-4e, p. 6). The loss of wetlands associated with Pacheco Pass alignments, as well as the impacts to wildlife corridors and habitat fragmentation, are not consistent with the substantive binding requirements of CWA Section 404(b)(1) Guidelines (40 CFR 230.10 (a) and (c)). Specifically, the magnitude of impacts to special aquatic sites may cause or contribute to significant degradation of waters of the United States (40 CFR 230.10(c)). If the FRA chooses to advance the Pacheco Pass alignments to Tier 2, substantial alignment and design modifications would be important to reduce impacts consistent with the Guidelines. AF008-10

Recommendations:

Based on the information available to date, EPA would have difficulty concurring on a Diablo Direct alignment as the least environmentally damaging practicable alternative

F134519

Comment Letter AF008 Continued

Also, in light of the potentially significant impacts to waters resulting from the Pacheco Pass alignment, additional measures to avoid and minimize impacts to waters should be evaluated.

AF008-10 cont

Altamont Pass Alignment

Because the Diablo Direct and Pacheco Pass alignments, as proposed, may have significant adverse impacts to waters of the United States and could be inconsistent with the Guidelines, it is important to fully evaluate other viable alternatives in Tier 1. The Altamont Pass Alternative in the Bay Area to Merced region was not fully evaluated in the Draft PEIS. Page 2-38 states that Altamont Pass would result in considerable system operational constraints, would not permit high-frequency service to the major Bay Area markets, and would require a new San Francisco Bay Crossing. A new crossing of the San Francisco Bay, as well as a route through the Don Edwards National Wildlife Refuge, could result in impacts to important aquatic resources and habitat for multiple species. While EPA understands that an Altamont Pass alignment with a Bay Crossing may have significant environmental impacts, an analysis of an Altamont Pass alignment with and without a Bay crossing should be completed to determine which Bay Area to Merced alignment is most likely to contain the least environmentally damaging practicable alternative. Through interagency meetings, EPA has stated that information presented in the Draft PEIS supporting the elimination of Altamont Pass is not sufficient in light of: (1) the significant impacts associated with the only other alternatives for connecting the Bay Area to Merced, and (2) the potential for practicable design variations of the Altamont Pass alternative to meet the stated purpose and need for the project.

Recommendations

AF008-11

FRA and CHSRA should establish why Altamont Pass should be eliminated and provide supporting documentation regarding relevant technical studies, market share estimates, ridership (intercity and commute trips) analysis data, and operational constraints. The analysis should clearly demonstrate and support why all variations of an Altamont Pass alternative (including an alignment without a Bay Crossing and with destinations to San Jose and San Francisco with service to Oakland on existing light-rail) are not practicable in light of the entire high speed train system and logistical constraints that must be addressed in other urban centers.

Alternatively, FRA and CHSRA should analyze a full range of reasonable alternatives, including an Altamont Pass alignment with and without a Bay Crossing, so that an equal comparison between all the Bay Area to Merced alternatives can be made. The analysis should include Tier 1 landscape-level data, such as a complete list of water bodies, wetlands, and streams that are mapped on USGS 7.5 minute maps (even if these water ways are not digitized or available electronically), as well as broad "edge-area" analysis to quantify fragmentation.

Southern Mountain Crossings

Interstate-5 and State Route 58/Soledad Canyon

The Draft PEIS identifies that data gaps exist for both the Interstate-5 (I-5) and the State Route 58 (SR-58)/Soledad Canyon route. The high speed train alternative will traverse "more undeveloped (and possibly more unsurveyed) area" than the modal alternative and that the high speed train alternative may impact a larger number of special-status species and habitat than has been estimated in the document (p. 3.15-24)." The I-5 route would provide a more direct connection between Northern and Southern California and would require fewer miles of track (87 versus 120 miles) and less overall conversion of land from open space to transportation uses than the SR-58/Soledad Canyon alignment. It would also impact fewer biological resources (p. 3.15-25). The SR-58/Soledad Canyon route would be even more damaging if it parallels the Santa Clara River and utilizes cut-and-fill techniques in this sensitive region. The Santa Clara River and Soledad Canyon provide wildlife corridors and contain sensitive plant communities and essential habitat for an endangered native fish, the unarmored threespine stickleback, as indicated in the Draft PEIS (BLM, 2000). EPA would not support an alignment that causes significant adverse impact to this major regional resource for wildlife. The Draft PEIS indicates that a wider corridor, including a route that would avoid Soledad Canyon and the Santa Clara River, is also being considered; however, there is no information presented regarding the environmental impacts associated with a route that avoids these areas.

AF008-12

Recommendations:

Clarify the extent of underestimated impacts for the Interstate-5 (I-5) and State Route 58(SR-58)/Soledad Canyon routes. As mentioned above, Tier 1 landscape-level analysis should include a complete list of water bodies, wetlands, and streams that are mapped on USGS 7.5 minute maps (even if these water ways are not digitized or available electronically), as well as broad "edge-area" analysis to quantify fragmentation. If substantial data gaps cannot be addressed in the Final PEIS, defer elimination of either Bakersfield to Los Angeles alignments until sufficient information is available in order for Army Corps of Engineers and EPA to conclude that the alignment being moved forward to the Tier 2 analysis is most likely to contain the least environmentally damaging practicable alternative.

The Final PEIS should disclose the impacts from an alignment from Bakersfield to Los Angeles through the Antelope Valley that would not follow Soledad Canyon and the Santa Clara River and would not degrade existing and proposed conservation areas. The Final PEIS should include a mapped alignment of such a route and correlate the modified route with impacts that would be avoided by moving the alignment out of the canyon.

Express Loops and Bypasses in the Central Valley

The Draft PEIS proposed several potential express loops/bypasses to circumvent the more congested urban areas, reduce costs, and reduce potential urban impacts such as noise. The Draft

AF008-13

F134520

Comment Letter AF008 Continued

PEIS indicates that "some areas require the development of an express loop and mainline alignment (p. 3.8-14)." Although other corridor alignments in the train system are proposed to pass through urbanized areas (Los Angeles to San Diego, Bay Area to Merced, etc.), the only city bypasses proposed are located in the Central Valley. The justification for bypassing communities is critical in light of the additional impacts to resources that would result from bypassing each community in the Central Valley.

The Tier 1 Draft PEIS estimates the "lowest potential impacts" associated with the proposed express loops and "mainline" high speed train system through the Sacramento to Bakersfield corridor, assuming a 100-foot-wide corridor. As shown in Table 3.8-2, the "mainline" train system would impact far fewer acres of farmland than a train system with a network of both bypasses and mainline routes. For example, the Modesto "mainline" route would impact 49 acres of prime farmland, while the bypass would impact an additional 141 acres of prime farmland. EPA recognizes that the impacts to farmlands can be minimized by reducing the size of the right-of-way to 50 feet and sharing track, where feasible. We also recognize that providing bypasses around cities offers a method to increase speed throughout the entire route and to reduce noise within established communities. However, the introduction of express bypasses throughout the Central Valley would significantly increase farmland severances, acres of farmland impacted, and introduce an additional source of noise and visual impacts to adjacent communities. EPA has objections with the proposal to route the high speed train network both through and around communities in the Central Valley and recommends reducing the impacts that the train system will have in this region by minimizing total miles of train track required for system operation.

AF008-13 cont.

Recommendations:

Clarify why express loop construction is warranted in each community in light of additional farmland impacts and noise and visual impacts. Because the bypasses are proposed to circumvent the more congested urban areas, reduce costs, and reduce potential urban impacts such as noise, the Final PEIS should examine additional less damaging measures, other than city bypasses, to reduce urban impacts. Identify the operational constraints in the Central Valley that require the train system to bypass communities in the context of the other regions of the train system where no bypasses are proposed.

EPA recommends that FRA and CHSRA commit to analyzing Central Valley routes with and without bypasses in the Tier 2 Environmental Impact Statement in order to disclose to decision makers the full impact of bypasses and to provide flexibility in determining the best mix of bypass and mainline routes. In the Final PEIS, identify strategies to pursue agreements with existing rail operators to share right-of-way to further minimize impacts to farmlands.

5

Impact Analysis Methodology

The "envelope" approach used to estimate the potential impacts to biological and water resources attempts to address affects that may occur at a distance from the direct impacts of the project. The width of the envelope was altered depending on the sensitivity of the particular location associated with the train route. The Draft PEIS does not, however, clearly identify what specific portions of each alignment are deemed sensitive and what characteristics support the sensitivity rating. A sensitivity rating is not applied consistently across regions.

Recommendations:

For the analysis of impacts to biological and water resources, define "sensitive" areas and justify why specific areas within the high speed train alternative alignment were determined to be sensitive by describing the characteristics that support this designation. Apply the sensitivity designations consistently across all regions. Provide a figure or map depicting where sensitive areas are and where other modifications to the envelope approach are provided (i.e., developed and undeveloped areas, p. 3.15-4). Overlay this map with sensitive species occurrences and waters of the United States, so that it is clear which areas are considered sensitive and granted a wider study area.

The "envelope" approach and method of reporting impact values results in values that are quite large and not useful for decision making (e.g., 9,627 acres of impact to wetlands along the San Jose to San Francisco alignment for the high speed train alternative alone). EPA recognizes that the values presented offer a basis for understanding the existing environment and potential indirect impacts, rather than the direct impacts of a proposed train system. However, because these large impact values obscure an understanding of potential direct impacts resulting from the project, quantified estimates that more accurately reflect potential direct impacts to biological and water resources are necessary to understand potential impacts.

AF008-14

Recommendations:

Distinguish direct and indirect impacts to biological and water resources in the Final PEIS (see 40 CFR 1508.8(b)). Discuss which resources are indirectly impacted by the project footprint and how they are affected (e.g., reduced hydrologic connectivity, habitat fragmentation, headcutting and downcutting from culverts, changes in sediment transport capacity, etc.). As discussed in previous interagency meetings, EPA recommends including an additional analysis of the potential direct impacts to resources by assuming impacts to all resources within a potential 50-foot right-of-way and compare these values to potential indirect impacts already presented.

6

F134521

Comment Letter AF008 Continued

the potential for tunneling to affect riparian habitat, the direction of lateral movement of water through the soil profile, and the recharge of shallow, unconfined aquifers. AF008-27 cont

Biological Resources

The Draft PEIS does not consistently address wildlife corridor impacts from the high speed train alternative and it does not summarize the overall effect of miles of continuous barrier to animal movement that a fully grade-separated train system would cause. For example, the Draft PEIS states that because a proposed alignment is along existing rail corridors, "little impact on movement/migration routes would be anticipated (p. 3.15-21)." The Draft PEIS does not discuss how proposed restrictions to crossing high speed train tracks (fences, etc.) may limit wildlife movement, even along existing rail corridors (Jackson, 2000).

Recommendations:

Identify landscape-level wildlife movement corridors and discuss proposed methods for protecting these corridors (see Morse, 2003). Outline how FRA and CHSRA plan to mitigate impacts by preserving ecological processes related to landscape continuity. Identify what connections would likely remain after an area is developed following construction of the high speed train system and highlight these areas as "connectivity zones" for future Tier 2 analysis. Disclose how fencing the train route will affect wildlife movement and discuss how fencing for safety purposes will be integrated with wildlife passages identified (culverts, bridges, viaducts, underpasses, overpasses, etc.). AF008-28

The Draft PEIS indicates that a station at March Air Reserve Base would potentially impact 90 acres of coastal sage scrub habitat (Appendix 3.15.D-13). It is unclear why a station at this location would result in such large impacts and methods to minimize impacts are not discussed. Given the fact that much previously disturbed habitat exists in the area of March Air Reserve Base, it may be possible to locate a station without impacting undisturbed coastal sage scrub. AF008-29

Recommendations:

Clarify the impacts associated with a proposed station at March Air Reserve Base and describe why this location would result in such large impacts to coastal sage scrub

Noise and Vibration Impacts

The Draft PEIS assesses noise and vibration exposure to determine high, medium, and low severity of impacts to residences and other locations near the proposed high speed train route. Potential impacts to human health and welfare are important with a project of this magnitude, particularly in light of the maximum speed and resulting sounds and vibrations that the high speed train will produce throughout the train route. While noise impacts are addressed AF008-30

at a Tier 1 level, the Draft PEIS does not address nocturnal and diurnal impacts to wildlife activities such as foraging, predator avoidance, and nesting that may be affected by new sounds and vibrations introduced to natural habitats.

Recommendations: AF008-30 cont

Identify anticipated noise and vibration impacts to nocturnal and diurnal wildlife activities and address the impacts of new sounds introduced to natural habitats. Discuss methods utilized to mitigate noise and vibration impacts in countries where high speed trains pass in close proximity to natural areas.

Mitigation and Avoidance

The Draft PEIS provides little discussion of the potential mitigation measures or approaches which could be used to address the significant impacts associated with the proposed actions. While it may be premature to identify specific mitigation actions until a more clear understanding of the impacts is evaluated at the project level, the Final PEIS should propose reasonable mitigation measures or identify a suite of mitigation approaches that FRA and CHSRA could take to address the environmental impacts at the program scale. This programmatic, landscape-level plan provides an opportunity to identify and generally describe potential mechanisms to promote regional and statewide cooperation in identification of methods to avoid and minimize impacts to environmental resources and to mitigate those impacts that cannot be avoided. (See Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, March 23, 1981, Question #19b). AF008-31

Recommendations:

Outline the strategy that FRA and CHSRA will follow to work with cities and counties to plan landscape-level mitigation strategies as well as site-specific strategies (i.e., transit-oriented development around proposed station locations, and mitigation for community severance). Identify potential partnership opportunities and strategies for Tier 2 project development.

Relationship to Other Plans

EPA understands that a separate Draft EIS for the Los Angeles to San Diego (LOSSAN) corridor and planned improvements will be available for public comment sometime in 2004. EPA will be providing comments on the LOSSAN corridor at that time. The Draft PEIS for the high speed train alternative should be clear in the description of what decisions this Final PEIS and Record of Decision will make regarding LOSSAN improvements and what decisions the subsequent stand-alone Draft EIS for LOSSAN will make. AF008-32

F134525

Response to Comments of Enrique Manzanilla, Director – U.S. Environmental Protection Agency, August 31, 2004 (Letter AF008)

AF008-1

Acknowledged.

AF008-2

The FRA acknowledges the interagency MOU among cooperating federal agencies in this NEPA program environmental process, the general framework for the integration of NEPA review and Clean Water Act Section 404 issues, and expectations for future steps to satisfy NEPA, Section 404 and other permitting requirements.

AF008-3

The lead agencies are continuing to cooperate with US EPA to address Clean Water Act Section 404 issues. The Program EIR/EIS is based on available data bases and information, and a selection of a preferred alignment between the Bay Area and Merced has been deferred. Further study of this area is planned in a separate program EIR/EIS considering a broad corridor including Pacheco Pass generally in the south and Altamont pass generally in the north before identifying a preferred alignment for the proposed HST system to connect the Central Valley to the Bay Area. The referenced designation of "aquatic resources of national importance" (which is not a statutory designation) occurred in conjunction with the approval of the first phase of the extensive Diablo Grande residential and commercial development, was based on a broad literature review, and was not based on field review of resources in the area, parts of which have been in long term ranching and grazing use. Please see Standard Response 6.3.1.

AF008-4

See response to Comment AF008-12.

AF008-5

See response to Comment AF008-13.

AF008-6

To represent the potential for direct impact to water and biological resources for the System Alternatives (Modal and HST), additional GIS analysis has been completed for the approximate footprint of the alternatives. For the HST Alternative this analysis identified and quantified potential direct impacts based on the representative Draft Program EIR/EIS alignments within the broader GIS envelopes used to identify the potentially affected resources. For the Modal Alternative this analysis identified and quantified potential direct impacts for the highway improvements only. Airport improvements represented a relatively minor portion of the additional right of way required and were not included for this additional analysis. The quantifications are representative of the unmitigated potential for direct impacts that could occur within the corridor. Subsequent project level engineering and environmental studies would focus on further avoidance and minimization of potential impacts. The analysis is included in Section 3.14, Section 3.15, Chapter 6, and the Summary of the Final Program EIR/EIS.

AF008-7

Acknowledged.

AF008-8

The FRA acknowledges the regulatory context and expectations for future steps to satisfy Clean Water Act Section 404 permitting requirements. The FRA has concurred with the preferred alignments and stations and has consulted with the USEPA and USACE regarding their concurrence for compliance with the requirements of Section 404 of the Clean Water Act. Although no permit is being requested

analysis at the project level would lead to selection of one of these two sites for a Merced area station. In order to serve a potential HST station at the Castle AFB station site, a new "loop" alignment would (please see Figure 6.3-2B the Draft Program EIR/EIS) serve this site. However, a Castle AFB station option along the BNSF that does not include a new "loop" and a downtown Merced station option (which does not include a new loop) will also be investigated at the project specific level of study.

The HST alignment between Fresno and Bakersfield would diverge from the BNSF alignment on a new alignment around Hanford in order to maintain high-speeds because of the tight, speed restricting curves south of Laton, through Hanford, and to the south of Hanford (see Figure 2.7-6B of the Final Program EIR/EIS). An alignment through Hanford as described would add approximately 11 minutes to the estimated express travel time through the Central Valley as compared to the new alignment west of Hanford.

The Draft Program EIR/EIS did evaluate a few potential "loop" alignments not intended to maintain high-speeds, but potentially to reduce environmental impacts (Fresno, Merced, and Tulare). The Authority has not included these express loops as part of the preferred alignment. Please see standard response 6.20.5 regarding the "loop" line concept around Fresno.

Foreign HST experience (e.g., in France and Japan), the experience of the Northeast Corridor (Boston to New York to Washington D.C.), HST studies done elsewhere in the U.S., and the Authority's feasibility studies have all shown that to compete with air transportation and generate high ridership and revenue, the intercity HST travel times between major transportation markets must be below 3 hours (please also see standard response 2.9.1 and standard response 2.9.2). In order to operate HST services at high-speeds, very straight alignments with only mild curves are required. In the Bay Area, Sacramento, Los Angeles area and San Diego, existing transportation corridors are generally not straight enough over long enough distances to permit high-speed operations. Moreover, in these areas, there is generally no undeveloped land available that would allow for the development of a new "high-speed" alignment through these areas. Serving these large urban areas is essential to the purpose and need of the HST system, therefore "bypassing" these areas is not a viable solution. New corridors through heavily urbanized areas were not considered to be practicable alternatives in this Program EIR/EIS. In California, the best opportunities for high-speed operations are primarily through the Central Valley, and through the mountain passes (please see Figure 4.3-2 in the Final Program EIR/EIS). Please see the Engineering Criteria technical report (January 2004) referenced in the Program EIR/EIS for more information regarding HST design criteria assumptions.

As noted, the Authority has identified a preferred alignment that maximizes the use of existing rail corridors, based upon the analysis in this Program EIR/EIS. For those few areas of the preferred alignment in the Central Valley which include a bypass loop (noted above), except for Hanford, further study during project-level (Tier 2) review would consider additional mitigation measures to reduce potential impacts and would consider alignment variations with and without bypasses. If a decision were made to move forward with the HST system, the Authority would seek agreements with freight operators to utilize portions of the existing rail right-of-way to the greatest extent feasible (Final Program EIR/EIS, Summary and Chapter 6A).

AF008-14

14a. Both the Program EIR/EIS and the regional technical reports identify and describe the sensitive areas in each region and corridor as part of the affected environment sections. The Program EIR/EIS includes maps illustrating general resources of concern and other sensitive areas. However, detailed maps depicting sensitive areas and specific corridor study widths are not included in the Program EIR/EIS due to the impracticality of presenting mapping over 2500 miles of HST alignment options and nearly 3000 lane miles of highway improvements in the Modal Alternative. In general, sensitive areas were identified and the envelope widths were defined to gauge impact potential and sensitivity between alignment options

considered at the regional level. Representative impacts estimated using envelops that more closely reflect the actual footprint of the infrastructure proposed (as described in Response AF008-6 above) are compared in the Final Program EIR/EIS at the regional and system-wide level for consistency purposes. Also refer to response to Comment AF007-3 regarding the information included in the analysis.

14b. See Response AF008-6 above. The analysis of representative impacts indicates the approximate level of potential direct impacts in relation to the larger area where indirect effects are possible. However, due to the general nature of alignment location in this program level analysis it is not possible to quantify anticipated indirect impacts. The Final Program EIR/EIS discusses and describes potential direct and indirect impacts to water and biological resources in Sections 3.14 and 3.15, respectively, as well as Chapter 6 and the Summary.

AF008-15

See standard response 3.15.7 and standard response 3.15.1.

AF008-16

Along the I-215/I-15 alignment option, the HST alignment is proposed to be within the median of I-215. A portion of the Santa Margarita Ecological Reserve is located adjacent to the west side of the I-215 freeway. The HST alignment would not encroach upon the reserve. Potential for noise impacts and indirect impacts would be evaluated at the project level. See Section 3.14 for a description of the potential for impact. The I-215/I-15 alignment option crosses the Temecula Creek (an upstream tributary of the Santa Margarita River). The sensitivity of this watercourse is acknowledged and will be considered in subsequent project level environmental review. Thoughtful design practices (as described in Chapter 3 of the Final Program EIR/EIS) would avoid impacts to Temecula Creek at the crossing. Potential for wildlife movement would also be considered in the design of this crossing.

AF008-17

Acknowledged. The Authority has identified both the Carroll Canyon and Miramar Road alignment options as preferred for further project level analysis between Mira Mesa and San Diego. Either the Carroll Canyon or Miramar Road options would enable the HST system to directly serve downtown San Diego, whereas the I-15 to Qualcomm option would terminate about 8-miles from the city center at the Qualcomm Stadium (20 minutes by light rail). The Carroll Canyon and Miramar Road options would directly serve Downtown San Diego would provide better connections to the regional transit system and airport. SANDAG, NCTD, MTDB, Caltrans District 11, and the City of San Diego all support direct HST service to downtown San Diego via the Inland Empire (I-215/I-15 Corridor).

The Carroll Canyon and Miramar Road alignment options would have similar potential environmental impacts. However, the Carroll Canyon option could avoid and minimize potential impacts to Miramar Naval Air Station as compared to either the Miramar Road or I-15 alignment option. As compared to the I-15 option, the Carroll Canyon and Miramar Road options would have less potential impacts to parklands, and vernal pools (U.S. Fish & Wildlife Service, "Vernal Pools of Southern California, Draft Recovery Plan", 1997) and less potential for growth-induced impacts, but more potential visual, cultural, and floodplains impacts.

The United States Marine Corps has raised concern regarding the Miramar Road option which is directly adjacent to the Miramar housing complex and "sensitive habitats" and has noted that any efforts related to the proposed HST system that would limit or impact on the Marine Corps ability to perform its mission would be opposed. The City of San Diego commented that building the alignment below grade should be considered from Old Town to Downtown San Diego, which would be considered in subsequent project level environmental review.

Determining the number and location of individual vernal pools and larger vernal pool complexes that would be affected by each remaining alignment is beyond the scope of this program level

AF008-31

Measures to mitigate potential impacts have been added to the Final Program EIR/EIS in each section of Chapter 3: Environmental Consequences. Further clarification and description of the design features of the proposed project have been added to the Summary of the Final Program EIR/EIS and each section of Chapter 3. Discussion of transit-oriented development is found in Chapter 6B of the Final Program EIR/EIS.

AF008-32

See Standard Response 6.41.1.

Comment Letter AS012

State of California - The Resources Agency ARNOLD SCHWARZENEGGER, Governor
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AS012

August 31, 2004

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Allan Rutter, Administrator
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U.S. Department of Transportation
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Dear Messrs. Morshed and Rutter:

California High-Speed Train Draft Program Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) SCH 2001042045

The California Department of Fish and Game (Department) has reviewed the California High-Speed Train Draft Program EIR/EIS (DPEIR/EIS) and provides comments on fish and wildlife resources that may be affected by the project. The project consists of a high-speed train program that will serve as a guide for planning and implementing high-speed train infrastructure and providing high-speed train services to customers throughout California between the major metropolitan centers of Sacramento and the San Francisco Bay Area in the north, through the Central Valley, to Los Angeles and San Diego in the south. The train system would be approximately 700 miles long and capable of traveling 220 miles per hour, with a fully grade-separated track, and with state of the art safety, signaling, and automated control systems.

The Department has jurisdiction over the conservation, protection and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Fish and Game Code section 1802). The Department is a Trustee Agency under the California Environmental Quality Act (CEQA), Section 15386, and a Responsible Agency for ensuring that fish and wildlife resources of the State are addressed pursuant to CEQA. The Department also has regulatory authority with regard to the "take" of any state listed threatened or endangered species under the California Endangered Species Act (CESA), and over activities that substantially divert or obstruct the natural flow of, or substantially change or use material from the bed, channel, or bank of any river, stream, or lake (Fish and Game Code section 1602). California maintains lists of fully protected species. The Department can not authorize the incidental take of those species listed as "Fully Protected" as per California Fish and Game Code sections 3511, 4700, 5050, and 5515.

Conserving California's Wildlife Since 1870

The Department's comments are based on the impacts discussion and proposed mitigation strategies identified in the California High-Speed Train EIR/EIS and the three (3) following alternatives: (1) a No Project Alternative, (2) High-Speed Train (HST) Alternative, and (3) a Modal Alternative. Various corridor alignments have been identified and proposed for selection in subsequent analyses.

The Department offers the following comments and recommendations on the California High-Speed Train EIR/EIS regarding impacts to wildlife, the habitats on which they depend and the Department's jurisdiction and role in conserving lands for the benefit of those species. The Department participated in and provided comments at five (5) Resource Agency workshops held by the California High Speed Rail Authority (Authority) and Federal Railroad Administration (FRA) and commented on the Notice of Preparation and the September 4, 2002 Revised Draft Summaries, Environmental Analysis Methodologies. Many of our concerns remain unaddressed in the DPEIR/EIS. The Department urges the Authority and the FRA to complete the additional suggested program level analyses and re-circulate a DPEIR/EIS prior to certification of a final environmental document for the project. AS012-1

STATEWIDE ISSUES

Alternatives

HST Alternative

The HST Alternative analyzed two types of train technologies: electrified steel-wheel-on-steel-rail dedicated service and non-electrified steel-wheel-on-steel-rail (conventional) service for the Los Angeles to San Diego corridor. The electrified train, capable of maximum speeds of 220 mph requires an "access-controlled right-of-way" and "fully grade-separated" track. Some existing rail infrastructure would be used, but in some areas 3 or 4 mainline tracks may be utilized to provide different levels of service.

The Department requests more information regarding the infrastructure and configuration of train related systems such as electrical supply substations, booster stations, catenary wires and safety features such as perimeter fencing. These infrastructure features contribute to overall impacts the HST alternative may have on wildlife. The inadequate project description in the DPEIR/EIS made it difficult to adequately evaluate project-related impacts and feasible mitigation measures on biological resources and wetlands. A discussion, analysis of the potential impacts and proposed mitigation for the design features, infrastructure, construction methods, noise barriers and numerous other un-described project details will need to be addressed in the subsequent analysis of impacts, but also warrants discussion in the DPEIR/EIS. Many of the design features, infrastructure, and construction methods are already known to some extent, as demonstrated by Figures 2.6-3 and 2.6-5 and through discussions at HST Resource Agency workshops. Therefore, their impacts on wildlife should be discussed in more detail in the DPEIR/EIS. AS012-2

No Project Alternative vs. Modal Alternative

The No Project Alternative chosen as the baseline for comparison of the Modal and HST Alternatives is unusual in that it is based on anticipated AS012-3

F1346S7

Comment Letter AS012 Continued

improvements to highway, air, and rail currently projected to be implemented by 2020. It is not clear what the real value of the proposed HST project would be. Even though the HST system would serve the same passenger population that currently uses highways, airports and trains, it should be made clear in the DPEIR/EIS that implementation of the HST does not preclude implementation of the Modal Alternative. Therefore, the DPEIR/EIS should include an evaluation of impacts based on implementation of all of the alternatives (No Project, Modal, *and* HST) to more accurately represent a probable future transportation system in California.

AS012-5 cont.

Alternative Corridor Options

The general analysis of the Alternative Corridor Options was thorough in that it described and made general estimates of the potential number of acres of wetlands and other waters, numbers of species, and identified a few of the larger conservation areas impacted. This general selection of alternative corridors, according to the DPEIR/EIS would result in alignments with potentially fewer significant natural resource impacts. The analysis of alternatives highlighted why some sections were selected over others that represented options with the fewest potential impacts to biological resources and wetlands. Subsequent analyses will provide more detail regarding which alignments remaining will result in fewer significant natural resource impacts. The Department anticipates further analysis and opportunities to review and comment on remaining alignment selection to further avoid and minimize impacts.

AS012-4

3.15.2B. Biological Resources and Wetlands By Region

In general, the DPEIR/EIS presented no specific discussion and analysis of the types of biological resource impacts that would need to be mitigated. The DPEIR/EIS simply provided cursory lists of the wetlands, wildlife species whose movement may be impacted, wildlife species, and plants and vegetation communities that would potentially be impacted by the project as generated from the California Natural Diversity Database (CNDDB). Site-specific surveys, on-site visits, and consultation with species experts and agency biologists will be necessary to further analyze the project impacts of the various corridor alignments on biological resources and wetlands, and develop site-specific mitigation measures.

AS012-5

The evaluation of project impacts provided by the DPEIR/EIS was extremely limited. For example, only single statements were made regarding impacts of light, shadow, noise, and fencing for at-grade alignments. The DPEIR/EIS should discuss the potential impacts the HST and Modal alternatives may have on wildlife. The Department recommends the DPEIR/EIS be revised to include more detailed project descriptions for each alternative and discuss potentially significant direct, indirect, and cumulative impacts and feasible mitigation measures for the following impacts including, but not limited to: EMI/EMF, light, noise, vibration, disturbance, habitat fragmentation, sedimentation, habitat loss, conservation lands (NCCPs, HCPs, mitigation lands, conservation easements and other conserved lands), public use on conservation lands, energy supply and infrastructure, regional and statewide growth inducement, direct and indirect mortality due to collision on HST drafts, and edge effects.

AS012-6

Study Wildlife Movement/Migration Corridors

The HST has the potential to disrupt already beleaguered wildlife passages, threatening the continued viability of many species. Construction of access controlled rail lines may create barriers to the movement of wildlife, thereby cutting them off from important food, shelter, or breeding areas. Isolation of sub-populations limits the exchange of genetic material and puts populations at risk of local extinctions through genetic and environmental factors. Barriers can prevent the re-colonization of suitable habitat following local extirpations, ultimately putting the species at risk of extinction.

AS012-7

The DPEIR/EIS proposes to study wildlife movement/migration corridors further in subsequent "project-level studies". The information the DPEIR/EIS relied upon for the impacts analysis for the DPEIR/EIS was obtained from the *Missing Linkages* report by the California Wilderness Coalition (2000). The "Linkages" lines are estimations of location and indicate areas in need of connectivity. These lines should be used for general planning purposes only. They may provide some guidance in the subsequent alignment-specific project analysis and may guide mitigation strategies for creating linkages where there are currently choke points or impassable areas as project mitigation for impacted wildlife movement. At a program level, the DPEIR/EIS must analyze impacts to wildlife resulting from loss of corridors, habitat fragmentation, and population isolation.

The DPEIR/EIS Section 3.15.4 Comparison of Alternatives by Region mentioned wildlife underpasses, overpasses, and tunnels as potential mitigation. A discussion and analysis of these measures as feasible mitigation measures should be included in the Mitigation Strategies Section. Research should be conducted before the selection of the alignments to determine the best locations for wildlife movement passage structures, numbers of structures, alignment elevation or tunneling based on animal movement patterns, landscape features, and habitat. Specific alignments and wildlife passage structures such as underpasses, overpasses, elevating the alignment and tunnels may not be suitable for all species and locations and would need to be evaluated carefully in subsequent analysis of alignment sections. Methods to determine the best locations for wildlife movement structures or avoidance should include at a minimum: 1) track count surveys, 2) ditch crossing surveys, 3) monitoring trails with infrared or Trailmaster cameras, and 4) GIS habitat modeling to identify likely wildlife travel corridors and anthropogenic barriers (such as highways, canals, and reservoirs) at the landscape level. In addition, wildlife habitat linkages will need to be identified using habitat models, information from the movement studies and GIS analyses.

AS012-8

In addition to identifying wildlife movement corridors, habitat linkages, the amount and type of wildlife habitat fragmented, and reduced habitat value and/or viability by the project will need to be quantified and mitigated. We anticipate the acres of fragmented habitat to be significant due to the linear nature of the project.

AS012-9

The Department recommends avoiding and restoring wildlife movement corridors and mitigating the interruption of wildlife corridors by elevating the track, relocating sub-segments, changing track alignment and design, tunneling, and

AS012-10

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Comment Letter AS012 Continued

HCPs. The impacts to these conservation planning efforts should be discussed in the DPEIR/EIS and subsequent alignment-specific analyses. AS012-21 cont

Bakersfield to Los Angeles

Wildlife Movement

This corridor alignment would impact many movement corridors for meso- and large carnivores, large mammals, fish, amphibians, and birds. Special status species that could be impacted by this rail segment include: Tehachapi slender salamander, blunt-nosed leopard lizard, and desert tortoise. The DPEIR/EIS concludes the SR-58/Soledad Canyon HST alignment would likely have a greater impact on wildlife movement than the I-5 grapevine. The DPEIR/EIS does not include enough information to substantiate this conclusion. AS012-22

Conservation Plans

The DPEIR/EIS briefly discussed the approved Kern County – Metro Bakersfield HCP and the proposed Kern Valley Floor HCP. The DPEIR/EIS should discuss how the project may impact these conservation plans and their efforts to conserve habitats.

Los Angeles to San Diego via the Inland Empire

Conservation Plans and Wildlife Movement

Approved conservation plans not addressed in the DPEIR/EIS include the Western Riverside MSHCP, San Diego Multiple Species Conservation Program (MSCP), City of San Diego MSCP Subarea Plan, County of San Diego MSCP Subarea Plan, and San Diego Gas & Electric (SDG&E) Company Subregional Plan. Conservation plans in progress in this region include the North County MSCP Subarea Plan and the City of Escondido MHCP Subarea Plan. Information on these plans is updated regularly at http://www.dfg.ca.gov/nccp/status.htm. The DPEIR/EIS should discuss how the project may impact these approved and proposed conservation plans and their efforts to conserve habitats. The proposed HST alignment in urban locations such as the I-15 corridor would fragment the remaining small habitat areas, often constituting the only habitat left for some wildlife species, and acting as "stepping stones" for resident and migratory wildlife movement. Specifically, the I-15 HST alignment would impact the limited habitat that remains and allows for movement of Coastal California gnatcatchers. Impacts to these plans, reserves and remaining habitat for special status species is a potentially significant impact that should be addressed in the DPEIR/EIS and subsequent analyses. AS012-23

Los Angeles to San Diego via Orange County

Conservation Plans

An approved conservation plan not discussed in the DPEIR/EIS is the Orange County Central-Coastal NCCP Subregional Plan. Local land use plans for the protection of the coastal zone should be analyzed for this area also. Other conservation plans approved in this region include the San Diego Multiple Species Conservation Program (MSCP), County of San Diego MSCP Subarea Plan, and the City of San Diego MSCP Subarea Plan. Other conservation plans in development include the Orange County Northern Subregion and Orange County Southern Subregion, City of Oceanside MHCP Subarea Plan, City of Encinitas MHCP AS012-24

Subarea Plan, and City of Carlsbad MHCP Subarea Plan. Information on these plans is updated regularly at http://www.dfg.ca.gov/nccp/status.htm. The DPEIR/EIS should discuss how the project may impact these conservation plans and their efforts to conserve habitats.

Wetlands

More detailed studies than what is proposed should also be used when analyzing impacts to watersheds, estuaries and lagoons. Information for the DPEIR/EIS and subsequent analyses of impacts in this region may be obtained from the Calleguas Creek Watershed Management group, Friends of the Santa Clara River, Ormond Beach Task Force; landowners with large holdings of lagoon/estuarine properties (e.g. CA Dept of Parks and Recreation, DFG, San Diego Gas and Electric, Southern California Edison); Dr. Chang and others at San Diego State University; the Port of Los Angeles, conservation groups such as the Audubon Society; and local lagoon foundations and citizen groups. AS012-24 cont.

3.15.5 Mitigation Strategies

Strategies vs. Mitigation Measures

The Department recognizes a Program DPEIR/EIS should identify and generally discuss the environmental effects the project will have. In addition to general discussion, a Program DPEIR/EIS may discuss policy alternatives, cumulative impacts, and feasible mitigation measures. The California High-Speed Train Program DPEIR/EIS offers some "potential strategies to mitigate impacts on special-status species and sensitive habitat areas" for future project level analysis in Section 3.15.5 that are not feasible mitigation measures. There is no distinction made between proposed mitigation strategies and mitigation measures. All of the "potential mitigation strategies" discussed in the DPEIR/EIS could more appropriately be categorized into "policies to implement appropriate mitigation" and "potential feasible mitigation measures". The "policies to implement appropriate mitigation" may include those "strategies" discussed in the first paragraph of Section 3.15.5 of the DPEIR/EIS such as 1) field verification, 2) filling data gaps, 3) subsequent project specific analysis, 4) consultation with the appropriate resource agencies to refine avoidance and mitigation measures, and 5) developing a mitigation and monitoring program to determine impacts and mitigation effectiveness. The Program DPEIR/EIS "may recommend further measures to consider in more detail at the project level to avoid, minimize, and mitigate potential adverse impacts" (Summary, page S-1). The measures may include at a minimum those discussed in the DPEIR/EIS such as: 1) develop/participate in conservation banks, 2) avoid impacts by: design change, relocating segments, constructing above ground, constructing structures for wildlife movement, and adjusting the alignment plan; and 3) "special mitigation needs" including acquisition, preservation, restoration, banks, HCPs, and NCCPs. AS012-25

3.15.6 Subsequent Analysis

Surveys and Mapping

The Subsequent Analysis Section 3.15.6 proposes that field surveys will be conducted to determine the extent and type of general and sensitive biological resources including focused surveys for special-status species. Site-specific AS012-26

Comment Letter AS012 Continued

surveys and on-site visits will be necessary to further analyze the impacts of the various corridor alignments, inform alignment selection, and develop site-specific mitigation measures. The Department recommends that areas of suitable habitat be considered occupied if species-specific surveys are not planned or accepted protocols and methods are not followed to examine site-specific impacts, or if there is limited information available on species presence.

The Department appreciates the opportunity to comment on the California High-Speed Train Draft Program DPEIR/EIS. The Department will continue to work closely with you and others involved with this project. If you have any questions regarding our review or if we can provide you with additional assistance on plant and wildlife aspects of your project, please contact Mr. Scott Flint, Program Manager, Habitat Conservation Planning Branch, by telephone at (916) 653-9719.

Sincerely,

Sandra C. Morey, Chief
Habitat Conservation Planning Branch

Attachment
cc: Department of Fish and Game

Mr. Scott Flint
Ms. Gail Presley
Ms. Tina Bartlett
Ms. Sarah Calzada
Sacramento, California

Mr. Michael Haynie
Ms. Dee Sudduth
Eastern Sierra-Inland Deserts Region
Chino Hills, California

Mr. Carl Wilcox
Central Coast Region
Yountville, California

Mr. Don Chadwick
South Coast Region
San Diego, California

Mr. Larry Eng
Sacramento Valley-Central Sierra Region
Rancho Cordova, California

Mr. Jeff Single
San Joaquin Valley-Southern Sierra Region
Fresno, California

AS012-36

Attachment 1. HST Impacts to Department of Fish and Game Lands

Department of Fish and Game Region	Property Name
San Francisco to Sacramento	
2	CENTRAL VALLEY SCREEN SHOP
2	COSUMNES RIVER ECOLOGICAL RESERVE
2	LAGUNA CREEK CONSERVATION EASEMENT
4	ALLENSWORTH ECOLOGICAL RESERVE
4	LE GRAND
4	RESERVE GUN CLUB CONSERVATION EASEMENT
San Francisco Bay Area	
3	BAIR ISLAND ECOLOGICAL RESERVE
3	BRISBANE FISHING PIER
3	FRANKLIN D. ROOSEVELT PIER
3	PIER SEVEN
3	REDWOOD SHORES ECOLOGICAL RESERVE
3	SAN ANTONIO FISHING PIER
3	SAN BRUNO MOUNTAIN ECOLOGICAL RESERVE
3	SAN FRANCISCO BAY
3	SAN LUIS RESERVOIR WILDLIFE AREA
4	COTTONWOOD CREEK WILDLIFE AREA
4	LOS BANOS WILDLIFE AREA
4	MUD SLOUGH CONSERVATION EASEMENT
4	O'NEILL FOREBAY WILDLIFE AREA
4	ORESTIMBA FISHING ACCESS
4	SAN LUIS RESERVOIR WILDLIFE AREA
4	VOLTA WILDLIFE AREA
4	WEST HILMAR WILDLIFE AREA
Los Angeles to San Diego via Orange County	
5	AGUA HEDIONDA LAGOON ECOLOGICAL RESERVE
5	BATIQUITOS LAGOON ECOLOGICAL RESERVE
5	BUENA VISTA LAGOON ECOLOGICAL RESERVE
5	CASTAIC CONSERVATION EASEMENT
5	DWR MITIGATION-L.A. PROPERTY
5	EMBARCADERO PARK FISHING PIER
5	OCEANSIDE FISHING PIER
5	SAN CLEMENTE FISHING PIER
5	SAN DIEGUITO LAGOON ECOLOGICAL RESERVE
5	SAN ELIJO LAGOON ECOLOGICAL RESERVE
Los Angeles to San Diego via Riverside County	
6	SANTA MARGARITA RIVER
6	SYCAMORE CANYON ECOLOGICAL RESERVE

F134663

Response to Comments of Sandra C. Morey, Chief of Habitat Conservation Planning Branch, California Department of Fish and Game, August 2004 (Letter AS012)

AS012-1

Responses have been provided to the Department's comments and additional information has been included in the Final Program EIR/EIS, where appropriate. Recirculation is not required.

AS012-2

In the Final Program EIR/EIS, each environmental section of Chapter 3 has been modified to include specific design methods and features that will be applied during the project level studies and implementation of the HST system to avoid, minimize, and mitigate potential impacts. Specific design criteria regarding power supply and perimeter fencing are documented in Section 3.2 of Engineering Criteria, January 2004. See excerpts from the Engineering Criteria Report (incorporated by reference) regarding power supply facilities below:

"An electrical propulsion system is necessary to provide the performance characteristics (e.g. speed and acceleration) required to be competitive with other modes of travel in California. The power supply would consist of a 2x25KV overhead catenary system for all electrified portions of the statewide system. Supply stations would be required at approximately 30 mile intervals. Based on the estimated power needs of this system, these stations would need to be approximately 20,000 square feet (200' X 100'). Switching stations would be required at approximately 15 mile intervals. These stations would need to be approximately 7,500 square feet (150' X 50'). Paralleling (booster) stations would be required at approximately 7½ mile interval. These stations would need to be approximately 5,000 square feet (100' X 50'). Each station includes a control house that would need approximately 800 square feet (40' X 20'). These facilities would not be sited as part of this Program EIR/EIS. However, a generic analysis of these facilities would be included. The facilities defined fall well within the potential impact areas defined for the environmental analysis methods for the program level study. All facility sizing and spacing to be verified by simulation based on planned headways, speed and specific equipment specifications at the project specific level of analysis."

Please also see Section 2.6.2b "Electrification" of the Final Program EIR/EIS.

AS012-3

The Modal and HST Alternatives were each developed to independently accommodate the anticipated future intercity travel demand. While the implementation of one system alternative does not necessarily preclude the implementation of the other, it is highly unlikely that both alternatives would be needed (over twice the projected need) or pursued during the same time period because of the high levels of environmental impact and capital cost to complete both of these alternatives. It is likely, however, that highway and airport facilities/systems would continue to be improved much as projected in the No Project Alternative, even with the implementation of the HST Alternative. Please also see response to Comment AS012-6.

AS012-4

Acknowledged.

AS012-5

Acknowledged. Site specific analysis will be completed in subsequent project level environmental review.

AS012-6

In the Final Program EIR/EIS, each environmental section of Chapter 3 has been modified to include mitigation strategies that would be applied in general for the HST system. Each section of Chapter 3 also outlines specific design methods and features that will be

applied during project level studies and the implementation of the HST system to avoid, minimize, and mitigate potential impacts. Specific potential impacts related to the topics suggested in the comment will be addressed in the subsequent project level analysis.

AS012-7

Please see standard response 3.15.9 regarding wildlife corridors and habitat fragmentation. Information from the report entitled "Missing Linkages" has been referred to in the Final PEIR/S – please see response to Comment O034 – 19. As noted, the Missing Linkages report provides information that is suitable for general planning purposes only. The program level environmental review that has been conducted is exactly that – a general planning level environmental review. The information generated to date will provide guidance for subsequent project-level, Tier 2 analyses and development of more detailed mitigation strategies. Because the Authority intends to provide mitigation to maintain wildlife corridors, it would be premature to make a determination that any wildlife corridors will be lost. However the PEIR/S does acknowledge that the HST project has the potential to result in habitat fragmentation and population isolation.

AS012-8

Please see standard response 3.15.9 regarding mitigation to wildlife corridor movements and habitat fragmentation. Additional discussion regarding maintenance of wildlife corridors has been added to the mitigation strategies section. The Co-lead agencies appreciate the guidance provided by the Department of Fish and Game and its recommendations regarding methods for determining appropriate locations for wildlife movement structures. This work will be conducted during project-level, Tier 2 environmental review.

AS012-9

Please see standard response 3.15.9 and response to Comment AS012 – 08. It is agreed that, when project-level Tier 2 environmental review is done, the environmental document should identify wildlife movement corridors, habitat linkages, and amount and type of wildlife habitat fragmented. Reductions of habitat value due to fragmentation would be evaluated, and mitigation would be incorporated to minimize fragmentation.

AS012-10

Please see standard response 3.15.9 and response to Comment AS012 – 08. Estimated costs for mitigation of HST program impacts have been included in the HST capital cost estimates.

AS012-11

Please see standard response 3.15.10. Should the HST proposal mover forward, future mitigation efforts should complement and be coordinated with habitat conservation or protection plans for areas potentially affected by the proposed HST system.

AS012-12

The Co-lead agencies agree with the comment that, in addition to the possible direct fill of wetlands, there is a potential for impacts associated with alteration of hydrologic function. Although detailed evaluation of construction and maintenance impacts is not possible without further site-specific definition of the project alignment and construction methods, the Draft PEIR/S used an estimate of an 0.25-mi [0.40-km] area that "was used to encompass natural undisturbed resources that could be subject to indirect impacts from noise, erosion, storm water runoff, or other effects of construction or operation of the alternatives." Additional analysis will be performed at a project level, and the following text has been added to the section on Subsequent Analysis in Section 3.15.7 of the Final PEIR/S: "Evaluation of both direct and indirect impacts on wetland, riparian areas and other waters. Effects of project construction and operations on hydrologic connections will be evaluated. Potential for sedimentation and pollution will be addressed. Impacts on wildlife of habitat loss, degradation and fragmentation will be assessed".

system on those properties. Project-level, Tier 2 analyses would include a more detailed evaluation of impacts on farmland, including identification of properties that are under Williamson Act contracts, conservation easements, or are included in one of the above programs.

AS012-19

Effects on wildlife movement corridors were considered in the Draft PEIR/S, and additional analysis will be conducted at a project level. As noted on page 3.15.31 of the Draft PEIR/S, the Program document has identified major wildlife movement/migration corridors within the study area, but further study needs to be done on movement/migration corridors: "Field studies could identify additional locally significant corridors and provide data to assist in the design of bridges and wildlife crossings at crucial travel route points." Measures to mitigate effects of the HST Project on animal movements and corridors have been added to the Final PEIR/S and are provided in Section 3.15.6. A discussion of the systemwide potential impacts to identified wildlife movement corridors for the Modal and HST Alternatives (including illustrative figures) has been added to the Final PEIR/EIS and is included in Section 3.15.

AS012-20

See Standard Response 6.3.1.

AS012-21

Please see standard response 3.15.3 and standard response 3.15.4. The Draft PEIR/S acknowledges that special-status species could be affected by the HST project. Information on special status species and sensitive habitats is available in the Technical Evaluations for Biological Resources, which were conducted for each region. These studies are available for review on the California High Speed Rail Authority website

(http://www.cahighspeedrail.ca.gov/eir/regional_studies/default.asp)

For example, the Bay Area to Merced Biological Resources Evaluation contains a table listing all of the special status species present along the project alignments and the acreage of habitat present along each alternative. Please refer to standard response 3.15.2 regarding the level of detail included in the PEIR/S. Please refer to standard response 3.15.10 regarding evaluation of effects on HCPs.

AS012-22

Please see standard response 3.15.11.

AS012-23

Please refer to standard response 3.15.10 regarding evaluation of effects on HCPs and response to Comment AS012-11. Detailed studies of impacts on watersheds, estuaries and lagoons will be conducted as a part of the project-level, Tier 2 environmental documentation.

AS012-24

Please refer to standard response 3.15.10 regarding evaluation of effects on HCPs and response to Comment AS012-11. Detailed studies of impacts on watersheds, estuaries and lagoons will be conducted as a part of the project-level, Tier 2 environmental documentation. Please refer to Response to Comment AS012-12 regarding additional studies to be conducted on water bodies. The PEIR/S also specifically requires additional study in the form of "hydraulic analysis of lagoon crossings to identify potentially feasible improvements that may help improve tidal hydraulics and remove barriers to floodwaters" (see Draft PEIR/S page 3.15-31).

AS012-25

The Co-lead agencies generally agree with the recommendations in this comment, and Section 3.15.5 of the Final PEIR/S has been revised. The term "strategies" has been retained, but the strategies have been separated from possible mitigation measures for consideration in the more-detailed, project-specific, Tier 2 evaluations.

Comment Letter AL072

AL072

Comments of

Grassland Water District
And
Grassland Resource Conservation District

on the

Draft
Program Environmental Impact Report /
Environmental Impact Statement
For
The California High Speed Train Project

Volume 1 of 2

August 31, 2004

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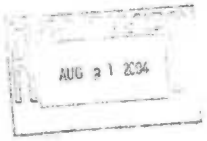
August 31, 2004



Chairman Joseph E. Petrillo and
Members of the High-Speed Rail Authority
Attn: California High-Speed Train Draft
Program EIR/EIS Comments
925 L Street, Suite 1425
Sacramento, CA 95814

Re: Grassland Water District / Grassland Resource Conservation District Draft Program EIR/EIS Comments on the California High Speed Train

Dear Chairman Joseph E. Petrillo and Members of the High-Speed Rail Authority:

I am writing on behalf of the Grassland Water District ("GWD") and the Grassland Resource Conservation District ("GRCD") to comment on the Draft Program Environmental Impact Report / Environmental Impact Statement ("DEIR/S") for the proposed California High Speed Train System ("HST" or "the Project"), pursuant to the California Environmental Quality Act[1] ("CEQA") and the National Environmental Policy Act[2] ("NEPA"). As explained in more detail below, the DEIR/S does not comply with the requirements of CEQA or NEPA and may not be used as the basis for selecting a preferred alignment of the HST that would run along the proposed Pacheco route. The High-Speed Rail Authority ("Authority") may not select a preferred alignment for the Project until an adequate DEIR/S is prepared and re-circulated for public review and comment.

The combined area of the GWD and GRCD contains approximately 60,000 acres of privately owned wetlands located north, east and south of the City of Los Banos in Merced County. The Districts are charged under state law and federal contract with the responsibility to manage water resources and carry out conservation programs in order to preserve and protect this resource, primarily as habitat for waterfowl and other wildlife species. Land stewardship in the GWD and

[1] Pub. Res. Code §§ 21000 *et seq.*

[2] 42 U.S.C. § 4321 *et seq.*

1124-339d

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GRCD mostly comprises privately owned and managed waterfowl hunting clubs that receive their water supply from GWD.

The GWD and GRCD together with the adjacent federal wildlife refuges, state wildlife areas and state park make up the Grassland Ecological Area ("GEA"). Attached, as Exhibit 1 and Exhibit 2 to this Comment are two maps that show the boundary of the GEA and the federal, state and privately owned lands within the GEA. Encompassing approximately 180,000 acres, the GEA is the largest wetland complex in California and contains the largest block of contiguous wetlands remaining in the Central Valley.[3] This region is considered a critical component of the Central Valley wintering habitat for waterfowl and has been recognized as a resource of international significance.

The GWD and GRCD are concerned about the proposed Project because the Project proposes a Pacheco Pass alignment that would pass through their jurisdictional boundaries, bisecting important biological corridors of contiguous wetlands and causing fragmentation and other direct impacts. In addition, the growth-inducing impacts of locating a train station in rural Los Banos would likely result in urban encroachment and development pressures that would spell the end of the continued viability of this area. The DEIR/S, unfortunately, makes no mention of the GEA, fails to describe the potential impacts the high speed rail may have on this area and offers no analysis as to whether these impacts could be mitigated and, if so, what mitigation measures to protect this area would be required as a condition of choosing the Pacheco alignment as the preferred alignment.

As these comments will demonstrate, the DEIR/S is a fatally flawed document. It fails in almost all aspects to perform its function as an informational document that is meant "to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project."[4] The DEIR/S must be revised and re-circulated before it can be relied upon to support agency decisions such as the selection of the Pacheco Pass alignment.

[3] Exhibit 8, Grasslands Water District, Land Use and Economics Study: Grasslands Ecological Area (July 2001), p. 2 (hereafter "*Grassland Water District*").

[4] *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391.

We have prepared these comments with the assistance of technical experts, including Terry Watt (growth inducing impacts) and Dr. Karen Weissman (biological resources, land use and other impacts). The comments of these experts are appended hereto as Exhibits 3 (*Watt Comments*) and Exhibit 4 (*Dr. Weissman Comments*) and their *curriculum vitae* are attached as Exhibits 5 and 6. Please note that these experts' comments supplement the issues addressed below and should be addressed and responded to separately.

I. IMPORTANCE OF GRASSLAND ECOLOGICAL AREA

The GEA is an irreplaceable, internationally significant, ecological resource surrounding Los Banos to the north, east and south. Originally, this area was part of a four million acre wetland system in the Central Valley of California. Of the 300,000 acres that remain, the GEA is the largest contiguous block of wetlands in the Central Valley. The protection of this area has been the result of private and public investments and partnerships.

The GEA boundary is a non-jurisdictional boundary designated by the U.S. Fish & Wildlife Service in order to identify an area for priority purchase of public easements for wetland preservation and enhancement.[5] The GEA includes federal wildlife refuges, a state park, state wildlife management areas and the largest block of privately managed wetlands in the state. The GEA also includes a large and growing portfolio of federal, state and private conservation easements. Through 1998, conservation easements had been acquired on over 64,000 acres at a total cost of over $28 million.[6]

The GEA is of considerable importance because it preserves a variety of habitats important to the maintenance of biodiversity on a local, regional, national and international scale. It has been estimated that thirty percent (30%) of the Central Valley migratory population of waterfowl use this area for winter foraging.[7] The GEA is a major wintering ground for migratory waterfowl and shorebirds of the Pacific Flyway and the Western Hemisphere Shorebird Reserve Network has

[5] *Grassland Water District* at 2.

[6] *Id.* at pp. 11-12.

[7] U.S. Bureau of Reclamation, *Final NEPA EA, Refuge Water Supply Long-Term Water Supply Agreements* (January 2002).

designated the GEA as one of only 22 international shorebird reserves in the world.[8] Over one million waterfowl are regularly found in the GEA during the winter months.[9] The GEA also provides habitat for more than 550 species of plants and animals, including 47 plant and animal species that are endangered, threatened or candidate species under state or federal law.[10]

In addition to providing critical biological habitat, the Grassland wetlands also provide a wide range of other benefits to the area, including flood control and educational and recreational opportunities. This concentration of wetlands and wildlife is a unique feature of the area, attracting hunters and other recreational visitors who make significant contributions to the economy of the area. The GEA receives over 300,000 user visits per year for hunting, fishing and non-consumptive wildlife recreation.[11] Recreational and other activities related to habitat values within the GEA contributes $41 million per year to the Merced County economy, and accounts for approximately 800 jobs.[12]

Without a careful study of the impacts that the Pacheco route may have on the GEA, the Project risks destroying this irreplaceable ecological resource of international importance. It also risks destroying the substantial direct economic contributions to the local and regional economics that the Grassland wetlands provide, as well as jeopardizing the tens of millions of federal, state and local dollars that have been invested in the protection of this area.

II. CEQA REQUIRES AGENCIES TO BE INFORMED ABOUT THE ENVIRONMENTAL CONSEQUENCES OF THEIR DECISIONS *BEFORE* THEY ARE MADE

Except in certain limited circumstances, CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an Environmental Impact Report ("EIR").[13] The EIR is the very *heart* of CEQA.[14]

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[8] Exhibit 11, Fredrickson, Leigh H. and Laubhan, Murray K, *Land Use Impacts and Habitat Preservation in the Grasslands of Western Merced County, CA* (February 1995), p.3.

[9] Exhibit 8, *Grasslands Water District*, supra, at p. 2.

[10] *Id.*

[11] *Id.* at p. 14

[12] *Id.* at p. 21.

[13] *See, e.g.*, Pub. Res. Code § 21100.

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"The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."[15]

CEQA has two basic purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.[16] "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'"[17]

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.[18] The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced."[19] If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns" specified in CEQA section 21081.[20]

AL072-1 cont

In the case at hand, the DEIR/S fails to satisfy either of these basic purposes. The DEIR/S, as presently constituted, is legally deficient because: (1) it employs an inaccurate and incomplete description of the project setting which, among other defects, fails to describe the existence and importance of internationally significant wetlands habitat and wildlife within the Grassland Ecological Area; (2) it contains an incomplete project description that omits critical details of the project, including

[14] *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

[15] *Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal.App.4th 98, 109.

[16] 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a)(1).

[17] *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

[18] CEQA Guidelines § 15002(a)(2)-(3); *see also, Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners (2001)* 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400.

[19] CEQA Guidelines § 15002(a)(2).

[20] CEQA Guidelines § 15092(b)(2)(A)-(B).

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but not limited to, significant construction, engineering and operational aspects of the project; (3) it fails to disclose, adequately consider and/or identify mitigation measures for numerous potential significant environmental impacts, including but not limited to, construction, land-use, operational and growth-inducing impacts on the wetlands habitat and wildlife within the GEA; (5) it improperly defers the identification of mitigation measures or standards and/or improperly relies upon uncertain and vague mitigation "strategies;" (6) it improperly rejects the feasible environmentally superior Altamont pass alternative without analysis; (7) it fails to support its findings regarding significance of environmental impacts, feasibility of mitigation and feasibility of alternatives with substantial evidence; and (8) for numerous other reasons as described throughout this document and its supporting exhibits. The Authority must correct these shortcomings and recirculate a revised DEIR/S for public review and comment before it may choose a preferred HST alignment that may impact the GEA.

AL072-1 cont.

III. THE DEIR/S FAILS TO ADEQUATELY DESCRIBE THE PROJECT SETTING

The DEIR/S employs an inaccurate and incomplete description of the project setting, thereby rendering the impact analysis legally deficient. An accurate description of the environmental setting is critical because it establishes the baseline physical conditions against which a lead agency can determine whether an impact is significant.[21] Under CEQA and NEPA, an EIR must include a description of the physical environmental conditions in the vicinity of the project from both a local and regional perspective.[22]

AL072-2

The DEIR/S must provide an accurate description of the environmental baseline, because "[t]he impacts of the project must be measured against the 'real conditions on the ground.'"[23] While the absence of information in the DEIR/S does not per se constitute a prejudicial abuse of discretion, "a prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process."[24]

[21] CEQA Guidelines § 15125(a).

[22] *Id*; 40 C.F.R. § 1502.15.

[23] *Save Our Peninsula Committee v. Monterey Board of Supervisors* (2001) 87 Cal.App.4th 99, 121.

[24] *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1355.

Here, the DEIR/S completely fails to describe the existence and importance of the habitat and wildlife within the GEA despite the fact that the proposed Pacheco alignment would bisect and impact this area. Such an utter failure to accurately describe the project setting is fatal to the DEIR/S as it precludes any semblance of informed decision-making and informed public participation.

The inadequacy of the project description in the DEIR/S is strikingly similar to the inadequacy of the legally deficient project description in the case *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713. In that case, the court found that the EIR's description of the environmental setting of a large residential development project was inadequate as a matter of law because it failed to disclose the specific location and extent of riparian habitat adjacent to the property, inadequately investigated the possibility of wetlands on the site, understated the significance of the project's location to the San Joaquin River, and failed to discuss a nearby wetland wildlife preserve. In the case at hand, the DEIR/S not only fails to disclose or examine the existence and importance of the wetlands habitat and wildlife in the GEA, but it also fails to describe the significance of the Project's crossing of the San Joaquin River at a location nearby the GEA.

AL072-2 cont.

The inadequate consideration and documentation in the DEIR/S of existing environmental conditions renders it impossible for the DEIR/S to assess the project's impact, to determine appropriate mitigation measures for those impacts and to determine an environmentally preferred alternative. The description of the environmental setting in the DEIR/S thus is not only, in and of itself, inadequate as a matter of law, but it also taints the impact analysis, alternatives analysis and mitigation findings, rendering them legally inadequate as well.[25]

IV. THE DEIR/S FAILS TO ADEQUATELY DESCRIBE THE PROJECT

An accurate and stable project description is the *sine qua non* of an informative, legally adequate EIR.[26] A legally sufficient project description must contain a "general description of the project's technical, economic, and

AL072-3

[25] *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729.

[26] *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192.

environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities."[27] While an EIR need not contain design-level description of the project, it must contain sufficient specific information about the project to allow an evaluation and review of its environmental impacts.[28]

Without an accurate description on which to base an EIR's analysis, CEQA's objective of furthering public disclosure and informed environmental decisionmaking would be impossible and consideration of mitigation measures and alternatives would be rendered useless.[29] In the case at hand, the DEIR/S provides an incomplete project description that omits critical details of the project, including but not limited to, significant construction activities, engineering and operations aspects of the project. As a result of the DEIR/S' failure to discuss or to identify key project components, potentially significant environmental impacts are not adequately described, analyzed or addressed.

The most glaring example may be the failure of the DEIR/S to reveal the frequency with which trains will pass by on these tracks. The only allusion to this information is a chart in the appendix to a technical report on operations that lays out the proposed schedule of trains for the Pacheco route.[30] This chart states that at least 134 total daily trains will pass through Los Banos; an average of more than one train every 11 minutes. This is critical Project information for establishing the potential visual, noise, vibration, and wildlife collision impacts and for providing the public with the real picture of what will be going through their parks, wildlife refuges, hunting clubs and neighborhoods. Yet, it is utterly absent in the DEIR/S itself.

The DEIR/S also fails to fully describe key project features such as noise barriers: "While noise barrier walls would not be the only potential mitigation strategy to be considered, they were used to represent mitigation potential in this Program EIR/EIS." DEIR/S page 3.4-5. Such barriers could have devastating impacts on wildlife and further fragment habitat areas.[31]

AL072-3 cont.

[27] CEQA Guidelines § 15124(c).

[28] *Cry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20.

[29] *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193, 197-198, 203.

[30] See DEIR/S, High Speed Train Operations Report, Appendix E (online at http://www.cahighspeedrail.ca.gov/eir/pd9/rgn_stdies/state/Operations/Op_App_E.pdf).

[31] Exhibit 9, Thomas Reid Associates, *Grasseland Water District Land Planning Guidance Study* (1995), Appendix A (Nose, R.F., *Translating Conservation Principles to Landscape Design for the*

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Another key project feature that the DEIR/S fails to adequately describe is the major crossing it must build over the San Joaquin River. Under the proposed Pacheco Pass alignment, this crossing would occur just a few miles from the sensitive habitat of the GEA. Yet, the DEIR/S fails to identify this project component or to describe how this undertaking would be accomplished.

Another example is the HST stations. The DEIR/S includes only general information about the total area of these project features and parking and, this information appears to underestimate total area for these features. The description fails to include the scale of these stations and their parking lots, access for each proposed station location or any indication of what likely related land uses would occur should these stations be built. A revised DEIR/S must include much more detailed descriptions of these and other HST station features, including likely diagrams and renderings of stations, parking facilities, access roads and transit oriented development around stations.

AL072-3 cont.

Yet another example is the lack of detailed description of construction activities. The duration of noisy and invasive construction activities through and adjacent to the GEA may severely disrupt biological species, habitat, water quality and air quality. In addition, the construction of the San Joaquin River crossing could pose serious impacts to water quality and riparian habitat. Without a complete and clear description of what it will actually take to construct the HST in these areas, impacts to the GEA from the construction of this project cannot be meaningfully analyzed.

If these and all other key project features are not thoroughly described, related impacts cannot be analyzed. These and other omissions in the description of the Project must be corrected in a revised DEIR/S and the potential for impacts (or mitigation) of these related projects and features disclosed and analyzed.

Grassland Water District (1994)), p. 44-47.

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V. THE DEIR/S FAILS TO ADEQUATELY ANALYZE POTENTIALLY SIGNIFICANT IMPACTS, FAILS TO INCORPORATE ADEQUATE MEASURES TO MITIGATE IMPACTS TO LESS THAN SIGNIFICANCE AND IMPROPERLY DEFERS MITIGATION MEASURES

Both CEQA and NEPA require that the DEIR/S identify all potentially significant Project impacts and identify feasible mitigation measures to reduce those impacts to less than significant.[32] The DEIR/S fails to comply with these requirements by failing to identify and mitigate potentially significant impacts related to the GEA, including impacts associated with construction and operation of the Project and impacts associated with population growth and urban encroachment induced by placement of HST stations in Merced County.

The DEIR/S attempts to excuse these failings by stating that it is a "program" EIR/EIS and that more detailed analysis of impacts and mitigation measures will be given in subsequent project-specific EIR/S. The DEIR/S, however, also states that a preferred alignment may be chosen in the final version of this DEIR/S *without any further environmental review*. Accordingly, even though this document is a first-tier program EIR/EIS, the potential impacts of choosing a HST alignment that passes through the GEA must be analyzed now in the DEIR/S and should not be deferred until after a decision on alignment has already been made. Such post-hoc review is too late and is inconsistent with CEQA's goal of informed decision-making. AL072-6

The High-Speed Rail Authority should correct these errors by analyzing all of the Project's potential impacts and identifying feasible, and enforceable mitigation measures in a revised DEIR/S that is circulated for public review.

A. A Program DEIR/S Must Provide Sufficiently Detailed Analysis To Support The Decisions Being Made In Reliance Upon It

A program EIR may be prepared on a series of actions that can be characterized as one large project and are related either: (1) geographically; (2) as logical parts in the chain of contemplated actions; (3) in connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a AL072-5

[32] Pub Res. Code §§ 21002.1(a), 21100 (b)(1) & (b)(3); 14 Cal. Code Regs. §§ 15126(a), 15126.4, 15143, 40 CFR 1502.16, 1508.8, 1508.25.

continuing program; or (4) as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.[33] Program EIRs allow the lead agency to consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.[34] Subsequent activities in the program must be examined in light of the program EIR to determine what additional environmental documents must be prepared.[35] If the potential impacts of the Subsequent activity were not fully examined in the program EIR, a new EIR or Negative Declaration would have to be prepared to address these impacts.[36]

Where an EIR is a program EIR, it must be sufficiently detailed to provide a full analysis of the potential environmental impacts of any discretionary decisions that would be made in reliance on the EIR, but may defer to a later study full analysis of the potential environmental impacts of actions or decisions that would not be taken until after further environmental study.[37] In the case at hand, the DEIR/S states that one of its intended uses is to choose a preferred alignment between the Bay Area and the Central Valley.[38] In order to make such a choice, the DEIR/S must first fully analyze all the potential impacts that may arise if a particular alignment is chosen and it must identify feasible mitigation measures to address these impacts. AL072-5 cont.

CEQA prohibits deferring analysis of these impacts under the guise of "tiering." Both NEPA and CEQA require analysis of a project's impacts at the "earliest possible stage, even though more detailed environmental review may be necessary later."[39] This requirement holds regardless of any intention to undertake site-specific environmental review for future project phases.[40] California courts require detailed analyses of all potentially significant impacts that may result from

[33] CEQA Guidelines § 15168(a).

[34] CEQA Guidelines § 15168(b)(4).

[35] CEQA Guidelines § 15168(c).

[36] CEQA Guidelines § 15168(c)(1).

[37] 14 Cal Code Regs § 1512(b); *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182.

[38] DEIR/S at 1-12.

[39] *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1147; see 40 C.F.R. 1501.1; 1501.2.

[40] *Stanislaus Nat'l Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 199.

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a project. Under CEQA, an EIR must focus on the changes in the environment that would result from the project.[41] An EIR must examine all phases of the project including planning, construction, and operation.[42]

A lead agency cannot ignore the requirement for an analysis of impacts from planning, construction or operation or defer the requirement to identify feasible mitigation measures simply by deferring the analysis in a "program" EIR.[43] In *Stanislaus Natural Heritage Project*, the County asserted that a specific plan EIR was both a "program EIR" for some aspects of the project and a "project-level" EIR for other aspects.[44] The court rejected the County's argument that it could review certain project phases and their environmental impacts in the future:

> the County's approval of the project under these circumstances [would] defeat [...] a fundamental purpose of CEQA: to "inform the public and responsible officials of the environmental consequences of their decisions *before* they are made."[45]

AL072-5 cont

The court held that tiering is not a device for deferring the identification of significant environmental impacts that the adoption of a specific plan could be expected to cause. The court stated that calling a specific plan a "program" does not relieve an agency from having to address the significant effects of that project.[46]

The High-Speed Rail Authority's approach in this case fails to provide the requisite level of review required by CEQA. The DEIR/S fails to adequately describe the Project setting, to adequately describe the Project itself, to analyze Project impacts, and to mitigate impacts that it does identify with specific, enforceable mitigation measures. Rather, the document repeatedly defers critical analysis and Project description on the grounds that the DEIR/S is a program EIR/S. The DEIR/S' vague and tentative analysis with respect to numerous Project elements precludes a full and proper analysis of Project impacts. Equally flawed,

[41] CEQA Guidelines § 15161.

[42] *Id.*

[43] *Stanislaus Nat'l Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 199.

[44] *Id.* at 202.

[45] *Id.* at 195 (emphasis added), quoting *Laurel Heights Improvement Association v. Regents of University of California* ("*Laurel Heights II*")(1993) 6 Cal.4th 1112, 1123.

[46] *Id.* at 197.

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the DEIR/S repeatedly determines that Project impacts would not be significant based solely on assumptions that vague and unspecified mitigation measures would be identified in later documents.

A program EIR/EIS may defer analysis of the impacts of decisions that would not be made until after additional environmental review. Here, however, the DEIR/S states that the preferred alignment may be chosen in the final version of this DEIR/S *without any further environmental review*. Accordingly, the potential impacts of choosing a HST alignment that passes through the GEA must be analyzed now in the DEIR/S if it is to be relied upon to support a decision on alignment.

AL072-5 cont

B. Analyzing Significant Environmental Impacts

The DEIR/S omits analysis of a number of potentially significant Project impacts and is, therefore, legally deficient. Both CEQA and NEPA require that the DEIR/S identify and analyze all direct and indirect potentially significant environmental impacts of a project.[47] A significant environmental impact is "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance."[48] In preparing an EIR, a lead agency is required to

AL072-6

> analyze the relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human uses of land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality and public services. The EIR [must] also analyze any significant environmental effects the project might cause by bringing development and people into the area affected.[49]

The primary function of an EIR is to "inform the public and responsible officials of the environmental consequences of their decisions before they are

[47] Pub. Res. Code § 21100(b)(1); CEQA Guidelines § 15126.2(a); 40 C.F.R 1508.8, 1502.16.)

[48] CEQA Guidelines § 15382.

[49] *Id.* at § 15126.2(a).

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made."[50] To fulfill this function, an EIR must be detailed, complete, and must "reflect a good faith effort at full disclosure."[51] An adequate EIR must also contain facts and analysis, not just an agency's conclusions.[52] In the case at hand, the DEIR/S does not meet these requirements.

The DEIR/S does not provide the necessary facts and analyses of the Project's potential impact on the GEA to allow the Authority and the public to make an informed decision concerning the project alternatives and mitigation measures. In many cases, the DEIR/S fails to even indicate whether an impact is considered significant, less than significant or reduced to less than significant after mitigation. Where the DEIR/S does make findings as to an impacts significance, it often fails to provide supporting evidence for its conclusions.

AL072-6 cont.

C. Adopting Feasible Mitigation Measures

Both CEQA and NEPA require the proposal and description of mitigation measures sufficient to minimize the significant adverse environmental impacts identified in the EIR.[53] This requirement is the heart of CEQA. CEQA imposes an affirmative obligation on agencies to avoid or to reduce environmental harm by adopting feasible project alternatives or mitigation measures.[54] Without an adequate analysis and description of feasible mitigation measures, it would be impossible for the Authority to meet this obligation.

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Mitigation measures must be designed to minimize, reduce or avoid an identified environmental impact or to rectify or to compensate for that impact.[55] A public agency may not rely on mitigation measures of uncertain efficacy or feasibility.[56] "Feasible" means capable of being accomplished in a successful

[50] *Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1123.

[51] CEQA Guidelines § 15151; *San Joaquin Raptor / Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

[52] See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568 (1990).

[53] Pub. Res. Code §§ 21002.1(a), 21100(b)(3); 40 C.F.R. §§ 1502.14(f), 1502.16(h); *Robertson v. Methow Valley Citizens Council* (1989) 420 U.S. 332, 352.

[54] Pub Res. Code §§ 21002-21002.1.

[55] CEQA Guidelines § 15370.

[56] *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed

manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors.[57] Mitigation measures must be specific and fully enforceable through permit conditions, agreements or other legally binding instruments.[58] Mitigation measures that are vague, or so undefined that it is impossible to evaluate their effectiveness, are legally inadequate.[59]

An agency must identify mitigation measures for significant impacts *before* it issues a proposed EIR for public review.[60] Mitigation measures adopted *after* project approval cannot validate the issuance of an EIR, since this deferral denies the public the opportunity to comment on the project as modified to mitigate impacts.[61] Accordingly, deferral of the formulation of mitigation measures to post-approval studies is generally impermissible.[62] An agency may only defer the formulation of mitigation measures when it "recognizes the significance of the potential environmental effect, commits itself to mitigating its impact, and articulates *specific performance criteria* for the future mitigation."[63]

AL072-7 cont.

Here, the DEIR/S consistently fails to identify feasible mitigation measures capable of mitigating the significant environmental impacts of the project alternatives and cumulative impacts. In particular, the DEIR/S fails to provide any mitigation analysis whatsoever relating to its potential impacts on the habitat and wildlife within the GEA.

Furthermore, where the DEIR/S does identify potential impacts, it repeatedly fails to articulate specific, enforceable mitigation measures or mitigation performance criteria. Instead, the DEIR/S refers to what it calls "mitigation strategies." These "mitigation strategies" are almost entirely vague and

that replacement water was available).

[57] CEQA Guidelines § 15364.

[58] *Id.* at § 15126.4(a)(2).

[59] *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

[60] Public Res. Code § 21061.

[61] *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393); *Quail Botanical Gardens Foundation v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1604, fn. 6.

[62] *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-309.

[63] *Gentry*, 36 Cal.App.4th at 1411 (emphasis provided), citing *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028-1029.

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unenforceable statements that lack any "specific performance criteria." Accordingly, it is impossible to determine their efficacy in reducing significant impacts to less than significant.

Nonetheless, the DEIR/S improperly and repeatedly concludes that significant impacts are rendered less than significant on the basis that unspecified "mitigation strategies" would be developed during future project-level review.[64]

In particular, the DEIR/S provides vague and insufficient mitigation measures for the following categories of impacts:

Transportation: "Consultation and coordination with public transit services in order to encourage the provision of adequate bus feeder routes to serve proposed station areas could mitigate potential transit feeders." DEIR/S page 3.1-24

Air Quality: "Potential localized impacts could be addressed at the project level by promoting the following measures: Increase use of public transit; increase use of alternative fuel vehicles; increase parking for carpools, bicycles, and other alternatives transportation modes." DEIR/S page 3.3-33.

AL072-7 cont.

Construction: "Potential construction impacts, which should be analyzed once more detailed project plans are available, can be mitigated by following local and state guidelines." DEIR/S page 3.3-33.

Noise and Vibration: "More detailed mitigation strategies for potential noise and vibration impacts would be developed in the next stage of environmental analysis." DEIR/S page 3.4-23. "This program level analysis has identified areas where future analysis should be given to potential HST-induced vibrations." DEIR/S page 3.4-24.

Energy: "The design particulars would be developed at the project-level of analysis..." DEIR/S page 3.5-22.

Land Use: "Local land use plans and ordinances would be further considered in the selection of alignments and station locations..." DEIR/S page 3.7-26.

[64] See, *e.g.*, DEIR/S Table 7.3-1.

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Agriculture: "Consideration of potential mitigation such as protection or preservation of off-site lands to mitigate conversion of farmlands or acquiring easements, or payment of an in-lieu fee as mitigation mechanisms, would depend on the potentially considerable environmental impacts identified at specific locations, as assessed in a project-level document. DEIR/S page 3.8-18.

Geology and Soils: "Mitigation for potential impacts related to geologic and soils conditions must be developed on a site-specific basis, based on the results of more detailed (design-level) engineering geologic and geotechnical studies." DEIR/S page 3.13-13.

Biological Resources: "Consultation with the appropriate resource agencies to develop site-specific avoidance and minimization strategies would be incorporated in the project-level environmental review." DEIR/S page 3.15-31.

4(f) and 6(f): Possible mitigation measures include sound walls, visual buffers/landscaping and modification of access to the resources. Strategies would be developed during the public input process. DEIR/S page 3.15-13.

AL072-7 cont.

For a number of the impacts identified above, the DEIR/S proposes deferring the development of mitigation measures until project-level review. CEQA and NEPA, however, require the Authority to identify feasible mitigation measures prior to taking an action that would rely on those mitigation measures. The Authority may not defer the requirement to identify feasible mitigation measures simply by deferring the analysis in a "program" EIR.[65]

In the case at hand, the Authority has indicated that it intends to choose a preferred alignment between the Central Valley and the Bay Area solely on the basis of the analysis in the DEIR/S. In order to make such a choice, the DEIR/S must first fully analyze all the potential impacts that may arise if a particular alignment is chosen and it must also identify feasible mitigation measures to address these impacts. Each of the impacts identified above could face unique mitigation difficulties or costs as the HST passes through the GEA. Such

[65] *Stanislaus Nat'l Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 199.

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difficulties could well tip the balance in the selection of a preferred alignment between the Central Valley and the Bay Area.

Identification of feasible mitigation measures after an alignment has already been chosen would defeat CEQA's goal of informed decisionmaking. The DEIR/S must be revised to identify specific, feasible mitigation measures for these impacts.

AL072-7 cont.

D. The DEIR/S Fails To Adequately Analyze The Potential Biological Impacts Of The HST On GEA Wildlife And Habitat

The DEIR/S fails to make sufficient analysis of the Project impacts on the biological resources of the GEA to permit an informed consideration of the implication of choosing one alignment over the other. Once the presence of the biological resources in the GEA have been identified and described, the DEIR/S must then analyze how the direct and indirect impacts of the project and cumulative projects would affect these resources.[65] Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both short-term and long-term effects.[67] The discussion should include relevant specifics of the area, the resources involved, physical changes, and alterations to the ecological systems.[68]

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The DEIR/S fails to either analyze the project's biological impacts on the GEA or to identify potential related mitigations. What little analysis that the DEIR/S does provide of the project's biological impacts is extremely cursory and incomplete. The discussion that there is of biological resources and wetlands in the DEIR/S merely provides narrative lists of species that may be potentially affected by the project. There is no meaningful analysis of the potential for the project to adversely affect the species via direct, indirect, or cumulative impacts and, consequently, no identification of specific, feasible alternatives.

Furthermore, the DEIR/S admits that the data it has relied upon in making its analysis is incomplete, stating that "[g]iven the data sets, the lack of identification of an impact does not necessarily mean that this portion of the proposed alternative would not result in potential impacts on biological resources, only the location-specific data would be required to make a more precise

[65] CEQA Guidelines Section 15126(a).

[67] *Id.*

[68] *Id.*

determination."[69] The failure to provide location-specific analysis of biological impacts is fatal to the DEIR/S' stated purpose of providing sufficient analysis to permit an informed selection of a preferred alignment between the Central Valley and the Bay Area. The Authority cannot base a possible selection of a preferred alignment through the GEA on such incomplete data.

A complete analysis of the potential biological impacts of the HST on the GEA is essential due to the considerable importance of this area. As discussed in more detail above, the GEA constitutes the most important waterfowl wintering area on the Pacific Flyway, and international treaties have recognized the habitat as a resource of international significance. The complex of wetland habitats within the GEA is of special significance because the size, juxtaposition, and connectivity of the different wetland types provide a unique opportunity to sustain native migratory and resident wildlife populations.[70] The associated uplands surrounding the semi-permanent wetlands are also of special importance, because they provide nesting areas for waterbirds, important food sources for grazers such as geese, and essential habitat for endangered species and numerous upland wildlife. Over one million waterfowl winter in the GEA each year and the GEA provides critical habitat for over 550 species of plants and animals, including 47 plant and animal species that are endangered, threatened or candidate species under state or federal law.

AL072-8 cont.

Prior to the selection of an alignment through this area, a complete assessment of all the Project's potential biological impacts on this important ecological resource must be made. These potential impacts include interruption of habitat connectivity, train noise and vibration impacts, shock wave impacts, train collisions with large animals, water quality impacts and construction impacts.

[69] DEIR/S at 3.15-3.

[70] Exhibit 11, Fredrickson, Leigh H. and Laubhan, Murray K., *Land Use Impacts and Habitat Preservation in the Grasslands of Western Merced County, CA* (February 1995).

Response to Comments of Thomas A. Enslow, Adams, Broadwell, Joseph & Cardozo, Grassland Water District and Grassland Resource Conservation District, August 31, 2004 (Letter AL072 and Attachment B)

AL072-1

The Co-lead agencies acknowledge the importance of the GEA and are planning additional review of alignment options between the Central Valley and Bay Area. Please see standard responses 3.15.7 and standard response 6.3.1 regarding anticipated future review of alignment options between the Central Valley and the Bay area and standard response 3.15.2 regarding the general level of review in this PEIR/S and the detailed impact reviews anticipated under the project-level, Tier 2 studies. The additional evaluations to be completed in these future studies will further review the types of issues raised in this comment related to the mountain crossing alignment options. Section 3.15.2.C of the Final Program EIR/EIS has been revised to include discussion of the location, content, and importance of the GEA.

The PEIR/S has been prepared at a level of detail appropriate for determining whether to proceed with the proposed HST program and for identifying preferred alignment options for the HST Alternative rather than presenting a more detailed assessment of project impacts. The Program EIR/EIS uses planning data at a consistent level of detail to compare potential impacts and choices between alignment options. The detailed questions included in this comment will need to be addressed as part of the new alignment studies for the Central Valley to the Bay Area. Detailed evaluations of site-specific impacts to the GEA and appropriate mitigation measures would be provided in subsequent project-level, Tier 2 studies, should the ultimately selected HST corridor alignment pass through or near the GEA.

The Co-lead agencies acknowledge the size of the GEA. Given its size, the Co-lead agencies are not certain that the ultimately selected HST alignment can or will avoid the GEA area, but the Co-lead agencies commit to continuing to review ways to first, avoid and minimize potential impacts, and second, mitigate impacts to the GEA, if necessary. This Final PEIR/S includes a discussion of design practices and additional possible mitigation measures to be applied to reduce potential impacts to wetlands and biological resources (see Sections 3.15.5 and 3.15.6 in the Final PEIR/S).

AL072-2

See Response AL072-1 above. The expected additional Program EIR/EIS for the Bay Area to Central Valley will include additional information on potential impacts to wetlands, and water resources.

AL072-3

See Response AL072-1 above. The co-lead agencies disagree with your assessment, "as a result of the DEIR/S failure to discuss or to identify key project components, potentially significant environmental impacts are not adequately described, analyzed or addressed". The frequency of HST trains was described in Sections 2.6.1 "Travel Times and Frequency of Service" (which includes reference to the Authority's June 2000 Business Plan), and 2.6.2 "Conceptual Service Plan" of the Draft Program EIR/EIS. In addition, Section 6.2.4 "Performance Criteria described the HST Alternative as "capable of maintaining operations at 3-minute headways", Section 3.2.3 discussed both the high frequency of the HST Alternative and the overall capacity of the system (which is calculated based upon minimum frequencies of 3-minute headways), and Section 6.2.2 "Bay Area to Merced Station Options" notes that the conceptual operating plan that was assumed for the Business Plan, "proposed 66 trains (per day, per direction – 132 total) to serve the Bay Area". The Draft Program EIR/EIS had a special section on noise barriers 3.4.5A "Noise Barriers". The co-lead agencies disagree with your assessment that noise barriers could have "devastating impacts on wildlife and further fragment habitat areas". The HST Alternative would be fenced to prevent right-of-way intrusion with or without noise barriers where the alignment was at-grade or in a cut or fill

section. General mitigation strategies can be defined at the program level of analysis and each environmental section of Chapter 3 in the Final Program EIR/EIS has been modified to include mitigation strategies that would be applied in general for the HST system. Each section of Chapter 3 also outlines specific design features that will be applied to the implementation of the HST system to avoid, minimize, and mitigate potential impacts (including measures to mitigate effects on the HST Project on animal movements and corridors in Section 3.15.6). The methods of construction including excavation and disposal/use of excavated materials are discussed in Section 3.18.5 of the Final EIR/EIS. However, construction impacts are highly site-specific in nature and will be addressed in detail during the subsequent project level environmental review.

AL072-4

Construction and operational impacts are highly site-specific in nature. See Section 3.18 of the Final Program EIR/S for a general discussion of potential construction impacts. These issues will be addressed in more detail during subsequent project level environmental review, based on more precise information regarding location and design of the facilities proposed (e.g., specific alignment, right of way corridor width, elevated, at-grade, cuts and fills, etc.). The more detailed engineering associated with project level environmental analysis will allow the Authority to further investigate ways to avoid, minimize and mitigate potential impacts. Once the alignment is refined and the facilities are fully defined through project level analysis, and after avoidance and minimization efforts have been exhausted, specific impacts and mitigation measures will be addressed. However, general mitigation strategies can be defined at the program level of analysis. Each environmental section of Chapter 3 in the Final Program EIR/EIS has been modified to include mitigation strategies that would be applied in general for the HST system. Each section of Chapter 3 also outlines specific design features that will be applied to the project level studies and implementation of the HST system to avoid, minimize, and mitigate potential impacts.

Potential growth related impacts to placement of a HSR station in Merced County are addressed in Section 5.2 of the Final Program EIR/EIS.

AL072-5

The co-lead agencies acknowledge the intent to provide sufficient information to support the decisions to be made in the Program EIR/EIS. In this regard the Co-Lead agencies have determined that additional information is required to identify a preferred alignment option between Merced and the San Francisco Bay Area. Please see standard responses 3.15.7 and standard response 6.3.1 regarding anticipated future review of alignment options between the Central Valley and the Bay area and standard responses 3.15.2 and 3.15.13 regarding the general level of review in this PEIR/S and the detailed impact reviews anticipated under the project-level, Tier 2 studies. The additional evaluations to be completed in these studies will review the types of issues raised in this comment.

AL072-6

The Co-Lead agencies disagree with the commentor's conclusion that the Program EIR/EIS does not meet CEQA requirements. The Program EIR/EIS presents extensive information regarding the potential impacts of a statewide HST system at a program level of detail. The Co-Lead agencies have determined that additional information is required to identify a preferred alignment option between Merced and the San Francisco Bay Area. Please see standard responses 3.15.7 and standard response 6.3.1 regarding anticipated future review of alignment options between the Central Valley and the Bay area, and standard responses 3.15.2 and 3.15.13 regarding the general level of review in this PEIR/S and the detailed impact reviews anticipated under the project-level, Tier 2 studies.

AL072-7

Specific mitigation measures will be addressed during subsequent project-level environmental review, based on additional information regarding location and design of the facilities proposed. The more

detailed engineering associated with the project level environmental analysis will allow the Authority to further investigate ways to avoid, minimize and mitigate potential impacts. Once the alignment is refined and the facilities are fully defined through project level analysis, and only after avoidance and minimization efforts have been exhausted, will specific impacts and mitigation measures be addressed. However, general mitigation strategies can be defined at the program level of analysis and each environmental section of Chapter 3 in the Final Program EIR/EIS has been modified to include mitigation strategies that would be applied in general for the HST system. Each section of Chapter 3 also outlines specific design features that will be applied to the implementation of the HST system to avoid, minimize, and mitigate potential impacts. Please also see standard response 6.3.1.

AL072-8

In an effort to minimize impacts to the Grassland Ecological Area (GEA), the conceptual HST Pacheco Pass alignments through the GEA was placed immediately adjacent to an existing roadway, Henry Miller Road, that currently passes through privately held lands of the GEA at the southernmost end of the Los Banos Wildlife area, and that provides vehicular access to that area. The Co-lead agencies acknowledge the importance of the GEA and are planning an additional programmatic review of alignment options between the Central Valley and Bay Area. Please see standard response 3.15.7 regarding anticipated future reviews of alignment options between the Central Valley and the Bay area and standard response 3.15.2 regarding the more general level of review in this PEIR/S and the more detailed impact reviews anticipated under the project-level, Tier 2 studies. The PEIR/S has been prepared at a level of detail appropriate for determining whether to go forward with the program and for identifying preferred alignments in other parts of the state, but not at a detailed project-level of analysis. Therefore, the PEIR/S uses planning level data at a consistent level of detail to compare potential impacts and choices between alignment options. The detailed questions included in this comment will need to be addressed as part of the planned additional alignment studies for the proposed HST system from the Central Valley to the Bay Area. Detailed evaluations of site-specific impacts to the GEA and appropriate mitigation measures would be provided in subsequent project-level, Tier 2 studies, should the ultimately selected HST corridor alignment pass through or near the GEA. The Co-lead agencies acknowledge the size of the GEA. Given its extent, the Co-lead agencies are not certain that the ultimately selected HST alignment can or will avoid the GEA area, but the Co-lead agencies commit to continuing to review ways to first, avoid and minimize potential impacts, and second, mitigate impacts to the GEA, if necessary. This Final PEIR/S includes discussions of design practices and construction impacts, and identifies additional possible mitigation measures to be applied to reduce potential impacts to wetlands and biological resources.

AL072-9

Please see response to Comment AL072-8 regarding anticipated additional HST alignment and detailed environmental impact studies to be completed in the future. Please see standard response 3.15.9 regarding wildlife corridors. The currently proposed HST alignment through the GEA has been placed immediately adjacent to an existing roadway as it passes through the GEA area. Future reviews of alignment options between the Central Valley and the Bay Area will evaluate variations of the options for the route alignments, within the preferred broad corridor identified between the Pacheco and Altamont passes. This Final PEIR/S includes an expanded description of design practices and possible mitigation measures to reduce potential impacts to wetlands and biological resources, addressing such issues as how to protect water flow and how to reduce interference with animal movement by, e.g., by constructing portions of the track in an aerial alignment. Please note that the Authority has dropped a station in the Los Banos area from further consideration. Anticipated future project-level, Tier 2 evaluations to be performed following selection of a preferred HST corridor alignment, will provide more detailed review of impacts to the GEA (should it pass through or near the GEA area), and associated mitigation measures.

Comment Letter O015

NRDC
THE EARTH'S BEST DEFENSE

NATURAL RESOURCES DEFENSE COUNCIL

Via U.S. Mail and Facsimile

July 28, 2004

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Chairman Joseph E. Petrillo and
Members of the High-Speed Rail Authority
Attn: California High-Speed Train
Draft Program EIR/EIS Comments
925 L Street, Suite 1425
Sacramento, CA 95814
Fax: (916) 322-0827

Re: Draft Program EIR/EIS Comments on the California High-Speed Train

Dear Chairman Petrillo and Members of the High-Speed Rail Authority:

The following comments regarding the proposed California High-Speed Train System ("HST" or "project") are submitted on behalf of the Natural Resource Defense Council ("NRDC") and its more than 550,000 members, 110,000 of whom reside in California. NRDC is a national, nonprofit organization of scientists, lawyers and environmental specialists dedicated to protecting public health and the environment, with California offices in Los Angeles and San Francisco.

The concept of a high-speed rail system in California is, in our view, an exciting one, with broad public importance and enormous implications across a wide range of environmental and other concerns. Precisely for this reason, however, and because of the extraordinary scale and range of impacts associated with the proposed project, the level of environmental analysis required is justifiably high, and the need to provide the public and decision-makers with objective and accurate information is understandably great.

Unfortunately, the California High-Speed Rail Authority (the "Authority") and the Federal Railroad Administration (the "FRA") have failed in the draft environmental impact report and environmental impact statement ("DEIR/S" or "draft") to meet this standard. In our view, the Authority and the FRA have prepared and circulated an inadequate draft that fails to reflect the level of detail a project of this magnitude demands. The draft's discussion of potential impacts and mitigation strategies consistently defers to a future point in time meaningful analysis of significant impacts as well as detailed discussion of specific and enforceable mitigation measures. As a result, the DEIR/S does not comply with the California Environmental Quality Act ("CEQA"), Cal. Pub. Res. Code § 21000 *et seq*.; the CEQA Guidelines, California Code of Regulation, Title 14, Section 15000 *et seq*.; the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq*.; and the NEPA regulations. Accordingly, the DEIR/S must be revised and re-circulated.[1]

I. Introduction

CEQA and NEPA contain parallel requirements mandating that an environmental review accompany proposals for major federal and state actions significantly affecting the environment. The EIR/EIS must include, among other things, an analysis of the reasonably foreseeable and significant direct, indirect, cumulative, short- and long-term adverse environmental consequences of each developed alternative. This disclosure must be undertaken to adequately inform decision-makers and the public about the potential impacts of a project, and to avoid or reduce environmental damage through the use of alternatives or mitigation measures.

When information on these consequences is incomplete or prohibitively expensive, the gaps must be noted, their relevance analyzed, and an evaluation of theoretical impacts based on credible scientific evidence given. The DEIR/S is to serve as "an environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." (*County of Inyo. v. Yorty* (1973) 32 Cal.App.3d 795, 810.)

As discussed below, the HST DEIR/S does not fulfill the basic requirements of CEQA and NEPA as it fails to provide enough information to adequately inform decision-makers and the public of the range of impacts resulting from the project. Simply put, the analysis in the DEIR/S is insufficient to fulfill the purposes for which it was drafted -- to adopt the HST Alternative and select preferred HST corridors/alignments and general station locations. (See DEIR/S at S-1.) The Authority and the FRA have not "demonstrate[ed] to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." (*Berkeley Keep Jets Over Bay v. Port Commissioners* (2001) 91 Cal.App.4th 1344, 1374 (quoting *Schoen v. Dept. of Forestry* (1997) 58 Cal.App.4th 556, 573-574).) As such, the project should undergo further review and revision, consistent with these comments and proposed recommendations, before the HST Alternative is adopted.[2]

[1] The DEIR/S's failure adequately to meet these disclosure requirements makes it virtually impossible to make an informed comparison between the various proposed alternatives. For that reason, our comments will not attempt such a comparison. Rather, these comments will address the adequacy of the draft's discussion of the project's potential environmental impacts, and the specificity and enforceability of the mitigation and benefits proposed to offset these impacts. We have also added a section that specifically discusses the potential construction impacts under the HST Alternative. For a project of this size, the construction impacts are unquestionably enormous, and the Authority and FRA's failure to consider these impacts in detail is unacceptable.

[2] Notably, the draft repeatedly recognizes the need for supplemental analysis. For example, in the section of Biological Resources and Wetlands the DEIR/S states: "Given the data sets, the lack of identification of an impact does not necessarily mean that this portion of the proposed alternative would not result in potential impacts on

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II. Discussion of HST DEIR/S

A. *Chapter 3- Affected Environment, Environmental Consequences, and Mitigation Strategies*

1. Section 3.1- Traffic and Circulation

Impacts

Importantly, "intercity traffic in California is expected to grow from 155 million trips to more than 209 million trips in the next 20 years, with an estimated 58% of these trips made by automobile." (DEIR/S at 3.17-2; see DEIR/S at 3.1-5 ("Traffic conditions throughout northern and southern California are expected to worsen").) As stated in the DEIR/S, "the study area highway and roadway corridors considered in [the DEIR/S] represent some of the worst traffic conditions in the nation." (DEIR/S at 3.1-5.) While the HST may improve traffic conditions in some areas,[3] it will detrimentally impact the traffic conditions in other areas, particularly where HST station stops are located. (See DEIR/S at 3.17-2.)

For example, in discussing the Bay Area to Merced segment, the DEIR/S states: "The only significant projected degradation under the HST Alternative compared to the No Project Alternative would occur at the proposed Transbay Terminal, where the [Level of Service (LOS)] would degrade from LOS D to LOS F ..." (DEIR/S at 3.1-15.) This would bring the LOS from *Fair* ("Delays may be substantial during portions of rush hours, but enough lower volume periods occur to permit clearing of developing lines, preventing excessive backups")[4] to *Failure* ("Backups from nearby locations or on cross streets may restrict or prevent movement of vehicles out of the intersection approaches. Tremendous delays with continuously increasing queue lengths.")[5]

Under the Los Angeles to San Diego via Orange County segment, "[t]raffic conditions are expected to worsen at the proposed HST station sites, with the exception of four stations, where funded roadway improvements will result in improved conditions under the No Project Alternative." (DEIR/S at 3.1-11.) Moreover, "[o]verall, ... although highway conditions would improve under the Modal and HST Alternatives, the general conditions would remains at poor LOS [LOS E 'Represents the maximum vehicles that intersection approached can accommodate; may be long lines of waiting vehicles through several signal cycles']" or at Failure --LOS F.

O015-1

biological resources, only that location-specific data would be required to make a more precise determination." (DEIR/S at 3.15-3.) This supplemental analysis should be prepared, circulated, and revised before the HST project is approved and goes forward, and additional mitigation measures should be reviewed and adopted before carrying out the project.

[3] The Modal Alternative will improve traffic conditions 21% above the No project Alternative, compared with 5% under the HST Alternative. (DEIR/S at 3.1-12 (Table 3.14-4.)

[4] DEIR/S at 3.1-2 (Table 3.1-1).

[5] DEIR/S at 3.1-2 (Table 3.1-1).

(DEIR/S at 3.1-13; see DEIR/S at 3.1-2 (Table 3.1-1).) These impacts are potentially significant and should be more critically and appropriately reviewed and mitigated.

Mitigation

Although the traffic impacts of the HST Alternative are significant and inconsistent with the public's understanding of the one of the fundamental purposes of the project -- that is, high-speed rail will aid in *decreasing* congestion and traffic -- the mitigation measures detailed in the HST are neither sufficiently specific nor clearly enforceable. For example, under the sections describing mitigation strategies, the draft states that the "California High Speed Rail Authority could participate in developing potential construction and operational mitigation measures in consultation with state, federal, regional, and local governments and affected transit agencies during project-level reviews." (DEIR/S at 3.1-23.) This discussion of mitigation strategies is insufficient.

O015-1 cont.

In addition, the mitigation measures proposed do not address the foreseeable environmental impacts that the measures themselves may have. For example, under the DEIR/S a potential mitigation measure that may be developed would include "[m]ajor intersection improvements (full lane widening), which require significant right-of way acquisition to accommodate additional left-turn and/or through lanes." (DEIR/S at 3.1-23.) The effect of such acquisition should be further evaluated and analyzed.

2. Section 3.3- Air Quality

Impacts

"*Air pollution* is a general term that refers to one or more chemical substances that degrade the quality of the atmosphere." (DEIR/S at 3.3-1 (emphasis in original).) The DEIR/S does not adequately address the air quality impacts that would result from construction and operation of the HST, even though the DEIR/S suggests that these impacts are significant. For example, the project would result in "[s]hort-term construction impacts related to earthwork (cut and fill grading) that would result in dust (PM 10) and localized emissions". (DEIR/S at 7-2.) PM 10 is just one of many pollutants identified by the U.S. Environmental Protection Agency as a concern nationwide. In fact, "PM10 continues to be a problem in the South Coast Air Basin, which is designated as nonattainment for both the state and national ambient air quality standards. More controls specific to PM10 will be needed to reach attainment." (DEIR/S at 3.3-14.)

O015-2

Rather than discuss such construction impacts, the DEIR/S determines:

> Potential construction impacts and potential mitigation measures should also be addressed in subsequent analyses. Once an alternative and alignment is established a full construction analysis should be conducted. This analysis should quantify emissions from construction vehicles, excavation, worker trips, and other related construction activities. Mitigation measures, if required, should be

detailed and a construction monitoring program, if required should be established.

(DEIR/S at 3.3-33.) Leaving analysis of construction impacts for a future point in time is inconsistent with CEQA, because as the DEIR/S states the "construction period would last at least 10 years and the miles of corridor under construction at one time would extend across the state, these physical impacts would potentially be significant." (DEIR/S at 7-2.) These impacts are potentially significant and should be more appropriately and critically reviewed.

Similarly, the impacts from operating the HST stations have not been fully evaluated or discussed in the DEIR/S. While these impacts may be minimal, these impacts are known to result from the project and must be discussed. Further, there are a great number of traffic impacts around the HST stations, as suggested in the Traffic and Circulation section of the DEIR/S. The potential air quality impacts resulting from these traffic impacts are not fully assessed in the DEIR/S. Rather, the DEIR/S states:

> Once alignments are selected, if a decision is made to proceed with the proposed HST system, then local traffic counts could be conducted at access roads serving major station locations. These counts would provide more accurate information for determining potential local air quality hotspot locations.

(DEIR/S at 3.3-33.) These impacts are potentially significant and should be more appropriately and critically reviewed.

One mode of HST technology considered in the DEIR/S "includes *existing diesel locomotive* intercity train equipment (e.g., Amtrak)." (DEIR/S at 2-27 (emphasis added).) The DEIR/S considers diesel technology "[b]ecause of the extensive constraints (e.g., existing historical land uses, sensitive coastal habitats, and established coastal communities) along portions of the existing LOSSAN corridor between Orange County (Irvine) and San Diego ... The LOSSAN region is the only portion of the proposed HST system where non-electric train technology is being considered." (DEIR/S at 2-30.) The impacts of diesel-powered locomotives have not been evaluated in the Air Quality section of the DEIR/S and do not appear to exist in any other section of the DEIR/S. These impacts are potentially significant and should be more thoroughly reviewed and mitigated.

Mitigation

As in many other sections in the DEIR/S, these mitigation measures, too, lack specificity and enforceability. For example, the DEIR/S states: "At the project level potential mitigation strategies should be explored to address potential localized impacts ... The proposed HST system could be designed to use state-of-the-art, energy-efficient equipment to minimize potential air pollution impacts associated with power used by the proposed HST system. Potential localized impacts could be addressed at the project level by *promoting* ... Increase use

O015-2 cont.

of public transit ... Increase use of alternative-fueled vehicles ... Increase parking for carpools, bicycles, and other alternative transportation methods." (DEIR/S at 3.3-33 (emphasis added).) The DEIR/S further states: "Potential construction impacts, which should be analyzed once more detailed project plans are available, can be mitigated by following local and state guidelines." (DEIR/S at 3.3-33.) Merely requiring compliance with applicable laws and regulations, and promoting but not requiring more efficient measures, is insufficient mitigation for a project of this magnitude.

The following additional mitigation measures also merit consideration:

- Prohibiting engine idling of onroad and nonroad heavy-duty diesel construction equipment
- Ensuring appropriate maintenance and regular, periodic inspections, including smoke testing inspection of onroad and nonroad construction equipment
- Encouraging the use of better construction equipment (for example, alternative fuel (non-diesel) equipment such as electric or propane forklifts, solar signboards and fuel cell generators) through incentives
- Requiring that construction equipment use low sulfur diesel fuel with after-treatment technologies
- Requiring the use of diesel particulate filters on onroad and nonroad construction vehicles
- Requiring the use of oxidation catalysts on onroad and nonroad construction vehicles
- Constructing the HST stations and other facilities in compliance with Leadership in Energy and Environmental Design ("LEED") green building standards

O015-2 cont.

3. Section 3.5- Energy

Impacts

California is the tenth-largest worldwide consumer of energy, and at 46% of California's consumption the transportation sector represents the largest proportion of energy consumed in the state. (See DEIR/S at 3.5-7.) The energy consumption based on passenger miles traveled ("PMT") is 1,200 Btus/PMT for the HST compared with 3,300 Btus/PMT for airplanes. (DEIR/S at 3.5-16 (Table 3.5-5).) However, the direct energy consumption for HST is 924,384 Btus/VMT compared with 334,086 Btus/VMT for airplanes. (DEIR/S at 3.5-4 (Table 3.5-1).) The current presentation of data in the DEIR/S is confusing and should be revised to present the analysis in a manner that adequately alerts the public to the amount of energy the HST Alternative will consume.

O015-3

There are some potentially substantial and significant impacts that are identified but not analyzed in the DEIR/S. For example, the DEIR/S states: "Given the scope and scale of the ... HST Alternative, it is anticipated that secondary construction-related energy impacts would be substantial" and "[c]onstruction of the ... HST Alternatives would potentially represent a significant use of nonrenewable resources." (DEIR/S at 3.5-20.) As these impacts admittedly may be substantial and significant, these impacts should be reviewed in a supplement to the DEIR/S before the project goes forward.

Comment Letter O015 Continued

Mitigation
The DEIR/S commits to adopting specific mitigation measures, including to "[u]se regenerative braking to reduce energy consumption of the system," "minimize grade changes in steep terrain areas to reduce the use of electricity during peak periods," "[u]se energy-saving equipment and facilities to reduce electricity demand," "[m]aximize intermodal transit connections to reduce automobile VMT related to the HST system," "[d]evelop and implement a construction energy conservation plan," and "[d]evelop potential measures to reduce energy consumption during operation and maintenance activities." (DEIR/S at 3.5-22, 23.) However, "[d]etails regarding energy conservation practices have not been specified for the HST Alternative, which has not been designed in detail, nor have construction methods and staging been planned at this time." (DEIR/S at 3.5-19; see DEIR/S at 3.5-22, 23.) For the adopted mitigation measures to have sufficient specificity and enforceability, these details and methods must be developed and discussed in a supplemental DEIR/S.

O015-3 cont

4. Section 3.7- Land Use and Planning, Communities and Neighborhoods, Property, and Environmental Justice

Impacts
The DEIR/S addresses the impacts on land uses. "The potential compatibility of the alternatives with existing land use is evaluated based on the potential sensitivity of various land uses to the changes which would be included with the Modal and HST Alternatives, and the potential impact of these changes on existing and planned land uses." (DEIR/S at 3.7-2.) Under this means of evaluation, alignment choices within the existing right of way are always considered low impacts. (See DEIR/S at 3.7-4 (Table 3.7-2).) This appears to underestimate the actual impacts of the project. HST alignments that travel within existing rights of way may still pose new, or magnify existing, negative impacts on surrounding communities and resources. These potentially significant impacts are inadequately addressed in the DEIR/S and need to be further assessed in a supplemental DEIR/S before the project goes forward.

O015-4

The study area for land use compatibility is .25 miles on either side from the centerline of the rail, stations, and other potential HST related facilities. (DEIR/S at 3.7-5.) For property impacts, the study area is 100 feet on either side of the centerline. (DEIR/S at 3.7-5.) Realistically speaking, a property that is 150 feet or 200 feet from a train speeding by at 200 miles per hour ("mph") eight times a day will be significantly impacted by those occurrences. Both of these study areas need to be expanded to adequately assess potential impacts

The DEIR/S also addresses the impacts on environmental justice communities. The study area for environmental justice communities is .25 miles on either side from the centerline of the rail, stations, and other potential HST related facilities. (DEIR/S at 3.7-5.) This study area also needs to be expanded to adequately assess the impacts from the HST. A more appropriate area for assessing such impacts would be the same area used to identify a community as an

environmental justice community. Expanding the study area in this manner would provide a more accurate review of the communities impacted by the project.

Even within this limited study area, the discussion of environmental justice impacts in the DEIR/S does not comply with existing laws and regulations. For example:

> Planning and programming activities that shall have the potential to have a disproportionately high and adverse effect on human health or the environment shall include explicit consideration of the effects on minority populations and low-income populations. Procedures shall be established or expanded, as necessary, to provide *meaningful opportunities for public involvement by members of minority populations and low-income populations* during the planning and development of programs, policies and activities.

O015-4 cont

(U.S. Department of Transportation, *Environmental Justice in Minority Populations and Low-Income Populations*, Order DOT 5610.2 (emphasis added).) In spite of this specific guidance, there is little analysis of environmental justice concerns, or specific discussion of efforts to "provide meaningful opportunities for public involvement by members of minority populations and low-income populations." This is troubling considering many of the proposed HST station stops are located "within a minority population." A supplement to the DEIR/S should engage communities around potential HST alignment and station stops to more fully assess and address environmental justice concerns.

Mitigation
The DEIR/S fails to discuss any measures to mitigate the impacts HST will have on land use or environmental justice communities. Instead the draft saves for the project level analyses discussion of consistency with existing and planned land use, neighborhood access needs, multi-modal connectivity opportunities, and outreach to potential environmental justice communities. (DEIR/S at 3.7-26, 27.) For the Authority and the FRA to present an adequate and accurate analysis of the impacts that the HST will impose, and measures that will mitigate that impact, these issues need to be explored in a supplement to the DEIR/S.[6]

5. Section 3.8 Agricultural Lands

Impacts
California leads the nation in agricultural production and export. (DEIR/S at 3.8-5.) In 2001, California farmland comprised 4% of the nation's total, and its agricultural production accounted

O015-5

[6] The Authority and FRA should consider providing free or nominal cost hard (or compact disc) copies of the HST DEIR/S to low-income communities and communities of color that may be directly or indirectly impacted by the HST, as well as conducting workshops and hearings in all areas where there is a proposed HST station stop, with additional outreach in environmental justice communities.

Comment Letter O015 Continued

for 13% of the nation's gross cash receipts. (DEIR/S at 3.8-5.) As important as California's farmland is to our nation's economy, the "Agricultural Lands" considered in the DEIR/S are only those included in the Farmland Mapping and Monitoring Program ("FMMP"). Indeed, the analyses for the Sacramento to Bakersfield and Bakersfield to Los Angeles segments indicate that aerial views clearly show farmland not included in the FMMP. (DEIR/S at 3.8-6, 7.) Likewise, grazing lands are also left out of the FMMP and the impacts analysis. (DEIR/S at 3.8-6.) As such, there is clearly more farmland than that included in the FMMP. The DEIR/S makes no attempt to include the potentially significant impacts on these lands or estimate what proportion of California's farmland is actually covered by the FMMP database.

The HST alternative will result in major impacts to farmland. According to the DEIR/S, the HST Alternative is expected to impact between 2,445 and 3,860 acres of farmland. (See DEIR/S at 3.8-10 (Table 3.8-1).) The project's projected impacts are limited to a tally of the amount of farmland converted by the footprint of each alternative -- "the geographic area needed for the improvements only, with no extra area surrounding them."[7] (DEIR/S at 3.8-3.) Focusing largely on the 0 to 100 feet that will be required for the rail, the draft fails to address substantial impacts. (See DEIR/S at 3.8-3, 4.)

O015-5

The DEIR/S suggests that the primary contributor to farmland loss will not be the 50 or 100-foot strip upon which the route is actually built, but rather urban development -- a function of population growth, housing economics, and commuting patterns. (See DEIR/S at 3.8-9 (under the no project alternative 845,000 acres of farmland will be lost by 2020 and transportation improvements, i.e. footprints of new roads or runways, account for less than one percent of the projected farmland loss).) This DEIR/S fails to consider the possible impacts of the HST alternatives other than the admittedly minor "footprint" of the rail.[8]

Mitigation

Mitigation strategies for the HST Alternative include avoidance through alignment choice, and reduction of impacts by sharing existing rights-of-way where possible. (DEIR/S at 3.8-18.) Site-specific impacts and specific farmland mitigation strategies will await a project level analysis. (DEIR/S at 3.8-18.) These impacts and strategies should be considered before the project is approved. These mitigation strategies should discuss, among other things, possible placement of stations that encourage smart growth.

[7] This quote is taken from the Modal Alternative discussion, but the HST Alternative discussion suggests the same methodology.

[8] Key questions to explore must include the following: (1) What impacts will urban growth and commuting patterns have on impacts to farms under each alternative? (2) Which HST station locations have greater potential to spur urban growth patterns that are detrimental to farmlands? (3) Which station locations will have the least potential negative impacts?

6. Section 3.10- Public Utilities

Impacts

The DEIR/S identifies and compares the potential impacts each alternative would have on utility systems. The potential for impacts is calculated by tallying the number of identified utilities that "conflict," i.e. are within 100 feet of the centerline of a proposed alignment and 100 feet around each station. (DEIR/S at 3.10-2.) Potential for impacts from all utilities are represented by: major transmission electrical lines and substations of 230 Kilovolts or more; natural gas facilities and high pressure pipelines; and wastewater treatment facilities in the project corridor and pipelines of 36 inches or more in diameter. (DEIR/S at 3.10-2.) System-wide, the HST Alternative will impact 511 to 842 identified public utilities depending upon alignment choices. (DEIR/S at 3.10-7 (Table 3.10-2).) Yet, the DEIR/S identifies no significant potential impacts that could not be avoided, minimized, or mitigated. (DEIR/S at 3.10-3.) This needs to be further explored as these impacts are potentially significant and should be more appropriately and critically reviewed.

The DEIR/S's methodology of tallying the number of utilities that intersect with the alternatives fails to identify potential environmental impacts, and ranking the segments by the amount of intersections provides very little information. For example, the DEIR/S does not discuss the impacts that may result from damage to the sewage and natural gas pipelines that the project intersects. Without such analysis, no meaningful comparison of alternatives is possible. Costs and disruptions from impacts to wastewater, electricity, and natural gas would all have differing impacts, but no analysis of the differentiated impacts is given. The impacts are potentially significant and should be evaluated in a supplement to the DEIR/S.

O015-6

The DEIR/S's focus on electric, natural gas, and wastewater as representative of all utilities excludes other potentially significant utilities. For example, for the segment from Los Angeles to San Diego via the Inland Empire, the DEIR/S shows a cluster of oil pipelines running alongside and crossing the HST route, yet oil pipelines are not considered in the analysis. (See DEIR/S at Figure 3.10-1.) According to the DEIR/S, the subsequent project-level analysis will focus on local details once alignments are better defined. Specifically, more information will be collected on water supply lines; wastewater conveyance lines; wastewater and water pump stations; storm drains; fiber-optic lines; telecommunication lines; and other utilities and pipelines such as liquefied petroleum and crude oil. (DEIR/S at 3.10-11, 12.) However, by failing to address the impacts from other utilities in the context of this draft, the Authority and the FRA have hindered informed decision-making and meaningful public comment.

Response to Comments of Zahirah Washington, Attorney Fellow, Natural Resources Defense Council, July 28, 2004 (Letter O015)

O015-1

As the commentor points out, the Program EIR/EIS identifies several areas of concern regarding potential traffic impacts, particularly around HST station locations. The Program EIR/EIS traffic analysis was completed at a regional level of detail based on regional modeling data. Should the HST program move forward, site-specific intersection traffic analysis would be required as part of subsequent project level studies. Should the HST proposal move forward, the Authority would work closely with the local governments (cities) and others to ensure that adequate and appropriate access improvements are identified and considered to minimize and mitigate potential traffic impacts. Detailed traffic studies are not appropriate until subsequent project level studies consider designs and locations for the proposed stations.

In the Final Program EIR/EIS, each environmental section of Chapter 3 has been modified to describe in more detail mitigation strategies that would be applied in general for the HST system and further refined in project-level studies. Each section of Chapter 3 also outlines specific design features that will be applied to the implementation of the HST system to avoid, minimize, and mitigate potential impacts. Specific impacts and mitigation measures also will be addressed during subsequent project level environmental review, based on more precise information regarding location and design of the facilities proposed. The more detailed engineering associated with the project level environmental analysis will allow the Authority to further investigate ways to avoid, minimize and mitigate potential impacts. Once the alignment is refined and the facilities are more fully described in project level analysis, and after avoidance and minimization efforts have been exhausted, specific impacts and mitigation measures will be addressed.

O015-2

Section 3.19 of the Final Program EIR/EIS addresses construction methods and the potential for construction impacts in general. In addition, each section of Chapter 3 also outlines specific design practices and features that will be applied to the project level studies and during the implementation of the HST system to avoid, minimize, and mitigate potential impacts. However, construction impacts are highly site-specific in nature. Construction impacts will be addressed in more detail during subsequent project level environmental review, based on more precise information regarding location and design of the facilities proposed and the phasing or sequencing of construction. The more detailed engineering associated with the project level environmental analysis will allow the Authority to further investigate ways to avoid, minimize and mitigate potential impacts.

Section 3.3 of the Final Program EIR/EIS addresses the potential impacts to air quality at a regional level and statewide level. However, Section 3.3.1.D describes the methodology applied to assess localized impacts at this program level of analysis. Section 3.3.3 generally addresses impacts in each region of study. More detailed traffic studies (see Response O015-1 above) to be completed at the project level of analysis will be preformed to identify potential localized air quality impacts and potential additional mitigation measures.

Regarding conventional rail improvements and service on the LOSSAN corridor south of Irvine (Orange County), please refer to standard response 6.42.1.

In the Final Program EIR/EIS, each environmental section of Chapter 3 has been modified to describe in more detail mitigation strategies that would be applied in general for the HST system. Each section of Chapter 3 also outlines specific design features that will be applied to the implementation of the HST system to avoid, minimize, and

mitigate potential impacts. Specific impacts and mitigations will be addressed during subsequent project level environmental review, based on more precise information regarding location and design of the facilities proposed.

O015-3

The direct energy values presented in Table 3.5-1 are per vehicle mile traveled (VMT) while the values presented in Table 3.5-5 are per passenger mile traveled (PMT). As footnoted in Table 3.5-5, high speed trains are expected to carry 761 passengers per 16-car trainset (63% load factor) while airplanes are expected to carry 101.25 passengers per airplane (70% load factor). Table 3.5-4 shows the expected energy savings for the HST Alternative, which would reduce energy consumption by 5.3 million barrels of oil per year over the Modal Alternative in 2020. The general mitigation strategies in the PEIR/S would be considered in more detail during the project level design stage. Mitigation measures would be specified in the project-level studies of HST corridor alignments selected during this program environmental review. See response to Comment O015-2 in regards to construction methods and impacts which are addressed in the Final Program EIR/EIS.

O015-4

Please see standard response 3.15.13 for more information on the purpose of the PEIR/S and the subsequent studies. The PEIR/S has been prepared to support the selection of alignment options for the proposed HST Alternative rather than to present a detailed assessment of project impacts. Please see standard response 3.15.2 for a discussion of the future project-level, Tier 2 detailed assessment of site-specific project impacts and associated mitigations measures. The Co-lead Agencies acknowledge that HST alignments that travel within existing rights-of-way may pose new or magnify existing impacts, however, in general it can be said that these impacts would be lower than impacts from HST alignments placed in corridors without an existing rights-of-way. It was necessary to use this type of analysis to evaluate the large number of possible corridor alignments in order to distinguish between them and make selections. The project-level, Tier 2 studies will evaluate these types of land use impacts at a site-specific level of detail. The PEIR/S property impacts analysis permits a comparative assessment of how adjoining properties may be affected by the alternatives; particularly with regard to property acquisition and direct impacts. A study area 100 feet from the centerline was appropriate for assessing these impacts at the program level. The potential alternatives may also have indirect impacts farther away from the alignment (e.g., noise and visual), the 0.25 mile study area was used for those environmental resources. The Co-lead Agencies completed an extensive public involvement and information program for the PEIR/S. This effort included numerous public meetings throughout the state, a mailing list of over 10,000 names, presentations before many groups, and a website. Display advertisements in community newspapers that included readership and distribution in poor and low income communities throughout the study area were utilized for notification of all statewide scoping meetings (and initiation of studies) and public hearings (as well as availability of the draft PEIR). Meetings were also held at sites conveniently located to poor and low income communities and CD's of the Draft Program EIR/EIS were made available for free. The Program EIR/EIS properly considered EJ issues relating to the proposed HST system. Should the HST proposal move forward, more detailed project specific studies will be required which would include additional community outreach.

O015-5

The Farmland Mapping and Monitoring Program (FMMP) is the most comprehensive, well maintained, consistent across the study area, and readily available source of agricultural resources. It is appropriate to use the FMMP data for program level comparisons. Subsequent project specific environmental review will also assess impacts to farmland resources and grazing lands through parcel searches, local studies, and field assessment. The potential for farmland impacts due to growth is discussed in Section 5.2 of the Final Program EIR/EIS for each system alternative (No-Project, Modal, and HST).

Each section of Chapter 3 also outlines specific design features that will be applied to the implementation of the HST system to avoid, minimize, and mitigate potential impacts. Specific impacts and mitigations will be addressed in more detail during subsequent project level environmental review, based on more precise information regarding location and design of the facilities proposed.

O015-6

The public utilities impact analysis in this Program EIR/EIS is programmatic and appropriately addresses representative utilities; it does not address all utilities and does not address local site-specific details. Project-level analysis would address all utilities and local issues for the proposed alignments and profiles, at a point when facility designs will be more defined. The more detailed engineering associated with the project level environmental analysis will allow further investigation of ways to avoid, minimize and mitigate potential impacts. Should the HST proposal move forward, the Authority will work closely with the local governments (cities) and others to avoid, minimize, and mitigate, where necessary, taking all necessary steps to ensure that there will be no disruption to service through thoughtful design and best construction practices.

Each section of Chapter 3 in the Final Program EIR/EIS also outlines "design practices" that will be applied to the implementation of the HST system to avoid, minimize, and mitigate potential impacts. Specific impacts and mitigations will be addressed in more detail during subsequent project level environmental review, based on more precise information regarding location and design of the facilities proposed.

O015-7

The potential hazardous materials impacts analysis in this Program EIR/EIS is programmatic and does not address site-specific details. Potential hazardous materials impacts are highly site-specific in nature. These issues will be addressed in more detail during subsequent project level environmental review, based on more precise information regarding location and design of the facilities proposed and the construction and operation activities that are likely to occur near any potentially impacted sites. The more detailed engineering associated with the project level environmental analysis will allow further investigation of ways to avoid, minimize and mitigate potential impacts. Once the alignment is refined, the facilities are more fully defined through project level analysis, construction and operational plans are refined, and only after avoidance and minimization efforts have been exhausted, specific impacts and potential mitigation measures will be addressed in more detail.

O015-8

Please see standard response 3.15.2 regarding the general level of detail in this PEIR/S and the anticipated more detailed project-level, Tier 2 studies. Please see standard response 3.15.13 for more information on the purpose of the PEIR/S and the subsequent studies. Rather than presenting a detailed assessment of site-specific project impacts, this PEIR/S provides and evaluation and comparison of potential impacts related to the major project alternatives (i.e., No Action vs. Modal vs. HST) and between alternative alignment options for the proposed HST network. Future, more detailed site-specific environmental analyses with associated mitigation measures will be prepared during Tier II, project level environmental review. Additional mitigation measures are described in Section 3.14.6 of the Final PEIR/S regarding minimization of sediment impacts during construction and potential impacts on groundwater. Section 3.14.5 describes design practice commitments to minimize potential impacts to water resources. Please also see standard response 6.42.1.

O015-9

It is acknowledged that California's parks are an important asset to the State. It is important to note that all of the impacts associated with the HST and Modal Alternatives are potential impacts.

The Authority screened a large number of different alignment options and alignment combinations throughout the state to develop

Comment Letter O032

O032

California Native Plant Society

Santa Clara Valley Chapter
3921 E. Bayshore Blvd., Palo Alto, CA 94303

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August 23, 2004

Faxed 8/27/04 to:
(916) 322-0827

Attn: California High-Speed Train Draft Program EIR/EIS Comments

California High Speed Rail Authority
Draft Program EIR/EIS Comments
925 L Street, Suite 1425
Sacramento, CA 95814

Re: Draft Environmental Impact Report/Draft Environmental Impact Statement (DEIR/S) for the Proposed California High Speed Rail Project

Comments of the Santa Clara Valley Chapter of the California Native Plant Society

Our analysis covers the Bay Area to Merced High Spood Rail routes through the Santa Clara Valley and the adjacent Mt. Hamilton Range, and the impacts of these routes on plants and plant communities therein. This covers the following route alignments:

- Northern Tunnel
- Tunnel under Coe State Park
- Minimize tunnel under Coe State Park
- Pacheco Pass

We request that you take no further action on the existing Draft EIR/S but rather, withdraw and revise it to deal with the concerns we raise and recirculate it, because it is an inadequate document in its current form.

O032-1

Specifically, the identification and analysis of biological resources in Santa Clara County and the adjacent Mt. Hamilton range is entirely inadequate for purposes of making any decisions about routing. It is also inadequate for making choices between the proposed project and the modal alternative.

Data Collection

No plant surveys were conducted, the rationale being that this is a program level DEIR/S. But there is no indication that a thorough search of existing data or publications had been done. There is much published and readily available data that was not consulted. The Biological Resources Appendix (Page 3.15-C-1) states that there was no data available from the California Native Plant Society. Yet the *Inventory of Rare and Endangered Plants of California (Sixth Ed.)* (Tibor 2001) is easily accessible on-line, is constantly updated, and would have provided location information on all special status plants in the state, including those not included in the CNDDB. The Appendix also states that there were no species-specific publications available (loc. cit.). I presume what they meant to say was that they did not bother to consult any, as there are many reputable, well known, readily available species-specific publications that are directly relevant to the areas under consideration. For example, the U.S. Fish & Wildlife Service *Recovery Plan for Serpentine Soil Species of the San Francisco Bay Area* (Elam 1998) provides detailed information on the location, distribution, ecology, threats, protection and restoration issues on six federally listed plant species and three animal species on Coyote Ridge, directly in the path of two proposed alignments. Data from the CNPS Coyote Ridge vegetation survey, although not published at the time the DEIR/S was being researched, was available in electronic form and could easily have been obtained (Evens et al. 2004).

O032-2

Data Analysis

There is no description of what methodology, if any, was used to analyze the special status plant data that was cited. The analysis of special status plants is particularly brief and superficial. It does not take into account number of occurrences, population size, or degree of threat. It does not include plants with rating below CNPS 1B, although these plants are CEQA eligible when local agencies identify them as significant and they must be included in the analysis.

The *California Gap Analysis*, computer software and database, used for analyzing vegetation communities is not a suitable database or tool for evaluating transportation route impacts. The data is not current, it excludes data not available throughout the state, such as that being developed using the new California vegetation classification, and it was designed to be used to identify areas and species that are in need of protection, not to justify proposed projects that have the potential for great harm to the environment. The worthy goals of California Gap Analysis are turned upside down in this DEIR/S.

There was virtually no recognition of existing conserved areas, or the goals, plans, or activities of the City of San Jose, Santa Clara County or other local governments, the Santa Clara County Open Space Authority, the Santa Clara Valley Water District, or non-profit environmental organizations active in the area. There was no mention at all of the Santa Clara County Habitat Conservation Plan/Natural Communities Conservation Plan which is concerned with endangered species in the areas that would be impacted by several of the alignments. There was no mention of Coyote Ridge, whose preservation is being planned by a coalition of public and private agencies. This ridge, an area of great biodiversity, would be highly impacted and bisected by three of the proposed alignments. There was no mention of privately conserved lands in Isabel Valley, San Antonio Valley and elsewhere east of the Mt. Hamilton summit. There was no mention of the Bolsa de San Felipe (Soap Lake) privately owned wetland along Highway 152 that is considered a Significant Bird Area by the California Audubon Society (Cooper 2004).

O032-3

There was brief mention of Henry Coe State Park and The Nature Conservancy's Mount Hamilton Project, whose purview covers the entire Hamilton Range from Alameda County to Highway 152. One would think the existence of a large state park and wilderness area and a major conservation effort such as the Mt. Hamilton Project would signal to the planners that there were important wilderness, open space, and conservation issues at stake in the Hamilton Range, but no steps were taken to explore it.

The route analysis basically uses this limited and inadequate data, which ignores substantial data on area significance to rank routes in terms of impact on sensitive species.

It would be a travesty to chose a route based upon the highly inadequate analysis in the DEIR/S on the grounds that endangered species issues and local concerns will be dealt with in a project level EIR/S through mitigation, avoidance, or by ignoring environmental impacts, when, in fact, no information on the ecological significance, restoration possibilities, or local land use concerns were ever considered.

F135152

Comment Letter O032 Continued

The Santa Clara Valley chapter of the California Native Plant Society opposes high speed rail routes through the Hamilton Range because they will do great harm to endangered species, habitats, and biodiversity and open up areas to development that should remain wildlands.

O032-3 cont.

Information already available, but not considered in the DEIR/S makes it clear that the Hamilton Range alignments should be rejected. This includes information on the location, distribution, rarity, endangerment, and difficulty of mitigation of specific special status species and habitats in specific locations along the Hamilton Range alignments.

Impacts to Rare and Endangered Plants and Plant Communities

Alignments

The system proposes four alignments from the San Jose area to the Central Valley. Three alignments would swing east at Metcalf Canyon, heavily impacting the Coyote Ridge area. One alternative then swings north, entering tunnels beyond Metcalf Canyon, but crossing at grade and heavily impacting special status species in both the Isabel and San Antonio Valleys. This is called the Northern Tunnel alignment. Alternatively, after leaving Metcalf Canyon two alignments swing south, passing through Henry Coe State Park, partly in tunnels, partly at the surface. One route is called the Tunnel Under Coe State Park. The other route, with less tunneling is called the Minimize Tunnel under Coe State Park. Finally there is a route that would go south from San Jose to Gilroy and follow State Route 152, over Pacheco Pass, with several tunnels. This is called the Pacheco Pass alignment. It could impact the Soap Lake area and the Pacheco Pass area.

Following is a review of areas in the Hamilton Range with special status plants that could be negatively impacted by one or more of the High Speed alignments. Table 1 provides a list of these plants, by status and area.

O032-4

Impact Areas – Santa Clara County

1. Coyote Ridge

Coyote Ridge is a unique serpentine habitat of some 7,000 acres east of US Highway 101 between San Jose and Morgan Hill. It is the first range of hills east of the Coyote Valley. As such it represents a natural open space border to the metropolitan area, and 81% of San Jose voters chose to place it outside the urban development "Green Line." It is also a hot spot of plant and animal diversity. This has been documented in the U.S. Fish & Wildlife's *Recovery Plan for Serpentine Soil Species of the San Francisco Bay* (Elam 1998). It is home to ten special-status animal species, and it is the only remaining viable habitat for the Bay checkerspot butterfly, federally listed as threatened. This butterfly is dependent on the serpentine soil plant species found here. It is also habitat for the red-legged frog and California tiger salamander. There are 14 special status plants whose current existence on Coyote Ridge has been verified. There are six other special status plants found elsewhere in the Hamilton Range which may be on Coyote Ridge. The southernmost populations of the Tiburon Indian Paintbrush, on both federal and state endangered lists, are found here. The Metcalf Canyon jewelflower, on the federal endangered list, is found only in Metcalf Canyon. Two other plants impacted by these alignments are on the federal endangered list: the Santa Clara Valley dudleya and the coyote ceanothus. This area has been designated as critical habitat for the serpentine endemics by the U.S. Fish & Wildlife Service. This is an area that the California Native Plant Society and a coalition of environmental groups have been working for the past decade to preserve. Other members in this coalition include: the Loma Prieta Chapter of the Sierra Club, the Committee for

Green Foothills, the Santa Clara Valley Audubon Society, Acterra, the Greenbelt Alliance, and the Citizens' Committee to Complete the Refuge.

O032-4 cont.

2. East of Mt. Hamilton: Isabel and San Antonio Valleys

The Hamilton Range to the east of the summit is an undeveloped area, an almost pristine wilderness between the urbanized area of the Santa Clara Valley and the Central Valley. Of particular concern to CNPS and other conservation organizations are the Isabel and San Antonio Valleys. The Northern Route would pass through these two valleys, mostly at grade. There are 26 special status plants, 16 of them CNPS list 1B, to the east of the Mt. Hamilton quad. The Nature Conservancy has placed a high priority on preservation of this area and has acquired a conservation easement on an 11,189 acre ranch in Isabel Valley. A 2,000-acre ranch in San Antonio Valley has 12 special status plants, including three of the four recorded populations of the Mt. Hamilton jewelflower.

O032-5

3. Henry Coe State Park

Henry Coe State Park is the largest state park in Northern California. Located in mountains and valleys south and east of Mt. Hamilton, it contains a designated wilderness, the Orestimba Wilderness Area, other pristine areas, biodiversity and rare species equal to those of Isabel and San Antonio Valleys. It contains the other recorded population of the Mt. Hamilton jewelflower and 15 other special status plants. Of these plants, nine are CNPS list 1B. One plant, the robust monardella, was discovered just this summer by two CNPS members. Henry Coe State Park also has a strong and enthusiastic user base who value the wild and rugged experiences it offers.

Two other local environmental organizations have strongly opposed high speed rail alignments through Coe Park. These are:

O032-6

The Loma Prieta Chapter of the Sierra Club, which states in its DEIR/EIS commentary:

> "No part of Henry W. Coe State Park should be violated by a train, at grade or contained in a tunnel."

Advocates for Coe Park, which in its DEIR/EIS commentary makes these points:

> *"A rail route through a wilderness area is illegal.* The two Coe Park alignments would pass through the Orestimba Wilderness.
>
> *New transportation corridors are discouraged by State and Federal law.* All three Northern Routes create a new corridor through the Diablo Range, an area that is presently undeveloped."

4. Soap Lake and Pacheco Pass

The Pacheco Pass route could impact several sensitive plant species on the southern boundary of Santa Clara County if it goes through the Soap Lake (San Felipe Lake) area. These include San Joaquin saltbush, Hoover's button celery, hairless popcorn flower, saline clover, Oregon meconella, and the red-flowered lotus.

O032-7

The route through Pacheco Pass follows an existing corridor, State Highway 152, a four-lane highway over the pass. Hall's bush mallow has been documented along this corridor and arcuate bush mallow and Loma Prieta hoita may be there. There is a very good example of sycamore alluvial woodland in

F135153

Comment Letter O032 Continued

this corridor. On the other side of the pass, the alignment could affect the very extensive wetlands in Los Banos area, which provide major bird habitat. Advocates for Coe Park have proposed a different alignment for the Pacheco Route that would avoid most of the Los Banos wetlands.

O032-7 cont.

Thank you for considering our comments on this document.

Sincerely,

Georgia Stigall
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California Native Plant Society
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Cc: David Chipping, CNPS Conservation Chair
Cc: Don Mayall, CNPS/Santa Clara Valley Chapter Rare Plants South Chair

Attachment: Special Status Plants of the Hamilton Range (Table 1, two pages)

References

Cooper, Daniel S., *Important Bird Areas of California*, Audubon California, Pasadena, 2004.

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Evens, Julie, and Sau San, *Woody and herbaceous associations of Coyote Ridge, Santa Clara Valley, CA*, California Native Plant Society, Sacramento, in press, 2004.

Tibor, David P., *Inventory of Rare and Endangered Plants of California (Sixth Edition)*, California Native Plant Society, Sacramento, 2001.

The Nature Conservancy, *Bay Conservancy Program- The Second Year Report*, 2002.

Table 1 Special Status Plants, Hamilton Range August 23, 2004

Botanical name	Common Name	CNPS	State	Fed	Coyote Ridge	Hamilton and East	Coe Park	Soap Lake, Pacheco
Acanthomintha lanceolata	Santa Clara thornmint	4			?	X	X	
Allium sharsmithiae	Sharsmith's onion	1B				X		
Ambrosia chamissonis ssp. *acuta*	California rockpopping	4			?	X		
Amsinckia grandiflora	San Joaquin fiddleneck	1B		SOC				X
Balsamorhiza macrolepis var. *macrolepis*	California balsamroot	1B			X			
Calochortus umbellatus	Oakland mariposa lily	4				X		
Calyptridium parryi var. *hesseae*	Hesse's pussypaws	3				X		
Campanula exigua	chaparral bellflower	1B				X	X	
Castilleja affinis ssp. *neglecta*	Tiburon indian paintbrush	1B	CT	FE	X			
Ceanothus ferrisiae	coyote ceanothus	1B		FE	X			
Cirsium fontinale var. *campylon*	Mt. Hamilton thistle	1B		SOC	X	X		
Clarkia breweri	fiare fare	4				X	X	
Clarkia concinna ssp. *automixa*	Santa Clara red ribbons	4		SOC			X	
Eriogonum hamiltonii	Mt. Hamilton buckwheat	1B		SOC		X		
Delphinium californicum ssp. *interius*	hospital canyon larkspur	1B		SOC		X		
Dudleya setchellii	Santa Clara Valley dudleya	1B		FE	X		X	
Fritillaria brandegeae	Brandegee's crisdrum	1B		SOC		X		
Fritillaria tracyi	Tracy's crisdrum	1B	CR			X		
Eriogonum nudum	Coast Range buckwheat	4			?			
Eriogonum umbellatum var. *bahiiforme*	bay buckwheat	4				X		
Eriophyllum jepsonii	Jepson's woolly sunflower	4				X	X	
Eryngium aristulatum var. *hoveri*	Hoover's button celery	1B		SOC				X
Erysimum franciscanum	San Francisco wallflower	4		SOC	X			
Fritillaria falcata	talus fritillary	1B		SOC		X		
Fritillaria liliacea	fragrant fritillary	1B		SOC	X			
Galium andrewsii ssp. *gatense*	serpentine bedstraw	4			?	X		
Hesperolinon serpentinum	Napa dwarf flax	1B				X		
Hoita strobilina	Loma Prieta hoita	1B			X			?
Lessingia micradenia var. *glabrata*	smooth lessingia	1B			X		X	
Lessingia tenuis	spring lessingia	4?				X	X	
Linanthus ambiguus	serpentine linanthus	4			X	X	X	

Comment Letter O032 Continued

Table 1. Special Status Plants, Hamilton Range August 23, 2004

Botanical name	Common Name	CNPS	State	Fed	Coyote Ridge	Hamilton and East	Coe Park	Soap Lake, Pacheco
Limnanthes gracilipes	slender-flowered meadowfoam	4			X			
Lomatium observatorium	Mt. Hamilton lomatium	1B				X		
Lotus rubriflorus	red-flowered lotus	1B						X
Malacothamnus arcuatus	arcuate bush mallow	1B			X			
Malacothamnus hallii	Hall's bush mallow	1B			X		X	X
Mecardonella oregana	Oregon mecardella	1B						X
Microseris sylvatica	sylvan microseris	4				X		X
Monardella villosa ssp. *globosa*	robust monardella	1B					X	
Phacelia phacelioides	Mount Diablo phacelia	1B				X	X	
Plagiobothrys glaberrimus	hairless popcornflower	4				X		
Plagiobothrys uncinatus	hooked popcornflower	1B				X		
Pseudopentachaeta lyonii	Lyon's pentachaeta	1B	FE	SE	X			
Sanicula saxatilis	rock sanicle	1B	CR			X	X	
Streptanthus albidus ssp. *albidus*	Metcalf Canyon jewelflower	1B		FE	X			
Streptanthus albidus ssp. *peramoenus*	most beautiful jewelflower	1B			X			
Streptanthus callistus	Mount Hamilton jewelflower	1B				X	X	
Trifolium depauperatum var. *hydrophilum*	saline clover	1B						X

Source: CNDDB and records CNPS Santa Clara Valley Chapter
CNPS 1B = Plants rare, threatened, or endangered
CNPS 1 = Need more information
CNPS 4 = Plants of limited distribution
CR = California Endangered
CT = California Threatened
FE = Federal Endangered
sc = species of concern

Santa Clara Valley Chapter, CNPS Attachment to HSR Draft Program EIR/EIS Comments Page 2

F135155

Response to Comments of Georgia Stigall, President, California Native Plant Society, August 23, 2004 (Letter O032)

O032-1

Please see standard response 6.3.1 regarding the HST segment between the Bay Area and the Central Valley (Mt. Hamilton Range). The Authority and the FRA disagree with your conclusions regarding the adequacy of the program environmental documentation and the need to recirculate the Draft Program EIR/EIS.

O032-2

Data from the California Natural Diversity Data Base regarding plant species of concern was consulted and is reported in the Technical Evaluations for Biological Resources, which were conducted for each region to support the Draft PEIR/S. These studies are available for review on the California High Speed Rail Authority website (http://www.cahighspeedrail.ca.gov/eir/regional_studies/default.asp). For example, the Bay Area to Merced Biological Resources Evaluation contains Table 8, which lists all of the special status plant species present along the project alignments and the acreage of habitat present along each alternative. The appendix indicates that there is no geospatial data available from the California Native Plant Society or species-specific publications. The Recovery Plan for Serpentine Soil Species of the San Francisco Bay Area has been reviewed, and although the document does contain maps of species occurrences, the level of detail of the mapping is general and is not in a GIS format. Additional analysis of available information will be performed in the program-level studies of the northern mountain crossing (Bay Area to Central Valley Corridor) and analyses of site-specific impacts will be preformed as part of the anticipated project -level, tier 2 evaluations, and the data cited in the comment will be useful for these future environmental reviews.

O032-3

Please see standard response 3.15.2 regarding the level of detail used for this program-level EIR/Tier 1 EIS. Standard response 3.15.2 also discusses the anticipated future reviews of HST alignments between the Central Valley and the Bay Area. The Authority has determined not to pursue further consideration of alignments passing through and under Henry Coe State Park and the Orestimaba State Wilderness. Information referenced in this comment, e.g., the Nature Conservancy's Mount Hamilton Project, will be further evaluated as part of future analysis. The Co-lead agencies have met with the Nature Conservancy to continue discussions regarding its preservation efforts in the Diablo Range. The methodology used to analyze special status plants data is described in the Technical Evaluations for Biological Resources, which were conducted for each region and supported the Draft PEIR/S. These studies are available for review on the California High Speed Rail Authority website (http://www.cahighspeedrail.ca.gov/eir/regional_studies/default.asp). Please see standard response 3.15.10 regarding review of potential conflicts with the provisions of habitat conservation plans (HCP), natural community conservation plans (NCCP), or other approved local, regional, or state habitat conservation plans. Please note that this PEIR/S has been prepared to support the identification of a system alternative (no project, modal, or HST), and the selection of HST corridor alignments for further study. The Co-lead agencies acknowledge that the PEIR/S data does not detail site-specific impacts of HST alignment options, but consider the information provided is sufficient to make program level decisions. The Co-lead agencies intend to rely upon the PEIR/S to eliminate certain alignment options from further study, including alignments that appeared to present more severe impacts to sensitive biological environments. The types of analyses requested in this comment and data provided in it could be

used as part of more detailed future studies. Please see standard response 3.15.13.

O032-4

Please note that the Co-lead agencies propose to continue and to supplement their evaluation of HST alignment options between the Central Valley and the San Francisco Bay Area before identifying a preferred alignment. Please see standard response 3.15.2. Further investigation has been recommended to identify a preferred alignment option within a broad corridor, which excludes alignment options through Henry Coe State Park and the Orestimaba State Wilderness. The study should consider alignment options between (and including) the Pacheco Pass Corridor (SR-152) to the south and the Altamont Pass Corridor (I-580) to the north. Please also see standard response 6.3.1. This comment provides a large amount of data on native plants located within the Merced to Bay Area alignments evaluated in the PEIR/S. This data will be used during the future review of alignments between the Central Valley and Bay Area.

O032-5

Please see response to Comment O032-4. Information provided in this comment letter will be used in future analyses. Please note that the Authority will not pursue alignment options passing through Henry Coe State Park and the Orestimaba State Wilderness.

O032-6

Please see response to Comment O032-4 and 5.

O032-7

Please see response to Comment O032-4 and 5.

Comment Letter O034

O034

California Office

National Headquarters

August 30, 2004

AUG 30 2004

Chairman Joseph E. Petrillo and
Members of the High Speed Rail Authority
Attn: California High-Speed Train
Draft Program EIR/EIS Comments
925 L Street, Suite 1425
Sacramento, CA 95814

Re: Comments on Draft Environmental Impact Report/Draft Environmental Impact Statement (DEIR/S) for the Proposed California High Speed Rail Project

Dear Chairman Petrillo and Members of the Authority:

On behalf of Defenders of Wildlife and our more than 90,000 members and supporters in California, I am writing to provide comments on the Draft Environmental Impact Report/Draft Environmental Impact Statement (DEIR/EIS) for the Proposed California High Speed Rail Project ("Project"). While we support the concept of providing high speed rail transportation to California's growing population, we are concerned that this project's environmental documents have failed to comply with the California Environmental Quality Act ("CEQA") and National Environmental Policy Act ("NEPA").

We join in the issues raised in separate written comments by the Planning and Conservation League, Natural Resources Defense Council, and Sierra Club. In addition, we raise additional issues below regarding the inadequacies of the analysis of impacts to biological resources from the project.

I. Flaws in the DEIR/EIS's Analysis of Biological Impacts

Overall, the Draft EIS/EIR lists the biological resources that could be affected, their general location, and general descriptions of their habitat associations. The technical documents give an overall tally of how much habitat for each species would be directly impacted within a narrow impact zone (between 1000ft and 0.5 mile depending on amount of current development) and report whether there is a low, medium, or high level of impact. However, the documents do not discuss the relative quality and importance of the habitat to be destroyed to the species overall survival. This failing and others render the DEIR/S inadequate for informing alignment decisions because alignment choices will sharply affect most, if not all, of the biological impacts listed below. Further analysis, as suggested below, is necessary prior to any alignment decision.

O034-1

A. Inadequate Data/Information:

A major flaw in this already inadequate analysis is that the habitat and occurrence data used to develop the estimate of the impact are based on occurrences in the California Natural Diversity Database. These occurrences are not comprehensive and only cover areas that have been surveyed. Large amounts of unsurveyed land (often private lands) may have higher densities of species, but since no surveys have been conducted, the quality of this habitat is unknown. However, the DEIS/EIR would score this as low to zero habitat value. It is unacceptable to make decisions regarding the relative impact of the various route alternatives (and indeed impossible to identify the least environmentally damaging alternative) without on-the-ground data that reflect the real biological condition. Indeed, the draft document acknowledges that "the lack of identification of an impact does not necessarily mean that this portion of the proposed alternative would not result in potential impacts on biological resources, only that location-specific data would be required to make a more precise determination." (DEIR/EIS).

O034-2

In addition, the DEIR/EIS relies on the National Wetlands Inventory to analyze impacts to wetlands. This database provides only a very coarse and incomplete analysis of wetlands in California. The database is compiled by aerial photographs of landscapes in which many smaller wetlands are not readily distinguishable. In addition, many areas in California have not been photographed. In order to ascertain a more complete picture of wetlands impacts, the environmental documents need to conduct a more thorough review of potential wetlands impacts, including on-the-ground surveying efforts.

B. Inadequate Analysis of General Impacts to Biological Resources:

Roads are one of the top causes of species imperilment in California (National Wildlife Federation 2001) and the impacts of railroads as linear transportation features are assumed to be similar. Specific ecological effects of roads have been thoroughly documented (Forman and Alexander 1998, Trombulak and Frissell 2000, Natural Resource Defense Council 1999). The key impacts are mortality from project construction, road kill, habitat fragmentation, alteration of movement and behavior, spread of exotic species, spread of human activity, reduction of environmental quality, and facilitation of urban sprawl. All of these are major impacts to wildlife that must be discussed in an improved DEIS/EIR.

O034-3

1. The DEIR/EIS fails to analyze the environmental advantages of Rail Corridors over Highways

The DEIS/R must explicitly list and discuss the following advantages of railway corridors over highways (from DeSanto and Smith 1993):

1. Water drains away from the railbed, maintaining a dry environment that prevents unwanted vegetation from establishing.
2. The bed and banks have a porous, stable ballast that prevents runoff from concentrating, keeps slope erosion to a minimum, and filters out particulates and chemical pollutants.
3. A service road or other narrow strip running alongside the rail prevents ballast spoils from shifting beyond the toe of the roadway slope.

F135163

Comment Letter O034 Continued

4. Drainage ditches parallel to the rail prevent uncontrolled erosion, act as sediment traps, filter railway runoff, and insulate adjoining land from uncontrolled channel flow.
5. High Speed Rail (HSR) construction usually leaves a significantly smaller footprint than road construction, so it has smaller short-term impacts.
6. HSR corridors are narrower than roads, so animals are more willing to cross under them. This is a significant advantage.
7. It is more feasible to elevate an HSR system on pile-supported structures than to elevate a road. "Elevated corridors on bridges or viaducts undoubtedly have the least disruptive impact on wildlife movement and migration passageways."

The DEIR/EIS fails to include any discussion of these issues.

2. The DEIR/EIS fails to adequate analyze the impacts of habitat fragmentation

Expanding networks of roads force wildlife to live on ever-shrinking islands of habitat, where it is more difficult for them to find food, water, shelter, mates, and protection from predators. Genetic problems such as inbreeding appear, and populations become more susceptible to catastrophic events such as wildfire. The resulting fragmented habitat inevitably leads to smaller populations of wildlife, and extinction of populations or species becomes more likely.

Fragmentation also increases the ratio of edge habitat to interior habitat, which is harmful to those species that need interior habitat. The concept has been best documented in forest-dwelling birds. The inside of a habitat has a different climate and supports different and usually more sensitive species than do the edges. In forested areas, edges associated with roads are a source of nest predators and brood parasites. Aggressive species such as brown-headed cowbirds and blue jays thrive in edge habitats (e.g. Baker and Lacki 1997). Snakes, raccoons, and other predators hunt along the edge. Species that occur only within the interior of forests, such as the ovenbird, scarlet tanager, hooded warbler and a number of other migratory songbirds, can't withstand the predation or can't compete against the more aggressive edge species, and they die out, reducing the biodiversity of an area (Pornelutzi and Faaborg 1999, Rosenberg et al. 1999, Robinson et al. 1995). DeSanto and Smith (1993) discuss the habitat fragmentation consequences specific to HSR systems. They conclude that the long-term impacts of habitat fragmentation are directly related to the area and type of habitats replaced and discuss. A European Commission Report (COST 2000) discusses the habitat fragmentation effect of railways.

The HSR DEIS/EIR does mention that the rail will fragment habitat, but the extent to which this will harm specific species is not detailed. In fact, the details of the fragmentation impact are embedded in the technical reports. Again, the environmental document itself is lacking specification, only revealing that "Segments that would be placed at grade (cut and fill) would require fencing the HST alignment for the safety of humans, as well as protection from train-wildlife collisions, and would have the potential to interfere with wildlife movement." (p. 3-15-22). Depending on the design of the fencing, this impact would be significant. In fact, in the technical documents under "Alignment Design Parameters: Grade Separation" we find that exclusion of wildlife is a goal of the fencing: "…the right of way would be fully access controlled (fenced) in areas of high-speed operation to avoid intrusion by pedestrians, *wildlife* and livestock (Engineering Criteria, Task 1.11, p. 11, emphasis added)." The impacts of this fencing is never analyzed in the DEIS/R. In order to even identify the dimensions of the planned fencing, one must know to look in Appendix 4 C (page 4C-10). This is a major example of the failure of the DEIS/R to effectively present and analyze the impact of the proposed project on biological resources.

O034-3 cont.

The Missing Linkages report and associated GIS overlays identify major areas of movement throughout the state. However, identifying areas where these linkages will be cut off by the HSR route does not adequately address the significant habitat fragmentation impacts that the alignment will have. Every one of the 700 proposed miles will fragment habitat of species and have impacts on ecological functioning. A revised DEIS/EIR must be present the significant fragmentation impacts of the various alignments to wildlife species of concern, not only species that are currently threatened and endangered.

Particularly lacking in the DEIR/EIS is an analysis of impacts to wide-ranging species such as mountain lions, coyotes, bobcats, and bears. By virtue of their need to access large areas of habitat, these species would be significantly impacted even if they are not currently identified as "sensitive." Much work has been done looking at the movement needs and impacts of roads on these species (e.g. black bears – Brody and Pelton, 1989, mule deer and elk – Rost and Bailey 1979) and even their needs in terms of wildlife crossing to avoid and mitigate impacts from transportation infrastructure (e.g. Evink 1990, Leeson 1996). Specifically for mountain lions, a 9 to 12 foot fence, with a 12-48 inch foot overhang with barbed/predator or electric wire at the top to stymie a cat from climbing over are recommended. Florida uses a 10 foot fence with 3 barbed wires for an overhang to keep lions off highways and channel them into culvert underpasses. A noted above the HSR proposes to use security fencing that is only 8.2 ft high. The insufficient height and design could potentially lead to mountain lions on the track, obviously a threat to wildlife survival and human safety.

O034-4 cont.

Habitat fragmentation can present significant problems for the normal functioning of ecological processes. For example, pollination is a major ecological process that will be impacted by the proposed HSR project. Bhattacharya et. Al (2003) found that white bumblebees have the ability to cross a road and a railroad, these structures may restrict bumblebee movement and act to fragment plant populations because of their site fidelity when foraging. The bumblebees they studies rarely crossed railroads even when suitable habitat was only 30-40 m away on the other side. This signifies that High Speed Rail may have significant and unquantifiable impacts on plant species which depend on these pollinators for their reproduction, genetic flow and ultimate survival. Additionally, the rail will fragment bumblebee (and presumably that of other insect) habitat, with the associated lower survival and reproduction. The ability of an ecosystem to survive a natural disaster (such as fire, earthquake, windstorm, disease outbreak) is decreased as habitat is fragmented. Fragmentation also limits the ability of species and ecological communities to respond and adapt to global climate change. The DEIS/R completely fails to address the impacts on all such ecological processes.

O034-4

3 4

F135164

Response to Comments of Kim Delfino, California Program Director, Defenders of Wildlife, August 30, 2004 (Letter O034)

O034-1

The Co-lead Agencies believe that the data used and the level of analysis presented in the PEIR/S is appropriate and sufficient to make a decision on whether or not to proceed with the HST Alternative and to identify various corridor alignments to continue to study at the project level. Please also see standard response 3.15.7, and standard response 3.15.13.

O034-2

More detailed resource data, including that cited in the comment and data collected through field-work, will be used in subsequent studies including review of the northern mountain crossing corridor (Bay Area to Central Valley Corridor) and project-level environmental reviews. The Program EIR/EIS recognizes the limitations of these databases. Please see response to Comment O034-1 and response to Comment O034-3. Please also see response to Comment AF007-3C.

O034-3

The following text (similar to text suggested in the comment) has been added to the PEIR/S in Section 3.15.3: In general, railroad corridors have been found to have the following environmental advantages over highways: 1) Water drains away from the track-bed, maintaining a dry environment that prevents unwanted vegetation from establishing. 2) The track-bed has a porous, stable base that prevents runoff from concentrating, keeps slope erosion to a minimum, and filters out particulates and chemical pollutants. 3) A service road or other narrow access strip running alongside the track-bed prevent spoils from shifting beyond the toe of the track-bed slope. 4) Drainage ditches parallel to the track-bed prevent uncontrolled erosion, act as sediment traps, filter railway runoff, and insulate adjoining land from uncontrolled channel flow. 5) High Speed Rail (HSR) construction usually has a significantly smaller footprint than road construction, so it has less long-term and short-term impacts. 6) HSR corridors are narrower than roads, so animals are more willing to cross under them. This is a significant advantage. 7) It is more feasible to elevate an HSR system on pile-supported structures than to elevate a road.

"Elevated corridors on bridges or viaducts undoubtedly have the less disruptive impact on wildlife movement and migration passageways." (DeSanto, R.S. and D.G. Smith; Environmental auditing: an introduction to issues of habitat fragmentation relative to transportation corridors with special reference to high-speed rail (HSR); Environmental Management 17:111-114; 1993)

O034-4

Please see standard response 3.15.2 and standard response 3.15.13 for more information on subsequent studies and the project-level, Tier 2 evaluations that would be prepared on HST corridor alignments identified as preferred. The project-level, Tier 2 studies would provide a more detailed evaluation of potential impacts of habitat fragmentation on specific species. The analyses would be prepared as part of these subsequent studies once design has progressed to a point where details regarding fencing, grade separations, aerial section, and culverting are available. The information provided in this comment regarding (among other things) appropriate fencing strategies, will be used in these subsequent studies to consider design options for the proposed rail alignments and appropriate mitigation for project impacts. The Co-lead agencies believe that the PEIR/S provides sufficient information to support selection of a system alternative and identification of various preferred HST corridor alignments, but acknowledge that much additional analysis will be necessary at a project level. Because of the large amount of technical data generated during the preparation of the PEIR/S, the impact analysis sections contained in the PEIR/S are, of necessity, summaries of information found in the

technical reports. The comment is correct that additional details regarding fencing and its effects on habitat fragmentation can be found in those technical studies. Technical Evaluations for Biological Resources for each region are available for review on the California High Speed Rail Authority website (http://www.cahighspeedrail.ca.gov/eir/regional_studies/default.asp) and have been incorporated by reference. The analyses requested in the comment will be conducted at a project-specific level, and will include an analysis of fragmentation impacts on both special-status species and wildlife species such as mountain lions, coyotes, bobcats, and bears. Details of fencing and wildlife movement mitigation will also be developed at the project level. The information provided in the comment regarding appropriate height and design of fences is appreciated. The Final PEIR/S has an expanded description of the overall approach to fencing, culverts, and overpasses as they relate to wildlife movements – Please see standard response 3.15.9 and Section 3.15.5 and Section 3.15.6 of the Final PEIR/S. The comment has provided valuable references to information regarding effects of transportation facilities on habitat fragmentation, and these reference sources will be used in the project-level, Tier 2 evaluation of impacts.

O034-5

Please refer to Response to Comment AS004-45 regarding potential spread of exotic species of plants.

O034-6

Please see response to Comment O034-4. The type of impacts listed in this comment cannot be further evaluated until more detailed project level designs are developed for the alignment options. These potential impacts will be fully evaluated in the project-level, Tier 2 studies. Please see standard response 3.4.1 regarding noise impacts to wildlife. Please see response to Comment AS004 – 49 regarding EMF/EMI levels associated with the HST Alternative. Lighting of the entire length of the HST alignment is not needed or anticipated. Lighting will be provided for station areas and maintenance and storage facilities. Other facilities such as roadways crossing over or under the HST alignment will also be lit as appropriate for safety and according to Caltrans/FHWA requirements. Please see standard response 3.15.13 regarding intended uses of this PEIR/S.

O034-7

The Authority acknowledges your concerns regarding potential hazards for birds interacting with overhead catenary power supply lines on the HST alignments. In the Final Program EIR/EIS, each environmental sections of Chapter 3 has been modified to include mitigation strategies that would be applied in general for the HST system. Each section of Chapter 3 also outlines specific design features that will be applied to the project level studies and implementation of the HST system to avoid, minimize, and mitigate potential impacts. The design and mitigation suggestions in the comment, as well as other measures, will be given full consideration in subsequent project level analysis.

Overall, it can be expected that the HST Alternative would introduce additional EMF exposures or EMI at levels for which there are no established adverse impacts on humans or wildlife. EMF emissions from HST vehicle passby's are very low, and impacts are therefore not expected to be significant. EMF/EMI characteristics will be analyzed in the subsequent project level environmental review, as summarized in the Program EIR/EIS in Section 3.6.4 and 3.6.5.

O034-8

The Co-lead agencies are aware that Section 7 of the Endangered Species requires consultation with the U.S. Fish and Wildlife Service, and this consultation will be conducted as part of the project-level, Tier 2 environmental evaluations. The project-level evaluation (outlined in response to Comment O034-4) will consider both designated and proposed critical habitat in the project area. The project-level studies will consider potential overlap with critical habitat for all species of concern within the project area, including those listed in the comment: arroyo toad, California gnatcatcher, California red-legged frog, Least Bell's vireo, Quino checkerspot butterfly, Riverside fairy shrimp, San Bernardino kangaroo rat,

Comment Letter O049

O049

Audubon California
Bay Area Open Space Council
California Native Plant Society
Center for Law in the Public Interest
Defenders of Wildlife
Defense of Place
Greenbelt Alliance
Golden Gate Audubon Society
Mountain Lion Foundation
Natural Resources Defense Council
Planning and Conservation League

August 31, 2004

Chairman Joseph E. Petrillo and
Members of the High Speed Rail Authority
Attn: California High-Speed Train
Draft Program EIR/EIS Comments
925 L Street, Suite 1425
Sacramento, CA 95814

Re: Comments on Draft Environmental Impact Report/Draft Environmental Impact Statement (DEIR/S) for the Proposed California High Speed Rail Project

Dear Chairman Petrillo and Members of the Authority:

These comments are submitted on behalf of the following groups:

Bay Area Open Space Council
California Native Plant Society
Center for Law in the Public Interest
Defenders of Wildlife
Defense of Place
Greenbelt Alliance
Golden Gate Audubon Society
Mountain Lion Foundation
Natural Resources Defense Council
Planning and Conservation League

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The purpose of this letter is to provide comments on the Draft Environmental Impact Report/Draft Environmental Impact Statement (DEIR/S) for the proposed California High Speed Rail Project (hereinafter "project" or "HST") and to inform the Authority that the document fails to comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 et seq. and the CEQA Guidelines, California Code of Regulations, title 14, section 15000 et seq. ("CEQA Guidelines") and the National Environmental Policy Act ("NEPA") 42 U.S.C 4321; 40 C.F.R. 1500.1.

The massive California High Speed Rail project has the potential either to significantly improve the quality of transportation and life in California or to result in major negative environmental impacts and significant economic and social displacement. Given the unprecedented statewide scope of this project, CEQA and NEPA mandate that its DEIR/S must be of the highest quality, including full disclosure of the many significant impacts that would occur. The DEIR/S should give both the public and decisionmakers a full opportunity to understand the environmental consequences of the project and propose and feasible measures and alternatives to mitigate environmental damage. As explained in detail below, the DEIR/S fails to comply with this mandate.

A summary of the major defects in the DEIR/S includes, but is not limited to, the following:

- The DEIR/S fails to adequately and completely describe the project alternatives.
- The DEIR/S lacks an adequate summary section.
- The DEIR/S fails to clearly characterize the significance of project-related and cumulative impacts before and after mitigation. Conclusions that are reached concerning the comparative significance of impacts are in many cases based on inadequate and misleading information (e.g. growth inducement, impacts to agricultural land, biological resources, etc.).
- The DEIR/S improperly defers analysis of impacts of the HST alternative until the project-level review; after alignments and station locations are selected.
- To determine level of impact, the Modal and HST Alternatives are improperly compared with the No Project Alternative instead of baseline conditions for most environmental topic areas.
- Mitigation "strategies" consist of vague and unenforceable suggestions and for the most part are improperly deferred until the project-level review. Some of the suggested strategies would actually result in additional impacts that are not evaluated as indirect or secondary impacts of the project (e.g. sound walls, additional tunneling, intersection and access improvements, and the like).
- The DEIR/S fails to analyze all feasible alternatives, improperly rejects feasible alternatives and fails to identify the environmentally superior HST alignments and station locations. For example, as described in detail in Attachment A, the DEIR/S fails to include an Altamont Alternative and

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F135259

Comment Letter O049 Continued

rejected this option based on flawed, misleading and incomplete information.

Given the multiple inadequacies described in this letter, this DEIR/S cannot properly form the basis of a final EIR. CEQA and the CEQA Guidelines require recirculation of a draft EIR where, as here, the document is so fundamentally inadequate in nature that meaningful public review and comment are precluded. See CEQA Guidelines § 15088.5.

I. THE DEIR/S DOES NOT COMPLY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. Use of a Program DEIR/S Does Not Excuse Inadequate Analysis

As discussed more fully below, the DEIR/S repeatedly fails to adequately describe the project, analyze project impacts, and mitigate its host of associated impacts with specific, enforceable mitigation measures. As apparent justification for the DEIR/S's lack of detail and specificity concerning the project, impacts and mitigation measures, the document repeatedly defers critical analysis and project description on the grounds that the DEIR/S is a program EIR/S. The mere fact that the DEIR/S is a program EIR/S does not provide a carte blanche to omit a discussion of the project as is currently reasonably foreseeable. An agency "must use its best efforts to find out and disclose all that it reasonably can." CEQA Guidelines § 15144. Here, the DEIR/S's failure to describe and analyze the project extends well beyond the exact location alignments and stations. The DEIR/S's vague and noncommittal analysis with respect to numerous project elements precludes a full and proper analysis of project alternative impacts.

Equally flawed, the DEIR/S repeatedly determines that project impacts would not be significant based solely on uncommitted future assumptions. CEQA contemplates consideration of environmental consequences at the "earliest possible stage, even though more detailed environmental review may be necessary later." McQueen v. Board of Directors, 202 Cal.App.3d 1136, 1147 (1988). Similarly, NEPA requires agencies to integrate the NEPA process into their activities at the earliest possible time. 40 C.F.R. 1501.1; 1501.2. Regardless of an intention to undertake site-specific environmental review for future project phases, the use of "tiering" and a program EIR/S is not a device for deferring the identification of significant environmental impacts. Stanislaus Nat'l Heritage Project v. County of Stanislaus, 48 Cal.App.4th 182, 199 (1996).

While the DEIR/S attempts to present a choice between rail and other transportation modes, the proposed project is much more than a modal choice. Here, the project will likely result in the selection of preferred alignments and general station locations. As the DEIR/S mentions, "The Authority expects to identify a preferred system of alignment and station options in the Final Program EIR/EIS, after the public comment period for this Draft EIR/EIS has concluded" (DEIR page S-16). Accordingly, the DEIR/S must include a sufficient level of detail on each feasible alignment alternative and its related impacts and mitigation to support an alignment choice, and a worst-case scenario of the impacts of the related level of development and the specific areas can be forecast and

O049-1

analyzed. Rather than do so, the DEIR/S provides insufficient details concerning many elements of the proposed project likely to result in significant impacts. The DEIR/S's deferral of project description elements, analysis of impacts *and* mitigation measures is particularly egregious here because project approvals may include alignment and station locations and commit the Authority to a course of action. See Rio Vista Farm Bureau v. County of Solano, 5 Cal.App.4th at 351, 371 (1992).

As part of its flawed approach, the DEIR/S impermissibly and repeatedly concludes that the majority of all of the HST project's environmental impacts are either less than significant or will be rendered less than significant by mitigation, while at the same time deferring necessary analysis of mitigation measures. Under CEQA, an EIR may conclude that impacts are insignificant only if it provides an adequate analysis of the magnitude of the impacts and the degree to which they will be mitigated. See Sundstrom, 202 Cal.App.3d at 306-07. Thus, if an agency fails to investigate a potential impact, its finding of insignificance simply will not stand. Id. Further, CEQA generally requires that all mitigation measures be adopted simultaneously with, or prior to, project approval. Here the proposed mitigation measures are not measures at all. Rather, they consist of vague strategy suggestions, the details of which are deferred until project-level review. An agency may defer preparation of a plan for mitigation only when the agency commits itself and/or the project proponent to satisfying specified performance standards that will ensure the avoidance of any significant effects. Id. In the present case, the DEIR/S violates CEQA by deferring critical analyses of project impacts and feasible mitigation. The following is a non-exhaustive list of examples of mitigation strategies that are vague, unenforceable and details of which are deferred to a later date:

O049-1 cont.

> Transportation: "Consultation and coordination with public transit services in order to encourage the provision of adequate bus feeder routes to serve proposed station areas could mitigate potential transit feeders." DEIR/S page 3.1-24.
>
> Air Quality: "Potential localized impacts could be addressed at the project level by promoting the following measures. Increase use of public transit; increase use of alternative fuel vehicles; increase parking for carpools, bicycles, and other alternatives transportation modes." DEIR/S page 3.3-33.
>
> Air Quality: "Potential construction impacts, which should be analyzed once more detailed project plans are available, can be mitigated by following local and state guidelines." DEIR/S page 3.3-33.
>
> Noise and Vibration: "More detailed mitigation strategies for potential noise and vibration impacts would be developed in the next stage of environmental analysis." DEIR/S page 3.4-23. "This program level analysis has identified areas where future analysis should be given to potential HST-induced vibrations." DEIR/S page 3.4-24.
>
> Energy: "The design particulars would be developed at the project-level of analysis..." DEIR/S page 3.5-22.

Comment Letter O049 Continued

Land Use: "Local land use plans and ordinances would be further considered in the selection of alignments and station locations…" DEIR/S page 3.7-26.

Agriculture: "Consideration of potential mitigation such as protection or preservation of off-site lands to mitigate conversion of farmlands or acquiring easements, or payment of an in-lieu fee as mitigation mechanisms, would depend on the potentially considerable environmental impacts identified at specific locations, as assessed in a project-level document. DEIR/S page 3.8-18.

Geology and Soils: "Mitigation for potential impacts related to geologic and soils conditions must be developed on a site-specific basis, based on the results of more detailed (design-level) engineering geologic and geotechnical studies." DEIR/S page 3.13-13.

Biological Resources: "Consultation with the appropriate resource agencies to develop site-specific avoidance and minimization strategies would be incorporated in the project-level environmental review." DEIR/S page 3.15-31.

4(f) and 6(f): Possible mitigation measures include sound walls, visual buffers landscaping, modification of access to the resources. Strategies would be developed during the public input process. DEIR/S page 3.15-13.

O049-1 cont

Specific mitigation measures, including identified funding for them, must be developed at this time, well before project-level environmental review, and based on complete project information and impact analyses. Project-related and cumulative impacts determined to be significant and unavoidable must also be identified and listed as such (See Table 7.3-1). These include, but are not limited to the following[1]:

- Traffic and circulation
- Land use compatibility
- Hydrology
- Noise
- Biological impacts related to changes in hydrology and noise
- Biological impacts related to habitat fragmentation and wildlife corridors
- Growth inducement
- Among others

The DEIR/S's failure to adequately identify and analyze the potentially significant effects of the project, and to design proper mitigation measures prior to project approval, renders the document legally inadequate, particularly as it applies to choosing between potential

[1] The DEIR/S is so poorly drafted that it is difficult to determine what impacts are significant before and after mitigation. The individual topic chapters fail to clearly identify significant impacts and demonstrate how mitigation reduces significant impacts to less than significant. The closest the DEIR/S comes to identifying this *required information* is Table 7.3-1, which falls well short of CEQA/NEPA requirements for identification of significant impacts before and after mitigation.

high speed rail alignments. With the DEIR/S in its current form, decision-makers, the public and permitting agencies cannot evaluate the advisability of project approval even at the level of a modal choice. A revised DEIR/S must be completed and circulated which provides adequate information about project alternatives, project-related and cumulative impacts and mitigation measures before decisions are made concerning the HST project.

O049-1 cont

B. The DEIR/S Lacks an Adequate Summary Section

This project is the largest infrastructure project ever contemplated in California history and therefore one of the most complex projects ever considered. As such, it is critical that the document relied on to inform decision-making concerning the proposed project be well organized, clear and readable. Environmental documents are designed for many different readers and often different sections are targeted at different audiences. That makes it very important for the summary section to present information to readers interested in a getting a quick understanding of the proposed action and its consequences. Typically, EIR and EIS summary sections include a matrix or table that allows comparison of all alternatives in terms of their respective environmental impacts and includes conclusions regarding the significance of impacts before and after mitigation. Great care should be taken to ensure that after reviewing the summary section, readers have a clear understanding of the proposed project, project alternatives and how they compare to one another. The instant DEIR/S fails to provide a clear, complete and therefore adequate summary section. To the contrary, the comparison table only includes general information concerning the three project "modal" alternatives, fails to characterize as significant or insignificant the impacts of each, and fails altogether to include a table describing the HST alignment and station choices. Moreover, the body of the DEIR/S does not include clear information about the level of significance of project-related impacts. Only Table 7.3-1 indicates the potential significance of HST-related impacts before and after mitigation. This is a major flaw in the DEIR/S, which must be corrected in a recirculated draft.

O049-2

Once again, this DEIR/S is not only being relied upon for a choice of modes between No Project, Modal Alternative and HST, but, this document is also intended for use in selecting HST alignments and station locations. If the document is to be used for either "level" choice of alternatives, a revised summary table or matrix must be developed that: clearly characterizes the significance of impacts before and after mitigation, and presents the information in a manner that allows meaningful comparison of both the modal alternatives and project components (alignments/station locations, etc.), if decisions will be made concerning these components based on the DEIR/S.

C. The DEIR/S Fails to Adequately Describe the Proposed Project

The DEIR/S incomplete project description omits critical details of the project, including, but not limited to significant construction activities, engineering and operations aspects of the project. As a result of the DEIR/S's failure to discuss key project components,

O049-3

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potentially significant environmental impacts are not adequately described, analyzed or addressed.

Under both CEQA and NEPA, the DEIR/S must contain a clear and comprehensive project description. The CEQA Guidelines define "project" as "the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately…" CEQA Guidelines Section 15378. Among other components, an EIR's project description must contain a "general description of the project's *technical, economic*, and environmental characteristics, *considering the principal engineering proposals if any and supporting public service facilities.*" CEQA Guidelines Section 15124(c). Similarly NEPA provides that the lead agency must ensure that the description of the project action includes "connected actions" that are currently proposed or will be proposed in the foreseeable future. The lead agency must determine the proposed action's full extent, including all components, segments, and future phases. An agency may not divide a proposed action into smaller segments to avoid disclosure and analysis of the full environmental effects. If the EIS excludes arguably related actions, it must include the following:

- A description of the related actions and how they relate to the proposed action;
- A brief discussion of the impacts of the related actions to the extent they are known;
- An explanation of why it is not required or possible to evaluate the actions in detail at this time; and
- An explanation of when, and in what type of NEPA document, the related actions are being or will be evaluated (e.g. a second Tier EIS).

O049-3 cont.

1. The DEIR/S's Description of the Project is Not Adequate

Under both CEQA and NEPA, the DEIR/S must contain a clear and comprehensive project description. Because this DEIR/S may be relied on for both a modal choice and general alignments and station locations for HST, the project description must accurately, completely and clearly describe all of the following:

- Each modal choice (No Project, Modal Alternative and HST);
- All features for each modal alternative (e.g. construction, operations, related facilities, etc.); and
- All features of each proposed alignment, station location and other features of HST.

Instead of providing a clear and comprehensive project description early in the DEIR/S, the reader must "assemble" the project descriptions for each alternative choice (modal as well as alignments/station locations) by sifting through not only the DEIR/S, but all of its appendices and in some cases, related studies. For example, the ridership studies, which provide underlying assumptions concerning both modal alternatives and key components of the HST alternative (alignment and station choices) are found in a separate document not included in the DEIR/S. This approach contravenes both CEQA and NEPA. All information should be presented in the DEIR/S necessary to accurately and thoroughly describe the proposed project or action – and in this case, actions. A revised draft DEIR/S must be completed which includes all information about the proposed modal alternatives necessary to support informed decision-making.

2. The DEIR/S Fails to Adequately Describe Features of the Project Alternatives

According to the DEIR/S, the Authority and FRA may not only select a modal choice, but as well may select a preferred HST corridor alignment, station locations, and recommended mitigation strategies based on the DEIR/S. DEIR/S page S-1. The lack of an adequate and complete project description does not support informed decision-making concerning modal choice let alone more detailed decisions such as corridor alignment and station locations. Specifically, the DEIR/S provides only the most cursory information concerning the description of the modal alternatives and even less information concerning the specifics of the corridor alignment and station locations. Information that is provided is difficult to verify because the assumptions underlying the information is not provided or is located in documents not readily available or properly summarized in the DEIR/S.

O049-3 cont.

The DEIR/S does provide information about the modal choices, but this information is incomplete. For example, the following information is provided concerning the No Project: proposed interchange improvements, construction related energy consumption (DEIR/S page 3.5-5) for the highway element and square feet of passenger terminals (DEIR/S Table 2.4-2 and Table 2.4-3), new gates (DEIR/S Table 2.4-2 and Table 2.4-3), access lanes (DEIR/S Table 2.4-2 and Table 2.4-3), parking spaces (DEIR/S Table 2.4-2 and Table 2.4-3) and construction-related energy consumption(DEIR/S page 3.5-5) for the aviation element of the no-project alternative. A similar level of detail of the project description is provided concerning the modal and HST alternatives. However, much of the critical information concerning the features of these alternatives is in the appendices to the DEIR/S or in other documents. In addition to the project features that are not described, the lack of transparency about how this information was developed renders it inadequate for meaningful impact analysis. Again, the reader must "assemble" the project description by reviewing hundreds of pages of the DEIR/S and its appendices, but also documents that are not included in the DEIR/S. A complete project description section is not included in the DEIR/S as it must be.

Specific examples of the types of information missing from the project description of the HST option include, but are not limited to the following:

a. The DEIR/S Description of Construction Activities is Incomplete

O049-4

Construction activities related to the HST (as well as the other modal alternatives) could impose greater impacts on certain resources than the actual operations of the HST.

Impacts related to construction activities are not necessarily short-term in nature. For example, many of the changes to hydrology and topography necessary to construct the project will be permanent. Also, construction impacts associated with HST construction will differ in nature and magnitude along different alignments due to varying topography, geological and environmental challenges, ease of access, distance from materials and utilities, construction staging areas, required equipment, and other factors. Because the Authority and FRA may select a preferred HST corridor/alignment, station locations, and recommended mitigation strategies based on the DEIR/S, it is not appropriate to defer details concerning construction activities until later.

Construction activities that are not disclosed include, but are not limited to the following: locations of spoils and borrow sites for soils related to grading and tunneling; other construction activities and schedule; extent of cuts and fills and total amount of grading for each alternative alignment and station; water use and dewatering related to tunnels; chemicals or other hazardous agents used for clearing or in construction; the number and type of construction employees; types of equipment and their characteristics; total construction related trips including truck haul routes; and the like. Also, where the alignments are located in remote areas, the DEIR/S should address construction worker housing or temporary housing and the potential impacts associated with actually building the tracks in these areas. Finally, it is clear that construction of HST in remote areas with steep terrain may involve extensive and long-term destruction of the natural landscape, including greater areas of grading, boring and vegetation removal than described in the DEIR/S. In addition, the duration of noisy and invasive construction activities in these areas may severely disrupt species. Without a complete and clear description of what it will actually take to construct HST in these areas, impacts to the landscape (including topography and hydrology) and biological species cannot be meaningfully analyzed.

O049-4 cont.

Individually and collectively, this information about the project alternatives could result in a tipping the selection to a more developed route where fewer collateral impacts will be imposed to build the HST. If this information is not provided early in the decision-making process, a fully informed decision cannot be made. A revised DEIR/S must include this level of detail not only for the HST alignment and station options, but also for each of the three modal alternatives (No Project, Modal Alternative and HST).

b. The DEIR/S Fails to Describe the Potential Operations on HST

The DEIR/S fails to accurately and completely describe all likely operational aspects of the HST. Omissions include, but are not limited to number of and type of HST employees, the typical distance riders will travel to reach HST stations, use of trains for freight service, among other operational aspects of HST. For example, according to the DEIR/S: "While the Authority recognizes the potential for overnight medium-weight freight service on the proposed high-speed rail tracks, it has not been included in this analysis. Discussions with potential high speed freight operators could be initiated as part of subsequent project development with appropriate analysis." DEIR/S at 2-25. This is an example of another type of omission in the project description – a likely use of

O049-5

HST – which has the potential for increased impacts related to the development of freight carriers (likely trucks) to and from stations to off-haul freight (obviously, the project also could result in overall positive traffic congestion, revenue and air quality benefits depending on the details of the freight service). If the project description omits major features of HST or other modal alternatives, impacts will be underestimated. A revised project description must include all anticipated operational elements and analyze the impacts of these elements.

O049-5 cont.

c. The DEIR/S Fails to Provide Information About All Related Projects and Project Features to HST

The DEIR/S fails in numerous respects to fully disclose and describe related projects and features of HST. For example, among other aspects of the project, CEQA requires the DEIR/S to describe all supporting public service facilities. The DEIR/S is silent on the types and locations of needed public service facilities and instead assumes these will be available: "It was not possible as part of this study to identify or quantify the utility improvements expected to occur by 2020. Rather, it is assumed that utility development will occur to meet projected demand and growth characteristics near the alignments of the proposed alternatives." DEIR/S page 3.10-5. The entire section on public utilities is focused on conflicts between HST and these facilities, rather than on project-related public service facilities. The need for new or expanded public services and utilities to serve station locations in remote areas is also excluded from the DEIR/S. All public services and facilities needed for the HST must be included in a revised DEIR/S, including, but not limited to: access roads, water and sewer services, emergency services, and the like. Services and infrastructure needed to serve the stations as well as the trains must be included.

O049-6

In some cases the DEIR/S refers to related projects to HST, such as connecting transit. However, the DEIR/S is inconsistent in identifying these related projects, including, but not limited to co-use of tracks, future routes and connecting transit. Similarly, the DEIR/S fails to adequately describe key project features such as noise barriers: "While noise barrier walls would not be the only potential mitigation strategy to be considered, they were used to represent mitigation potential in this Program EIR/EIS." DEIR/S page 3.4-5. Such barriers could have devastating impacts on wildlife by further fragmenting habitat areas. Another example is the HST stations. The DEIR/S includes only general information about the total area of stations and their parking facilities. The information that is provided appears to underestimate total area for these key project features. The description fails to include the scale of these stations, their parking facilities and access for each proposed station location. Moreover, the DEIR/S fails to describe the likely related land uses would occur should these stations be built.[2] A revised DEIR/S must

[2] The DEIR establishes several standardized "types" of stations that could be tailored to each station location once stations are chosen. However, the actual suite of stations chosen for a particular alignment and the design of each station will affect the alignments cost, footprint, performance, and environmental impacts. Thus the choice of alignment must depend on an understanding of which stations will be chosen, how they will be designed and integrated into surrounding communities, and specific mitigation measures to mitigate impacts.

include much more detailed descriptions of these and other project features, including likely diagrams and renderings of stations, parking facilities, access roads and transit oriented development around stations.

Finally, the DEIR/S fails to consistently describe related transit services, such as the Baby Bullet trains which just premiered in the Bay Area[3], planned commuter rail service over the Dumbarton bridge, and planned Sacramento light rail service to the Sacramento Airport. This and other related transit services, segments, phases and other related facilities must be included in a revised project description in a revised and recirculated DEIR/S.

O049-6 cont.

If these key project features are not thoroughly described, related impacts cannot be analyzed. These and other omissions in the description of the HST and other modal alternatives must be corrected in a revised DEIR/S and the potential for impacts (or mitigation) of these related projects and features disclosed and analyzed.

d. The DEIR/S Fails to Disclose all Fundamental Engineering Aspects of the HST Alternative

O049-7

All engineering aspects of HST and the other alternatives must be disclosed and described. For example, while there is some information about the extent of tunneling, boring, grading, bridges and overpasses provided for the HST alternatives, the information is neither complete nor consistent. The DEIR/S also alludes to aspects of HST that give this option an advantage over other modal choices, but fails to provide sufficient information about the feature to substantiate claims of superiority. An example of this is that HST would consist of permeable track fill, rather than pavement expansion. DEIR/S page 3.14-11. According to the DEIR/S this results in HST generating less runoff and more infiltration than the modal alternative. Insufficient information is provided to document this conclusion. This is one more example of the type of information that should be fully disclosed in the project description and highlighted as a difference in the project alternatives.

e. The DEIR/S Fails to Fairly and Completely Disclose the Economic Aspects of the Modal and HST Alignment and Station Choices

O049-8

[3] While Baby Bullet service opened to the public during the comment period for this EIR, advent of the service has been well publicized for several years. See, for instance, "Baby Bullet" trains will speed service between S.F., San Jose," November 29, 2000, in the Menlo Almanac or the KCBS Radio stories "Caltrain "Baby Bullet" to make World Series run," October 27, 2002 or "Baby Bullet Train Planned for SF/San Jose Route" June 28, 2002, at http://groups.yahoo.com/group/BATN/message/8306.

A description of the economic feasibility of the various alternatives, modal and HST related, is critical to informed decision-making. Moreover, CEQA requires that the project description must contain a "general description of the project's *technical, economic*, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities." CEQA Guidelines Section 15124(c). Disclosure of the costs of the HSR alternatives and the feasibility of funding route acquisition and improvement must be disclosed. All costs and revenues in comparable form for each modal alternative must also be disclosed in a revised DEIR/S.

O049-8 cont.

f. The DEIR/S Fails to Adequately Describe Project Phasing

The omission of adequate and accurate project phasing information presents several problems for the document. First, the omission means that the project description may not include the "whole of the project" as required by CEQA or all related project elements as required by both CEQA and NEPA. Second, it renders the document confusing to the public, decision-makers and permitting agencies concerning what the project action really is. Third, it frustrates alignment decisions, since the financial viability, ridership, and environmental impacts will vary among alignments for the initial phase of the project, as well as for the project overall.

Studies performed by the predecessor Intercity High Speed Rail Commission through 1996 separately explained two major phases of this project. The first phase of the project is the portion from LA to the Bay Area, which would be separately financed through an initial statewide bond measure. The second phase includes "extensions" to Sacramento, San Diego, and possibly Oakland. The existence of this two-phase strategy is reflected in the statewide legislative ballot measure passed this year and scheduled for 2006. The ballot measure would provide a portion of the funding for phase I of the project, but not for phase II. Realistically, it may be years or decades between the construction of phase I and phase II. Indeed, the independent financial viability of phase I will affect whether phase II is built. Yet the DEIR/S speaks almost uniformly of the fully-built project.

O049-9

The incomplete, inaccurate and vague project description points to a fundamental difficulty in the Authority's DEIR/S strategy. The DEIR/S is presented as a "programmatic" study to determine whether to build high speed rail rather than expanding highways and airports. However, the computer modeling, cost analysis, and environmental impacts of the HSR alternative cannot be evaluated without choosing a project alignment. Thus, if this DEIR/S is the basis for decision-making, the Authority/FRA will be making key alignment decisions in advance of the careful analysis needed to support informed decision-making as required by law. Indeed, the first page of the DEIR notes that "In the Final Program EIR/S, which will be prepared after the close of the public comment period on the Draft Program EIR/S, the Authority and the FRA may select a preferred HSR corridor/alignment..."

By reserving the ability to make this choice based on this DEIR/S, the agencies go beyond a programmatic-level DEIR/S. To cure this flaw, the Authority should either

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evaluate each major alignment in this document (including Bay Area access over the Altamont Pass), or explicitly defer all alignment decisions to a future project EIR/S. It is not acceptable to select a preferred HST corridor/alignment in advance of a detailed project DEIR/S which fully discloses all future phases of the HST. It would be particularly objectionable to do so "after the close of the public comment period" (ibid.) which focuses the public on programmatic-level decisions rather than fully vetting project-level decisions about alignment. DEIR/S at S-1.

O049-9 cont

Without accurate, adequate and complete information about the "whole" project and its major phases, an adequate analysis of project impacts is not possible. A revised and recirculated DEIR/S must be prepared before any decisions are made concerning modal choice, let alone HST alignments and station locations.

D. The DEIR/S Fails to Adequately Analyze and Mitigate the Project's Significant Impacts

The analysis of environmental impacts in the DEIR/S fails to provide the necessary facts and analysis to allow the Authority, the agencies and the public to make an informed decision concerning the project alternatives (modal and HST related) and mitigation measures. CEQA requires that an EIR be detailed, complete, and reflect a good faith effort at full disclosure. CEQA Guidelines section 15151. A fundamental purpose of an EIR is to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." Laurel Heights Improvement Assn. V. Regents of the University of California, 6 Cal.4th 1112, 1123 (1988). To do so, an EIR must contain facts and analysis, not just an agency's conclusions. See Citizens of Goleta Valley v. Board of Supervisors, 52 Cal.3d 553, 568 (1990). Not only does the DEIR/S fail to provide supporting evidence for its conclusions concerning the significant of project-related and cumulative impacts, in most cases, it is not possible to tell from the DEIR/S whether an impact is considered significant, less than significant or reduced to less than significant after mitigation. The discussions simply omit this basic information.

O049-10

The treatment of mitigation measures in the DEIR/S is similarly deficient. Mitigation measures must be identified and analyzed. This DEIR/S refers to the mitigation measures as mitigation "strategies." The term "mitigation strategy" is not recognized or defined by CEQA or NEPA. In most cases the suggested "strategies" are so vague that it is not possible to determine their efficacy in reducing significant impacts to less than significant. Many of these so called mitigation strategies consist of suggested actions the details of which are deferred until after project actions are taken that commit the Authority to a specific course (e.g. specific HST alignment and station locations). This approach makes it impossible to evaluate the effectiveness of strategies to reduce impacts. In addition, CEQA cautions that "public agencies should not approve projects as proposed if there are…feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. . ." Pub. Res. Code section 21002. NEPA contains similar requirements. Here the DEIR/S simply fails to identify feasible mitigation measures capable of mitigating the significant environmental impacts of the project alternatives and cumulative impacts.

This approach does not keep the DEIR/S from concluding that potentially significant impacts can be mitigated. See Table 7.3-1 where numerous significant impacts are rendered less than significant after vague and non-committal mitigation strategies are imposed. This approach violates CEQA and NEPA. A revised DEIR/S must include feasible mitigation measures to address significant project-related and cumulative impacts.

O049-10 cont

Finally, the DEIR/S improperly bases its analysis of the impacts associated with the Modal and HST Alternatives with the No Project Alternative, rather than with existing baseline conditions. This approach is improper under both CEQA and NEPA, which require the analysis of impacts to be based on existing physical environmental conditions in the affected area at the time the notice of preparation is published. CEQA Guidelines section 15126.2. A revised DEIR/S must include an analysis of the impacts of these alternatives with both the existing environmental conditions (at the time the NOP was issued) and with the No Project alternative.

O049-11

Examples of inadequate impact analyses include, but are not limited to, the following:

a. The DEIR/S Fails to Analyze Adequately Traffic and Circulation Impacts

After identifying numerous significant impacts of HST on traffic and circulation, the DEIR/S concludes that all potentially significant traffic and circulation impacts of the HST alternative will be reduced to less than significant *with* mitigation. Mitigation consists of "encouraging" the use of transit and working with transit providers to improve station connections. This, along with other remarkable statements in this section of the DEIR/S underscore the reasons why this document is not adequate to support informed decision-making concerning the modal choices, let alone HST alignments and stations.

O049-12

The DEIR/S fails to disclose the project's (including all alternatives') impact to the physical environment and in specific to traffic and circulation as required under CEQA and NEPA for a number of reasons including but not limited to the lack of adequate and complete setting information, inadequate analysis of impacts and failure to identify feasible mitigation measures.

First, omitted and inadequate project description information makes it impossible to adequately evaluate project related impacts on traffic and circulation. Examples of omitted or inadequate project description elements that result in an underestimation of traffic impacts include, but are not limited to: construction activities including construction haul routes, construction related trips, current and adequate information about ridership on the different modes, consistent assumptions concerning catchment areas (i.e. the distance people will travel to ride HST), information about all potential uses (e.g. freight) of HST as well as other information.

Second, the description of the affected environment discussion has numerous omissions and inconsistencies that make the section inadequate for choosing a preferred modal

Response to Comments Bay Area Open Space Council, et al., August 31, 2004 (Letter O049)

O049-1

Please see standard response 3.15.2 and standard response 3.15.13 regarding the general level of detail in this Program EIR/EIS and the anticipated more detailed project-level, Tier 2 studies. Please see response to Comment O042-1 for more information on the purpose of the Program EIR/EIS and the subsequent studies. The co-lead agencies believe that the Program EIR/EIS contains sufficient information and analyses for the decisions made as part of this document. Please see response to Comment O064-08 in regards to suitable mitigation measures. In addition, further clarification and description of the design features of the proposed project and further discussion of proposed mitigation strategies have been added to the Final Program EIR/EIS in Chapter 3. Please see Chapter 6A and the Summary of the Final Program EIR/EIS in regards to the preferred HST alignment and station locations.

Please refer to standard response 3.15.13 in regards to the level of detail of the Program EIR/EIS process and Section 1.1 of the Final Program EIR/EIS document. The mitigation strategies described in the Final Program EIR/EIS represent mitigation menus for decision-makers to consider. Commitments to specific mitigation measure will come in decisions on the program document and in the future, more specifically as part the decisions on project-level documents, should the HST proposal move forward.

O049-2

The co-lead agencies believe the Final Program EIR/EIS meets the requirements of both CEQA and NEPA, including the Summary section. Conclusions regarding significance of impacts before and after mitigation are presented in Section 7, "Unavoidable Adverse Environmental Impacts". Tables describing the HST alignment and station choices are included as Section 6, "High-Speed Train Alignment Options Comparison". This section is a "summary chapter", which presents in table format a summary of the data presented in Chapter 3 and in the supporting technical documents so that alignment and station comparisons can be made between the various HST design options. Given that the HST Alternative is over 700-miles long and that thousands of miles of alignment options have been investigated, it is not practical to place all the information suggested by your comments into a single "summary chapter". Section 6 is over 100 pages in length (not including the many pages of figures). The preferred HST alignments and potential station locations and the rationale behind their identification are presented in Chapter 6A of the Final Program EIR/EIS document.

O049-3

Section 2.6 of the Program EIR/EIS describes the No Project, HST, and Modal alternatives. The description of the HST Alternative includes key engineering and operations aspects and references additional technical documents. For the Final Program EIR/EIS, Section 3.18 has been added which includes a description of construction practices and discussion relating to potential construction related impacts. Potentially significant environmental impacts are addressed in Chapter 7. Chapter 3 summarizes the potential environmental impacts of the No Project, HST and Modal Alternatives. The co-lead agencies believe that the Final EIR/EIS presents sufficient information to accurately and thoroughly describe the proposed project and actions. However, it is neither necessary nor practical to include all the technical information related to the Final EIR/EIS (about 100 supporting technical reports) in the Final EIR/EIS. Please also see standard response 10.1.1 in regards to the availability of the supporting technical documents. Please also see response to Comment O043-1 and O043-2. Please see Chapter 12 of the Final Program EIR/EIS for a complete list of references including supporting technical reports.

O049-4

Please see response to Comment O043-3.

O049-5

Please see response to Comment O043-3. The co-lead agencies believe that the HST Operations description is appropriate for a program level document. Should the HST proposal move forward, more detailed operational analysis will be required as part of future project-specific studies. Please also see standard response 2.7.2 and standard response 2.7.3.

O049-6

The co-lead agencies disagree with your assessment. Please see standard response 3.15.2 and standard response 3.15.13 regarding the general level of detail in this Program EIR/EIS and the anticipated more detailed project-level, Tier 2 studies. Please see response to Comment O042-1 for more information on the purpose of the Program EIREIS and the subsequent studies. The expected scale of stations and general footprint needs are described in the "Engineering Criteria" and "Alignment Configuration and Cross Sections" technical reports (January, 2004) and are reference in Section 2.7.3 of the Final Program EIR/EIS. The analysis on public utilities (like the analysis for the resource topics) was done at a program level of detail. Further analysis of local traffic impacts and connecting transit services will be preformed in project-level environmental reviews when additional details of facilities and design and location will be known. A further evaluation of "project-related public service facilities" is beyond the scope of this program EIR/EIS process. Should the HST proposal move forward, more detailed project-level studies will be required.

O049-7

The engineering aspects of HST and the other alternatives are described at a conceptual level of detail (see Section 2.6 of the Final Program EIR/EIS). Describing "all engineering aspects of HST and the other alternatives" is beyond the scope of this program EIR/EIS process. The co-lead agencies believe that sufficient information has been provided in the Final EIR/EIS regarding to the advantages of the HST over the other alternatives (please see the Summary of the Program EIR/EIS). A footnote has been added to the Final Program EIR/EIS documenting an appropriate source for the claim that HST would generate less runoff and has more infiltration potential than the Modal Alternative (See Section 3.15.3). Information from your comments (Attachment C) have been added to the Final Program EIR/EIS discussing the advantages of railway corridors over highways (from DeSanto and Smith 1993).

O049-8

The co-lead agencies believe that the Program EIR/EIS document fully meets the requirements of CEQA and NEPA for a program level document. The estimated costs for the HST Alternative and Modal Alternative are summarized in Section 4 of the Program EIR/EIS. Detailed cost-benefit analyses which were prepared as part of the Commission's and the Authority's feasibility studies were referenced in this program process (see Section 2.3). The preparation of a financing plan for the proposed HST system is not required for CEQA and NEPA compliance and is beyond the scope of this program EIR/EIS.

O049-9

Please see standard response 10.1.7. While the Commission discussed several phasing concepts, it made no preference or recommendation regarding the phasing of a statewide HST system. However, the Commission did determine that the links to Sacramento and San Diego were "vital to the feasibility of the project" (High-Speed Rail Summary Report and Action Plan, December 1996, page 8-28). Please also see standard response 2.13.1.

The co-lead agencies disagree with your conclusions. In the Draft Program EIR/EIS the co-lead agencies identified the HST Alternative as the preferred alternative based on a range of potential impacts derived from the various design options which were compared to the No Project and Modal alternatives. Based upon the information presented in the Draft Program EIR/EIS and comments received from agencies, organizations and the public the Authority identified a

preferred alignment and station locations which has been added to the Final Program EIR/EIS. The co-lead agencies believe that process that has been followed fully meets the requirements of CEQA and NEPA.

Please see standard response 6.3.1 in regards to the Bay Area to Central Valley portion of the HST Alternative.

O049-10

Please see response to Comment O049-1 and response to Comment O049-2.

O049-11

In the Final Program EIR/EIS, each environmental area (sections of Chapter 3) has been modified to include specific mitigation strategies that would be applied in general for the HST system. Each section of Chapter 3 also outlines specific design features that will be applied to the implementation of the HST system to avoid, minimize, and mitigate potential impacts. At this level of design it is premature to develop more specific mitigation measures for specific potential effects. Only once there is a more detailed analysis of the alignment and avoidance and minimization efforts have been exhausted, will specific mitigation be addressed. Also see comment O029-4 regarding the further examination of alignment options.

Because the proposed HST system would not be operational until the year 2020, the affected environment discussions describe both the existing conditions as of 2003 and, where appropriate and not overly speculative, the anticipated 2020 conditions that would pertain when the project becomes operational. For disciplines where projections of future changes in existing conditions would be overly speculative, the existing 2003 conditions were used as a proxy for the 2020 conditions. For some disciplines—such as transportation, energy, air quality, and land use—future conditions are routinely projected in adopted regional or local planning documents or are forecast by public agencies. In these cases, the existing conditions and the projected 2020 conditions were used as the basis for impact analysis. The technical studies prepared for each region and addressing each resource area provided key information for the preparation of the affected environment discussions.

The environmental consequences discussions describe the potential environmental impacts (both adverse and beneficial) of the Modal and HST Alternatives in comparison to the No Project Alternative and compared to each other. Each discussion begins by comparing existing conditions with 2020 No Project conditions to describe the consequences of No Project and how environmental conditions are expected to change during the timeframe required to bring the proposed HST system online. As described above, existing (2003) conditions were used as a proxy for 2020 No Project conditions where 2020 baseline information was unavailable, could not be projected, or would be overly speculative. Using 2020 No Project conditions as a basis for comparison, the analysis of impacts then addresses direct and indirect impacts for the proposed HST and Modal Alternatives, as well as potential cumulative impacts.

O049-12

Program EIR/EIS the traffic analysis has been completed at a regional level of detail based on regional modeling data. Should the HST program move forward detailed intersection level traffic analysis will be required as part of subsequent project specific analysis. Should the HST proposal move forward, the Authority and the FRA will work closely with the local governments (cities) and other stakeholders involved to ensure that adequate access improvements are identified to minimize and mitigate potential traffic impacts. Detailed traffic studies are not appropriate until more specificity is defined for proposed stations in terms of location and design during the subsequent project level studies.

In the Final Program EIR/EIS, each environmental area (sections of Chapter 3) has been modified to include mitigation strategies that would be applied in general for the HST system. Each section of Chapter 3 also outlines specific design features that will be applied to the implementation of the HST system to avoid, minimize, and mitigate potential impacts. Specific impacts and mitigations will be addressed during subsequent project level environmental review,

Comment Letter O051

O051

CALIFORNIA STATE PARKS FOUNDATION

The Voice for California's State Parks

Medhi Morshed, Executive Director
California High Speed Rail Authority
925 L Street, Suite 1425
Sacramento California 95814

August 30, 2004

Allan Rutter, Administrator
Federal Railroad Administration
U.S. Department of Transportation
1120 Vermont Avenue N.W. M/S 20
Washington, D.C. 20590

Re: Comments on Draft Program Environmental Impact Report/Environmental Impact Statement on Proposed California High Speed Rail Line

Dear Messrs. Morshed and Rutter:

We welcome the opportunity to comment on the Draft Environmental Impact Statement/Supplemental Environmental Impact Report for the California High Speed Rail Line Project.

The California State Parks Foundation is the only statewide organization dedicated to the protection of the California State Park system. The Foundation was founded 35 years ago by William Penn Mott, Jr., former director of California and National Park Systems. Since that time we have raised over $116 million to support park projects and have 50,000 members statewide. We reviewed the Draft Environmental Impact Report (DEIR)/Environmental Impact Statement (DEIS) from the standpoint of potential impacts to our magnificent State Park System.

As California has led the nation in its commitment to environmental protection, it is fitting that the state also would set a new standard in the development of alternative modes of transportation. This project has the potential to provide a state-of-the-art high speed rail line that could provide competitive transportation alternatives for Californians seeking travel between northern and southern California. It may also connect Central Valley communities with major metropolitan areas in other parts of the state. Given the magnitude and expense of the proposed transportation project, we believe the general public has a right to expect a comprehensive and high quality analysis of the potential impacts required under state and national regulations. We have found the DEIR/S to be insufficient, and that the document fails to comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 et seq. and the CEQA Guidelines, California Code of Regulations, title 14, section 15000 et seq. ("CEQA Guidelines") and the National Environmental Policy Act ("NEPA") 42 U.S.C 4321; 40 C.F.R. 1500.1. ***Accordingly we believe the DEIR/S must be revised and re-circulated.***

State Parks Foundation Comments 1

INTRODUCTION

The California Department of Parks and Recreation (DPR) is responsible for managing the most diverse and complex natural landscapes of any land-management agency in California. More rare and endangered species exist on State Park lands that any other category of state owned property. Our State Parks are living classrooms educating visitors to the state's unique natural landscapes and great cultural resources, including wilderness areas, recreation areas, reservoirs, museums, historical and archeological sites. California's State Parks contain the most diverse natural holdings of any state in the nation, including one-quarter of the spectacular California coastline, old growth redwoods, oak woodlands, pristine deserts -- 1.5 million acres overall. In addition to resource protection, State Parks provide affordable recreation to more than 90 million visitors each year. State Parks provide a much needed refuge for urban residents, and afford all visitors safe and economical recreation. Data shows that visitors to State Parks spend upwards of $2.6 billion each year in local communities. That revenue is cycled through the economy and results in total output of nearly $7 billion. More than 100,000 jobs statewide are dependent on park visitors and their spending. Open space preserved in parks is a benchmark of a community's quality of life, and our parks give local communities and the state a competitive edge in attracting new businesses.

The public reasonably expects our State Parks to be treasured and protected in perpetuity. Since the creation of our first State Park, Yosemite, in 1864 by Abraham Lincoln, Californians have demonstrated their commitment to the preservation of these public resources. Historic parks, beaches, old growth forests, deserts, ghost towns and mining towns are a small sampling of the incredible state assets protected in these parklands. Today the System is comprised of 278 Park Units. By our best reckoning upwards of 40 State Parks could be directly or indirectly impacted by the proposed High Speed Train (HST). (Appendix 1.)

Program DEIR/S Does Not Contain Adequate Analysis

CEQA and NEPA both require that an environmental review accompany projects for major federal or state actions that may significantly affect the environment. The environmental review should consider items such as significant direct, indirect, cumulative and short and long-term environmental impacts. In effect the DEIR/S is to serve as an "environmental 'alarm bell' whose purpose is to alert the public and responsible officials to environmental changes before they have reached ecological points of no return." County of Inyo v. Yorty (1973) 32 Cal.App3d 795,810. O0SI-1

The DEIR/S is not sufficient in that it does not include adequate information to properly educate decision-makers and the public of the breadth of the potential impact to our cherished state parklands by a HST that does not adequately consider the impacts to the biological, recreational, and historic resources. Reviewing the Alternative HST and proposed routes, we believe upwards of 40 and perhaps many more State Parks are either directly or indirectly impacted. In the DEIR/S, when impacts to parklands are considered they are evaluated only from the standpoint of reduction of open space without considering

State Parks Foundation Comments 2

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Comment Letter O051 Continued

the potential degradation of natural resources, cultural resources, and recreation opportunities.

The DEIR/S fails to adequately describe the scope of the HST project and mitigate its host of associated impacts with specific, enforceable mitigation measures. The document repeatedly defers critical analysis and project description on the grounds that the DEIR/S is a program EIR/S. An agency "must use its best efforts to find out and disclose all that it reasonably can." CEQA Guidelines § 15144. The DEIR/S vague analysis with respect to numerous project elements precludes a full and proper analysis of project alternative impacts.

The DEIR/S repeatedly determines that project impacts would not be significant based solely on *uncommitted future assumptions*. CEQA contemplates consideration of environmental consequences at the "earliest possible stage, even though more detailed environmental review may be necessary later." McQueen v. Board of Directors, 202 Cal.App.3d 1136, 1147 (1988). Similarly, NEPA requires agencies to integrate the NEPA process into their activities at the earliest possible time. 40 C.F.R. 1501.1; 1501.2. The proposed project is much more than a modal choice. The DEIR/S provides insufficient details concerning many elements of the proposed project. The DEIR/S deferral of description and analysis is particularly egregious because project approvals may ***include alignment and station locations and commit the Authority to a course of action.*** See Rio Vista Farm Bureau v. County of Solano, 5 Cal.App.4th at 351, 371 (1992). O051-1 cont

The DEIR/S repeatedly concludes that the majority of all of the HST project's environmental impacts are either less than significant or will be rendered less than significant by mitigation, while at the same time deferring necessary analysis of mitigation measures. Under CEQA, an EIR may conclude that impacts are insignificant only if it provides an adequate analysis of the magnitude of the impacts and the degree to which they will be mitigated. See Sundstrom, 202 Cal.App.3d at 306-07. Further, CEQA generally requires that all mitigation measures be adopted simultaneously with, or prior to, project approval. An agency may defer preparation of a plan for mitigation only when the agency commits itself and/or the project proponent to satisfying specified performance standards that will ensure the avoidance of any significant effects. Id. In the present case, the DEIR/S violates CEQA by deferring critical analyses of project impacts and feasible mitigation.

The DEIR/S Fails to Adequately Describe Features of the Project Alternatives

According to the DEIR/S, the California High Speed Rail Authority (Authority) and Federal Railroad Administration (FRA) may not only select a modal choice but as well may select a preferred HST corridor/alignment, station locations, and recommended mitigation strategies based on the DEIR/S. DEIR/S page S-1. The lack of an adequate and complete project description does not support informed decision-making concerning modal choice let alone more detailed decisions such as corridor/alignment and station locations. Specifically, the DEIR/S provides only the most cursory information concerning the description of the modal alternatives and even less concerning the specifics of the O051-2

corridor/alignment and station locations. Information that is provided is difficult to verify because the assumptions underlying the information is not provided or is located in documents not readily available or adequately summarized in the DEIR/S. O051-2 cont

The DEIR/S Fails to Adequately Analyze and Mitigate the Project's Significant Impacts

The DEIR/S analysis of environmental impacts fails to provide the necessary facts and analysis to allow the Authority, the agencies and the public to make an informed decision concerning the project alternatives (modal and HST related) and mitigation measures. Nor does the document adequately consider recreational impacts. A fundamental purpose of an EIR is to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." Laurel Heights Improvement Assn. V. Regents of the University of California, 6 Cal.4th 1112, 1123 (1988). To do so, an EIR must contain facts and analysis, not just an agency's conclusions. See Citizens of Goleta Valley v. Board of Supervisors, 52 Cal.3d 553, 568 (1990). Not only does the DEIR/S fail to provide supporting evidence for its conclusions concerning the significance of project-related and cumulative impacts, it is often not possible to tell from the DEIR/S whether an impact is considered significant, less than significant or reduced to less than significant after mitigation. O051-3

In addition, CEQA cautions that "public agencies should not approve projects as proposed if there are…feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects…" Pub. Res. Code section 21002. NEPA contains similar requirements. This document fails however to identify feasible mitigation measures capable of mitigating the significant environmental impacts of the project alternatives and cumulative impacts.

Finally, the DEIR/S improperly bases its analysis of the impacts associated with the modal and HST alternatives with the no project alternative, rather than with existing baseline conditions. This approach is improper under both CEQA and NEPA, which require the analysis of impacts to be based on existing physical environmental conditions in the affected area at the time the notice of preparation is published. CEQA Guidelines section 15126.2. A revised DEIR/S must include an analysis of the impacts of these alternatives with both the existing environmental conditions (at the time the NOP was issued) and with the no project alternative.

The DEIR/S Fails to Analyze Adequately Biological Resource Issues

Once the presence of biological resources in a project site have been identified and described, a DEIR/S must then analyze how the direct and indirect impacts of the project and cumulative projects would affect resources. As set forth in the CEQA Guidelines Section 15126(a): O051-4

> Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both short-term and

Comment Letter O051 Continued

San Franciscans' for Reasonable Growth v. City and County of San Francisco, 151 Cal.App.3d 61, 74 & n. 13 (1984). In addition, projects anticipated beyond the near future should be analyzed for their cumulative effect if they are reasonably foreseeable. See Bozung v. Local Agency Formation Comm'n, 13 Cal3d 263, 284 (1975).

Alternatively, an EIR may utilize a summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact. CEQA Guidelines Section 15130(b)(1)(B). Any such planning document shall be referenced and made available to the public at a location specified by the lead agency. Id.

The discussion of cumulative impacts must include a summary of the expected environmental effects to be produced by those projects, a reasonable analysis of the cumulative impacts, and full consideration of all feasible mitigation measures that could reduce or avoid any significant cumulative effects of a proposed project. See CEQA Guidelines Sections 15126.4(a)(1) and 15130(b)(3).

The DEIS/R fails to meet these requirements and only discusses present and future projects within the area that the HST would traverse. DEIR/S Appendix 3.17-A. Key transportation and other projects are omitted from the discussion and analysis (e.g. Expansion of LAX, MORE). As a result of this approach, the cumulative analysis is improperly narrow in scope and therefore underestimates and omits cumulative impacts.

O051-9 cont

The DEIR/S Fails to Identify Adequate Mitigation Measures

Both CEQA and NEPA require that mitigation measures be identified and analyzed. The Supreme Court has described the mitigation and alternatives sections of the EIR as the "core" of the document. Citizens of Goleta Valley v. Board of Supervisors, 52 CAL.3d 553 (1990). As explained below, the DEIR/S identification and analysis of mitigation measures, like much of its analysis, is inadequate.

An EIR is inadequate if it fails to suggest mitigation measures, or if its suggested mitigation measures are so undefined that is it impossible to evaluate their effectiveness. The DEIR/S defers the description of all meaningful mitigation and relies on vague and "future" mitigation to suggest that potentially significant impacts will be reduced to less than significant. Improperly deferred details of mitigation measures include, but are not limited to the following (see DEIR/S text and Table 7.3-1):

O051-10

- Traffic and Circulation: Encourage use of transit to stations. Work with transit providers to improve station connections. Note that the feasibility of this mitigation is dramatically affected by alignment choice, yet the DEIR/S does not take this into account.
- Energy Use: "Develop and implement energy conservation plan for construction." Note that the amount of energy consumed for construction (and operation) varies dramatically by alignment choice (due to substantially different topography), meaning the feasibility of this mitigation is highly dependent on alignment choice. The DEIR/S does not take this into account.
- Land Use: "Continued coordination with local agencies. Explore opportunities for joint and mixed-use development at stations. Relocation assistance during future project-level review." Note that alignment choice and station locations would have a large impact on the feasibility of this proposed mitigation.
- Geology: "Use of ground motion data and instruments; routine maintenance of tracks; slope reinforcement."
- Growth Potential: "Work with local communities to encourage higher density development around stations." Note that the potential for higher density development around stations is quite different depending on alignment and station location.
- Hydrology and Water Resources: "Avoid or minimize footprint in floodplains; conduct project-level analysis of surface hydrology and coastal lagoons; Best Management Practices…"
- Section 4(f) and 6(f): "Consider design options to avoid parkland and wildlife refuges; identify site specific mitigation measures." Note that this is like closing the barn door after the cows have gotten out; once an alignment though a park or refuge has been chosen, the ability of alternative designs to mitigate impacts is vastly reduced.

O051-10 cont

For example, with respect to land use impacts, the DEIR/S should have specified mitigation requirements for land use and growth inducing impacts including:

- "Requirements" for agreements with cities/counties that the route traverses for "smart growth" policies (e.g. in downtowns around stations, specific programming for higher densities, etc.; in rural areas specific policies for farmland protection, etc.). Explore possibility of funding in return for smart growth provisions in GPs:
- up-front purchase of conservation and agricultural easements to either side of the tracks;
- fees for additional purchase and stewardship of conservation and agricultural lands;
- Limits on any new stations.

Moreover, the DEIR/S includes inappropriate assumptions concerning the cost of mitigation measures for the alternatives. In fact, it appears that the DEIR/S improperly applied a standard 3% mitigation cost of all segments (except Dumbarton) rather than

using detailed mitigation figures developed in background reports. For example, a 1995 Corridor Evaluation and Environmental Constraints Analysis provide detailed mitigation costs which vary significantly by study segments. The analysis states that mitigation costs are higher in urbanized areas where there are high value habitats which would require mitigation. Again, a revised DEIR/S must include adequate and feasible mitigation measures to address both project-related and cumulative impacts based on the "whole" project and a complete list of cumulative projects. Mitigation measures must be accurately presented in terms of their feasibility, including costs.

O051-10 cont.

The DEIR/S Fails to Analyze Alternatives Adequately

The DEIR/S fails to adequately analyze alternatives that have been included and fails to analyze a reasonable range of alternatives to the project. Although the DEIR/S analyzes a number of alternatives at an "equal" level of detail, the respective alternatives analyses fall short of the standards set by CEQA and NEPA. Under CEQA, an EIR must analyze a reasonable range of alternatives to the project, or to the location of the project, that would feasibly attain most of the basic objectives while avoiding or substantially lessening the project's significant impacts. See Pub. Res. Code Section 21100(b)(4); CEQA Guidelines Section 15126.6(a); Citizens for Quality Growth v. City of Mount Shasta, 198 Cal.App.3d 433, 443-45 (1988). Similarly, under NEPA a reasonable range of alternatives that satisfy the statement of purpose and need must be analyzed. See above argument that the statement of purpose and need is improperly constrained, and therefore, the range of alternatives is also improperly constrained.

The DEIR/S fails to include an adequate analysis of alternatives for a number of reasons:

- The DEIR/S fails to include a reasonable range of feasible alternatives.
- Feasible alternatives are rejected without evidence.

O051-11

In addition to its failure to adequately identify and analyze alternatives to the HST alignments and stations, the DEIR/S fails to identify the environmentally superior HST alignments and station location alternatives. The document does identify the HST alternatives as the environmentally superior alternative:

> "Based on the evaluations documented in Chapter 3 of this Program EIR/EIS, the HST alternative has been identified as the environmentally superior alternative." DEIR/S page 7-5; See also DEIR/S S-8 – HST is the preferred system alignment.

However, when it comes to alignments and station locations choices – choices which may be made relying on this DEIR/S, the document states:

> "The Authority and the FRA continue to consider HST alignment and station options and have not identified a preference among those presented in the Draft Program EIR/EIS." DEIR/S page S-8.

A revised and recirculated DEIR/S must identify the environmentally superior alignments and station locations as required by law.

O051-11 cont.

The DEIR/S fails to include a reasonable range of feasible alternatives

The DEIR/S fails to include reasonable range of alternative alignments. For example, in the Bay Area, the DEIR/S fails to include the Altamont alternative. Elsewhere, the DEIR/S fails to include alignments and station locations that would avoid 4(f) and 6(f) resources. Under CEQA, an EIR must analyze a reasonable range of alternatives to the project, or to the location of the project, *that would feasibly attain most of the basic objectives while avoiding or substantially lessening the project's significant impacts.* See Pub. Res. Code Section 21100(b)(4); CEQA Guidelines Section 15126.6(a); Citizens for Quality Growth v. City of Mount Shasta, 198 Cal.App.3d 433, 443-45 (1988). Similarly, under NEPA a reasonable range of alternatives that satisfy the statement of purpose and need must be analyzed. A revised DEIS/R must include a reasonable range of alternatives that would feasibly attain project objectives with fewer impacts.

O051-12

Among the most glaring omissions is the omission of an Altamont alternative in the Bay Area. There is significant evidence that an Altamont alternative will actually result in the fewest environmental impacts and superior ridership and costs. Based on the 10 criteria used for screening alternatives (DEIR/S at S-2), an Altamont alternative, there is evidence in the record that Altamont is the superior Bay Area option with respect to at least the following:

- maximizing ridership and revenue potential;
- minimizing travel time to be competitive with other modes of travel;
- minimizing impacts on natural resources;
- minimizing adverse social and economic impacts (e.g. growth inducement);
- minimizing impacts on parks and cultural resources.

THE DEIR/S SHOULD BE REDRAFTED AND RECIRCULATED

The serious inadequacies of the DEIR/S are symptomatic of fundamental deficiencies in the project itself. The Authority may not approve the project unless the DEIR/S is again revised and recirculated to fully disclose and analyze the project's impacts and a proper range of alternatives. Given the multiple inadequacies discussed above, this DEIR/S cannot properly form the basis of a final EIR. CEQA and the NEPA Guidelines require recirculation of a draft EIR where, as here, the document is so fundamentally inadequate in nature that meaningful public review and comment are precluded. See CEQA Guidelines § 15088.5.

F135361

Response to Comments of Elizabeth Goldstein, President, California State Parks Foundation, August 30, 2004 (Letter O051)

O051-1

The Authority's objectives include planning for a cost effective, prompt and reliable high-speed train service, but in a manner sensitive to and protective of natural resources, including those in our State Parks. Please see the Purpose and Need Statement, Section 1.2.1 of the Final Program EIR/EIS and objectives used to describe alternatives for study (Section 2.3.2C).

The Authority has identified a preferred HST alignment extending over 700-miles long. Of the 278 State Parks, five State Parks would be within 900 feet of the preferred high-speed train alignment[1], and no State Parks would be crossed or bisected by the preferred alignment for the proposed system. While the Program EIR/EIS has identified these five State Parks as being potentially impacted by the proposed HST system, it is an objective of the Authority for the HST system to avoid impacts to State Parks to the extent feasible.

A high-speed rail system is needed to help meet California's future travel and commerce demands while reducing energy consumption and pollution and could positively influence community growth patterns which otherwise may increasingly reduce open space, wildlife habitat and public park opportunities. Some of the numerous steps the Authority has taken to avoid impacts to State Parks are described below.

The development of high-speed train alignment and station options for the Draft Program EIR/EIS included an extensive screening analysis in which many alignment and station options were eliminated from further consideration due to several criteria, including high potential for impacts on park and recreational resources. Avoidance of potential impacts on park and recreational resources was a consideration throughout the preparation of the Draft Program EIR/EIS and the recent public process to identify preferred alignments for the proposed system that has been included in this Final Program EIR/EIS. Future project-level environmental review will provide further opportunities to avoid and minimize the potential effects to parks, as more specific alignments and facilities are considered.

Explicit actions the Authority has taken to date to further reduce potential impacts to State Park units include:

- The Authority is not pursuing any extension of the high-speed rail system south of Irvine in the existing coastal corridor, primarily due to the great potential for impacts to coastal environmental resources, including ten State Beaches and a State Reserve. This action was taken in 2002 and was documented in the Draft Program EIR/EIS.
- The two potential high-speed train alignments crossing through Henry Coe State Park have been dropped from further analysis.
- Three state park units identified as potentially impacted in the Draft Program EIR/EIS are located along the I-5 alignment option between Bakersfield and Sylmar, which was not identified as the preferred alignment option through the southern mountain crossing. The alignment via the Antelope Valley was chosen as the preferred alignment in part because it avoids parklands, including Hungry Valley, Castaic, and Fort Tejon State Parks as well as Pyramid Lake and Angeles National Forest.

[1] The distance 900 feet on each side of centerline of the alignment option is based on the approximate extent of indirect impacts due to noise generated by the proposed HST operations (see Section 3.16.1.B of the Final Program EIR/EIS regarding the methods of evaluation).

- The Authority has identified the MTA/Metrolink alignment, which avoids the Cornfields property, as the preferred alignment from Sylmar to Union Station[2].

Of California's 278 State Parks, the five State Parks that are within 900 feet of the over 700-mile long preferred high-speed train system of alignment are: San Luis Reservoir State Recreation Area, Old Town San Diego, Colonel Allensworth, Taylor Yard, and McConnell State Recreation Area. The San Luis Reservoir State Recreation Area is within a broad corridor between the Bay Area and the Central Valley identified for further investigation. This corridor is generally bounded by the Pacheco Pass (SR-152) to the South and the Altamont Pass (I-580) to the North. The high-speed rail alignments studied as part of the Program EIR/EIS did not go through San Luis Reservoir State Recreation Area and any further analysis in this area will focus on alignment options that avoid this, and other State Parks. For the other four State Parks, the proposed high-speed rail alignment would be within existing, heavily used rail corridors, adjacent to the State Parks. The addition of high-speed rail in these corridors is not expected to greatly alter the environmental effects of these existing rail lines and we strongly believe that using existing rail corridors minimizes environmental impacts.

The analysis methodology applied in the Program EIR/EIS was developed to identify and highlight areas of potential impact to be avoided and/or considered further during subsequent project level environmental review. If this proposed project is carried to a project level of environmental review, preliminary engineering will be conducted allowing for a greater precision in the location of the proposed HST facilities and their associated impacts. The project level analysis will provide a more detailed analysis of the 4(f) and 6(f) potential direct and indirect affects. The detail of engineering associated with the project level environmental analysis will allow the Authority to further investigate ways to avoid, minimize and mitigate potential affects to 4(f) and 6(f) resources. Please see additional discussions of "design practices" commitments and mitigation strategies in Chapter 3 of the Final Program EIR/EIS, and construction methods in Section 3.18.

Deferment of identification of specific impacts to project level analysis is appropriate given the level of specificity that can be achieved at this program level. The subsequent preliminary engineering and project level environmental review will provide further opportunities to avoid and minimize the potential effects to 4(f) and 6(f) resources, as more specificity is defined for proposed alignments and facilities.

Your comment letter stated, "we believe upwards of 40 and perhaps many more State Parks are either directly or indirectly impacted" and and 35 are listed in your attached Appendix I "State Park Units, Alignment Routes, Impacts". However, when considering the preferred HST alignment, this appendix includes: 11 coastal State Park Units south of Irvine that would not be impacted by the HST system; 3 State Park Units along the I-5 alignment option between Bakersfield and Sylmar that was not identified as part of the preferred alignment (Castaic Lake SRA, Fort Tejon SHP, and Hungry Valley SVRA); "Cornfields" where the alignment option that bisected this park was not identified as part of the preferred HST alignment; 8 State Park Units in heavily urbanized areas where the HST system would operate at reduced speeds and have no negative direct impacts, no expected indirect impacts, and could be beneficial for park visitation; 2 properties that are not State Park Units (Tomo-Kahni and Loop Ranch Project); and 4 State Park Units that are 1-5 miles from the proposed HST alignment.

The list of State Parks attached as Appendix I noted 15 of the 35 State Parks as having the HST alignment "intersect" the State Park. However, when considering the preferred HST alignment, this list includes: 6 coastal State Park Units south of Irvine that would not be impacted by the HST system; Henry Coe State Park where alignments through this State Park have been eliminated from further investigation; 1 State Park Unit along the I-5 alignment between Bakersfield and Sylmar that was not selected as part of the

[2] Between Burbank and Los Angeles Union Station, the MTA/Metrolink alignment refers to a relatively wide corridor within which alignment variations will be studied at the projecat level.

preferred HST alignment (Hungry Valley SVRA); 2 properties that are not State Park Units (Tomo-Kahni and Loop Ranch Project); "Cornfields" where the alignment option that bisected this park was not identified as part of the preferred HST alignment, and the remaining 4 State Parks (Old Sacramento SHP, Old Town San Diego SHP, San Luis Reservoir SRA, and Taylor Yard) are adjacent to the HST alignment rather than "intersecting" the State Park.

The following is some additional detail regarding 8 of the urban State Parks listed in Appendix I:

Candlestick Point SRA: this State Park is located about 6 miles north of SFO along the Bay side of the SF Peninsula. Not only is this State Park about 2,400 ft from the proposed HST service on the existing Caltrain alignment, HST trains operating at speeds less than 100 mph would make less noise than existing Caltrain and freight trains and US 101 is between the State Park and the Caltrain alignment.

East Shore Park: this State Park is located just north of the Oakland side of the existing Bay Bridge along and in the bay. Not only do the HST design options terminate south of the State Park (at the West Oakland or 12th Street/City Center BART Station locations) where all trains would stop (1-2 miles from the State Park), but the State Park is also bounded by one of the busiest freeways in Northern California, Interstate 80.

Leland Stanford Mansion SHP: this State Park is located about 1 mile from the proposed HST terminus station in Sacramento where all trains would stop and would be running at very slow speeds. This State Park is less than a mile from Interstate 5/SR-99.

Old Sacramento SHP: this State Park is very near the existing Amtrak Sacramento Station (SP Depot) which is the site for the HST Sacramento terminus station where all HST trains would stop. However, not only would HST trains be traveling at very slow speeds, Old Sacramento is separated from the existing rail station by Interstate 5/SR-99 (the busiest freeway in the Sacramento region) on an aerial structure.

San Bruno Mountain SP: this State Park is located this State Park is located about 3 miles north of SFO along the Bay side of the SF Peninsula. HST service on the existing Caltrain alignment would operate at reduced speeds (100 mph or less in this segment) and HST trains would make less noise than existing Caltrain and freight trains. Moreover, US 101 is between this State Park and the Caltrain alignment.

San Pasqual Battlefield SHP: this State Park is located several miles from the proposed HST alignment which would be in the I-15 freeway corridor where trains would be running at reduced speeds (100-150 mph).

State Indian Museum SHP: this State Park is located about 1 mile from the proposed HST alignment, near the terminus station in downtown Sacramento where the HST trains would be traveling at very slow speeds. Moreover, this State Park is one block from Interstate 80 (a very busy elevated freeway).

Sutter Fort SHP: this State Park is located about 1 mile from the proposed HST alignment, near the terminus station in downtown Sacramento where the HST trains would be traveling at very slow speeds. Moreover, this State Park is one block from Interstate 80 (a very busy elevated freeway).

O051-2

The analysis methodologies applied in the Program EIR/EIS were developed based on the level of specificity of the location and design of proposed facilities. For Section 4(f) and 6(f) resources all resources within 900 feet on either side of the centerline of each alignment option were identified. Section 2.6, Section 2.7.3, Chapter 6, and Chapter 6A of the Program EIR/EIS clearly defines the alignment and station options considered and preferred alignment and station options, respectively. Further detail regarding the configuration of the proposed facilities is illustrated in the "Alignment Configuration and Cross Sections" technical report, January, 2004. Please also see response to Comment O051-1 and standard response 3.15.13.

O051-3

In the Final Program EIR/EIS, each environmental area (sections of Chapter 3) has been modified to include specific mitigation strategies that would be applied in general for the HST system. Each section of Chapter 3 also outlines specific design features that will be applied to the implementation of the HST system to avoid, minimize, and mitigate potential impacts. At this level of design it is premature to develop more specific mitigation measures for specific potential effects. Only once there is a more detailed analysis of the alignment and avoidance and minimization efforts have been exhausted, will specific mitigation be addressed. Also see comment O029-4 regarding the further examination of alignment options.

Because the proposed HST system would not be operational until the year 2020, the affected environment discussions describe both the existing conditions as of 2003 and, where appropriate and not overly speculative, the anticipated 2020 conditions that would pertain when the project becomes operational. For disciplines where projections of future changes in existing conditions would be overly speculative, the existing 2003 conditions were used as a proxy for the 2020 conditions. For some disciplines—such as transportation, energy, air quality, and land use—future conditions are routinely projected in adopted regional or local planning documents or are forecast by public agencies. In these cases, the existing conditions and the projected 2020 conditions were used as the basis for impact analysis. The technical studies prepared for each region and addressing each resource area provided key information for the preparation of the affected environment discussions.

The environmental consequences discussions describe the potential environmental impacts (both adverse and beneficial) of the Modal and HST Alternatives in comparison to the No Project Alternative and compared to each other. Each discussion begins by comparing existing conditions with 2020 No Project conditions to describe the consequences of No Project and how environmental conditions are expected to change during the timeframe required to bring the proposed HST system online. As described above, existing (2003) conditions were used as a proxy for 2020 No Project conditions where 2020 baseline information was unavailable, could not be projected, or would be overly speculative. Using 2020 No Project conditions as a basis for comparison, the analysis of impacts then addresses direct and indirect impacts for the proposed HST and Modal Alternatives, as well as potential cumulative impacts.

O051-4

Section 3 of the PEIR/S programmatically evaluates the potential for direct and indirect impacts of the No Project, HST and Modal Alternative. Please see standard response 3.15.2 and standard response 3.15.13 regarding the level of analysis and the intended uses of the PEIR/s. Please see responses to Comments AS004 – 45 regarding the addition of a construction section and response to Comment AS004 – 46 regarding the addition of a discussion of HST support facilities to the PEIR/S. Please see response to Comment AS004 – 50 regarding privately owned conservation lands. Please see response AF009 – 26 regarding threatened vs. endangered species. Please see standard response 3.15.10 regarding use of habitat conservation plans, natural community conservation plans (NCCP), and other approved local, regional, or state habitat conservation plans. Please see responses to Comments AF007 – 5, AS012 – 12, and AL072 – 8 and standard response 3.15.7 regarding impacts to wetlands. Please see standard responses 3.15.2, 3.15.3, 3.15.4, 3.15.9, and 3.15.11 and response to Comments AS004 – 46, 47, 48, 49, & 51, AS012 – 7, 8, 9, 12, & 17 and O034 – 3 & 4 regarding impacts to wildlife and wildlife corridors and habitat fragmentation. The Co-lead agencies acknowledge the importance of detailed comments regarding biological resources that are embodied in this comment. These issues will be addressed in the subsequent studies and project-level, Tier 2 studies for selected HST alignment options.

O051-5

Please see standard response 3.15.13. Please see response to Comment O015 – 4 and standard response 3.15.7 regarding the land use impact evaluation envelope. Please see response to Comment AL063 – 1 and 14 regarding review of local and regional plans.

Please note that the Authority has dropped from future consideration the previous alignment options passing through Henry Coe State Park and the Orestimba State Wilderness. The scope of study, extent of study area and localized impacts to specific properties will be addressed in the subsequent studies and project-level, Tier 2 studies to be completed for selected HST alignment and station options.

O051-6

See response to Comment O051-1.

O051-7

The Public Park Preservation Act of 1971 is addressed in section 3.16.1 subsection A. "Regulatory Requirements." Since the Public Park Preservation Act and Section 4(f) and 6(f) involve similar resources, further project-level analysis of potential impacts to the resources identified in this section would address both laws.

O051-8

All of the potentially impacted coastal state park units occur along the LOSSAN rail corridor between Irvine and San Diego. The Authority is not pursuing any extension of the high-speed rail system south of Irvine in this corridor, primarily due to the potential for considerable impacts to environmental resources, including state parks. Conventional rail infrastructure improvements are being pursued by others. See Standard Response 6.42.1.

For the program level analyses, the resources identified under the Section 4(f) and 6(f) section which also are State Park seashore properties would also be subject to the Public Code § 5001.6(b) (11) (A). Project level environmental analysis will examine these resources in detail and apply federal and state laws to address the potential impacts and appropriate actions regarding California State Beaches.

O051-9

See Standard Response 3.17.1.

O051-10

See Response O051-3

O051-11

The Program EIR/EIS describes the extensive procedures used to identify alternatives for study. This process satisfied/s CEQA and NEPA requirements (see Response O051-1). The Draft Program EIR/EIS identified a preferred system alternative (HST), however, identification of a preferred system of HST alignment and station options was deferred to the Final Program EIR/EIS in order to consider public and agency comment. Chapter 6A defines the preferred system of HST alignment and station locations. The environmentally superior alternative is identified in Section 7.3.3. Specific environmentally superior alignment options will be identified at the subsequent project level environmental review, when precise alignments would be defined.

O051-12

Regarding a reasonable range of alternatives, the Authority has considered hundreds of HST alignment and station options through the screening process and program level analysis (see response to Comment O051-1 and response to Comment O051-11).

Regarding the Altamont Pass, see Standard Response 2.18.1 and 6.3.1.

O051-13

The co-lead agencies respectfully disagree that recirculation of the Draft Program EIR/EIS is required. The State Parks Foundation will be kept on the distribution list for future information and announcements regarding the project. All notices and information will be sent to:

Elizabeth Goldstein, President
And
Barbara Hill, Vice-President

Comment Letter O054

AUG-31-2004 21:39 FROM:MICHAEL BECK EHL (619) 588-1595 TO:19163220827 P.2

O054

ENDANGERED HABITATS LEAGUE
DEDICATED TO ECOSYSTEM PROTECTION AND SUSTAINABLE LAND USE

AUG 31 2004

August 30, 2004

Chairman Joe Petrillo, and
Committee members of the California High Speed Rail Authority
925 L St., Suite 1425
Sacramento, CA 95814

Regarding: California High Speed Rail Draft EIR/EIS

Dear Mr. Petrillo and Committee Members:

The Endangered Habitats League is a regional conservation organization dedicated to ecosystem protection, sustainable land use, and collaborative conflict resolution. We engage on state and federal level policies and projects that affect our core mission. As such, we appreciate the opportunity to comment on the Draft EIR/EIS for the proposed High Speed Rail project.

An effective high speed rail system holds the potential to significantly benefit the citizens of the state through the development of a visionary transportation alternative. Such a project could leverage important and sustainable compact development, reduce sprawl, and actually result in a *net benefit* to a range of environmental issues, including water and air quality and biology. These are feasible, attainable goals. It is essential however that the project clearly and unequivocally demonstrates a commitment to such goals, and that the baseline CEQA/NEPA analysis adequately establishes the basis for the development and implementation of a system that will produce those outcomes. Unfortunately, we find the DEIR/EIS inadequate in driving a fundamentally sound and legally defensible project. Specifically we would like to highlight the inadequate impact analysis on the following topics:

- Project description
- Biology and hydrology including impact analysis
- Land use and transportation planning

Project Description
There is a clear discrepancy between the project and alternatives description that the public must construe from the DEIR/EIS and the decision options that the Authority has

O054-1

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AUG-31-2004 21:39 FROM:MICHAEL BECK EHL (619) 588-1595 TO:19163220827 P.3

regarding alignment, mitigation, and mode. The document does not provide clear and complete project alternative descriptions (including mode, alignment, impacts, mitigation etc.) in a manner that is accessible and understandable to the public, nor does it provide a description of potential impacts or anticipated subsequent projects as required by CEQA (Article 2, Section 21157).

In contrast, the Authority may actually select modes, alignments, and mitigation strategies based entirely upon the information provided in this program level document. Furthermore, CEQA allows *limited review* of subsequent projects described in the master document. (Section 21157.1). If this document is certified and subsequent projects approved with the limited review provisions of CEQA, the Public Trust safeguards and intent of CEQA will have been circumvented. In particular, the issue of corridor alignment is highly egregious as it drives so much in the way of impact analysis and mitigation. In order to rectify this situation, we recommend that a revised DEIR/EIS be developed which includes adequate information, compiled in a logical and accessible manner.

O054-1 cont.

• Biology, Hydrology, and Impact Analysis
A cascade of inadequate conclusions related to biological and hydrological impacts and mitigation flow from the lack of an appropriate project description.

The biologic and hydrologic resources that will be impacted by the project are components of natural *systems*. Wildlife movement, discrete populations of plants and animals, and the hydrologic underpinnings of those resources within these systems will be impacted directly and indirectly by the project. Because system thresholds can be eroded over time by projects such as the HSP, cumulative impacts must be seriously considered as they insidiously build to significant, sometimes "system breaking" levels. The document does not provide adequate baseline information regarding species, habitats or the interrelation between them at an ecosystem level. Without this fundamental perspective, it is not possible to adequately assess and mitigate impacts, which in turn should drive alternatives analysis considerations.

O054-2

Not only is it not possible to determine the impact level of significance based upon the information provided, but mitigation is generalized into a notion referred to as "mitigation strategies". CEQA does not provide for such a vague, non-specific action. A "strategy" is only as good as the criteria and binding performance standards linked to it.

In San Diego, our organization has been engaged in the Regional Transportation Plan (RTP) for a number of years. Funding to implement this 40-year, $14 billion plan will be before the voters in November of this year. Among the projects to be funded (there are no "green field" projects in the Expenditure Plan) are three highway expansions in resource sensitive areas. A program level EIR, which will be utilized by subsequent more specific CEQA documents for project implementation, supports the RTP.

In order to address the potential significant impacts to the biological resources along these corridors, the transportation agency board (San Diego Association of

2

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Comment Letter O054 Continued

Governments) adopted a "net biological benefit" standard as a legally binding performance outcome for these projects. Based upon this ordinance obligation, plant and animal populations and wildlife movement will be improved beyond *pre-project* conditions. Capital project design and route alignment alternatives will be utilized to minimize impacts and help reach this outcome. This commitment drives an "avoid first" approach (a CEQA objective), in contrast to the "impact and mitigate", which would seem to be the logical outcome of the CEQA process as outlined in the DEIR/EIS. We strongly recommend that the Authority adopt such a standard for impacts resulting from the HSR project. Following for your information is the TransNet Extension Ordinance and Expenditure Plan for those projects.

Environmental Enhancement Criteria Mitigating Highway 67, 76, and 94 Expansion Impacts

Segments of Highways SR 67, SR 76 and SR 94 are proposed for expansion from two to four lanes through funding identified in the *TransNet* Expenditure Plan.The proposed expansions will have substantial direct and indirect impacts to plant and animal species and to the regional wildlife movement corridors bisected by the roads. These corridors are essential "infrastructure" for our region's nationally recognized habitat preservation plans.

Very high levels of road kill are a significant existing condition on all of these highway segments, which could be exacerbated by the increased traffic along the expanded highways should they be widened. Direct and indirect impacts to sensitive plant and animal populations, and to the function of the wildlife corridors, should be mitigated in order to produce an on-site "net benefit" to species and to the movement of wildlife along these wildlife corridors.

In order to accomplish this objective, it is necessary that the adopted *TransNet* Expenditure Plan include policy language and directives that insures the "net benefit" mitigation standard is met. This will require a comprehensive baseline analysis of existing and future conditions, adoption of measures to mitigate direct and indirect impacts to species, adoption of measures to accommodate species-specific wildlife movement through the corridors, and implementation of capital project designs that can reduce impacts.

Biological analysis and recommendations need to be consistent with Multiple Species Conservation Program (MSCP) and Multiple Habitat Conservation Program (MHCP) goals and objectives, data, and protocols. Analysis will commence at the time of, or prior to, *TransNet* Funding availability.

Key road segments:
- SR67, Mapleview to Dye Road
- SR76, Melrose to I-15
- SR94, Jamacha Road to Steele Canyon Road

O054-2

Additionally, the DEIR/EIS fails to adequately discuss potential impacts of the project on the NCCP program in the south-coast plan areas. In fact, the document incorrectly states that there are no NCCP's along the LA-Orange County-San Diego corridor. This is inaccurate; in fact there are three subregional NCCP's in Orange and San Diego County along the coastal route (Southern Orange County NCCP, Multiple Habitat Conservation Plan in north-coastal San Diego County and Multiple Species Conservation Program in south-coastal San Diego County). Along the I-15 route are three NCCP's as well.

O054-3

These programs have been under development for over a decade and are inextricably linked to land use and transportation plans for the participating jurisdictions through state and federal ESA law. CEQA documents for this project must include a description of anticipated impacts and the implications of locating routes along corridors. Mechanisms to insure compatibility with NCCP standards must be identified.

Land Use and Transportation Planning

The proposed project is intended to run along the I-15 corridor through Riverside into San Diego County. The I-15 corridor, essentially at or beyond capacity at this time, is a primary focus of the Regional Transportation Plan that has been under development for a number of years in San Diego.

The RTP proposes a number of improvements along I-15 including managed HOV lanes, a bus-rapid-transit system, and connectors. These improvements will essentially use up remaining Caltrans easements along the corridor. (The DEIR/EIS does not address this fundamental easement issue.) The cost of building and operating system improvements along the I-15 runs into the billions of dollars. This investment of significant public funding in planning and implementation is not reconciled with the proposed high speed rail project. How for example will the HSR project interface with the RTP infrastructure investments, technologies, and ridership? How will the HSR project interface with land use and development strategies that are being linked to the RTP? What mechanism is in place to insure appropriate phasing of improvements for the projects if and when they are linked?

O054-4

Summary

In conclusion we hope that our limited comments contribute to a decision to redistribute a revised, improved, and legally defensible DEIR/EIS. A project of this magnitude and potential deserves nothing less.

Thank you for your consideration.

Sincerely,

Michael Beck
San Diego Director

F135386

Response to Comments of Michael Beck, San Diego Director, Endangered Habitats League, August 30, 2004 (Letter O054)

O054-1

Section 2.6 of the Final Program EIR/EIS describes the overall HST system alternative. Chapter 6A describes the preferred system of HST alignment and station options.

O054-2

Please see standard response 3.15.2 regarding level of detail regarding biological impacts. The Co-lead agencies have and will continue to look for ways to first avoid adverse environmental impacts. The identification and selection by the Co-lead agencies of the HST rather than the Modal Alternative would avoid significant impacts, as identified in the PEIR/S. A number of HST alignments (e.g., through Henry Coe State Park and the Orestimba State Wilderness) have also been dropped from further consideration by the Authority, in large part due to anticipated adverse impacts from these alignments (e.g., HST alignments in the LOSSAN Corridor). Additional avoidance of impacts will be pursued in the more-detailed, Tier 2 evaluations of selected HST alignments and corridors (please see standard response 3.15.13). For example, detailed HST alignments would be refined at the project level within the overall corridor alignment option identified in the through the program environmental process (please see standard response 3.15.6). As discussed throughout this Final PEIR/S and to be consistent with both NEPA and CEQA, the Co-lead agencies must prepare complete NEPA and CEQA documentation for future Project level, Tier 2 environmental reviews rather than just "limited reviews." Please see standard response 3.15.10 regarding use of MSCPs and MHCPs in the PEIR/S analyses.

O054-3

It is assumed that the HST alignment option would be developed in concert with other improvements within the I-15 corridor. In most cases the corridor, as planned, would allow for the inclusion of the HST alignment. As part of the PEIR/S process, only conceptual designs could be developed for all the alignment options. The detailed analysis called for in this comment would be completed as part of the project-level, Tier 2 studies. Please see Standard Response 3.15.13 regarding the two-step environmental process. Please also see standard response 10.1.7 in regards to project phasing.

F135387

Case No. S222472

IN THE SUPREME COURT OF CALIFORNIA

Friends of the Eel River, et al. v. North Coast Railroad Auth., et al.

Supporting Evidence for Farm Bureau Amicus Brief

Exhibit B

CALIFORNIA HIGH SPEED RAIL AUTHORITY
RESOLUTION NO. 05-01

CERTIFICATION OF FINAL PROGRAM ENVIRONMENT IMPACT REPORT AND APPROVAL OF HIGH SPEED TRAIN SYSTEM PROGRAM FOR CALIFORNIA

WHEREAS, pursuant to the California High-Speed Rail Act, Public Utilities Code section 185000, et seq., the California High-Speed Rail Authority ("Authority") was created in 1996 to implement a high-speed train system connecting California's major metropolitan areas;

WHEREAS, Section 185030 of the Public Utilities Code provides that the Authority shall direct the development and implementation of intercity high-speed rail service that is fully integrated with the state's existing intercity rail and bus network, and further directs that such an intercity high-speed rail network in turn shall be fully coordinated and connected with commuter rail lines and urban rail transit lines developed by local agencies, as well as other transit services, through the use of common station facilities whenever possible;

WHEREAS, pursuant to a Memorandum of Understanding between the California High Speed Rail Authority and the Federal Railroad Administration ("FRA"), the Authority and the FRA have worked in partnership to prepare a combined Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for compliance with the requirements of both the California Environmental Quality Act ("CEQA," Public Resources Code, section 21000, et seq.) and the National Environmental Policy Act;

WHEREAS, in compliance with applicable CEQA requirements a Draft Program EIR/EIS was prepared and circulated for public and agency comment in 2004, was posted on the Authority's website and lodged in libraries across the state, and was the subject of seven public hearings by the Authority;

WHEREAS, a Final Program EIR/EIS, ("Final PEIR") has been prepared by the Authority and the FRA in accordance with the requirements of CEQA and NEPA, and evaluates the potential environmental impacts of the implementation of the proposed High Speed Train System Program pursuant to CEQA;

WHEREAS, the Authority finds that all applicable requirements of CEQA and the State CEQA Guidelines are satisfied in the Final PEIR, which examines and evaluates all of the potential environmental effects of the proposed High Speed Train System Program at the program-level;

WHEREAS, the Authority finds that the Final PEIR was posted on the Authority's website and made available to the public in early September 2005, and copies of the Final PEIR were also provided in September 2005, to public agencies that submitted comments on the Draft PEIR;

WHEREAS, prior to taking action, the Authority has heard, been presented with, reviewed and considered the information and data in the Final PEIR and related technical documents, the Staff Report, the Findings and the Statement of Overriding Considerations, the Mitigation Monitoring and Reporting Program, and all oral and written evidence presented to it;

WHEREAS, the Final PEIR, and the Findings and the Statement of Overriding Considerations, reflect the independent judgment of the Authority and are deemed adequate for purposes of making decisions on the proposed High Speed Train System Program (HST System);

WHEREAS, the Authority has considered the environmental effects of the proposed HST System as presented in the Final PEIR and finds that with the inclusion of the described design practices and mitigation strategies, as discussed in the Final PEIR and the attached Findings, the potential adverse impacts of the HST System will be avoided, reduced and minimized; that the HST System includes feasible mitigation strategies identified at the program-level of analysis that will be applied and refined at the project level to further avoid and reduce impacts; and that additional mitigation strategies and strategies will be considered for specific sites as appropriate at the conclusion of project-level studies; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have been fulfilled;

NOW, THEREFORE, BE IT RESOLVED by the California High-Speed Authority as follows:

Section 1. Certification. The Final PEIR has been prepared in compliance with CEQA and reflects the Authority's independent judgment and the Authority hereby certifies that the Final PEIR has been completed in compliance with CEQA, has been presented to and reviewed by the Authority, and reflects the Authority's independent judgment;

Section 2. Approval of Findings. As the decision-making body for the Proposed High Speed Train System Program, the Authority has reviewed and considered the information contained in the Final PEIR and in the Findings attached hereto as Exhibit "A" and supporting documentation. The Authority determines that the Findings contain a complete and accurate reporting of the environmental impacts and mitigation measures associated with the HST System as analyzed in the Final PEIR, as well as a complete and accurate reporting of the unavoidable impacts and benefits of the HST System as detailed in the Statement of Overriding Considerations included with the Findings. The Authority further finds that the Findings have been completed in compliance with CEQA and the State CEQA Guidelines. The Authority hereby approves and adopts the Findings attached hereto as Exhibit "A;"

Section 3. Approval of Statement of Overriding Considerations. The Authority hereby finds that the Statement of Overriding Considerations was completed in accordance with State CEQA Guidelines Section 15093, subdivision (a), which states that CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or

other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. The Statement of Overriding Considerations is included in the Findings attached hereto as Exhibit "A" and sets forth the remaining significant effects on the environment that are found to be unavoidable but are acceptable due to the overriding concerns and significant benefits expected to result from the HST System identified as the Preferred Program Alternative. The Authority hereby approves and adopts the Statement of Overriding Considerations included in the Findings attached hereto as Exhibit "A;"

Section 4. Adoption of Mitigation Monitoring and Reporting Program. Pursuant to State CEQA Guidelines Section 15091, subdivision (d) and Public Resources Code section 21081.6, the Authority hereby approves and adopts the Mitigation Monitoring and Reporting Program attached hereto as Exhibit "B;"

Section 5. Approval of the Proposed High Speed Train System Program. Based on and in consideration of all of the foregoing, the Authority hereby approves the HST System identified as the Preferred Program Alternative along with, and as conditioned by, the design practices and mitigation strategies, which are described in the Findings attached hereto as Exhibit A and reflected in the Mitigation Monitoring and Reporting Program attached hereto as Exhibit B, and which shall be incorporated into and be a part of the approved HST System;

Section 6. Approval of Preferred Alignment and Station Locations for Further Study. Based on and in consideration of the information contained in the Final PEIR and the adopted Findings governing the HST System, the Authority hereby approves and adopts the Preferred Alignment and Station Locations identified in Chapter 6A of the Final PEIR as the alignment and stations locations to be pursued in further studies to implement the HST System; and

Section 7. Next Steps. Based on its consideration and approval of the HST System, and the Preferred Alignment and Station Locations it has identified for the HST System, the Authority hereby authorizes staff to proceed with the next steps in the environmental review process and the implementation planning for the HST System in California, including the preparation of a separate program level EIR to identify a preferred alignment within the broad corridor between and including the Altamont Pass and the Pacheco Pass for the HST System segment connecting the San Francisco Bay Area to the Central Valley and project level studies considering preferred alignment and station locations.

CERTIFICATION

The undersigned Executive Director, or his designee, of the California High-Speed Rail Authority does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the California High-Speed Rail Authority held on November 2, 2005.

Dated: Nov. 2, 2005

Mehdi Morshed, Executive Director

F139733

construction include potential neighborhood disruption and division. This impact would be reduced by phasing the construction of segments of the system and by the use of in-line construction techniques where appropriate. Due to uncertainty at the program level, this impact is considered significant.

The following mitigation strategies, along with mitigation identified for construction impacts on other resources (e.g., air quality, noise) can be refined and applied at the project-specific level and will reduce this impact:

1. Develop a traffic management plan to reduce barrier effects during construction.
2. To the extent feasible maintain connectivity during construction.

The Authority finds that the mitigation strategies described above will substantially lessen or avoid this impact; however, sufficient information is not available at the program-level to conclude with certainty that mitigation will reduce this impact to a less than significant impact in all circumstances. Therefore, for purposes of this programmatic EIR, the impact is considered significant and unavoidable.

3.8 Agricultural Lands

Impact 1 Conversion of Prime, Statewide Important, and Unique Farmlands, and Farmlands of Local Importance, to Project Uses

The conversion of farmland is the change in the use of important farmland (i.e., farmland listed as prime, statewide important, unique, and farmland of local importance on the Department of Conservation's Farmland Mapping and Monitoring Program (FMMP)) to non-agricultural uses. The HST could convert approximately 2445 acres of important farmland along the proposed alignment under the "least potential impact" scenario to HST uses. This scenario measured alignment combinations that would result in the least potential impact on agricultural lands per region.

The HST could convert approximately 3860 acres of important farmland along the proposed alignment under the "greatest potential impact" scenario to HST uses. This scenario measures alignment combinations that would result in the greatest potential impact on agricultural lands per region. The number of farmland acres anticipated to be converted with the Preferred HST System Alternative would fall between the acreage estimates for the "least" and the "greatest" potential impact scenarios.

Considering CEQA Appendix G as a basis for thresholds of significance, this impact is considered significant when viewed on a system-wide basis.

The following mitigation strategies can be refined and applied at the project-specific level and will reduce this impact:

1. Avoid farmland whenever feasible during the conceptual design stage of the project.
2. Reduce the potential for impacts by sharing existing rail rights-of-way where feasible or by aligning HST features immediately adjacent to existing rail rights-of-way.
3. Reduce the potential for impacts by reducing the HST right-of-way width to 50 feet in constrained areas.
4. Increase protection of existing important farmlands by securing easements or participating in mitigation banks.
5. Coordinate with and support the California Farmland Conservancy Program to secure conservation easements on farmland in geographic areas where the HST project creates impacts.
6. Coordinate with private agricultural land trusts, local programs, mitigation banks, and Resource Conservation Districts to identify additional measures to limit important farmland conversion or provide further protection to existing important farmland.

The Authority finds that while the mitigation strategies described above will substantially lessen this impact, it is unclear absent site-specific information that this impact can be mitigated to a less-than-significant level over the entire HST system. Therefore, for purposes of this programmatic EIR, the impact is considered significant and unavoidable.

Impact 2 Severance of Prime, Statewide Important, and Unique Farmlands, and Farmlands of Local Importance, to Project Uses

Farmland severance is the division of one farmland parcel into two or more areas of operation by the placement of a barrier through the parcel. The HST would cause some farmland severance in the Sacramento to Bakersfield region. It is not possible at the programmatic level of analysis to estimate the number of parcels or acres that could be affected by severance, and will not be possible until the HST system alignments are more refined. This impact could arise where the HST alignment options considered in the EIR would bypass urban areas on new corridors traveling mainly north-northwest to south-southwest, thereby diagonally dividing a number of north-south oriented farming parcels. Considering CEQA Appendix G as a basis for thresholds of significance, the impact is considered significant when viewed on a system-wide basis. The potential for this impact has been reduced because few bypass options have been identified for further study in the preferred alignment and station locations listed in the Final EIR

The following mitigation strategies can be refined and applied at the project-specific level and will reduce this impact:

1. Avoid farmland whenever feasible during the conceptual design stage of the project
2. Minimize severance of agricultural land by constructing underpasses and overpasses at reasonable intervals to provide property access

3. Work with landowners during final design of the system to enable adequate property access
4. Provide appropriate severance payments to landowners.

The Authority finds that the mitigation strategies described above will reduce this impact to a less-than-significant level over the entire HST system. The Authority concludes that these severance impacts are primarily economic rather than environmental. Where severance impacts could lead to significant environmental impacts at the project level of review, they will be analyzed and appropriate mitigation will be considered.

3.9 Aesthetics and Visual Resources

The construction and operation of the HST system would alter existing scenic landscapes and cause impacts on visual resources related to the addition of infrastructure in, or removal of infrastructure from, the existing landscape. The infrastructure may include construction and improvements of the HST system, tunnels, fences, noise walls, elevated guideways, catenaries (support-pole systems for power supply for trains), and stations. Visual impacts will have a higher sensitivity in areas of scenic open space and mountain crossings. The programmatic analysis of the visual impacts included photo simulations of conceptual design of the facilities associated with the HST system for a set of types of representative landscapes for each segment of the proposed corridors, and concentrated on the locations where the plans show elevated structures, tunnel portals, or areas with extensive cut or fill.

Considering the Appendix G thresholds of significance for aesthetics and visual impacts, the impacts as a result of construction and operation of the HST system are considered significant when viewed on a system-wide basis.

The following mitigation strategies can be refined and applied at the project-specific level and will reduce this impact:

1. At the project-level, design proposed facilities that are attractive in their own right and that would integrate well into landscape contexts, so as to reduce potential view blockage, contrast with existing landscape settings, light and shadow effects, and other potential visual impacts.
2. Design bridges and elevated guideways with graceful lines and minimal apparent bulk and shading effects.
3. Design elevated guideways, stations, and parking structures with sensitivity to the context, using exterior materials, colors, textures, and design details that are compatible with patterns in the surrounding natural and built environment, and that minimize the contrast of the structures with their surroundings.
4. Use neutral colors and dulled finishes that minimize reflectivity for catenary support structures, and design them to fit the context of the specific locale.

5. Use aesthetically appropriate fencing along rights-of-way, including decorative fencing, where appropriate, and use dark and non-reflective colors for fencing to reduce visual contrast.
6. Where at-grade or depressed route segments pass through or along the edge of residential areas or heavily traveled roadways, install landscape treatments along the edge of the right-of-way to provide partial screening and to visually integrate the right-of-way into the residential context.
7. Use the minimum amount of night lighting consistent with that necessary for operations and safety.
8. Use shielded and hooded outdoor lighting directed to the area where the lighting is required, and use sensors and timers for lights not required to be on all the time.
9. Design stations to minimize potential shadow impacts on adjacent pedestrian areas, parks, and residential areas, and site all structures in a way that minimizes shadow effects on sensitive portions of the surrounding area.
10. Seed and plant areas outside the operating rail trackbed that are disturbed by cut, fill or grading to blend with surrounding vegetated areas, where the land will support plants. Use native vegetation in appropriate locations and densities.
11. Use strategic plantings of fast-growing trees to provide partial or full screening of elevated guideways where they are close to residential areas, parks, and public open spaces.
12. Where elevated guideways are located down the median strips or along the edge of freeways or major roadways, use appropriate landscaping of the area under the guideway to provide a high level of visual interest. Landscaping in these area should use attractive shrubs and groundcovers, and emphasize the use of low-growing species to minimize any additional shadow effects or blockage of views.
13. Plan hours of construction operations and locate staging sites to minimize impacts to adjacent residents and businesses.

The Authority finds that while the mitigation strategies described above will substantially lessen impacts to aesthetics and visual resources, it is uncertain absent site-specific information that this impact can be mitigated to a less-than-significant level over the entire HST system. This is of greatest concern in areas where changes in scenic open space and mountain crossing areas are anticipated. As part of the site-specific design, many of the impacts on aesthetics and visual resources can be avoided or substantially mitigated. However, because of the size of the project and the variety of types of terrain it affects, the Authority does not have sufficient evidence to make that determination on a program-wide basis at this stage of design. Therefore, for purposes of this programmatic EIR, this impact is considered significant and unavoidable.

3.10 Public Utilities

Improvements associated with the proposed HST system could cause conflicts between a proposed alignment or station for the HST system and a pipeline or facility associated with a utility, including crossings. Because utilities are so prevalent throughout the study area, the

analysis could not practically assess each potential conflict. This evaluation considered three of the most common major facilities that may pose construction challenges as representative utility conflicts: electrical transmission lines, natural gas facilities, and wastewater treatment facilities. For purposes of this programmatic analysis, the alternative alignments and related facilities were overlaid over the available utility maps for the locations of infrastructure for these three utilities. The analysis divided the potential conflicts into two broad categories: those considered high-impact conflicts, which were those with fixed facilities such as electrical substations, power plants, and wastewater treatment facilities; and those considered low-impact conflicts, such as pipelines and transmission lines, which are easier to avoid by modifying the HST system route or by relocating the utility lines.

The HST system could result in up to 21 potential fixed-facility conflicts (high-impact conflicts), and up to 821 conflicts with utility transmission or pipelines (low-impact conflicts). These low-impact conflicts are not considered significant because they could generally be avoided, minimized, or mitigated by routing either the public utility or the HST system around, over, or under the facility. Where necessary, they can be relocated. Using current construction practices, these relocations would not pose significant adverse environmental impacts.

Considering the CEQA Appendix G thresholds of significance for public utilities and service systems, the conflicts of the HST system alternative with fixed facilities are considered significant when viewed on a system-wide basis, and less-than-significant for conflicts with low-impact conflicts.

The following mitigation strategies can be refined and applied at the project-specific level, and will avoid or reduce this impacts.

1. Make adjustments to the HST system alignments and vertical profiles to avoid crossing or using major utility right-of-way or fixed facilities during engineering design.
2. If avoidance is not feasible, in consultation and coordination with the utility owner, relocate or protect in place transmission lines, substations, and any other affected facilities.
3. For acquisition projects which result in utility relocation, follow the uniformity and equitable treatment policies, and comply with the requirements, of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 for all property necessary for the proposed HST system.

The Authority finds that the mitigation strategies described above will avoid or reduce impacts of the HST system alternative to utilities to a less-than-significant level.

3.11 Hazardous Materials and Wastes

Construction and operation of the HST system could cause impacts to existing hazardous materials or waste sites. For this programmatic analysis, a potential hazardous waste impact is considered wherever the route of a proposed alignment or location of an HST station or maintenance facility conflicts with a known contaminated site. For this analysis of potential impacts, the assessment was limited to hazardous materials sites and hazardous waste sites listed on the federal National Priorities List (Superfund list), the State Priority List, and the California Integrated Waste Management Board's list of solid waste landfills in the State of California. The sites that pose the greatest concern are those with soil or groundwater contamination within or adjacent to the right-of-way for a proposed alignment or a station facility, and those with groundwater contamination near areas where excavation down to groundwater would be necessary.

Considering the Appendix G thresholds of significance for hazardous materials, the impacts to the public or the environment as a result of construction or operation of the HST system are considered significant at the programmatic level.

The following mitigation strategies can be refined and applied at the project-specific level and will avoid or reduce this impact:

1. Investigate soils and groundwater for contamination and prepare environmental site assessments when necessary.
2. Design realignment of the HST corridors to avoid identified sites.
3. Relocate HST associated facilities such as stations to avoid identified sites.
4. Remediate identified hazardous materials and hazardous waste contamination.
5. Prior to demolition of buildings for project construction, survey for lead-based paint and asbestos-containing materials.
6. Follow BMP's for testing, treating, and disposing of water, and acquire necessary permits from the regional water quality control board, if ground dewatering is required.
7. When indicated by project level environmental site assessments, perform Phase II environmental site assessments in conformance with the ASTM Standards related to the Phase II Environmental Site Assessment Process to identify specific mitigation measures.
8. Prepare a Site Management Program/Contingency Plan prior to construction to address known and potential hazardous material issues, including
    a. Measures to address management of contaminated soil and groundwater;
    b. Site-specific Health and Safety Plan (HASP), including measures to protect construction workers and general public; and
    c. Procedures to protect workers and the general public in the event that unknown contamination or buried hazards are encountered.

9. As part of the second-tier environmental review, consider impacts to the environment on sites identified on the Cortese list (Government Code section 65962.4) at that time.

The Authority finds that the mitigation strategies described above will avoid or reduce impacts to the public and the environment as a result of construction or operation of the HST system to a less-than-significant level.

3.12 Cultural and Paleontological Resources

The EIR analyzed the occurrence of cultural and paleontological resources within an "Area of Potential Effect" or "APE." The APE was defined as: (1) 500 feet on each side of the centerline of proposed new rail routes where additional right-of-way could be needed; (2) 100 feet on each side of the centerline for routes along existing highways and railroad rights-of-way; and (1) 100 feet around station locations. For paleontological resources, the APE was defined as 100 feet on each side of the centerline of proposed rail routes and station locations in both urban and nonurban areas. For each resource type, the HST system was ranked as having low, medium, or high occurrence of the resource within the APE.

Impact 1 Impacts to Archaeological Resources and Traditional Cultural Properties

The HST could impact archaeological resources and traditional cultural properties by causing physical destruction or damage during construction. Archaeological resources include both prehistoric and historic sites. The EIR estimated the number of archaeological sites per linear mile identified in the APE for each corridor segment, and divided it by the total length of the corridor segment to reach an average number of sites per mile to obtain a rating of sensitivity for archaeological resources. The HST system has medium to high sensitivity for archaeological sites that have the potential to be impacted, which ranges from .26 to .75 sites per mile (medium) to .76 or more sites per mile (high). Considering CEQA Appendix G as a basis for thresholds of significance, this impact is considered significant when viewed on a system-wide basis.

The following mitigation strategies can be refined and applied at the project-specific level and will reduce this impact:

1. Avoid the impact, or when avoidance cannot be accommodated, minimize the scale of the impact.
2. Incorporate the site into parks or open space.
3. Provide data recovery for the archaeological resources, which may include excavation of an adequate sample of the site contents so that research questions applicable to the site can be addressed.
4. Develop procedures for fieldwork, identification, evaluation, and determination of potential effects to archaeological resources in consultation with SHPO and Native American tribes. Procedures may include on-site monitoring when sites

Mitigation, Monitoring, and Reporting Plan for the California High-Speed Rail Program EIR/EIS

This mitigation, monitoring, and reporting plan is designed to fulfill Section 21081.6 of the California Environmental Quality Act (CEQA), which requires public agencies to adopt a reporting or monitoring program whenever a project or program is approved that includes mitigation measures identified in an environmental document. The mitigation strategies described below are for a program-level decision and are to be used to avoid, minimize, or reduce any potentially significant environmental impacts. Project-level activities will undergo future environmental analysis as required by NEPA and CEQA tiering from this EIS/EIR. As part of these second-tier environmental reviews, the lead agency for each of these projects will use the mitigation strategies identified in the program document as starting points to determine their applicability to a specific project and to develop additional mitigation measures for significant adverse impacts identified in the project-specific analysis. Because all the potential actions and impacts for tiered projects cannot be anticipated at a programmatic level, each project needs to select those strategies applicable to the impacts associated with the specific location and type of action. For purposes of CEQA, the mitigation strategies in the Final EIS/EIR also serve as mitigation measures at a programmatic level. The NEPA/CEQA monitoring process includes review, guidance, and reporting components. The lead agencies for second tier documents will note which applicable programmatic mitigation strategies are being adopted and used for mitigation measures and explain why others are not. The lead agencies will provide a schedule for implementing the adopted mitigation measures and for reviewing the implementation of those measures.

As a programmatic-level document, the Program EIR/EIS does not analyze site-specific impacts of potential alignments or stations; therefore, it cannot predict with certainty which impacts will occur and what site-specific mitigation measures are appropriate for the second-tier level of actions. Consequently, the Program EIR/EIS describes mitigation strategies that are approaches tailored to address the types of impacts anticipated as a result of construction of the HST system. These strategies will provide the basis to structure more site-specific measures when more detailed data on the impacts is available at the second-tier. In addition, the Authority has committed to design practices and policies that will be used to develop alignment alternatives at the project-level to avoid impacts and to help shape specific mitigation measures.

At this program level of planning, the Authority is responsible for tracking the mitigation and incorporating it into future studies that it undertakes, but a monitoring plan cannot yet be developed. For the next tiers of environmental analysis, a monitoring plan will be developed as part of each project-level analysis that includes more specific timing for the mitigation measures, and additional parties may be identified with responsibility for implementing the measures.

Case No. S222472

IN THE SUPREME COURT OF CALIFORNIA

Friends of the Eel River, et al. v. North Coast Railroad Auth., et al.

Supporting Evidence for Farm Bureau Amicus Brief

Exhibit C

CALIFORNIA
HIGH-SPEED RAIL
AUTHORITY

**July 12, 2011 Updated/Amended

BRIEFING: JULY 2011 BOARD MEETING AGENDA
ITEM #5

TO: **Chairman Umberg and Committee Members**

FROM: **Jeff Abercrombie, Central Valley Area Program Manager**
Dan Leavitt, Deputy Director

DATE: **July 6, 2011**

RE: **Presentation on Merced-Fresno and Fresno-Bakersfield Draft Environmental Impact Report/Environmental Impact Statements**

Background

In February 2009, the Authority began preparing the design, engineering and environmental work required for the future construction and operation of the Merced to Fresno and Fresno to Bakersfield high-speed train projects. Since then, Authority and consultant staff have conducted public scoping; identified and evaluated potential alignment alternatives; prepared Preliminary and Supplemental Alternative Analysis reports; held agency, stakeholder and public meetings; and developed engineering and design plans to a 15% design level.

Earlier this year, the US Environmental Protection Agency (USEPA) and the US Army Corps of Engineers (USACE) concurred in the purpose and need for Merced-Fresno and Fresno-Bakersfield. Within the last month, USEPA and USACE have generally concurred with the range of alternatives for Merced-Fresno and Fresno-Bakersfield as well, but have raised a few issues that require additional effort:

- For the Merced to Fresno section, both agencies recommend that the Authority and FRA carry forward for detailed study a SR 152 east/west alignment and Wye. The agencies are cognizant of the time constraints for the Merced to Fresno Draft EIR/EIS, and agree that the SR 152 could be studied in detail in the San Jose to Merced EIR/EIS, along with the Avenue 21 and Avenue 24 east/west alignments, and that the decision about the Wye and east/west connection could be made as a part of the San Jose/Merced EIR/EIS process. Authority staff agrees with the USACE and USEPA that a SR 152 east/west alignment with corresponding Wyes merits study, and believe that the decision about the Wye and the east/west connection should be made as part of the San Jose to Merced EIR/EIS process. An SR 152

alternative has been developed over the last month and is the subject of Agenda Item # 6.

- Both USEPA and USACE recommend that the "Western Madera alignment" be studied in detail for the Merced to Fresno section, and the "West of Hanford" alignment be studied in detail for the Fresno to Bakersfield section in the Draft EIR/EIS documents. Authority staff does not agree that these are reasonable alternatives that merit detailed study in the Draft EIR/EIS documents. Staff proposes to provide additional documentation to better demonstrate to the USEPA and USACE that these are not reasonable alternatives.

Please see the attached staff memo titled, "Update on Status of Merced-Fresno and Fresno-Bakersfield Draft EIR/EISs; Input from Regulatory Agencies on Range of Alternatives; Adjustment to Decision Making for Merced-Fresno" which provides more detailed information, analyses and recommendations for moving forward with the Central Valley EIR/EIS documents based upon input received from the USEPA and USACE.

Details for the release of the EIR/EISs

The Authority is now ready to release two environmental documents for review and comment:

- The Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Merced to Fresno Section High-Speed Train Project, and
- The Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Fresno to Bakersfield Section High-Speed Train Project.

This memorandum summarizes the procedures and anticipated schedule for the Merced to Fresno and Fresno to Bakersfield Draft EIR/EISs. The Merced to Fresno and Fresno to Bakersfield sections have separate EIR/EISs; however, because the initial construction section includes portions of both sections, the two Draft EIR/EISs are being circulated for public comment at the same time. Table 1 on page 5 summarizes the activities, anticipated dates, and other information from releasing the Draft EIR/EISs for public comment, to the conclusion of the environmental review process under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA).

The Merced to Fresno and Fresno to Bakersfield Draft EIR/EISs will be available for public/agency review and comment no later than August 12, 2011, for a 45-day public review period that will extend to 5:00 pm on September 28, 2011. Once released, the EIR/EISs will be:

- Posted on the Authority's and Federal Railroad Administration's (FRAs) websites;
- Available to review at the Authority's office in hard copy or on compact disk (CD), and available for the public to request a copy in CD format ;
- Available to review hard copies at public libraries, community centers, and other high-traffic public buildings in the Merced to Fresno and Fresno to Bakersfield areas; and

Case No. S222472

IN THE SUPREME COURT OF CALIFORNIA

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Supporting Evidence for Farm Bureau Amicus Brief

Exhibit D

CALIFORNIA HIGH-SPEED RAIL AUTHORITY

Resolution #HSRA11-19
Direction to Staff regarding Merced-Fresno and Fresno-Bakersfield Section Draft EIR/EIS Documents

Whereas, pursuant to a memorandum of understanding, the Authority and the FRA have worked closely with the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers regarding the range of alternatives to be studied in the Merced-Fresno and Fresno-Bakersfield Section Draft EIR/EIS documents,

Whereas the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers have concurred in the range of alternatives in general, but request additional study of an SR 152 alternative and Wyes and Western Madera alternative (Merced-Fresno Draft EIR/EIS) and a West of Hanford alternative (Fresno-Bakersfield Draft EIR/EIS),

Whereas Authority staff recommend that an SR 152 alternative and Wyes be fully evaluated in the Draft EIR/EIS for San Jose-Merced, and the scope of decision making for the Merced-Fresno EIR/EIS process be adjusted to focus on the north/south alignment choice only,

Whereas Authority staff recommend that Western Madera and West of Hanford do not merit detailed study,

Therefore it is resolved, that the Board directs staff to:

1. Work with the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers to provide additional documentation on the Western Madera and West of Hanford alignments;

2. Incorporate preliminary information on SR 152 and related Wyes into the Merced-Fresno Draft EIR/EIS

3. Add SR 152 and Wyes into the range of alternatives for the San Jose-Merced Draft EIR/EIS (see agenda item # 6)

4. Adjust the scope of decision making for the Merced-Fresno EIR/EIS to focus only on making the north/south alignment determination for Merced-Fresno, and to focus the San Jose-Merced EIR/EIS process for a decision on the east/west and Wye alternatives.

Vote: 7-0

Date: July 14, 2011

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IN THE SUPREME COURT OF CALIFORNIA

Friends of the Eel River, et al. v. North Coast Railroad Auth., et al.

Supporting Evidence for Farm Bureau Amicus Brief

Exhibit E

FRA to EPA and USACE on January 27, 2012 (Subject: Recommendation Regarding Western Madera Alternative (A3) Screening Based on the "HST Merced to Fresno Section Western Madera (A3) Alternative Screening Memorandum Point 1: Waters of the United States Impacts Analysis), and the Checkpoint C Summary Report and attachments (Authority and FRA 2012a), available at www.cahighspeedrail.ca.gov. The USACE and EPA concurred with the alternatives carried forward and evaluated in the project-level EIR/EIS (USACE letters dated June 14, 2011, February 21, 2012, March 26, 2012; EPA letters dated June 24, 2011, and March 23, 2012).

Although the SR 152 connection to the San Jose to Merced Section was originally eliminated from detailed study, it was subsequently carried forward for evaluation in the San Jose to Merced Section Project EIR/EIS (Authority and FRA 2011b) based on additional input from regulatory agencies (EPA and USACE). Design refinements to this connection would avoid many of the impacts that led to its original dismissal from consideration. The Authority developed the SR 152 Wye with connections to all three north-south alignment alternatives (see Figure 2-20) to a conceptual-level alignment to be consistent with Caltrans planning, the SR 152 Freeway Agreement, and HST engineering criteria. The three wye configurations are evaluated and compared in the SR 152 Alternatives Analysis (available on the Authority's website at www.cahighspeedrail.ca.gov). This Merced to Fresno Section EIR/EIS does not analyze the SR 152 Wye. All three east-west alignments and wyes (i.e., along Avenue 24, Avenue 21, and SR 152) will be carried forward for additional study and consideration as part of the San Jose to Merced EIR/EIS process.

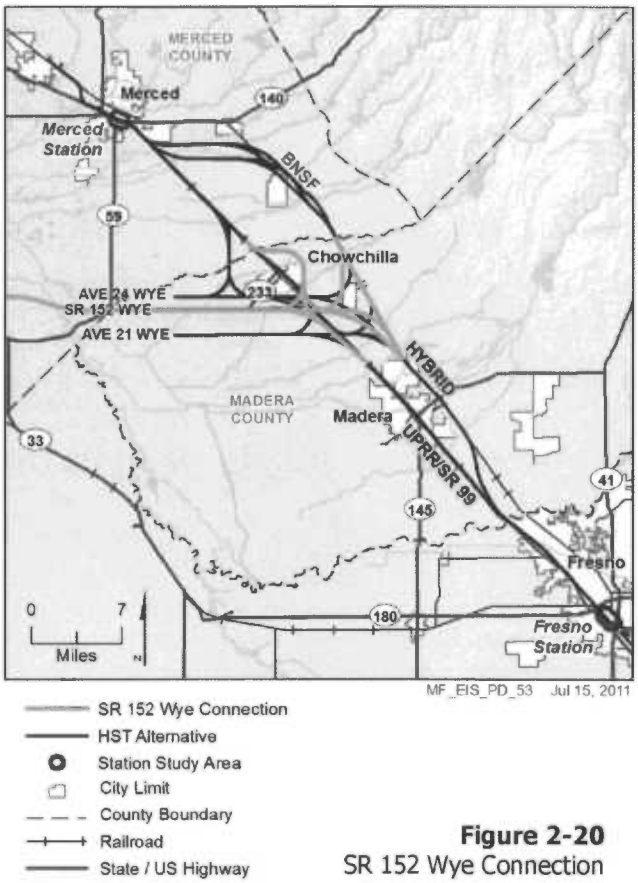

Figure 2-20
SR 152 Wye Connection

This approach will allow the Authority and FRA to make a decision on the north-south alignment between Merced and Fresno based on the Merced to Fresno Section Project EIR/EIS, and to make a decision on the east-west alignment and wyes based on the upcoming San Jose to Merced Section Project EIR/EIS.

The SR 152 wye connection, illustrated in Figure 2-20, would parallel SR 152 and would be offset approximately 400 feet from the edge of highway to the HST right-of-way, providing separation from each facility's respective right-of-way boundary. The proposed HST alignment offset 400 feet parallel to SR 152 balances the needs of (1) the Authority to have a safe operating corridor, (2) Caltrans to accommodate future growth, and (3) the overall system to minimize impacts on land owners, Caltrans, and the county. HST alignments closer than 400 feet to SR 152 would result in greater impacts on Caltrans and local agency facilities. HST alignments farther than 400 feet from SR 152 would have greater impacts on agricultural lands and further bifurcate the predominantly agricultural parcels adjacent to SR 152 and the HST. The opportunity resulting from the property remainder will need to be addressed by the Authority, Caltrans, local agencies, and community stakeholders. Preliminary analysis indicates that the SR 152 Wye differs from the Ave 21 and Ave 24 wyes primarily in impacts on agricultural lands and the communities of Chowchilla and Fairmead.

The San Jose to Merced Section Project EIR/EIS will fully evaluate these and the other wye configurations contained in the Merced to Fresno Section Project EIR/EIS so that all wye configurations currently under consideration, including those associated with the SR 152 alignments, are contained in the San Jose to Merced Project EIR/EIS. A decision regarding the preferred east-west connection of the San Jose to Merced Section to the Merced to Fresno Section would take place following circulation of the San Jose to Merced Section Project EIR/EIS in 2013 and a presentation to the Board by Authority staff of a recommended preferred east-west HST alignment.

2.3.3 Summary of Design Features for Alternatives Being Carried Forward

Figure 2-21 illustrates the HST alternatives and the HMF sites evaluated in this Merced to Fresno Section Project EIR/EIS. The Merced to Fresno Section alternatives presented in this EIR/EIS reflect refinements and modifications made to the project design in order to avoid and minimize impacts on known environmental and community resources. The alternatives evaluated in this EIR/EIS represent a 15% to 30% design level. Table 2-2 summarizes the design features included as part of the HST alternatives evaluated.

An important performance measure of each of the alternatives is the travel time between key destinations. The wye plays a major role in achieving the travel time requirements of 2 hours and 40 minutes between San Francisco and Los Angeles Union Station, as well as 2 hours and 20 minutes from Los Angeles Union Station to Sacramento, as mandated by state legislation and Proposition 1A. The following summarizes which alternatives perform the best for which direction and the differences for alternatives that result in longer travel times for that linkage:

- **Between San Francisco and Los Angeles** – The UPRR/SR 99 Alternative with the Ave 21 Wye design option is the shortest distance and the shortest travel time between San Francisco and Los Angeles. The BNSF and Hybrid alternatives with the Ave 21 Wye are about 30 seconds longer. The Ave 24 Wye adds a little over 2 minutes with the UPRR/SR 99 Alternative and 2½ minutes with the BNSF and Hybrid alternatives.
- **Between Merced and Fresno** – The UPRR/SR 99 Alternative (with either wye option) is the shortest and fastest route between Merced and Fresno; the West Chowchilla Design option adds a little less than 1½ minutes and the BNSF Alternative adds a little more than 1½ minutes. The Hybrid Alternative adds approximately 1 minute more with the Ave 21 wye and almost 2 minutes more with the Ave 24 Wye.
- **Between San Francisco and Merced (or further north to Sacramento)** – The UPRR/SR 99 and Hybrid alternatives with the Ave 24 Wye are the shortest and fastest alternatives in the west to northbound direction. Using the Ave 21 Wye would add slightly over 1 minute, but the BNSF Alternative would add 4 minutes for the Ave 24 Wye and 4½ minutes more for the Ave 21 Wye design option.

Submission 456 (David Alexander, City of Chowchilla, October 3, 2011)

City of Chowchilla

11-33-11P03:21 RCVD

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September 29, 2011

California High-Speed Rail Authority
Merced to Fresno Draft EIR/EIS Comments
770 L Street, Suite 800
Sacramento, CA 95814

Dear Board Members:

The City of Chowchilla takes this opportunity to comment on the California High Speed Train Project Draft EIR/EIS for the Merced to Fresno Section. The City has spent substantial resources reviewing the alternative routes proposed by the California High Speed Rail Authority and Federal Railroad Administration for the Merced to Fresno Section and the San Jose to Central Valley Section. Based on the City's evaluation of potential environmental impacts, overall performance of the system, and minimizing impacts to rural communities, the City of Chowchilla supports the A-1 and Avenue 21 alternative.

456-1

The California High Speed Rail Authority (Authority) and Federal Railroad Administration (FRA) completed a Program EIR/EIS evaluating alternative routes in the Central Valley in 2005 followed by a subsequent Program EIR/EIS in 2008 which discussed the route between the Bay Area and Central Valley via Pacheco Pass (later revised in 2010). California voters approved funding for the California High Speed Rail Project in Proposition 1A in 2008 based on what they thought they knew about the proposed project.

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Bolstered by its understanding of CHSRA Board Resolution 05-01 (November 2, 2005) which certified the Program EIR for the High Speed Train System and clearly approved the alignment of the BNSF (A-1) alignment in Madera County, Chowchilla continued to support the HSR. Chowchilla relied on the Program EIR/EIS that informed us of support for the BNSF alignment. "Throughout the corridor the UP alignment passes through more urban areas and would require more aerial structures, thereby increasing adverse impacts to communities and construction costs. Both the UP and BNSF have freight activity; however, the UP serves more local industries adjacent to the corridor that the HSR alignment would have to avoid. The HSR would typically accomplish this by using aerial structures to fly over the local freight tracks which would add cost and cause additional adverse community impacts. The BNSF alignment traverses a more rural setting, would require fewer aerial structures, and would cause fewer impacts to Central Valley communities."

"A great advantage of the BNSF alignment is that much of the HSR system could be constructed at-grade such that the freight track would be grade separated along with the adjacent HSR tracks. This would benefit freight services and communities by reducing noise (due to the elimination of horn and gate noise from existing services), providing improved safety, freeing automobile traffic, and improving air quality through reduced congestion." (2005 Program EIR Ch. 6a pg. 6A-10)

456-2

Incongruent Environmental Process and Unstable Project Description

Chowchilla became growingly skeptical of the CHSRA's environmental process when in 2008 the subsequent Program EIR for the Bay Area to Central Valley clarified the routes from San Jose to Merced, but left open the exact route through Chowchilla and which north-south alternative the CHSRA Board would select. The courts mandated the subsequent Program EIR for the San Jose-Merced Section because of the UP issue south of San Jose and not any confusion in the San Joaquin Valley. Besides separating the analysis between the two routes that are dependent on one another, this environmental analysis approach has led to the inevitable confusion and inconsistencies faced today in documents that are intended to present information upon which the

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Submission 456 (David Alexander, City of Chowchilla, October 3, 2011) - Continued

456-2

CHSRA Board will make a decision. Chowchilla is unique among communities affected by the HSR and in the unenviable position of being the only location in the state where two routes meet. Chowchilla finds little clarity and consistency in the environmental process that is required to meet Federal and State laws. This is a major inadequacy in the EIR/EIS.

It is with great concern that Chowchilla is unable to track the fractured decision-making with regard to movement away from the "preferred route" in the Program EIR to the Project EIR for the Merced to Fresno Route. The CHSRA Board, by resolution, certified the Program EIR/EIS declared the "preferred route" to be the BNSF alignment; but in the Draft Project EIR/EIS Ch. 6 where it states "In 2008, EPA and USACE concurred that the preferred network alternative was most likely to contain the LEDPA. In the Central Valley, the Authority selected the UPRR/SR 99 corridor as part of the preferred network alternative, but recommended continued study of the BNSF corridor."(page 6-2). How, when, and where did the CHSRA make that decision and how did the Authority notify the public that such a decision was being considered? There is a major inconsistency between the Program EIR/EIS, Subsequent Program EIR/EIS, and the Project Level EIR/EIS.

Chowchilla has participated in the Technical Working Groups, Public Workshop meetings, local discussions, and has testified before the CHSRA Board. The City of Chowchilla has spent tens of thousands of dollars attending meetings and providing information to HSR consultants from 2008 continuing into 2011. To what end? Only to find out in the Project EIR/EIS that the HSRA made a decision in 2008 that UPRR (A-2 alternative) was the preferred alternative.

It now makes sense that the Revised Program EIR/EIS for the San Jose to Merced section (that the Board certified) shows on its maps and in its text that the UPRR (A-2 alternative) is the point of connection for their section. The HRSA Board must have made a decision during the preparation of the Revised Program EIR/EIS.

Chowchilla's concerns were consistently raised at meetings with HSR consultants (from 2008 to the present) and clearly showed up as Issues Raised During the Scoping

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456-2

Process but not carried forward in the analysis contained in the Draft EIR/EIS for the Merced to Fresno Section. There is no tracking or mention to the reader how they can find where the issues raised were evaluated or how those issues were analyzed. Section 15123 of the CEQA Guidelines states: "(a) An EIR shall contain a brief summary of the proposed actions and its consequences. The language of the summary should be as clear and simple as reasonably practical. (b) The summary shall identify...(2) Areas of controversy known to the Lead Agency including issues raised by agencies and the public..."

The comments contained herein provide evidence that the required data and the quantitative and/or qualitative analysis used in the Draft EIR did not address these concerns in a comprehensive and complete manner and to the level of clarity that is required by the CEQA Guidelines. There appears to be a lack of reasoned good faith analysis as to the project-specific and cumulative impacts and lack of reasonable mitigation measures in the Draft EIR in compliance with the CEQA Guidelines. This is a major inadequacy in the EIR/EIS.

Such inconsistencies, disconnects, and piecemealing are exactly the reason why the courts have criticized EIRs and State Legislature included in the CEQA regulations found in Public Resources Code § 21065, "a project is defined as the whole of an action, which has a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment...". CEQA defines "*piecemealing*" as environmental review of a project in stages where a public agency has not taken the whole of an action into consideration. The Merced to Fresno section EIR/EIS cannot permissibly allow the San Jose to Merced section EIR/EIS to continue to analyze and provide for mitigation at a later stage in the decision-making process as intended by Merced to Fresno section EIR/EIS.

The decision-making process is further confused in this EIR/EIS by the stated intent of the CHRSA Board on page 6-1 "The Authority and FRA will consider both the Merced to Fresno HSR Final EIR/EIS and the Fresno to Bakersfield Final EIR/EIS and select a preferred HMF alternative." This statement does not include the San Jose to Merced

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Submission 456 (David Alexander, City of Chowchilla, October 3, 2011) - Continued

456-2

section EIR/EIS to which additional information to support a decision is theoretically contained in the piecemealing effort.

The CHRSA made the choice to prepare a Program level EIR/EIS first and then a Project level EIR/EIS. A subsequent project-level document significantly heightens expectations for the level of detailed analysis related to the proposed project. Chowchilla can only evaluate the project-level documents given the level of expectations it has enforced on projects it has considered as well as what we have seen as the level of effort from other communities in the Valley. "An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy." (Section 15144 CEQA Guidelines).

Inconsistent Levels of Analysis and Misleading Information

The CHSRA is considering the single most significant project in California's history. The environmental review process should reflect its importance particularly for all of those that will be affected by its design. Further, CEQA advises EIR preparers when evaluating impacts that "The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area."(Section 15064 CEQA Guidelines).

456-3

The reader immediately notices the extensive analysis provided to the urban setting of Fresno and Merced and impacts of the stations befitting a "project-level" EIR. At the same time, there is scarcity of information and analysis in the rural area of the alternative alignments only rising marginally to the level of a "program-level" EIR. The rural area of the Merced to Fresno section constitutes 80% of the total mileage in this section. Certainly the mandatory Federal requirements of biology and Environmental Justice stand out as exceptions in the analysis, but the scant analysis of the remaining

456-3

sections leads to an inappropriate conclusion of "no significant impact". This is a major inadequacy in the EIR/EIS.

Chowchilla is conflicted and concerned expecting that the HSR will in fact be built. Chowchilla is becoming convinced that our struggling rural community will be sacrificed with the A-2 alternative alignment at a cost of more than $2 billion to save 30 seconds of travel time between L.A. and San Francisco as compared to the A-1 alternative that costs less and has fewer impacts on communities. Comparatively, that amount of additional cost would allow the City of Chowchilla to operate for 125 years at its present program levels. In the meantime, the legitimate short and long-term impacts we perceive from the A-2 East Chowchilla and Avenue 24 and the Hybrid Avenue 21 Wye alignments appear to be ignored and go unmitigated because of a flawed level of analysis leading to erroneous claims in the EIR/EIS of "no significant impact".

Interestingly, CEQA Guideline Section 15126.4 (a)(3) tells us that "Mitigation measures are not required for effects which are not found to be significant." Perhaps that is the motive for a less than adequate analysis in the EIR/EIS of potential impacts to Chowchilla. Certainly that would take additional time to quantify and require reasonable communication to address adequate mitigation to those impacts to Chowchilla.

Support for the A-2 – Avenue 24 Wye route that some local governments expressed in the past (not Chowchilla) may be reversed when they recognize that impacts documented by rural communities will go unmitigated because the EIR claims "no significant impact" on areas of legitimate concern and close to the rural heart. Given the current information in the EIR/EIS, Chowchilla is among those rural areas that have little to gain and a lot to lose from the A-2 East Chowchilla and Avenue 24 and the Hybrid Avenue 21 Wye alignments.

Furthermore, the A-2, Avenue 21; the A-2, Avenue 24; or the hybrid have no relevance to a commitment of the CHSRA or the state to the voters who approved Proposition 1A in 2008. Only the A-1, Avenue 21 is a cost-effective method of achieving a requirement contained in Proposition 1A "The HST System would meet the requirements of Proposition 1A, including the requirement for a maximum nonstop service travel time

Response to Submission 456 (David Alexander, City of Chowchilla, October 3, 2011)

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See MF-Response-GENERAL-10

456-2

See MF-Response-GENERAL-1 and MF-Response-GENERAL-22

456-3

The commentor does not provide insights about what resources or issues were not considered in enough detail. Resources that concern rural areas would typically include economic, agricultural, biological, social and community resources, each of which are included in the EIS/EIR document and associated reports.
More specific information is provided in some cases for the citeis of Merced and Fresno because of the stations located within the cities and the potential for impacts and benefits associated with these stations. Figures within each resource section display impacts for Chowchilla and Madera vicinities in addition to Merced and Fresno.

456-4

The HST track will be constructed using a combination of slab (on elevated sections) and ballast. The materials would come from existing quarries within and outside the San Joaquin Valley. There are five potential quarries that could supply ballast for the HST Project. Section 3.9.1 of the FEIR/EIS has additional information regarding ballast and slab material.

The Project Description in the EIR/EIS states that excess excavated material would be removed and hauled to a permitted disposal site. Truck hauling would require a loading area, staging space for trucks awaiting loading, and provisions to prevent soil from being tracked on public streets. Truck haul routes would be consistent with local jurisdictions' requirements.

456-5

See MF-Response-NOISE-3 and MF-Response-NOISE-6.

456-6

The traffic count data presented in the DEIR/EIS was compared with traffic counts presented in the Madera County Traffic Monitoring Program (that conducts traffic counts

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at different times of the year) and found to be generally consistent. Moreover, in addition to the traffic counts, other factors such as additional travel due to road closures were used in the evaluation.

The proposed alignment through downtown Chowchilla is elevated and adjacent to SR 99, along an area that is least developed and opposite the freeway from the residential development. This alignment minimizes effects to development and circulation. Where HST is at-grade, along the Avenue 24 Wye and Hybrid Wye options, the project proposes to provide grade crossings to maintain traffic circulation and does look at future coordination with Caltrans projects. Close coordination with Caltrans has occurred throughout the project. Generally, grade separations were provided where HST was at-grade to maintain traffic circulation. The proposed HST alignment through Chowchilla would not disrupt the major roadways and would not affect traffic circulation.

Some of Caltrans' future improvements are included as part the HST Project due to the impact of HST facilities. There are possibilities to collaborate on other future improvements; this will depend on MOU/Agency Agreement between the Authority and Caltrans. The HST alignments are located, to the extent possible, adjacent to existing transportation corridors so that if future overcrossings are necessary, the span to cross HST is not prohibitative.

456-7

See MF-Response-TRAFFIC-2, MF-Response-SOCIAL-4, MF-Response-SOCIAL-1, MF-Response-SOCIAL-3, and MF-Response-LAND USE-3. None of the HST alternatives result in the bisection of any communities. As described in Section 3.12, Socioeconomics, Communities, and Environmental Justice, many of the cities in the study area grew because of the railroad which formed the original division. The HST project would add incrementally to this, but the footprint is about 50 feet where the alternatives are elevated and 100 feet where at-grade. Where elevated, access would remain under the alignment and where at-grade there would be overpasses constructed at most of the existing roadways. All of the alternatives result in property acquisition and the conversion of land to a transportation related use. Section 3.13.5, Land Use, Station Planning, and Development, provides information on the amount of land that would be

Submission 706 (Christian Scheuring, California Farm Bureau Federation Office of the General Counsel, October 13, 2011) - Continued

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corridor could serve as an effective means to mitigate some of the environmental justice impacts of the project on low-income and minority populations, whether from lost agricultural jobs or potential displacement. In contrast, an HMF along the BNSF alignment would be quite distant from any of the urban centers in the area, providing diminished economic benefits to any of these communities, while at the same time promoting potential leapfrog development in what is otherwise an entirely rural setting.

- To the extent it provides a much more direct path of travel, an UPRR / SR 99 alignment is also more conducive and amenable to meeting the HSTP's mandated objectives in terms of speed and safety. Whereas a continuous UPRR / SR 99 with appropriate elevations through the urban areas would provide a direct path of travel from one city to the next, the BNSF, Hybrid, and UPRR / SR 99 Bypass options are characterized by inefficient and inelegant twists and turns, in many places slashing across roads and fields in what is now virgin farmland. Aesthetic concerns aside, however, the more significant issue with these alignments relates to safety and mandated travel times. A HST located along a continuous UPRR / SR 99 alignment could travel more safely, at a faster and more constant rate of speed between one urban destination and another. This would improve the HST's efficiency, its reliability and, more than likely, its ridership.
-

One issue related to a UPRR / SR 99 alignment deals with the apparent concerns of the UPRR that a shared right-of-way could interfere with the UPRR's plans for future expansion of its rail lines and its commercial service in the Valley to predominantly agricultural customers. Given that a HSTP alignment along Highway 99 would follow and potentially share the UPRR's right-of-way, this is a significant concern. However, the Merced-Fresno EIR/EIS does *not* conclude, and we doubt that this concern is, in fact, one that is insurmountable. Recognizing the UPRR's concerns, therefore, we would encourage the HSRA to work with the UPRR to identify potential conflicts and workable political, financial, institutional, planning and engineering solutions to those conflicts. To be sure, as outlined herein, the many significant environmental advantages of a continuous UPRR / SR 99 alignment north of Fresno argue strongly in favor of a solution that seeks ways to address the UPRR's concerns, allowing for a shared alignment along the 99 corridor, that avoids any unacceptable impacts to the UPRR.

706-11

2. Consistent With HST Voter Intent, Mandates, Policies and Objectives, And Local Concerns, The Highway 152 Wye Alignment Should Be Considered and Designated As The Preferred Alternatives Over The Avenue 21 And Avenue 24 Alignments

CFBF submits that the Highway 152 east-west alignment for the Wye linkage between the proposed Merced-Fresno and Bay Area sections of the HST is the preferred alternative the HSRA and the FRA should select in their Final EIR/EIS, consistent with the voter intent, mandates, policies and objectives requiring that the HST alignment utilize existing transportation and utility corridors and rights of way and avoid and minimize impacts to natural and

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agricultural resources to the maximum extent possible. In contrast, the proposed Avenue 21 and 24 Wye alignments are inconsistent with HST voter intent, mandates, and objectives concerning farmland, natural resources, existing corridors and existing rights of way and, therefore, should be abandoned. For the same reasons, CFBF likewise opposes the proposed Chowchilla Bypass route and split around the City of Chowchilla, along the proposed alignment for the proposed Avenue 21 Wye. Instead, to achieve maximum consistency with the HST mandates concerning farmland, natural resources, and existing corridors and rights of way, a turnout for a new Highway 152 alignment should be configured as a simple "V," similar to the proposed alignment for the Avenue 24 Wye off the UPRR / SR 99 north-south alignment, but just north of Avenue 24, along Highway 152.

The Merced-Fresno Draft EIR/EIS indicates that the Avenue 21 and 24 Wyes depicted and preliminarily considered in that document will be fully considered in a next-tier EIR/EIS for the Bay Area to Central Valley segment of the HSTP. However, even preliminary or partial consideration of the Avenue 21 and 24 alignments in the Merced-Fresno Draft EIR/EIS is significant (and potentially prejudicial) in that either alignment implies a different set of impacts along two distinct routes. Furthermore, even a preliminary set of potential assumptions concerning the specific path and location of either Wye proposal has definite implications for the selection of a north-south alignment, including the HSRA's potential selection of the Chowchilla Bypass. For these same reasons, it also significant that the Draft EIR/EIS *does not* include or consider (even preliminarily) a Highway 152 alternative to the proposed Avenue 21 and Avenue 24 alignments, including the proposed Chowchilla Bypass. Indeed, it appears that the failure to consider a Highway 152 alternative in the Merced-Fresno EIR/EIS may constitute illegal piecemealing of the project under CEQA.

The Highway 152 alignment has the overwhelming backing and support of the local agricultural communities, both north and south of the Merced-Madera county line, as well as the express endorsement of the Madera County Board of Supervisors. Whereas, the Avenue 21 and Avenue 24 alignments would impact a complex web of irrigation and water distribution systems, including the canals and ditches of at least one major irrigation district, a Highway 152 alignment would have no such impacts. Unlike the Avenue 21 and 24 alignments, a Highway 152 alignment would follow a major regional transportation corridor (State Highway 152). Unlike the Avenue 21 proposal, a Highway 152 alignment would not require a Chowchilla Bypass or east-west split, or result in impacts to a large additional number of affected farm operations, and a substantially larger acreage of productive farmland. Highway 152 has been slated by CalTrans for major improvements in the near future, such that a Highway 152 alignment for the Wye might be conveniently coordinated with CalTrans improvement plans for Highway 152. Furthermore, as with a continuous north-south UPRR / SR 99 alignment, a Highway 152 alignment would have advantages the Avenue 21 and 24 alignments lack, in that it would require fewer curved and diagonal cuts across impacted agricultural parcels, while avoiding the impacts of the Avenue 21 and 24 alignments to numerous farm properties that are

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not currently adjacent to any major road or planned expansion of the existing transportation infrastructure.

In addition to these concerns associated with Avenue 21 and 24 alignments, as with other proposed alignments that stray from existing corridors and rights-of-way into adjacent farmland, not only are agricultural resources and local agricultural operations more negatively impacted the farther an alignment encroaches into these predominantly rural, agricultural, and open space areas, but in these same areas the probability and actual occurrence of impacts to sensitive habitats, wildlife resources, and waters of the United States rises significantly. As these comments emphasize, this is a major environmental concern, not only for the BNSF, Hybrid, UPRR / SR 99 Bypass, and Avenue 21 and 24 alignments north of Fresno, but also for essentially *any* of the Fresno-Bakersfield alignments through agricultural areas and outside of existing corridors and rights-of-way.

Accordingly, as described, there are many compelling reasons the HRSA's and the FRA's east-west alignment for the Bay Area to Central Valley linkage should specifically eschew the Avenue 21 and 24 alignments, including the proposed Chowchilla Bypass, and why the HRSA and the FRA should instead select the more environmentally sensitive and policy and objective-consistent Highway 152 alignment.

C. Proposed Alternatives For The Fresno-Bakersfield Section

1. Farmland Conversion and Other Significant Issues Remain Outstanding With Respect To The Proposed East and West Hanford Bypass Options Along The Fresno-Bakersfield Western Alignment

In light of the late (October 6th, 2011) announcement that a revised and recirculated EIR/EIS will consider a West Hanford Bypass alignment in addition to the proposed East Hanford Bypass option in Kings County, CFBF at this time reserves any detailed comment on this portion of the Fresno-Bakersfield Western Alignment until the HSRA releases the HSTP's West Hanford alternative to the proposed East Hanford alignment. Generally, however, we would note that the impacts to agricultural lands and businesses along either alignment would appear to be significant and unacceptable.

2. Consistent With HST Voter Intent, Mandates, Policies And Objectives, And Local Concerns, An All-BNSF Alignment Through Kern and Tulare Counties Should Be Designated The Preferred Western Alignment South Of Fresno Over The Proposed Wasco-Shafter and Allensworth Bypass Alignments

Like the BNSF, the Hybrid, the proposed Chowchilla Bypass, and the Avenue 21 and 24 Wye Alignments *north* of Fresno, CFBF submits that the proposed Wasco-Shafter and

Allensworth Bypass options, along the Western Alignment of the Fresno-Bakersfield section of the HSTP in the Counties of Kern and Tulare, are fundamentally inconsistent with the HST mandates to avoid impacts to natural and agricultural resources, and to locate HST alignments within existing transportation corridors and rights-of-way. In general terms at least, the reasons for this are similar to what is discussed above in relation to the various Fresno-Merced alignments that deviate from the UPRR / SR 99 corridor. Thus, these reasons include, with limitation, impacts to agricultural lands and operations in areas currently located outside existing transportation or utility corridors or rights-of-way; diagonal and curving cuts across fields and farm structures; impacts to rural roads and property access points; impacts to irrigation systems and water infrastructure, including canals, ditches, and deep wells; in addition to and numerous other disruptions to existing agricultural lands and activities.

3. The Fresno-Bakersfield Draft EIR/EIS Fails To Consider A Reasonable Range Of Alternatives By Failing To Fully Analyze a UPRR / SR 99 Alignment

Perhaps the most serious omission of the Fresno-Bakersfield Draft EIR/EIS, in terms of its consideration of alternatives, is the failure to consider a UPRR / SR 99 alignment to the east, in addition to the eastern BNSF alternative and sub-alternatives presently considered. While the Draft EIR/EIS includes some general discussion of the HSRA's elimination of a number of potential alternatives along or around the Highway 99 Corridor, and while the Draft EIR/EIS references a 2007 Visalia-Tulare-Hanford Station Feasibility Study supposedly documenting and explaining that process, the 2007 Study in fact provides only the vaguest of explanations why a UPRR / SR 99 alternative *south* of Fresno was eliminated. Thus, some of the main concerns cited include potential community impacts, cost and right-of-way issues. Objectively, however, as discussed with respect to the Merced-Fresno section of the HSTP above, all of these concerns are present in some degree along the Fresno-Merced HSTP alignment to the north—yet the Fresno-Merced EIR/EIS considers a UPRR / SR 99 alternative. As with the Merced-Fresno UPRR / SR 99 alignment to the north, therefore, it would appear that there are various reasons a UPRR / SR 99 alternative should at least be considered in the Fresno-Bakersfield EIR/EIS, just as a UPRR / SR 99 alternative is considered in the Merced-Fresno Draft EIR/EIS.

From an agricultural resources standpoint, for example, the differences between the BNSF alignment and a UPRR / SR 99 alignment from Fresno to Bakersfield largely parallel the differences between the BNSF and UPRR / SR 99 alignments from Merced to Fresno. Thus, it is generally true that the more winding and circuitous BNSF (with or without its multiple proposed bypasses along the country two-lane Highway 43) would tend to impact mostly farmland, in mostly undeveloped and sparsely populated or unpopulated areas. In contrast, while it too crosses through major agricultural areas in Kern, Tulare, and Fresno Counties, the heavily travelled and generally straight, four-lane UPRR / SR 99 corridor *itself* is much more heavily built up than Highway 43 to the west, even south of Fresno. In terms of the HSTP's objective to reduce impacts to natural and agricultural areas, therefore, it would appear that the impact of a

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Proposition 1A specifically provides that existing corridors are to be followed "to the extent feasible." The Authority has determined that in some locations, it is infeasible to stay within existing transportation or utility corridors. See MF-Response-GENERAL-2.

The Authority is required to balance the various provisions of Proposition 1A and the EIR/EIS explains the environmental impacts inherent in the three build-alternatives that it analyzes. This provides the Authority with sufficient information about the impacts to make an informed, reasoned choice.

706-8

The comment presents the view that the lead agencies cannot consider the costs associated with locating an alignment along an existing transportation corridor as a project cost to differentiate between alternatives, and that alternatives that maximum use of existing transportation corridors cannot be dismissed from selection based on being more costly. As explained in Chapter 7, Preferred Alternative, the identification of the Hybrid alignment as the preferred north/south alignment alternative has been based on a careful weighing of multiple factors, including but not limited to impacts to the natural environment, impacts to agricultural lands, and impacts to communities as well as cost and constructability issues. Cost is one factor among many that has influenced identification of the Hybrid as the preferred alternative.

706-9

The Authority and FRA acknowledge the requirement for the EIR/EIS to analyze a range of reasonable alternatives to the project, or to the location of the project. The Authority and FRA disagree with the suggestion that that the EIR/EIS does not include a range of reasonable alternatives.

See MF-Response-GENERAL-2.

706-10

See MF-Response-GENERAL-2 and MF-Response-GENERAL-10. Please also see Final EIR/EIS Chapter 7 which identifies the Agencies's Preferred Alternative, provides an evaluation of the alternatives analyzed in the document and provides a comparative analysis of the potential impacts by HST alternative. See also MF-Response-GENERAL-15 regarding the HMF decision.

706-11

The comment suggests that the project EIR/EIS may be piecemealed by not including detailed consideration of the SR 152 east/west connection and Wyes. The Authority and FRA have included detailed examination of the Avenue 21 and Avenue 24 east/west and Wye connections in the Merced to Fresno section EIR/EIS. To provide for additional study of these east/west and Wye connections, as well as an additional SR 152 east/west and Wye connection, the lead agencies will carry forward all three to the San Jose to Merced Draft EIR/EIS. No decision will be made on the east/west connection and wye until completion of the additional evaluation. All three north/south alignment alternatives can be connected with any of the three east/west connections and Wyes (Ave 21, Ave 24, and SR 152), therefore, the lead agencies' decision on the north/south alignment will not prejudice full consideration of all three east/west and wye alternatives. Piecemealing occurs when a large project is segregated into multiple smaller pieces as a method of avoiding environmental review. That is not the case here, where the decision making and environmental review process are crafted to promote the fullest environmental review by including the SR 152 alternative prior to any decision on the east/west connection and wye. See MF-Response-GENERAL-15, MF-Response-GENERAL-16, and MF-Response-GENERAL-22.

706-12

The Draft EIR/EIS analyzes farmland loss in Section 3.14, Agricultural Lands, and addresses regional economic effects (including effects on agriculture) in Section 3.12, Socioeconomics, Communities, and Environmental Justice. This is typical for an environmental impact assessment document - analyze impacts by resource rather than by community (e.g., impacts to farming). Although the focus of Section 3.14 is on farmland and farmland loss, there is extensive information about indirect impacts - effects of the project (e.g., wind, noise) that could exacerbate the direct farmland losses summarized in Table 3.14-5. In response to comments, impacts are further described (both from the perspective of farmland loss and economic consequences) in MF-Response-GENERAL-4. Also see MF-Response-GENERAL-3 in response to the comment on growth inducement. With regard to dairies, see MF-Response-AGRICULTURE-6.

Submission 666 (Anja Raudabaugh, Madera County Farm Bureau, October 13, 2011)

MADERA COUNTY FARM BUREAU

October 13, 2011

Merced to Fresno Draft EIR/EIS Comments

California High Speed Rail Authority

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The Madera County Farm Bureau (MCFB) appreciates the opportunity to submit comments on *the Draft Merced to Fresno Section Project DEIR/EIS, Volume I: Report*, dated August 2011(DEIR/EIS). The MCFB has previously submitted comments to the California High Speed Rail Authority (Authority) in letters dated December 10, 2009, and September 22, 2010, attached to the end of this comment letter for reference. Preceding detailed comments on this DEIR/EIS, the MCFB would like to stipulate its paramount position on this Project in its current form. MCFB recognizes the California High Speed Rail Project (Project) as a pivotal step in the future development of the Central Valley; however we oppose any unmitigated loss of agricultural lands, agricultural incomes, or agri-business related to Madera's County's agricultural economy. If the Project proceeds, the MCFB supports the selection of the UPRR/SR99 North-South Alternative, so as to minimize the open space and agricultural impacts to the County; however not the level of compensatory mitigation provided with this Alternative. MCFB feels that due to the high additional burdens placed on agriculture in the County of Madera and throughout the Central Valley that the Project should seek out superior mitigation responses for the industry.

MCFB's comments are organized by DEIR/EIS Sections, beginning with a summary of the overall MCFB comments regarding the Project.

Summary of MCFB's Comments

- ✓ MCFB supports the UPRR/SR99 Alignment with additional mitigation measures (see comments)
- ✓ The Documents is required under CEQA(Public Resources Code §21065 and Public Resources Code§ 21003.1(b)) to consider the HWY 152 alternative along with Avenues 21 and 24 Wyes for relevance in the study area for this DEIR/EIS

666-1

Summary

S.1 The Summary Introduction and Background fails to identify an East-West project boundary area; although adequately identifies a North-South project termini.

S.5.1 The No Project Alternative summary fails to mention a description of the Least Environmentally Damaging and Practical Alternative (LEDPA) in Section 404(b)(1) of the Clean Water Act (CWA) 33 U.S.C. §1251 et seq.

The reference to projected County growth of Merced, Madera, and Fresno is not cited appropriately by the Counties referenced. More recent and updated County General Plans exist and should be used in the relevance of this document.

666-2

S.5.2 Although indicated that the Authority developed the SR 152 Wye with connections to all three north-south Merced to Fresno alignments, the section goes on to state that SR 152 East-West alignment and related wyes will be studied at a later date during the San Jose to Merced Project EIR/EIS. MCFB opposes this decision due to the following reasons:

1.) *The Approach is a Piece-Meal of a Tiered NEPA and CEQA Process* -Although the Project has been tiered as provided for in the NEPA; the decision to study a required phase of an alignment separate from its equal alignment alternatives is a piece-meal evaluation of the Project according to CEQA Public Resources Code §21065. According to CEQA, a project is defined as the "whole of an action, which has a potential for resulting in a either a direct physical change in the environment...or a reasonably foreseeable indirect physical change in the environment." All three East –West Wyes need to be considered as a mandatory component of the North-South Merced to Fresno Project and must be evaluated with equal importance. The public perspective of each must analyzed simultaneously to reach the most locally preferred alternative.

2.)*The Decision Not to Include SR 152 in this Project DEIR/EIS is a Violation of the CEQA Scoping Process* –The scoping process provided for in CEQA Guidelines §15082.-15084 is specific in stating that all comments recorded during a Notice of Preparation Project scoping phase shall be considered in the Draft EIR. MCFB provided comments to both the Madera County Board of Supervisors (see attachments) and to the Authority requesting that SR 152 be considered as a viable alternative in the East-West Wye alignments. The DEIR/EIS is also specific in stating that this configuration was studied in the *SR 152 Alternatives Analysis* (California High Speed Rail Authority, 2011). Yet, SR 152 was omitted from the field of study in this DEIR/EIS. CEQA does not allow a lead agency, in this case the California High Speed Rail Authority, to defer studies and mitigation measures when being considered as Project in whole to the public. This is a violation of Public Resources Code 21003.1(b), and been adjudicated successfully multiple times (Better Environment v. City of Richmond (2010) 184 Cal. App.4th 70 and Watsonville Pilots Assn. v. City of Watsonville (2010)183Cal.App.4th 1059). MCFB repeats that the local ramifications of choosing an East-West Wye alternative are equal in importance to selecting a North-South alternative.

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3.) *The Decision Not to Include SR 152 as an East-West Wye Alternative Does Not Provide the Public with an Environmentally Preferable Alternative or a Choice Beyond No Project Alternative; A Violation of both NEPA and CEQA* –In only analyzing impacts associated with Ave 21 and Ave 24 Wye connections, the public is presented with unavoidable and un-mitigated significant impacts –OR, that the No Project Alternative selected presents a growing population density that will spiral out of control if no action is taken. This choice is unacceptable and is not permissible under NEPA [42 U.S.C. 4321 et seq.] § 10 as well as under CEQA §21003.1 and CEQA Guidelines §15126.6(2).

S.8 Regarding the HST Alternatives Evaluation, MCFB again takes issue with the lack of SR 152 East-West Wye Alternative compared with the UPRR/SR 99, BNSF, and Hybrid Alternative for the following reasons:

1.) Had this alignment been included, the elevated profile and thus the total project footprint is subject for inclusion in Table S-1, as both will likely change based on the study of this alignment;

2.) The number of straddle bents and railroad crossings would also change when compared to the BNSF and Hybrid Alignments (*SR 152 Alternatives Analysis*, CHSRA 2011), and should be included for public analysis in Table S-1 for review by the public;

3.) The number of water crossings and thus Project footprint as it relates to environmental impacts and agricultural impacts would change dramatically. MCFB speculates that impacts would be far reduced and this should be reflected in Table S-1.

4.) The number of roadway closures and roadway crossings would also be dramatically reduced if SR 152 East-West had been included in analysis consideration. To omit this alignment is a detriment to the public's perspective in considering their comments and in determination of Project impacts.

666-3

Chapter 2.0 Alternatives

2.3.2 The derivation of alternatives in the DEIR/EIS indicates that alternatives considered in the *Preliminary Alternatives Analysis* (Merced-Fresno DEIR/EIS Technical Appendices 2011) Report were removed from further consideration because they "departed from existing transportation corridors, thereby causing new transportation corridors among highly productive agricultural lands. " These alternatives included the UPRR/BNSF Hybrid and the Western Madera (A3) Alignments. However, the present Project being considered in the current DEIR/EIS includes a Hybrid Alternative that was never considered in the Preliminary Alternatives Analysis Report. This constitutes a violation of CEQA § 21002and§: 15002.(a)(3).

"...Primary impacts and, particularly, secondary impacts (such as highway improvements which provides access to a previously inaccessible area), and generally commit future generations to similar uses...must be analyzed and disclosed in all preceding Program, Project, and Alternatives Analyses...In order to provide adequate environmental analysis in any EIR thereafter..."

MCFB stipulates that the inclusion of a new, previously unanalyzed Alternative along either the North-West Alignment corridors or the East-West Alignment corridors is not in accordance with CEQA.

666-4

Section3.12 Socioeconomics, Communities, and Environmental Justice

Environmental Justice

Madera County is entirely reliant on agricultural operations, their employees, and families to ensure fiscal success. MCFB contends that by not including agriculture as an Impact area in the Environmental Justice section of the DEIR/EIS (page 3.12-5), an adequate assessment of the potential for minority populations to be disenfranchised by the Project was not completed.

3.12.3.4 Study Area for Analysis

The Document states, "... For population and household characteristics, including low-income and minority populations, census block group data were collected for the area within 0.5 miles of the centerline of the alignments." And, "...Because the majority of the residents are close to urban areas, census block groups with limited populations in the study area were not included in the demographic analysis."

MCFB is concerned that the study area is far too limited, as well as the potential for large minority and rural housing areas to have been excluded from both analysis and from public outreach by the Authority. Most of the agricultural operations throughout Madera County are supported by communities in the outskirts of the City of Madera, the City of Chowchilla, Kerman, Huron, and other communities far outside the half mile study boundary of the project. In addition, the Document says that population demographics were done using aerial photographs –a highly unorthodox practice regarding outreach and socioeconomics (see Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, 307). This practice is commonly used during right of way proceedings to establish property assets in rural areas, but to utilize this method to determine the affected population, the ethnicity and income level of a population, is a poor precedent to set. Finally, by not assessing the extreme rural nature of these farming communities and the impact of potentially severing these communities' transportation routes to employment, the Project threatens to displace substantial amounts of existing housing elsewhere –an impact that is both significant and potentially unavoidable. This should be disclosed, analyzed and discussed in this DEIR/EIS.

Section 3.14 Agricultural Lands

3.14.2.2 State

California Land Conservation Act of 1965 (California Government Code §51200-51295) [also known as the Williamson Act]

666-5

The Project will impact Madera County's Williamson Act Program, regardless of the Alternative selected. Many of MCFB members farming operations rely on the financial relief that the Williamson Act provides. The Project will bisect many parcels, specifically along the Ave 21 and Ave 24 proposed Wye Alignments, bringing them below the minimum allowable acreage for the Williamson Act, and therefore, creating a material breach of contract between the land owner's and the County of Madera. A monetary penalty exists with that breach –which is not discussed or mitigated for in this DEIR/EIS. Without being able to

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666-1

Thank you for your input. We have made the necessary edits in the Summary of the EIR/EIS. EIR/EIS Chapter S.11, Summary of Changes between the Draft and Final EIR/EIS, states that Chapter 1 was updated to reference the EPA and COE LEPA concurrence letters (March 23, 2012 and March 26, 2012 respectively). See Chapter 1 for more details.

Between the draft and final versions of the EIR/S, information was updated as needed to reflect the most current versions of County General Plans.

666-2

See MF-Response-GENERAL-1 regarding tiering, the appropriate level of analysis, and deferred mitigation; MF-Response-GENERAL-2 regarding the alternatives selection process; MF-Response-GENERAL-16 regarding the decision on the Wyes; and MF-Response-GENERAL-22 regarding piecemealing.

Contrary to the comment, there is no prohibition against modifying the project after the scoping process. Comments received during scoping were considered during preparation of the EIR/EIS. That does not mean that all suggestions provided in those comments were followed.

The public has been provided with an environmentally preferred alternative and this is not inhibited by deferring action on the SR152 Wye. The USACE and EPA have concurred on with the Authority/FRA on a "least environmentally practicable alternative" for purposes of the Section 404 CWA without the need to include the Wye at this time. The Authority and FRA recognize that the Wye alternatives have their own benefits and impacts. Those will be disclosed in more detail, thereby allowing a more informed choice, in the EIR/EIS being prepared for the San Jose to Merced section.

666-3

See MF-Response-GENERAL-2. The purpose of the alternatives analysis is to document the selection of alternatives. It is not, however, intended to strictly limit the range of reasonable alternatives that can be considered in the EIR/EIS -- particularly where the Hybrid alternative presented in the EIR/EIS is a modification of the prior hybrid. Contrary to the comment, the Hybrid alternative is properly being evaluated in the EIR/EIS, as required by CEQA and NEPA.

666-4

See MF-Response-GENERAL-4, MF-Response-GENERAL-5, and MF-Response-SOCIAL-7. Census data is based upon information from the 2010 Census and includes those census tracts and census block groups with 0.5 mile of the HST alternatives. Where the census areas are very large geographically, often extending for miles beyond the study area, aerial photography was used to verify the presence of residential development within the 0.5 mile study and these census areas were not included. Aerial photography was not used for the demographic analysis.

The reference to Sundstrom v. County of Mendocino [negative declaration overturned on the basis of improperly deferred mitigation] is not on point.

666-5

See MF-Response-AGRICULTURE-7 regarding Williamson Act impacts. Property owners can raise this issue with the Authority's appraiser during the acquisition process.

The impact on agriculture is disclosed in Section 3.14 of the EIR/EIS. The discussion of the NEPA analysis in that section has been revised to clarify the application of impact "context" and "intensity" when determining significance.

666-6

Temporary uses will be compensated through essentially the same process described in MF-Response-AGRICULTURE-4. Right-of-way agents will negotiate compensation with property owners on a case-by-case basis, taking into account each property's unique qualities, prior to construction occurring. This right-of-way acquisition and compensation process is part of the project design features described in Section 3.12.6 (see also Appendix 3.12-A). As such, no separate mitigation measure is necessary. Also see MF-Response-GENERAL-4.

Funding for mitigation is included in the total project cost as a percentage of the total project cost. The FRA and Authority have a binding commitment to fund mitigation measures presented in the FEIR/EIS.

Submission 616 (Jeff Marchini, Merced County Farm Bureau, October 13, 2011)

Merced - Fresno - RECORD #616 DETAIL

Status :	Action Pending
Record Date :	10/13/2011
Response Requested :	
Stakeholder Type :	Other
Submission Date :	10/13/2011
Submission Method :	Website
First Name :	Jeff
Last Name :	Marchini
Professional Title :	President
Business/Organization :	Merced County Farm Bureau
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Apt./Suite No. :	
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State :	CA
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Cell Phone :	
Email Subscription :	Merced - Fresno, San Jose - Merced
Add to Mailing List :	Yes

Stakeholder Comments/Issues :

October 13, 2011

California High-Speed Rail Authority
770 L. Street
Suite 800
Sacramento, CA 95817

RE: Merced to Fresno HST Environmental Review

To Whom It May Concern:

Merced County Farm Bureau (MCFB) is the leading agricultural organization representing over 1,500 farmers and ranchers in Merced County. We have been in ex-istence since 1917 with the purpose of improving the ability of individuals engaged in production agriculture to utilize California's resources to produce food and fiber in the most profitable, efficient and responsible manner. Since 2009, MCFB has provided statements, hosted meeting and tours and spoke at Board Authority meetings and pub-lic hearings. MCFB has submitted several letters, which have been resubmitted for the official record and are attached. These letters include our support of Alternative 2 (A-2) and State Route 152. The letters also state MCFB's opposition to A-1, A-3, A-4, West Chowchilla Bypass, Avenue 21 and Avenue 24. Our support of both A-2 and SR 152 also follow the language Californians voted for in 2008 on Proposition 1A which stated that the High-Speed Rail (HSR) "shall follow existing transportation or utility corridors." 616-1

Our first major concern with the Draft Environmental Impact Report/Environmental Im-pact Statement (Draft EIR/EIS) was the limited review period that was given for the Merced to Fresno segment. This was a substantial and highly technical document re-leased during a season when farmers and ranchers are often working 14 hour days, seven days a week. It was virtually impossible for someone dedicating their entire job to thoroughly review this document, let alone someone who works another job and is not accustom to reviewing environmental documents. We request the review period be reopened to allow for further public input. 616-2

MCFB adamantly opposed the A-1/BNSF route which runs through highly productive ag land with numerous protected species that were studied in detail when the University of California Merced Campus was proposed. Many of these studies have not been included in this environmental report. Further, as expressed in the Draft EIR/EIS on pg. 2-20, route options A-3 and A-4 were pulled from consideration on the North/South alignment because there were "greater direct and indirect environmental impacts and the potential to cause undesirable growth patterns over those alternatives that closely follow existing transportation corridors." Since then the Authority has brought forth the West Chowchilla Bypass which further departs from existing transportation corridors. A-1 or the BNSF route also diverges from existing transportation corridor. Following the Authorities statements, MCFB believes both the West Chowchilla Bypass and A-1 should be eliminated and recirculation of the Draft EIR/EIS. 616-3

Similarly with the WYE 152 there seems to be some conflicting statements as to why the SR152 is not evaluated in this section. All other WYE routes (Ave. 21, Ave. 24 and West Chowchilla Bypass) are evaluated in this report, even though the summary ex-plains that the WYEs will be fully studied during the San Jose to Merced segment Draft EIR/EIS. MCFB considers this piece-mealing as the WYE routes are 616-4

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Submission 616 (Jeff Marchini, Merced County Farm Bureau, October 13, 2011) - Continued

616-4 key design in our region and we believe the draft needs to be reevaluated for further studies to be in ac-cordance with NEPA and CEQA.

616-5 The No Project Alternative in the summary provides assumptions of growth and pro-jected planning that are neither realistic nor accurate for Merced County. It assumes that without this state level project (HSR), no infill, higher density housing or smart growth can occur at the local level. Decisions for growth planning can only occur at the local level. In addition it fails to thoroughly address the high number of vacant housing Merced County has, not to mention the large number of shovel ready lots. For example the City of Merced has current infill capacity that will take up to 10 years to reach. MCFB believes the Draft EIR/EIS has grossly overstated the No Project Alternative option

616-6 The document fails to mention that as California is the leading agriculture state, it pro-vides a healthy, safe and reliable food source to citizens throughout the world. With the world population expected to dramatically expanding in the coming years, priority should be placed on sources of safe and reliable food. The San Joaquin Valley is one of six valued places in the world which have good water, a Mediterranean climate and rich soil to produce a large quantity of the world's food and nutrients. Agriculture is a precious resource and must be protected for the benefit the general population.

616-7 Socioeconomic Section

3.12.3: Economic Effects on Agriculture
When defining "effects on agriculture" this section concludes property tax revenues to be the only form of revenues ag creates for the community. This could not be further from the truth. Farming and ranching employs upwards of 10 percent of the workforce, the variable of course being the time of the year. In 2010, agriculture was a $2.7 billion industry and those funds did not go directly into the tax revenues, and instead those are infused into the community in various ways (transporting, processing, local businesses, etc.). This is a misleading title. This infusion of money into the local economy is academically researched and described as an economic multiplier. Experts in Merced County regularly use an economic multiplier of 3, which equates to an estimated $8.1 billion in revenues in the county and surrounding region.

Why is the HSR estimating the number of employees in specific businesses? The size of the building, the amount of employees per business should have been thoroughly evaluated by staff and consultants.

Pg. 3.12-5: When reviewing the economic impacts to agriculture they forget to mention the jobs that will be lost, especially in agriculture and related industry. Not only seasonal, but year around. Our current unemployment rate in Merced County is 17 percent we need to be cognizant of every job lost in our county.

616-8 Section 3.12.3.4: The study area that was reviewed by aerial photography as well as the site visits occurred in November 2009 to April 2010. This does not reflect an accu-rate review of the population as the rural areas evaluated are heavily populated by mi-grant workers. The harvest season runs from mid-summer to late fall and is the time when population peaks in many of these rural areas. A proper evaluation of the study area has not occurred.

616-9 Section 3.12.4.1: Population projections for Merced County should be reviewed to re-flect the largely reduced growth in the county. All counties and cities are reviewing their growth projections due to several lawsuits that have been won against local jurisdictions including MCFB vs. the City of Livingston. The report reviews population characteristics which seem to piecemealed together with different data resources to fulfill information required, but it paints an inaccurate picture. The report also reflects on numbers from the 2000 U.S. Census which has also been updated and should be reflected in the Draft EIR/EIS.

616-10 When describing the cultural populations along routes, they mention the large Asian population along the BNSF route. However, only in one case does it mention an inter-preter being brought in to a meeting, never was any documents summarized and trans-lated in Hmong or other related Asian languages which are popular in our impacted communities. How does the Authority expect to properly reach out to the diverse cul-tures that exist in our rural communities if they do not provide appropriate avenues for these communities to learn of these projects?

616-11 Section 3.12.4.3:
As there are several rural school districts along the BNSF route, farmers and ranchers are continually concerned about the loss of revenue to their respective districts. In-creased costs for longer bus routes and other cost to schools are also not properly eva-luated. Ultimately due to the impacts of the HSR the burden will fall on these little communities who can barely handle the load they are forced with.

616-12 Pg. 3.12-19: While providing in-depth details about the UP/SR99 route option through Chowchilla, the section fails to evaluate the community setting of the West Chowchilla design option, other than stating that is bypasses Chowchilla and travels through agri-cultural land.

616-13 Pg. 3-12.23: The report states there "are few residences and no community facilities or services in the study area outside the unincorporated community of Le Grand." When reviewing the report the authors fail to evaluate the long studied Planada wastewater treatment plant expansion plans. See Attachment. This is vital to small rural communi-ties and must be addressed in the EIR/EIS. This statement by the authority is com-pletely false.

616-14 Section 3.12.4.5: MCFB knows for a fact that there are migrant farm worker houses that will either be destroyed and others that fall within the project foot print. We request further review at the local level.

616-15 Section 3.12.5.1: The report assumes that the station will encourage redevelopment, revitalize downtown areas, and result in primarily beneficial social impacts, however it fails to address the jobs that will be lost in agriculture, public agencies, schools and such due to the impacts of the train.

616-16 Pg. 3.12-31: Once this business plan is released a more thorough review of the pro-posed economic benefits of our region need to be addressed. For an accurate job creation projection, we believe jobs that should be counted are only sustainable jobs rather than those temporary jobs that will be eliminated once a project is complete. Another factor that needs to be included is those who lose their jobs in the rural communities (Planada, LeGrand, etc.) will have to commute to a new job, possibly elsewhere, or even relocate. What environmental impacts will those commuters create?

616-17 It is also assumed that infill development and redevelopment will result in higher densi-ties and less ag land developed. However if you look at the long publicized report by the American Farmland Trust called, "Paving Paradise" (see attachment) the trend in the Central Valley is

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616-1

See MF-Response-General-10

616-2

See MF-Response-General-7

616-3

See MF-Response-GENERAL-2 and MF-Response-General-10

616-4

See MF-Response-General-16

See MF-Response-General-22

616-5

See MF-Response GENERAL-3. Text in section 2.4.1, No Project Alternative-Existing and Planned Improvements, of Chapter 2, Alternatives, provides information on the planned population growth, the economic downtown, and the planned developments in various stages of approval. This information was taken into account and even with the existing developments and planned developments, additional developments will still be required to accommodate the expected population growth by 2035. Text in Section 3.18, Regional Growth, provides information on strategies that can create more compact developments and increase densities even without the HST project. The HST stations in Merced and Fresno are expected to encourage more compact development than the No Project Alternative. The Authority is working with the cities to prepare land use plans around the stations. Refer to Section 3.13.5, Station Planning, Land Use, and Development, for complete information.

616-6

See MF-Response-AGRICULTURE-1 and MF-Response-GENERAL-4.

616-7

See MF-Response-AGRICULTURE-1, MF-Response-GENERAL-1, and MF-Response-GENERAL-4.

616-7

Estimating the number of displaced employees is common for environmental reports. The number of displaced employees was determined by using estimated averages of 1 Fulltime Employee (FTE) per 325 square feet (sf) for commercial land uses, 1 FTE for 250 sf for municipal land uses (offices), and 1 FTE for 525 sf for industrial land uses (including manufacturing, distribution, and warehousing). The analysis also included a preliminary evaluation of properties for sale and lease in June, July, and August 2010 and current real estate market trends indicate an adequate quantity and quality of replacement properties for residential and business displacements. The analysis was performed using data from CoStar, a commercial real estate information company that provides commercial real estate information including commercial properties for sale and commercial space for lease. The replacement properties are within the citywide relocation replacement areas and within a 30-mile radius in unincorporated portions of the counties. This is true under all alternatives, at this time. Future availability may vary depending on market trends, population growth, and planned development. The evaluation of commercial and residential properties for sale and lease has been updated in the final EIR/EIS.

616-8

Where the census areas are very large geographically, often extending for miles beyond the study area, aerial photography was used to verify the presence of residential development within the 0.5 mile study and these census areas were not included. Aerial photography was not used for the demographic analysis. The population characteristics are based upon information provided by the U.S. Census which does not provide information on those who may be residing in non-housing units such as migrant workings. Census information has been updated with 2010 Census data. Information on migrant workers is provided in Section 3.12.4.5.

616-9

The population characteristics are based upon information provided by the U.S. Census. Information has been updated with 2010 Census data where possible. However, official population projections using the 2010 Census are not available from the Department of Finance and will not be available until 2013.

Submission 780 (Scott B. Birkey, Preserve Our Heritage (Attny for), Cox Castle & Nicholson LLP, October 13, 2011) - Continued

780-3

- Page 2-54. The graphic shows a "Secondary Impact Area" adjacent to the Merced HST Station but there is no explanation of that in the Project description. Moreover, there is no analysis of any "secondary impacts" in this area in any of the topical areas in the Draft EIR/EIS. Notably, there is no "Secondary Impact Area" identified for the Fresno HST station. The Draft EIR/EIS fails to account for these "Secondary Impact Areas" in the Project alternative descriptions, and it fails to analyze any of the "secondary" impacts that may result in these two areas.

- Page 2-65. The Draft EIR/EIS states that the BNSF alignment will go through the communities of Sharon and Kismet. Those two communities are not mentioned again in any of the resource sections of the Draft EIR/EIS. Is the Project description in error or the analysis incomplete?

- Page 2-89. Numerous agencies, organizations and citizen groups have identified inaccuracies in the Authority's ridership numbers. (*See, e.g.*, Elizabeth Alexis, Memo to the Ridership Peer Review Panel, Sept. 2011.) The Authority continues to use these numbers to justify the need for the Project and to assert that the Project will provide environmental benefits such as reduced air pollution and greenhouse gas emissions. Because these ridership numbers are inaccurate, the resulting benefits are seriously overstated.

- Pages 2-91 and 2-02. The description of the HST Service for the full system does not provide any information on the number of daily trains that would operate on the Merced-Fresno section, both north and south of the wye. In fact the Draft EIR/EIS does not make clear the number of trains that would operate on this section and the frequency of those trains. Given that the number of daily trains is a key variable that determines several of the Project's impacts, the lack of this information in the Project description is a serious flaw of the Draft EIR/EIS and has a ripple effect throughout the entirety of the document.

- Page 2-91. The Draft EIR/EIS claims that the percentage of transit passengers arriving by automobile will decrease as land development around the station increases. This is unlikely to occur because there are no true incentives to get local governments to focus on infill. To make this a reality, the Authority would need to provide incentives for cities along the high-speed rail alignments to encourage infill development near the transit centers. The Draft EIR/EIS assertions regarding infill development around stations are not supported by the facts.

- Page 2-96. The Draft EIR/EIS describes the track and station construction taking 7 years to complete and the HMF being completed in 9 years. The economic analysis uses 5 years of construction, thereby distorting the economic impacts of the Project.

780-4

B. The Draft EIR/EIS Inappropriately Segments the Overall Project, Resulting in Piecemeal Environmental Analysis Masking the Project's True Environmental Impacts.

A project description should include "the whole of [the] action," and must include the entirety of the project. *See Santiago Water District v. County of Orange*, 118 Cal.App.3d 818, 829-30 (1981). A lead agency may not "piecemeal" or "segment" a project by splitting it into two or more segments for analysis in separate environmental documents. CEQA mandates that environmental considerations must not be "submerged by chopping a large project into many little ones – each with minimal potential impact on the environment – which cumulatively may have disastrous consequences." *Bozung v. Local Agency Formation Comm'n*, 13 Cal.3d 263, 283-84 (1975). NEPA also prohibits lead agencies from segmenting a project in order to avoid their NEPA obligations. *See, e.g., Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985); *see also Save Yaak Comm. v. Block*, 840 F.2d 714 (9th Cir. 1988). Under NEPA, actions and proposals *that should be considered together* should not be separated for consideration in separate impact statements, and this principle applies in particular with respect to "connected actions" that are "closely related." 40 C.F.R. § 1508.25(a)(1). In several instances, the Draft EIR/EIS demonstrates that the Authority is piecemealing its environmental review of this Project.

- Page 2-22. The Draft EIR/EIS says that the Authority will pick a north-south alignment based on the analysis in this Draft EIR/EIS, but the wye will be picked based on the anticipated Merced to San Jose section EIR/EIS. This is classic piecemealing and a textbook violation of both NEPA and CEQA. Two elements of the same project must be evaluated together in one environmental document. *See, e.g., Laurel Heights Improvement Ass'n v. Regents of the University of California*, 47 Cal.3d 376, 396 (1988). Evaluating the wye in a separate environmental document violates this fundamental precept, and this is particular egregious here where the wye is a significant portion (about one-third of the total 65-mile section) of the section that comprises the Merced to Fresno corridor. Indeed, the Authority itself admits on page 3.1-2 that the wye influences the impacts of the north-south section. The wye also decides travel time and is an important factor in the purpose and need and decision making.

- *Passim*. The Draft EIR/EIS reports the environmental impacts of the Ave 21 and Ave 24 wyes and north-south section combinations together. As a result, it is nearly impossible for the public – and the Authority Board – to tease out the environmental impacts related to the north-south sections. The Authority cannot select the north-south alignment for this section based on the incomplete information in this Draft EIR/EIS. The Authority cannot make a decision on the north-south alignment without fully analyzing and disclosing the impacts of all the wye options, including the SR-152 wye. The Authority must analyze the environmental impacts of the SR-152 wye, add that information to this Draft EIR/EIS, and recirculate this document so that all of the impacts of the Project

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780-4

780-5

will be fully disclosed to the public and the decision makers will have all the necessary information needed to make an informed decision with respect to this section of the HSR system.

C. The Draft EIR/EIS Is Deficient Because It Defers the Environmental Analysis and Mitigation Related to Key Elements of the Project.

An analysis of environmental impacts that can be feasibly evaluated should not be deferred to later. *See, e.g., Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*, 40 Cal.4th 412 (2007) (EIR for large community plan did not adequately investigate impacts of supplying water to future stages of development); *Stanislaus Natural Heritage Project v. County of Stanislaus*, 48 Cal.App.4th 1428 (EIR for proposed multistage development project that contained no analysis of water supply impacts of later phases, and deferred analysis to later EIRs, held to be inadequate).

Similarly, it is generally inappropriate for a lead agency to defer formulation of a mitigation measure to the future. 14 Cal. Code Regs. § 15126.4(a)(1)(B). For example, mitigation measures calling for a mitigation plan to be devised based on future studies are legally inadequate if they do not describe the nature of the actions expected to be incorporated in the plan. *See San Joaquin Raptor Rescue Ctr. v. County of Merced*, 149 Cal.App.4th 645 (2007) (rejected mitigation measure calling for future surveys for special status species and development of undefined habitat management plan in response to surveys); *Endangered Habitats League v. County of Orange*, 131 Cal.App.4th 777 (2005) (rejecting mitigation measure requiring submission of acoustical analysis and approval of mitigation measures recommended by analysis because no mitigation criteria or potential mitigation measures were identified).

The Draft EIR/EIS improperly defers the environmental analysis and mitigation related to key elements of the Project, and therefore violates the principles identified above. The Authority may not wait until after the Draft EIR/EIS to evaluate the Project's impact or to develop mitigation related to any already-identified impacts from the Project. Those efforts must be done now and included in the Draft EIR/EIS. Below are examples of where the Draft EIR/EIS falls far short of satisfying this requirement.

- Page 2-98. The Draft EIR/EIS describes future staging areas, the locations and sizes of which currently are not identified in the Draft EIR/EIS. Given that this is a project-level analysis, the Draft EIR/EIS should indicate clearly how many staging areas will be required for the total length of the Merced to Bakersfield section, the length of time the staging areas would be needed, and in what condition they would be returned to owners. The Draft EIR/EIS fails to provide any of that information. It also fails to describe from where the dirt to construct the berms would be obtained.

780-5

- Page 2-98. The Draft EIR/EIS states that preconstruction activities will require temporary batch plants to produce PCC or asphaltic concrete. According to the Draft EIR/EIS, the contractor will be responsible for reducing air emissions, mitigating noise impacts, and reducing the potential for discharge of pollutants into storm drains or watercourses from the use of equipment, materials, and waste products. The Draft EIR/EIS also indicates that the Authority will do further studies as necessary to develop traffic control plans and conduct cultural resource investigations and historic property surveys.[2] All of this is classic deferred analysis. These project components should be fully identified in the Draft EIR/EIS. If because of the preliminary nature of the Project design these details about the Project cannot be identified at this time, then the Draft EIR/EIS should have identified clear performance standards as to how these future activities will be completed and how environmental impacts will be avoided or minimized. No such performance standards have been provided. As written, the public has no assurance that these components of the Project will not result in substantial additional environmental impacts that are not disclosed nor mitigated by the measures included in the Draft EIS/EIR.

- Page 3.1-2 states that even though the Authority and FRA will not make a decision on the wye as part of this Draft EIR/EIS, it analyzes the impacts of the Ave 21 and Ave 24 wye to show how the wyes would influence impacts associated with the north-south alignment. If that is the case, as noted in our comments above, the Authority cannot approve a north-south alignment without fully evaluating the SR 152 wye because that wye will also influence the impacts of the north-south alignment and the Authority and FRA have committed to evaluating that wye. As such, in addition to the piecemealing issue identified above, waiting until later to evaluate the SR 152 wye is an improper deferral of environmental analysis.

- The Draft EIR/EIS is replete with numerous examples of deferred mitigation. For example, ***Bio-MM#5*** requires the preparation of a biological resources management plan as mitigation. However, there are no details as to what will be included in the management plan, which is completely inadequate as mitigation under CEQA and NEPA. The Draft EIR/EIS provides no information regarding the requirements of the plan. How would any of the biological resources be managed? This question cannot be answered from the information provided in the mitigation measure. This is textbook deferral of mitigation. Similarly, ***Bio-MM#6*** requires the preparation of a restoration and revegetation plan, presumably for upland vegetation impacts, but there is a complete lack of details

[2] The reference to future cultural resource investigations and historic property surveys is particularly disturbing because the Project must complete the Section 106 compliance process pursuant to the National Historic Preservation Act before the Project is approved. Section 106 does not allow such analysis to be deferred.

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Response to Submission 780 (Scott B. Birkey, Preserve Our Heritage (Attny for), Cox Castle & Nicholson LLP, October 13, 2011) - Continued

780-4

The comment suggests the project and the EIR/EIS have been piecemealed in violation of CEQA and NEPA because the determination on the east/west connection and wye will be made as part of the San Jose to Merced EIR/EIS process. We disagree with the comment. The Merced to Fresno high-speed train project includes the north/south alignment, stations, the heavy maintenance facility, and the east/west connection to the San Jose to Merced section of the high-speed train system with a wye. These project components are described in Chapter 2 and the alternatives to them analyzed in Chapter 3. The EIR/EIS analyzes east/west connections along Avenue 21 and Avenue 24 and related wye alternatives for the UPRR/SR 99 alignment, the BNSF alignment, and the hybrid alignment. The east/west connection and wye component of the project has not been piecemealed from the environmental analysis. Chapter 2 does explain, however, that the lead agencies will stage their decision making to allow for additional study of a third east/west connection and wye along SR 152 prior to the east/west connection and wye decision being made. This approach provides for an expanded environmental analysis and consideration of alternatives. In addition, because the three north/south alignment alternatives are compatible with each of the three east/west connection and wyes (Avenue 21, Avenue 24, and SR 152), the decision on the north/south alignment does not improperly constrain or pre-determine the decision on the east/west connection and wye. Also see MF-Response_GENERAL-16 and MF-Response-GENERAL-22.

780-5

The comment generally claims the Draft EIR/EIS inappropriately defers environmental analysis and development of mitigation measures for key project elements. As described in the CEQA Guidelines, an EIR must disclose a project's significant effects on the environment and must describe feasible mitigation measures which could minimize a project's significant adverse impacts. NEPA regulations require an EIS to discuss means to mitigation a project's adverse environmental effects. Neither NEPA nor CEQA allow for a lead agency to defer development of mitigation measures until after project approval. Where, however, an EIR/EIS identifies multiple mitigation measures to mitigate an impact, but additional planning or information is needed to determine which mitigation measures are appropriate for implementation, the EIR/EIS can identify that the lead agency will meet a specific performance standard through one or more of the available mitigation measures. The details of exactly how the

780-5

performance standard will be achieved under the identified measures can be deferred pending completion of further study and planning. As explained in the Sacramento Old City Association v. City Council CEQA case, "for [the] kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process ..., the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval. Where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated." (*Sacramento Old City Association v. City Council* (1991) 229 Cal.App.3d 1011, 1028–1029 internal citations ommited.)

With regard to staging areas, the location of these features have not been determined at this time. As a design-build project, the location of staging areas will be left to the contractor. Staging areas are expected to be located within the project area surveyed and analyzed in the EIR/EIS and will be subject to the applicable project design features and mitigation measures described in the EIR/EIS. Dirt to construct the berms would be obtained off-site and brought to the construction site. The truck trips for delivery have been considered in the transportation analysis.

Similarly, the location of concrete batch plants are not known at this time. Performance standards for these plants are included in the air quality and noise mitigations.

If it is determined by the Authority and its contractor, during Final Design, that there will be project elements to be constructed outside of the Area of Potential Effect (APE) that was studied and approved as part of the EIR/EIS, then additional studies will be required and must follow the guidelines and terms specified in the project's Memorandum of Agreement (MOA). This document lays out a clear process for the steps necessary to ensure that cultural resources are taken into consideration within any new project impact areas. The Authority and FRA also disagree that certain mitigation measures constitute deferred mitigation without performance standards, see MF-Response-GENERAL-1. Numerous of the mitigation measures have been refined in the Final EIR/EIS to clarify the applicable performance standards (including published standards), provide additional detail (e.g., the required contents of traffic and construction management plans), identify the agency with responsibility for performance, and specify methods of implementation. Note that the Section 404 permit being obtained from the USACE (in conjunction with issuance of the ROD by the FRA) includes detailed requirements for biological and habitat mitigation, including a detailed implementation plan. In addition,

Case No. S222472

IN THE SUPREME COURT OF CALIFORNIA

Friends of the Eel River, et al. v. North Coast Railroad Auth., et al.

Supporting Evidence for Farm Bureau Amicus Brief

Exhibit F

CALIFORNIA
HIGH-SPEED RAIL
AUTHORITY

Resolution # HSRA 12-19

Certification of the Merced to Fresno Section
Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS)
for Compliance with the California Environmental Quality Act (CEQA)

WHEREAS, pursuant to the California High-Speed Rail Act, Public Utilities Code section 185000, et seq., the California High-Speed Rail Authority ("Authority") was created in 1996 to direct the development and implementation of intercity high-speed rail service that is fully integrated with the state's existing intercity rail and bus network.

WHEREAS, the Authority has chosen to use a tiered environmental review and decision making process to identify preferred alignments and station locations for the high-speed train system;

WHEREAS, the Authority and the Federal Railroad Administration (FRA) completed a first-tier, program EIR/EIS for the statewide high-speed train (HST) system in 2005 and approved general alignments and station locations for further study in second-tier, project-level environmental documents, but directed staff to prepare a separate first-tier, program EIR/EIS for the Bay Area to Central Valley route;

WHEREAS, the Authority and FRA completed a first-tier, Bay Area to Central Valley HST Final Program EIR/EIS in 2008, and the Authority completed a Partially Revised Final Program EIR in 2012;

WHEREAS, the Authority has now completed a second-tier Merced to Fresno Section Final Project EIR/EIS;

WHEREAS, prior to taking action, the Authority has reviewed and considered among other items:

(1) the Merced to Fresno Section Final Project EIR/EIS, including the entire body of public comment submitted to the Authority as reflected in Volume 4;

(2) the CEQA Addendum to the Merced to Fresno Section Final Project EIR/EIS;

(3) the Errata to the Merced to Fresno Section Final Project EIR/EIS; and

(4) the entire record before the Authority.

WHEREAS, all legal prerequisites to the adoption of this Resolution have been fulfilled;

NOW, THEREFORE, IT IS RESOLVED by the California High-Speed Authority as follows:

The Authority hereby certifies that:

a) the Merced to Fresno Section Final Project EIR/EIS has been completed in compliance with CEQA;

b) the Merced to Fresno Section Final Project EIR/EIS has been presented to the Authority board and the Board has reviewed and considered the information contained in the Merced to Fresno Section Final Project EIR/EIS; and

c) the Merced to Fresno Section Final Project EIR/EIS reflects the Authority's independent judgment and analysis.

CERTIFICATION

The undersigned Chief Executive Officer, or his designee, of the California High-Speed Rail Authority does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the California High-Speed Rail Authority held on May 3, 2012.

Dated: 05/03/12

Thomas Fellenz
Acting Chief Executive Officer

Vote: 5-0
Date: 05/03/12

o0O0o

Case No. S222472

IN THE SUPREME COURT OF CALIFORNIA

Friends of the Eel River, et al. v. North Coast Railroad Auth., et al.

Supporting Evidence for Farm Bureau Amicus Brief

Exhibit G

CALIFORNIA
HIGH-SPEED RAIL
AUTHORITY

Resolution # HSRA 12-20

Merced to Fresno Section High-Speed Train Project:

Adoption of CEQA Findings of Fact and Statement of Overriding Considerations

Adoption of Mitigation Monitoring and Reporting Program

Approval of the Hybrid Alternative North/South Alignment, Merced Downtown Station Location, and Downtown Fresno Station at the Mariposa Street Location

WHEREAS, pursuant to the California High-Speed Rail Act, Public Utilities Code section 185000, et seq., the California High-Speed Rail Authority ("Authority") was created in 1996 to direct the development and implementation of intercity high-speed rail service that is fully integrated with the state's existing intercity rail and bus network.

WHEREAS, the Authority has chosen to use a tiered environmental review and decision making process to identify preferred alignments and station locations for the high-speed train system;

WHEREAS, the Authority and the Federal Railroad Administration (FRA) completed a first-tier, program EIR/EIS for the statewide high-speed train (HST) system in 2005 and approved general alignments and station locations for further study in second-tier, project-level environmental documents, but directed staff to prepare a separate first-tier, program EIR/EIS for the Bay Area to Central Valley route;

WHEREAS, the Authority and FRA completed a first-tier, Bay Area to Central Valley HST Final Program EIR/EIS in 2008, and the Authority completed a Partially Revised Final Program EIR in 2012;

WHEREAS, the Authority has now completed a second-tier Merced to Fresno Section Final Project EIR/EIS;

WHEREAS, the Authority has certified the Merced to Fresno Section Final Project EIR/EIS through Resolution 12-19;

WHEREAS, all legal prerequisites to the adoption of this Resolution have been fulfilled;

NOW, THEREFORE, IT IS RESOLVED by the California High-Speed Authority takes the following actions:

Section 1. Adoption of CEQA Findings of Fact. As the decision-making body for the High-Speed Train system, the Authority has reviewed and considered the information contained in the Merced to Fresno Final Project EIR/EIS and in the CEQA Findings of Fact attached hereto as Exhibit "A" as modified by Exhibit "A1" and supporting documentation. The Authority determines that the CEQA Finding of Fact contains a complete and accurate reporting of the environmental impacts and mitigation strategies associated with the Hybrid Alternative North/South Alignment, the Downtown Merced Station Location, and the Downtown Fresno Station at the Mariposa Street Location. The Authority further finds that the CEQA Findings of Fact have been completed in compliance with CEQA and the State CEQA Guidelines. The Authority hereby approves and adopts the CEQA Findings of Fact attached hereto as Exhibit "A" as modified by Exhibit A1.

Section 2. Adoption of Statement of Overriding Considerations. The Authority hereby finds that the Statement of Overriding Considerations was completed in accordance with Public Resources Code section 21081 and State CEQA Guidelines Section 15093, subdivision (a), which states that CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. The Statement of Overriding Considerations is included in the Findings of Fact attached hereto as Exhibit "A" and sets forth those significant effects on the environment that are found to be unavoidable, but are acceptable due to the overriding concerns and benefits expected to result from implementing the Hybrid Alternative North/South Alignment, the Downtown Merced Station Location, and the Downtown Fresno Station at the Mariposa Street Location as part of the statewide HST System. The Authority hereby approves and adopts the Statement of Overriding Considerations included in the Findings of Fact attached hereto as Exhibit "A".

Section 3. Adoption of Mitigation Monitoring and Reporting Program. Staff is directed and authorized to revise Exhibit B to be consistent with Exhibit A1. Pursuant to Public Resources Code section 21081.6, and State CEQA Guidelines Section 15091, subdivision (d), the Authority hereby adopts the Mitigation Monitoring and Reporting Program attached hereto as Exhibit "B" as modified by Exhibit A1.

Section 4. Approval of the Hybrid Alternative North/South Alignment, the Downtown Merced Station Location, and the Downtown Fresno Station at the Mariposa Street Location as part of the statewide HST System. Based on and in consideration of all of the foregoing, the Authority hereby approves the Hybrid Alternative North/South Alignment (excepting all portions of the Merced Fresno project depicted within the rectangular box shown in Figure 2 in Exhibit A), the Downtown Merced Station Location, and the Downtown Fresno Station at the Mariposa Street Location, along with, and as conditioned by, the design practices and mitigation measures, which are described in the Findings of Fact attached hereto as Exhibit A and modified by Exhibit A1 and reflected in the Mitigation Monitoring and Reporting Program attached hereto as Exhibit B, and which shall be incorporated into and be a part of the approved project.

Section 5. Advance Funding for Construction Emissions Offsets. Regarding construction emissions offsets for criteria pollutants, the Authority shall fund upfront, from all available sources, offsets for the entire Merced Fresno segment, to the extent legally permissible and compliance with EPA governing rules.

Section 6. Next Steps. (A) The Authority hereby directs staff to file a Notice of Determination with the State Clearinghouse and to take any other necessary steps to implement the project; and (B) Staff shall carry forward for further study and analysis all high-speed rail elements in the wye area (i.e., the box in quotation shown in Figure 2 of the Findings). Such analysis shall determine whether any of the current wye alternatives should be changed, augmented, or eliminated or additional wye alternatives considered. Staff shall return to the Board with recommendations, including coverage, in further CEQA documentation by July 31st, 2012.

CERTIFICATION

The undersigned Chief Executive Officer, or his designee, of the California High-Speed Rail Authority does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the California High-Speed Rail Authority held on May 3, 2012.

Dated: 05/03/2012

Thomas Fellenz
Acting Chief Executive Officer

Vote: 5-0
Date: 5/03/12

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CALIFORNIA HIGH-SPEED TRAIN

Project Environmental Impact Report / Environmental Impact Statement

CEQA Findings of Fact and Statement of Overriding Considerations

Merced to Fresno Section

May 2012

CALIFORNIA
High-Speed Rail Authority

U.S. Department of Transportation
Federal Railroad Administration

A000008

Table of Contents

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1.0 INTRODUCTION

These CEQA Findings of Fact and Statement of Overriding Considerations are intended to fulfill the responsibilities of the California High-Speed Rail Authority (Authority) under the California Environmental Quality Act (CEQA) for its approval of the Hybrid Alternative, including the downtown Merced station location, and the Downtown Fresno Mariposa Street station location within the Merced to Fresno Section of the California High-Speed Train (HST) System. CEQA provides that no public agency shall approve a project or program as proposed, if it would result in significant environmental effects as identified in an EIR, unless it adopts and incorporates feasible mitigation to avoid and reduce such effects and adopt appropriate findings. Section 21081 of the Public Resources Code provides as follows:

Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

> (a) The public agency makes one or more of the following findings with respect to each significant effect:
>
> > (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
> >
> > (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
> >
> > (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the environmental impact report.
>
> (b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision
> (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

These findings include a description of the Hybrid Alternative (preferred alternative) for the Merced to Fresno HST section, findings concerning potentially significant environmental impacts and mitigation to address such impacts, a discussion of cumulative and growth-inducing impacts, and a statement of overriding considerations.

The custodian of the documents and other materials that constitute the record of proceedings upon which these CEQA findings of fact and statement of overriding considerations are based is the California High-Speed Rail Authority, 770 L Street, Suite 800, Sacramento, CA 95814, (916) 324-1541.

2.0 PROJECT DESCRIPTION

2.1 Background – Description of Statewide High-Speed Train System

The Authority has responsibility for planning, designing, constructing, and operating the California HST system. Its mandate is to develop a high-speed rail system coordinating with the state's existing transportation network, which includes intercity rail and bus lines, regional commuter rail lines, urban rail and bus transit lines, highways, and airports.

The California HST system will provide intercity, high-speed service on more than 800 miles of track throughout California, connecting the major population centers of Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. The Authority and FRA prepared two first-tier environmental impact report/environmental impact statement (EIR/EIS) documents to select preferred alignments and station locations to advance for more detailed study in second-tier EIR/EISs. Figure 1 shows the statewide HST system resulting from the first-tier EIR/EISs and first-tier decisions. The HST system will use state-of-the-art, electrically powered, high-speed, steel-wheel-on-steel-rail technology, including contemporary safety, signaling, and automated train-control systems, with trains capable of operating up to 220 miles per hour (mph) over a fully grade-separated, dedicated guideway alignment.

The Authority plans two phases: Phase 1 (built in stages dependent on funding availability) will connect San Francisco to Los Angeles/Anaheim via the Pacheco Pass and the Central Valley with a mandated express travel time of 2 hours and 40 minutes or less and Phase 2 will connect the Central Valley to the state's capital, Sacramento, and will extend the system from Los Angeles to San Diego. The Statewide HST system as approved through first-tier decisions has been divided into nine individual sections for more detailed, second-tier analysis. The Merced to Fresno Section is one of the nine individual sections undergoing second-tier environmental review. The HST System would operate more than 200 trains per day after full buildout.

2.1.1 General Description of HST System Infrastructure in the Merced to Fresno Section

Chapter 2 of the Merced to Fresno Section Final Project EIR/EIS describes the general components of HST System infrastructure that are part of, and included in, this Merced to Fresno Section.

System Design Performance, Safety, and Security: The HST would be a fully grade-separated and access-controlled guideway with intrusion detection and monitoring systems. All aspects of the HST system will conform to federal requirements regarding transportation security and safety.

Train Vehicles: Train vehicles, although not selected as part of this project, are anticipated to be an electric multiple unit (EMU) concept with a computer-based automatic train control system.

Stations: Stations include station platforms and trackway, arrival and departure facilities, and parking. The Merced to Fresno section has two stations, one in the City of Merced and one in the City of Fresno.

Track: The HST track would travel from Merced to Fresno, mostly along existing transportation corridors, as depicted in Chapter 2. The track, or guideway, includes multiple different vertical profiles, as described in Chapter 2.

Grade Separations: The HST would be fully grade separated from all crossing traffic through roadway overcrossings or undercrossings, or through elevation of the HST.

Figure 1
California HST System Initial Study Corridors

Railroad Wye: The Merced to Fresno Section includes a railroad wye, which allows for a connection between the east/west alignment of the San Jose to Merced Section and the north/south alignment of the Merced to Fresno Section, as described generally in chapter 2, section 2.2.6.

Traction Power Distribution: The project includes a traction power distribution system allowing trains to draw electric power form a catenary system fed through an overhead contact system. The catenary system consists of a series of mast poles with contact wires suspended from the mast poles. The catenary system will be connected to traction power substations spaced at approximately 30-mile intervals. Switching and paralleling stations will be required at approximately 15-mile intervals, at the midpoint between the traction power substations. Signaling and train control elements include small huts within the right of way that house signal relay and microprocessor components, and related equipment.

Track Structure: HST track will be constructed with ballast and ties, with continuous welded rail, for all at-grade sections, and slab construction will be used for elevated structures exceeding 1,000 feet in length where operating speeds are planned for 220 mph. The curves in the wye section are also assumed to be on structure.

Maintenance Facilities: A maintenance of way facility will provide for equipment, materials, and replacement parts storage, and support quarters and staging areas for HST System maintenance personnel. A heavy vehicle maintenance and layover facility is also under consideration for the Merced to Fresno section, but is not proposed for final approval at this time.

Operations Control Center: An operations control center would be part of the heavy maintenance facility.

2.1.2 Description of Hybrid Alternative, Downtown Merced Station Location, and Downtown Fresno Mariposa Street Station Location

Chapter 7 of the Merced to Fresno Section Final Project EIR/EIS identifies the Hybrid Alternative as the preferred north/south alignment for the Merced to Fresno Section, as shown in Figure 2. The Hybrid Alternative follows and is adjacent to the Union Pacific Railroad alignment from Merced to approximately Buchanan Hollow Road and from north of the San Joaquin River to Fresno. The Hybrid Alternative follows and is adjacent to the Burlington Northern Santa Fe Railroad alignment from north of the San Joaquin River to approximately Madera Acres. As shown on Figure 2, the Hybrid Alternative varies north of Madera Acres at approximately Avenue 19 ½ depending on the eventual selection of the east/west connection and wye. For purposes of these findings of fact, all alternatives within the area denoted with the rectangle on Figure 2 are selected to be carried forward for further study and consideration as part of the San Jose to Merced Draft Project EIR/EIS. These alternatives carried forward include the Avenue 21, Avenue 24, and SR 152 east/west connections and wyes. A final decision on the alignment within this area is anticipated to occur at the conclusion of the San Jose to Merced EIR/EIS process.

Chapter 7 of the Merced to Fresno Section Final Project EIR/EIS also describes the downtown Merced station location, between Martin Luther King Jr. Way and G Street, and the downtown Fresno Mariposa Street station location as preferred, as shown in Figures 3 and 4.

The Authority is deferring a decision on a Heavy Maintenance Facility site at this time. The impacts of a Heavy Maintenance Facility is therefore not addressed further in these Findings.

2.1.3 Project Design Features

The Merced to Fresno HST incorporates many design features and Best Management Practices (BMPs) that are identified in the Final Project EIR/EIS and included in detail in the Technical Reports. As a result of applying these design features and BMPs, the project will avoid significant impacts in several resource areas, including EMI/EMF, hydrology and water resources, geology and soils and hazardous materials and wastes. In addition, the regulatory requirements for many activities provide additional assurance that significant impacts to the environment will not occur.

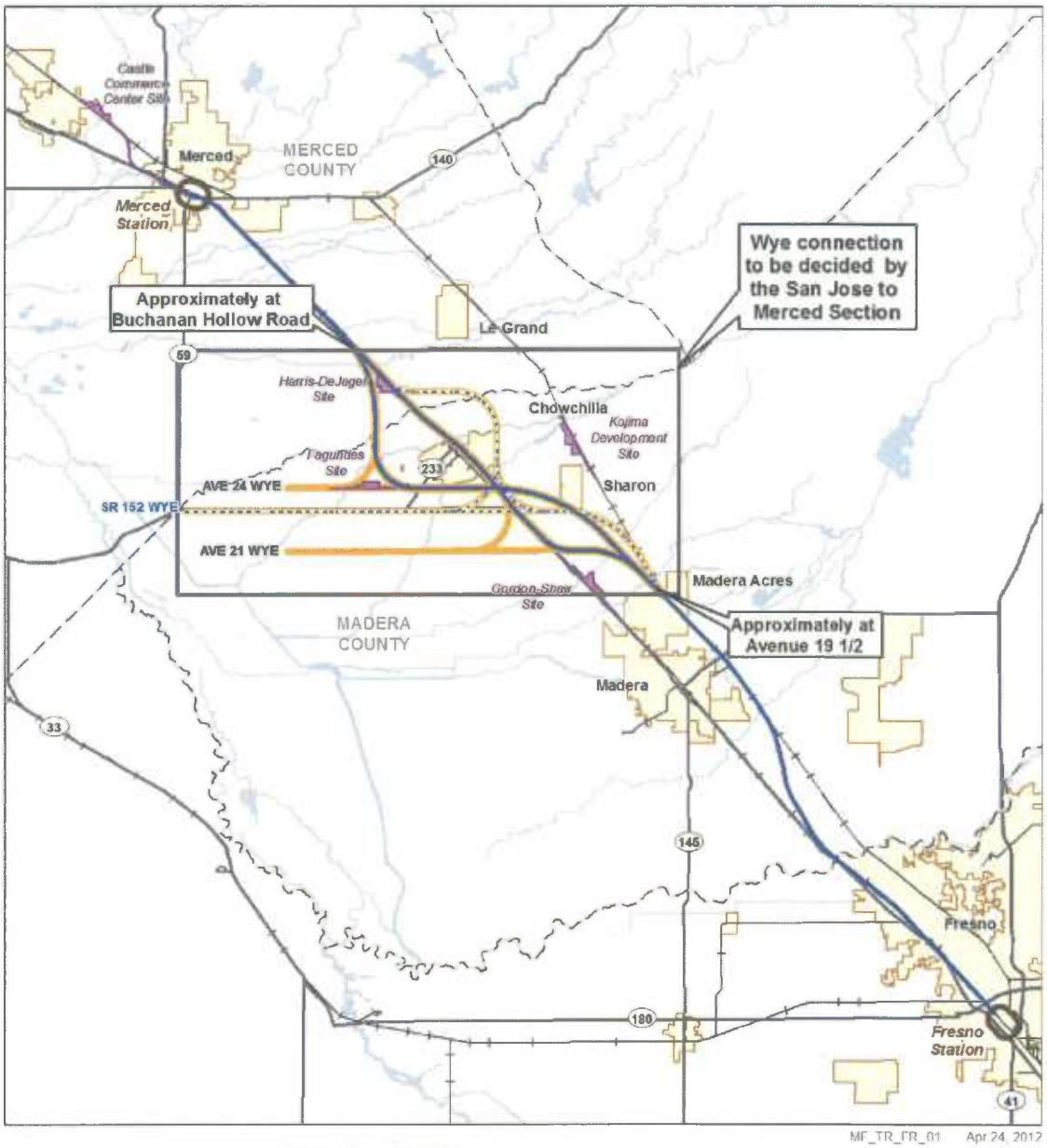


Figure 2
Preferred Alternative – Hybrid

Case No. S222472

IN THE SUPREME COURT OF CALIFORNIA

Friends of the Eel River, et al. v. North Coast Railroad Auth., et al.

Supporting Evidence for Farm Bureau Amicus Brief

Exhibit H

Certification of the Administrative Record

Project Final Environmental Impact Report (EIR)

Merced to Fresno Section

California High-Speed Train

Public Resources Code, §21167.6

This record of proceedings (Record) relates to the California High-Speed Rail Authority's (Authority) certification, under the California Environmental Quality Act (CEQA), of the Project Final Environmental Impact Report (EIR) for the Merced to Fresno Section of the California High-Speed Train. The Authority's certification occurred on May 3, 2012.

This Record has been prepared pursuant to Public Resources Code §21167.6 in light of litigation filed in Sacramento Superior Court challenging the Authority's May 3, 2012, certification of the EIR. The litigation was filed in three cases with the following case numbers: 34-2012-80001165 (filed June 1, 2012), 34-2012-80001166 (filed June 1, 2012) and 34-2012-80001168 (filed June 4, 2012).

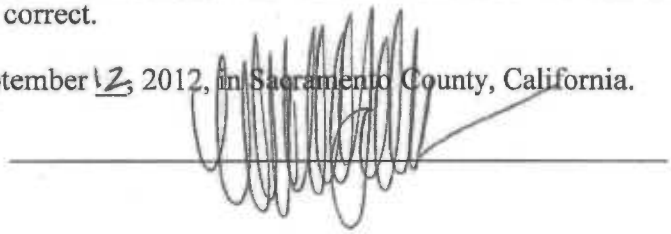
My title is Interim Deputy Director, Environmental Planning, for the Authority. I am personally familiar with the EIR and my responsibilities included oversight of its finalization and certification. I am familiar with the documents that comprise this Record. I certify that the documents contained in this Record are true and correct copies of the documents on file with the Authority related to preparation of the EIR. I further certify that this Record of proceedings is accurate and complete to the best of my knowledge.

A Summary Index of the Record is attached hereto as Attachment A. A "Guide to the Record of Proceedings for the California High-Speed Rail Authority's Project Final Environmental Impact Report for the Merced to Fresno Section of the California High-Speed Train" is attached hereto as Attachment B.

This Certification does not include Record Section L and Record Subsection K.2, as listed in the Summary Index at Attachment A. As to these, separate supplemental certification will occur.

I swear under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed September 12, 2012, in Sacramento County, California.



ATTACHMENT A

County of Madera, et al., v. California High-Speed Rail Authority
Sacramento Superior Court No. 34-2012-80001165

City of Chowchilla v. California High-Speed Rail Authority
Sacramento Superior Court No. 34-2012-80001166

Timeless Investments, Inc. v. California High-Speed Rail Authority
Sacramento Superior Court No. 34-2012-80001168

Summary Index of Record of Proceedings (September 12, 2012)				
Record Section	**Topic**		**Bates Range**	**DVD #**
A (90.00)	Final Decision Documents		A000001-A000164	1
B (90.01)	Final EIR/EIS		B000001-B003659 B003660-B008380 B008381-B014564 October 2011 Video	2 3 4 28
C (90.02)	Draft EIR/EIS		C000001-C003616 C003617-C008043	5 6
D (90.03)	Development of Alternatives		D000001-D003481	7
E (90.04)	Project Scoping		E000001-E001267	8
F (90.05)	Reference Materials Cited, Discussed, or Relied Upon in Draft and Final EIR/EIS			
	F.1	Materials Cited in Draft EIR/EIS	F000001-F015679 F015680-F026725 F026726-F037634 F037635-F059258 F059259-F075307	9 10 11 12 13
	F.2	Other Materials or Sources Discussed or Relied Upon for Draft EIR/EIS	F075308-F086378	14
	F.3	Additional Materials Cited in Final EIR/EIS not included in F.1	F086379-F121566	15
	F.4	Other Materials or Sources Discussed or Relied Upon for Final EIR/EIS	F121567-F126385	16
	F.5	Program EIR/EIS Documentation	F121386-F145653	17
	F.6	Authority Business Plan Documentation	F145654-F147567	18
G (90.06)	Authority Board Meeting Materials		G000001-G001882	19
H (90.07)	Other Correspondence		H000001-H001037	20
I (90.09)	Records of Agency Consultation		I000001-I013662	21
J (90.10)	Other Materials		J000001-J007148 J007149-J020068 J020069-J025948	22 23 24
K	Electronic Mail			
	K.1	Authority, Program Management Team and other Electronic Mail (certain non-standard attachments on separate disc 27)	K000001-K005590 K005591-K012879 Native Files	25 26 27
	K.2	Additional Program Management Team Electronic Mail	K012880-_____	TBD
L	References Cited in Responses to Comments (Final EIR/EIS Volume IV) not otherwise included in other Record Sections; and Certain Website References cited in Comment Letters (per Sept. 5, 2012, agreement of the Parties to these three cases)		L000001 - _____	TBD

ATTACHMENT B

Guide to the Record of Proceedings for the California High-Speed Rail Authority's Project Final Environmental Impact Report for the Merced to Fresno Section of the California High-Speed Train

General Notes:

(1) *Summary and Detailed Index.* There is a summary index (one page) identifying the Record Sections A to L and the Bates numbering range for each Section. Each Section has its own detailed index, listing each document separately.

(2) *Individual Sections with More than One DVD.* Each DVD/CD in a Section contains the full detailed index for that Section. Some Sections, however, involve more than one DVD. Accordingly, a detailed index as viewed on a DVD may list a document not actually contained on that DVD. That document would be found on one of the other DVDs for that Section, according to the Bates number of the document – per the Bates ranges listed in the summary index for each DVD/CD.

(3) *Cross-References.* Cross-references were used where possible to avoid duplication: In many instances, an item listed in the detailed index is identified as being located elsewhere in the Record (*e.g.*, "Reference included in Section C of record"). These cross-references are utilized in order to avoid having multiple copies of the same document within the Record.

(4) *Availability of non-standard electronic file types.* In some instances, an item listed in the detailed index is identified as "File available upon request." A number of non-standard electronic file types are contained within the Record, for example Geographic Information System (GIS) spatial mapping files, other spatial data files known as 'shapefiles' containing data that can be 'layered' onto a map that bear the file extension '.kmz', and a variety of complex modeling files used to model air quality or traffic impacts, for example. These non-standard electronic file types form part of the Record, although they are not susceptible to conversion to searchable .PDF format. Such items are available upon request from counsel of record for the Authority.

(5) *Availability of certain industry standard manuals and guides.* The detailed index for Section F lists a few documents with the note "Available for review at Authority office." These are industry-standard manuals or guides from the American Society for Testing and Materials (ASTM), the American Railway Engineering and Maintenance-of-Way Association (AREMA) and the American Association of State Highway and Transportation Officials (AASHTO). These are part of the Record, but were not reproduced in the physically lodged Record. They are available for review at the Authority offices, 770 L Street, Suite 800, Sacramento CA. Counsel of record for the Authority can make arrangements for these to be viewed.

(6) *Confidential biological resource information.* Certain confidential and sensitive very site-specific biological resources information (*i.e.*, the precise location of an endangered plant species specimen) was redacted from documentation circulated for public review. Section F for these items includes the following note: "Please note source document or portions of the document are not provided for confidentiality purposes. Specific locations of endangered,

threatened or rare species are not provided to reduce the potential for the unauthorized taking, possession, sale, or transport of these species, as required by the federal and state Endangered Species Act." Material unredacted versions are included in the Record in Section J.

(7) *Confidential archeological/paleontological/cultural resource information.* For some documents in Section F, the detailed index includes a note "Please note source document or portions of the document are not provided for confidentiality purposes. In order to access paleontological and archaeological archives please contact the Authority to sign an agreement of confidentiality agreeing to keep site content and location information confidential by not disclosing it to unauthorized individuals or including it in publicly-distributed documents. (California Government Code Section 6254.10 exempts archaeological sites from the California Public Records Act requirement that public records be open to public inspection.)" Any item so noted forms part of this Record, but is provided in redacted form only, or is not provided at all, due to its confidentiality. The unredacted versions of these documents are part of the Record. Please contact counsel of record for the Authority to make arrangements to sign any applicable confidentiality agreements in order to view these materials. These materials may also be available for an in camera review by the Court should it become necessary.

Specific notes for References

(1) *Section F.* The list of references included as Chapter 10 of the Draft EIR/EIS was replicated in its entirety to form the index for Section F1 ("Materials Cited in Draft EIR/EIS") of the Record. The list of references included as Chapter 11 of the Final EIR/EIS was reviewed to identify which additional materials were included as references for the Final EIR/EIS that had not previously been included as references to the Draft EIR/EIS. Thus, the index for Section F3 ("Additional Materials Cited in Final EIR/EIS not included in F.1") includes only those materials not included in Section F1. Please also note that in order to ensure consistency between the lists of references appearing in the Draft and Final EIR/EIS and the Record indices, the exact text of the reference appearing in the Draft and Final EIR/EIS (including any typos) is replicated exactly in the Record indices.

(2) *Section K.* Section K consists of electronic mail. If a particular e-mail included an attachment, that attachment is included in most cases in the Index and Record as the next document following the "parent" e-mail itself. In some cases, the attachment is not included. Attachments that did not readily convert to .PDF format (*e.g.*, Excel files, .kmz files, audio files, video files, etc.) are included in the Record as a separate DVD listed on the summary index as "native files". Section K includes a placeholder for these files; the placeholder contains a reference Bates number which can be used to find the associated "native file" on the separate DVD.

(3) *Section L.* Section L of the AR index includes those reference materials cited in the text of Responses to Comments (Volume IV of the Final EIR/EIS) not included elsewhere in the Record. Section L also includes certain materials identified via website reference only in public comment letters contained within Volume IV of the Final EIR/EIS; the volume of these materials has been limited per September 5, 2012, agreement between the parties to this litigation. Section L is to be lodged at a date later than the rest of the Record, as a supplement.

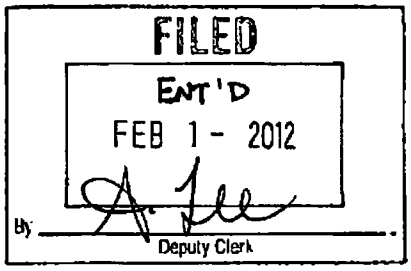
Case No. S222472

IN THE SUPREME COURT OF CALIFORNIA

Friends of the Eel River, et al. v. North Coast Railroad Auth., et al.

Supporting Evidence for Farm Bureau Amicus Brief

Exhibit I



IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

CITY OF PALO ALTO, a Municipal Corporation, COMMUNITY COALITION ON HIGH-SPEED RAIL, a California nonprofit corporation, MID-PENINSULA RESIDENTS FOR CIVIC SANITY, an unincorporated association, and PATRICIA LOUISE HOGAN-GIORNI, Petitioners and Plaintiffs v. CALIFORNIA HIGH SPEED RAIL AUTHORITY, a public entity, and DOES 1-20, Respondents and Defendants	No. 34-2010-80000679 ~~[proposed]~~ FINAL JUDGMENT GRANTING IN PART AND DENYING IN PART PETITIONERS' VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

This action came on regularly for hearing jointly with a hearing on objections to the supplemental writ return by Respondent CALIFORNIA HIGH-SPEED RAIL AUTHORITY in case No. 34-2008-80000022 on August 12, 2011 in Department 31 of the Superior Court, the Honorable Michael P. Kenny presiding. Counsel Stuart M. Flashman appeared on behalf of Petitioners and Plaintiffs TOWN OF ATHERTON, PLANNING AND CONSERVATION LEAGUE, CITY OF MENLO PARK, TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND and CALIFORNIA RAIL FOUNDATION in case number 34-2008-80000022 and on behalf of Petitioners and Plaintiffs CITY OF PALO ALTO, MID-PENINSULA RESIDENTS FOR CIVIC SANITY, AND PATRICIA LOUISE HOGAN-GIORNI in case number 34-2010-80000679. Counsel Gary A. Patton of the firm Wittwer & Parkin, LLP

appeared on behalf of Petitioner and Plaintiff COMMUNITY COALITION ON HIGH-SPEED RAIL in case number 34-2010-80000679. Respondent and Defendant CALIFORNIA HIGH SPEED RAIL AUTHORITY appeared by Deputy Attorneys General Danae J. Aitchison and Jessica Tucker-Mohl in both cases.

The Court having considered the papers submitted by the parties, the administrative record, supplemental administrative record, and supplemental administrative record addendum, all of which were admitted into evidence at the hearing without objection, and the arguments of the parties at hearing, issued its two Rulings on Submitted Matter in the above-referenced two matters on November 10, 2011.

Pursuant to the Court's Rulings on Submitted Matter and based upon the pleadings, evidence and argument submitted in this case, IT IS ORDERED, ADJUDGED AND DECREED that, for the reasons stated in the Court's Rulings on Submitted Matter, the Verified Petition for Peremptory Writ of Mandate and Complaint for Injunctive and Declaratory Relief is DENIED IN PART AND GRANTED IN PART, as follows:

1. The Petition is DENIED as to the Fifth Cause of Action.

2. The Petition is GRANTED as follows:

a) On the First Cause of Action, Petitioners and Plaintiffs CITY OF PALO ALTO, MID-PENINSULA RESIDENTS FOR CIVIC SANITY, PATRICIA LOUISE HOGAN-GIORNI, and COMMUNITY COALITION ON HIGH-SPEED RAIL shall have judgment against Respondent and Defendant CALIFORNIA HIGH-SPEED RAIL AUTHORITY. A Peremptory Writ of Mandate shall issue under seal of the Court, ordering Respondent and Defendant CALIFORNIA HIGH-SPEED RAIL AUTHORITY to rescind and set aside its determinations of September 2, 2010 certifying the Final Revised Program Environmental Impact Report for the Bay Area to Central Valley High-Speed Rail Project, and approving said Project. The writ shall further command Respondent to make and file a return within 60 days after issuance of the writ, setting forth what it has done to comply with the writ. The Court reserves jurisdiction in this action until there has been full compliance with the writ.

b) On the Second Cause of Action, Petitioners and Plaintiffs CITY OF PALO ALTO, MID-PENINSULA RESIDENTS FOR CIVIC SANITY, PATRICIA LOUISE HOGAN-GIORNI, and COMMUNITY COALITION ON HIGH-SPEED RAIL shall have judgment against Respondent and Defendant CALIFORNIA HIGH-SPEED RAIL AUTHORITY. A Peremptory Writ of Mandate shall issue under seal of the Court, ordering Respondent and Defendant CALIFORNIA HIGH-SPEED RAIL AUTHORITY to rescind and set aside its determinations of September 2, 2010 certifying the Final Revised Program Environmental Impact Report for the Bay Area to Central Valley High-Speed Rail Project, and approving said Project. The writ shall further command Respondent to make and file a return within 60 days after issuance of the writ, setting forth what it has done to comply with the writ. The Court reserves jurisdiction in this action until there has been full compliance with the writ.

c) On the Third Cause of Action, Petitioners and Plaintiffs CITY OF PALO ALTO, MID-PENINSULA RESIDENTS FOR CIVIC SANITY, PATRICIA LOUISE HOGAN-GIORNI, and COMMUNITY COALITION ON HIGH-SPEED RAIL shall have judgment against Respondent and Defendant CALIFORNIA HIGH-SPEED RAIL AUTHORITY. A Peremptory Writ of Mandate shall issue under seal of the Court, ordering Respondent and Defendant CALIFORNIA HIGH-SPEED RAIL AUTHORITY to rescind and set aside its determination of September 2, 2011 approving the Environmental Findings and Statement of Overriding Considerations for the Bay Area to Central Valley High-Speed Train Project. The writ shall further command Respondent to make and file a return within 60 days after issuance of the writ, setting forth what it has done to comply with the writ. The Court reserves jurisdiction in this action until there has been full compliance with the writ.

d) On the Fourth Cause of Action, Petitioners and Plaintiffs CITY OF PALO ALTO, MID-PENINSULA RESIDENTS FOR CIVIC SANITY, PATRICIA LOUISE HOGAN-GIORNI, and COMMUNITY COALITION ON HIGH-SPEED RAIL shall

have judgment against Respondent and Defendant CALIFORNIA HIGH-SPEED RAIL AUTHORITY. The Court hereby declares that:

a) The project approvals of September 2, 2010 for the Bay Area to Central Valley High-Speed Train Project failed to comply with the requirements of CEQA and the CEQA Guidelines;

b) The Final Revised Program Environmental Impact Report for said project failed to comply with the requirements of CEQA and the CEQA Guidelines with respect to the limited issues identified in the Court's Rulings on Submitted Matter;

c) The environmental findings and statement of overriding considerations issued on the above-same date by Respondent in support of its approvals for said Project failed to comply with the requirements of CEQA and the CEQA Guidelines with respect to the limited issues identified in the Court's Rulings on Submitted Matter.

3. The details of Respondent's lack of compliance as set forth above are laid out in the Court's Rulings on Submitted Matter, copies of which are attached to this Judgment as Exhibits A and B and are incorporated herein by this reference. The writ of mandate that shall issue pursuant to this judgment shall require that the defects identified in the Court's Rulings on Submitted Matter shall be corrected prior to Respondent's reconsideration of certification of the Program EIR and approval of the Project.

4. Pursuant to Public Resources Code §21168.9(c), nothing in this judgment or in the writ of mandate that shall issue pursuant to the judgment shall direct Respondent CALIFORNIA HIGH-SPEED RAIL AUTHORITY to exercise its discretion in any particular way.

5. Petitioners and Plaintiffs CITY OF PALO ALTO, MID-PENINSULA RESIDENTS FOR CIVIC SANITY, PATRICIA LOUISE HOGAN-GIORNI, and COMMUNITY COALITION ON HIGH-SPEED RAIL, as the prevailing parties, shall recover their costs of suit against Respondent and Defendant CALIFORNIA HIGH-SPEED RAIL AUTHORITY in the amount of $_____.

6. The right of Petitioners and Plaintiffs CITY OF PALO ALTO, MID-PENINSULA RESIDENTS FOR CIVIC SANITY, PATRICIA LOUISE HOGAN-GIORNI, and COMMUNITY COALITION ON HIGH-SPEED RAIL to recover their attorneys' fees from Respondent and Defendant CALIFORNIA HIGH-SPEED RAIL AUTHORITY under Code of Civil 1021.5 is hereby reserved for later determination in accordance with California Rule of Court 3.1702.

IT IS SO ORDERED.

Date: 2/1/12

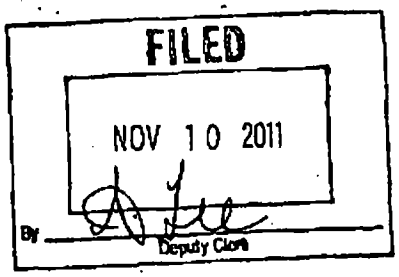
Michael P. Kenny
Judge of the Superior Court

APPROVED

Date: 1/6/12

Danae J. Aitchison
Deputy Attorney General

EXHIBIT A



SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

TOWN OF ATHERTON, a Municipal Corporation, CITY OF MENLO PARK, a Municipal Corporation, CITY OF PALO ALTO, a California Charter City and Municipal Corporation, PLANNING AND CONSERVATION LEAGUE, a California nonprofit corporation, TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND, a California nonprofit corporation, CALIFORNIA RAIL FOUNDATION, a California nonprofit corporation, COMMUNITY COALITION ON HIGH-SPEED RAIL, a California nonprofit corporation, MIDPENINSULA RESIDENTS FOR CIVIC SANITY, an unincorporated association, and PATRICIA LOUISE HOGAN-GIORNI,

Petitioners and Plaintiffs,

v.

CALIFORNIA HIGH SPEED RAIL AUTHORITY, a public entity, and DOES 1-20,

Respondents and Defendants.

Case No. 34-2010-80000679-CU-WM-GDS

[Coordinated with Case No. 34-2008-80000022-CU-WM-GDS]

RULING ON SUBMITTED MATTER: ORDER GRANTING IN PART AND DENYING IN PART PETITIONERS' VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

On October 4, 2010, Petitioners filed a Verified Petition for Peremptory Writ of Mandate and Complaint for Injunctive and Declaratory Relief ("Petition") challenging Respondent

California High Speed Rail Authority's certification of a Revised Final Programmatic Environmental Impact Report ("Revised Final Program EIR") pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code §§ 21000 *et seq.* The parties appeared before the Court on August 12, 2011, for oral argument,[1] after which the Court took the matter under submission.[2] The Court, having heard oral argument, read and considered the written argument of all parties, and read and considered the documents and pleadings in the above-entitled action, now rules on the Petition as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND[3]

A. The Project.

> In November 2005, following a programmatic environmental review process, [Respondent] and the [Federal Railroad Administration or "FRA"] approved the [High-Speed Train or "HST"] system program for intercity travel in California . . . . The HST system is about 800 miles long, with electric propulsion and steel-wheel-on-steel-rail trains capable of maximum operating speeds of 220 miles per hour (mph) . . . on a mostly dedicated system of fully grade-separated, access-controlled steel tracks and with state-of-the-art safety, signaling, communication, and automated train control systems. As part of the November 2005 decision, [Respondent] and the FRA selected, for further project-level study and implementation planning, a series of alignments and station locations for the HST system.
>
> For the section of the HST system connecting the Bay Area and the Central Valley, [Respondent] directed staff to prepare a separate program EIR to identify a preferred alignment within the broad corridor between and including the Altamont Pass and the Pacheco Pass.

(Supplemental Administrative Record ("SAR") at 11.)

"[Respondent] and the FRA circulated a Draft Bay Area to Central Valley HST Program EIR/EIS ["DPEIR"] in July 2007." (*Ibid.*) "In May 2008, [Respondent] and the FRA circulated a Final Program EIR/EIS [FPEIR"] . . . ." (*Ibid.*) According to Respondent, the Final Program EIR "involves the fundamental choice between Altamont Pass, Pacheco Pass, or both passes, but not

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[1] During oral argument, Respondent moved to enter two exhibits into evidence, which requests were unopposed and granted by the Court. Exhibit 1 consists of 10 slide printouts related to "*Atherton I*." Exhibit 2 consists of 25 slide printouts related to "*Atherton II*."

[2] Upon completion of the parties' August 12, 2011 presentations, the Court vacated a second hearing date, originally reserved to provide the parties with additional time for oral argument if necessary.

[3] The Court reproduces the Factual Background outlined in its *Atherton I* Ruling on Submitted Matter, with minor revisions, in order to ensure a complete record of these proceedings.

specific locations or vertical profiles for the rail alignments." "The first-tier project is the general choice between the Bay Area and the Central Valley, including alignments and station location options to be studied further in second-tier environmental documents." "The Final Program EIR/EIS identified the Pacheco Pass Network Alternative Serving San Francisco via San Jose as the preferred alternative" connecting the Central Valley and Bay Area. (*Ibid.*) Respondent "approved the Pacheco Pass Network Alternative in July 2008 . . . ." (*Ibid.*)

B. "*Atherton I.*"

1. The Verified Petition for Peremptory Writ of Mandate.

On August 8, 2008, Petitioners Town of Atherton, Planning and Conservation League, City of Menlo Park, Transportation Solutions Defense and Education Fund, California Rail Foundation, and Bayrail Alliance filed a Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief challenging Respondent's certification of the FPEIR.[4] The *Atherton I* Petitioners alleged Respondent violated CEQA by certifying an EIR that contained an inadequate project description, failed to disclose and adequately analyze and mitigate the Project's significant environmental impacts, failed to include an adequate analysis of Project alternatives, failed to adequately respond to public comments, and failed to support its factual findings with substantial evidence. They also alleged Respondent violated CEQA by failing to recirculate the DPEIR in response to new information and changed circumstances.

2. The Final Judgment.

On August 26, 2009, the Court issued its Ruling on Submitted Matter granting in part and denying in part the *Atherton I* Petition. The Court concluded:

> [P]etitioners have met their burden of showing that the EIR contains an inadequate description of the project, that respondent's finding that mitigation strategies will reduce vibration impact to a less-than-significant level is not supported by substantial evidence, that as a result of the FEIR's inadequate description of the project its land use analysis was inadequate, and that respondent improperly failed to recirculate the FEIR upon receipt of Union Pacific's statement of its position regarding its right-of-way.

(Final Judgment, Exh. "A" at 21.)

[4] The 2008 action is referred to herein as "*Atherton I*" and the petitioners are referred to herein the "*Atherton I* Petitioners."

Specifically, with respect to the project description, the Court held "the description of the alignment of the HSR tracks between San Jose and Gilroy was inadequate even for a programmatic EIR" due to the FEIR's failure to address the necessity of acquiring additional right-of-way outside the Union Pacific right-of-way ("ROW") thereby "requiring the taking of property and displacement of residents and businesses." (*Id.*, Exh. "A" at 5.) "The lack of specificity in turn results in an inadequate discussion of the impacts of the Pacheco alignment alternative on surrounding businesses and residences which may be displaced, construction impacts on the Monterey Highway, and impacts on Union Pacific's use of its right-of-way and spurs and consequently its freight operation." (*Id.*, Exh. "A" at 6.)

The Court also concluded "that various drawings, maps and photographs within the administrative record strongly indicate" the alignment was dependent upon use of Union Pacific's ROW. "The record further indicates that if the Union Pacific right-of-way is not available, there may not be sufficient space for the right-of-way needed for the HST without either impacting the Monterey Highway or without the takings of additional amounts of residential and commercial property." "These are significant impacts which were sufficient to trigger the recirculation of the FPEIR. However, respondent failed to take such further action after it received Union Pacific's statement of its position." (*Id.*, Exh. "A" at 19-20.)

The Court held "that in light of [a] contradiction between the FPEIR and the CEQA Findings, the Authority's finding that the mitigation strategies will reduce the vibration impact to a less-than-significant level is not supported by substantial evidence."[5] (*Id.*, Exh. "A" at 14.)

The Writ issued by this Court commanded Respondent to:

> 1. Rescind and set aside your Resolution No. 08-01 certifying the Final Environmental Impact Report/Environmental Impact Study for the Bay Area to Central Valley High-Speed Train Project, approving the Pacheco

[5] With respect to vibration impacts, the FPEIR stated:

> Although mitigation measures will reduce vibration impact levels, at the programmatic level it is uncertain whether the reduced vibration levels will be below a significant impact. The type of vibration mitigation and expected effectiveness to reduce the vibration impacts of the HST Alignment Alternatives to a less-than-significant level will be determined as part of the second-tier project-level environmental analysis.

(*Id.*, Exh. "A" at 14.)

Pass Network Alternative Serving San Francisco and San Jose Termini, and approving preferred alignment alternatives and station location options. This resolution is remanded to Respondent for reconsideration after completing compliance with this writ;

2. Rescind and set aside your Findings of Fact and Statement of Overriding Considerations under CEQA in support of Resolution No. 08-01. These findings are remanded to Respondent for reconsideration after completing compliance with this writ; and

3. To revise the Environmental Impact Report/Environmental Impact Statement for the Bay Area to Central Valley High-Speed Train Project in accordance with CEQA, the CEQA Guidelines, and the Final Judgment entered in this case prior to reconsidering certification of that EIR/EIS.

The Writ further provides: "Under Public Resources Code § 21168.9(c), this Court does not direct Respondent to exercise its lawful discretion in any particular way."

3. **Petition for Writ of Error *Coram Nobis.***

On May 6, 2010, the *Atherton I* Petitioners filed a Petition for Writ of Error *Coram Nobis* contending that the revised ridership and revenue modeling used in the PEIR/EIS, and upon which Respondent relied in choosing the Pacheco Pass Network Alternative, was flawed. The *Atherton I* Petitioners alleged that the original ridership model, when applied to the data for the Project, did not provide results that were acceptable to Respondent's consultant, Cambridge Systematics, Inc. ("Cambridge Systematics"). Cambridge Systematics accordingly changed the modeling parameters to generate a revised model that was neither peer reviewed nor published. The *Atherton I* Petitioners contended that had the revised model been published during the administrative process, they would have evaluated and commented on the model. As a consequence of the concealment of the revised model, the *Atherton I* Petitioners alleged they were deprived of the opportunity to present this issue to Respondent or the Court, thereby rendering the trial of the case and the resulting Judgment unfair. The *Atherton I* Petitioners sought a writ of error *coram nobis* vacating the Judgment and reopening the proceedings to consider the newly discovered evidence.

In a Minute Order dated August 20, 2010, the Court denied the *Atherton I* Petitioners' Petition for Writ of Error *Coram Nobis* on the ground the *Atherton I* Petitioners were unable to establish all of the elements required for the issuance of a writ of *coram nobis*. The *Atherton I*

Petitioners failed to demonstrate that the newly discovered evidence that Respondent allegedly concealed would compel or make probable a different result. The *Atherton I* Petitioners also failed to establish that the new evidence was not known to them and could not have been discovered by them in the exercise of due diligence. Finally, the Court denied the Petition for Writ of Error *Coram Nobis* on the ground the *Atherton I* Petitioners had an alternate legal remedy available to them, which they were already pursuing: participation in the CEQA public comment process on Respondent's Revised Draft Program EIR. In its response to the petition, Respondent conceded its obligation to respond to the *Atherton I* Petitioners' comments regarding the allegedly flawed ridership model. Accordingly, the Court could not conclude that the *Atherton I* Petitioners were without a viable, alternative legal remedy to address their grievances.

4. **Respondent's Returns and the *Atherton I* Petitioners' Objections.**

On January 6, 2010, Respondent filed an Initial Return to Peremptory Writ of Mandate confirming that on December 3, 2009, Respondent adopted Resolution HSRA 10-012, which rescinded Resolution No. 08-01 and directed "its staff to prepare the documentation needed to comply with the final judgment in this case and to circulate such documentation for the public review period required by" CEQA. (SAR at 12.)

On September 22, 2010, Respondent filed a Supplemental Return to Peremptory Writ of Mandate asserting Respondent's compliance with the Judgment and Writ and asking the Court to discharge the Writ. Respondent stated it prepared and circulated a "one-volume document entitled, Revised Draft Program Environmental Impact Report Material ("Revised Draft Program EIR") for a 45-day public comment period, which closed on April 26, 2010." "The Revised Draft Program EIR identified the Pacheco Pass Network Alternative serving San Francisco via San Jose as the preferred alternative . . . ." (SAR at 12.) Following the close of the public comment period, Respondent prepared a Revised Final Program Environmental Impact Report ("Revised Final Program EIR"). On September 2, 2010, Respondent certified the Revised Final Program EIR for compliance with CEQA, adopted findings of fact and a statement of overriding considerations, adopted a mitigation monitoring and reporting program, and selected the Pacheco Pass Network Alternative serving San Francisco via San Jose, including preferred alignments and

station locations, for further study in project-level environmental documents.

On October 4, 2010, the *Atherton I* Petitioners filed their Objections to Respondent's Supplemental Return detailing their opposition to the Revised Final Program EIR.[6] The *Atherton I* Petitioners outlined a number of alleged CEQA violations, including the Revised Final Program EIR's failure to: include an adequate project description due to its reliance on "inaccurate ridership and revenue figures that were derived using a defective and previously-undisclosed ridership/revenue model"; fully disclose and adequately analyze the Project's "significant impacts associated with moving its right-of-way eastward outside of the right-of-way owned by Union Pacific"; include an adequate analysis of Project alternatives; adequately respond to public comments; recirculate the draft RPEIR for public comment; and support its factual findings with substantial evidence.

C. ***"Atherton II."***

Also on October 4, 2010, various petitioners filed their Petition challenging Respondent's certification of the Revised Final Program EIR.[7] The *Atherton II* Petitioners outlined a number of alleged CEQA violations that overlap with the *Atherton I* Petitioners' objections to Respondent's Supplemental Return, including the Revised Final Program EIR's failure to: include an adequate project description due to its reliance on "inaccurate ridership and revenue figures that were derived using a defective and previously-undisclosed ridership/revenue model"; fully disclose and adequately analyze the Project's "significant impacts associated with moving its right-of-way eastward outside of the right-of-way owned by Union Pacific"; include an adequate analysis of Project alternatives; adequately respond to public comments; recirculate the draft RPEIR for public comment; and support its factual findings with substantial evidence.

[6] On September 23, 2010, the *Atherton I* Petitioners filed Preliminary Objections to Respondent's Supplemental Return generally outlining their objections that Respondent failed to fully comply with CEQA in revising, recirculating, and recertifying the Revised Final Program EIR for the Project.

[7] The 2010 action is referred to herein as "*Atherton II*" and the petitioners are referred to herein as "Petitioners" or the "*Atherton II* Petitioners" where appropriate. The *Atherton II* Petitioners originally included the Town of Atherton, City of Menlo Park, City of Palo Alto, Planning and Conservation League, Transportation Solutions Defense and Education Fund, California Rail Foundation, Community Coalition on High-Speed Rail, Midpeninsula Residents for Civic Sanity, and Patricia Louise Hogan-Giorni. As a result of a stipulation entered by the Court on or about February 7, 2011, the *Atherton II* Petitioners now include only the City of Palo Alto, Mid-Peninsula Residents for Civic Sanity, Patricia Giorni, and Community Coalition on High-Speed Rail.

D. **Resolution of Procedural Issues.**

In light of the complexities associated with adjudicating the *Atherton I* Petitioners' Objections to Respondent's Supplemental Return and the *Atherton II* Petition, the Court instructed the parties to brief various procedural issues related to the Court's handling of these matters. The Court held a status conference with the parties on January 14, 2011, to delineate the appropriate course of action. On February 3, 2011, the Court entered a Stipulation and Order on Parties, Briefing, and Hearing outlining the parties' agreement regarding the Court's handling of these matters. The Stipulation and Order provided, in part, for the following:

> 1. The Court's review of the supplemental return on the writ of mandate in the Atherton 1 case will address whether the Authority complied with all terms of the November 3, 2009, peremptory writ of mandate, including specifically the terms of Paragraph 3 of said writ requiring that the Environmental Impact Report/Environmental Impact Statement for the Project be revised in accordance with CEQA, the CEQA Guidelines, and the final judgment entered in the case. The review will specifically include the issues raised in Petitioners' Writ of Error Coram Nobis.
>
> 2. The Atherton 2 case will address whether the Authority complied with CEQA and the CEQA Guidelines in preparing and certifying its Revised Final Program EIR and granting approvals based on that EIR.
>
> 3. In light of this stipulation and order's determination that the Court's consideration of the Atherton 1 petitioners' objections to Respondent's return on the writ in that case will encompass all of the CEQA issues raised in Atherton 2, the Atherton 1 petitioners who are also petitioners in Atherton 2 (Town of Atherton, City of Menlo Park, Planning and Conservation League, Transportation Solutions Defense and Education Fund, and California Rail Foundation) agree to file a request for their dismissal with prejudice from Atherton 2 by no later than February 7, 2011.[8]

The Court's ruling outlined herein addresses Petitioners' arguments in support of their Petition. The Court issued a separate ruling addressing the merits of the *Atherton I* Petitioners' arguments in support of their Objections to Respondent's Supplemental Return.

II. DISCUSSION

A. **Standard of Review.**

"Where an EIR is challenged as being legally inadequate, a court presumes a public agency's decision to certify the EIR is correct, thereby imposing on a party challenging it the

[8] The *Atherton I* Petitioners were dismissed from *Atherton II* pursuant to a stipulation entered by the Court on or about February 7, 2011.

burden of establishing otherwise." (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 530.) "To establish noncompliance by the public agency in a [CEQA] [] proceeding, an opponent must show there was a prejudicial abuse of discretion [], which occurs when either the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (*Ibid.*; *Sunnyvale West Neighborhood Ass'n v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, 1371 (citations omitted); Pub. Res. Code § 21168.5.) "In reviewing an agency's actions under CEQA, we must bear in mind that 'the Legislature intended the act "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."'" (*Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 328 (citation omitted).)

"Our Supreme Court has counseled that '[i]n evaluating an EIR for CEQA compliance, . . . a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts.'" (*Communities for a Better Environment v. City of Richmond* ("*CBE*") (2010) 184 Cal.App.4th 70, 82 (citation omitted).)

"[Q]uestions concerning the proper interpretation or application of the requirements of CEQA are matters of law." (*Cherry Valley Pass, supra*, 190 Cal.App.4th at 327 (citation omitted).) "'The existence of substantial evidence supporting the agency's ultimate decision on a disputed issue is not relevant when one is assessing a violation of the information disclosure provisions of CEQA.'" (*CBE, supra*, 184 Cal.App.4th at 82 (citation omitted).)

The Court "accord[s] greater deference to an agency's substantive factual conclusions." (*Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538, 1546 (citation omitted).) "'The substantial evidence standard is applied to conclusions, findings and determinations. It also applies to the challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact and the reliability or accuracy of the data upon which the EIR relied because these types of challenges involve factual questions.'"[9] (*San Joaquin*

[9] As quoted in Footnote 1, *infra*, "'[a]s with all substantial evidence challenges, an appellant challenging an EIR for insufficient evidence must lay out the evidence favorable to the other side and show why it is lacking. Failure to do so is fatal. A reviewing court will not independently review the record to make up for appellant's failure to carry his

Raptor Rescue Center v. County of Merced (1994) 149 Cal.App.4th 645, 654 (citation omitted).)

A court "does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document." (*Sunnyvale*, *supra*, 190 Cal.App.4th at 1371 (citations and internal quotations omitted).) The Court may not "set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. . . . We may not, in sum, substitute our judgment for that of the people and their local representatives. We can and must, however, scrupulously enforce all legislatively mandated CEQA requirements.'"[10] (*Cherry Valley*, *supra*, 190 Cal.App.4th at 328-29 (citation omitted).)

"'The courts [] have looked not for perfection but for adequacy, completeness, and good faith effort at full disclosure.' [] The overriding issue on review is thus 'whether the [lead agency] reasonably and in good faith discussed [a project] in detail sufficient [to] enable the public [to] discern from the [EIR] the 'analytic route the . . . agency traveled from evidence to action.'" (*Cal. Oaks Found. v. Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 262 (citations omitted).) "If a final environmental impact report [] does not "adequately apprise all interested parties of the true scope of the projeet for intelligent weighing of the environmental consequences of the project, 'infarmed decision making cannot occur under CEQA and the final EIR is inadequate as a matter of law.'" (*CBE*, *supra*, 184 Cal.App.4th at 82-83 (citations and internal quotations omitted).)

B. <u>Petitioners' alternatives challenge is not barred by the doctrine of collateral estoppel.</u>

Respondent argues that Petitioners' challenge fo the Revised Final Program EIR's alternatives analysis is barred by the doctrine of collateral estoppel because the reasonableness of Respondent's alternatives analysis was actually litigated and necessarily and finally decided in *Atherton I*, the *Atherton I* Petitioners and the *Atherton II* Petitioners are in privity, and a strong policy basis for the application of collateral estoppel exists.

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burden.'" (*Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 934-35 (citation omitted); see also *Cal. Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 626.)

[10] Courts may not interpret CEQA or the CEQA Guidelines "in a manner which imposes procedural or substantive requirements beyond those explicitly stated" in CEQA or the CEQA Guidelines. (Pub. Res. Code § 21083.1.)

"Collateral estoppel precludes litigation of issues argued and decided in prior proceedings."[11] (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) "First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding." (*Ibid.*) "Consequently, '. . . a former judgment is not collateral estoppel on *issues which might have been raised but were not*; just as clearly, it is a collateral estoppel on issues which were raised, even though some factual matters or legal arguments which could have been presented were not.'" (*Branson v. Sun-Diamond Growers* (1994) 24 Cal.App.4th 327, 346 (citation omitted).) "The party asserting collateral estoppel bears the burden of establishing these requirements." (*Ibid.*)

Petitioners refute Respondent's collateral estoppel argument on two grounds. Petitioners first contend that collateral estoppel does not apply because the *Atherton I* Petitioners were not or are no longer parties in *Atherton II* and the two sets of petitioners are not in privity with one another. Petitioners then contend that the alternatives issue presented in *Atherton II* is not identical to the issue litigated in *Atherton I*. Although the Court holds that the *Atherton I* Petitioners and *Atherton II* Petitioners are indeed in privity with one another, the Court agrees with Petitioners that the alternatives issues raised by the *Atherton I* and *Atherton II* Petitioners are not identical. Accordingly, Respondent fails to convince the Court that the *Atherton II* Petitioners' alternatives challenge is barred by the doctrine of collateral estoppel.

As explained by the Second Appellate District in *Planning and Conservation League v. Castaic Lake Water Agency*, (2009) 180 Cal.App.4th 210:

> "[P]rivity ' "refers 'to a mutual or successive relationship to the same rights of property, or to such an identification in interest of one person with another as to represent the same legal rights [citations] ... .' " ' [] "[T]he determination of

[11] "The doctrine of collateral estoppel is one aspect of the concept of res judicata. In modern usage, however, the two terms have distinct meanings. The Restatement Second of Judgments, for example, describes collateral estoppel as 'issue preclusion' and res judicata as 'claim preclusion.'" (*Id.* at 341 n. 3 (citation omitted).) Respondent alleges that this case involves the former – collateral estoppel as issue preclusion.

> privity depends upon the fairness of binding [a party] with the result obtained in earlier proceedings in which it did not participate. [] ' "Whether someone is in privity with the actual parties requires close examination of the circumstances of each case." ' " ' [] 'This requirement of identity of parties or privity is a requirement of due process of law.' []"

(*Planning and Conservation League, supra*, 180 Cal.App.4th at 229-230.) "'A party is adequately represented for purposes of the privity rule "if his or her interests are so similar to a party's interest that the latter was the former's virtual representative in the earlier action."' (*Id.* at 230 (citation omitted).)

Here, the Court concludes the interests of the *Atherton II* Petitioners were sufficiently "virtually represented" by the *Atherton I* Petitioners as to establish privity of the parties. The *Atherton I* Petitioners consist of a group of municipalities and nonprofit public benefit corporations that "have a direct and beneficial interest in the approval and implementation of a well-planned, efficient, and environmentally sensitive high speed rail system within California and the San Francisco Bay area, and more specifically in the fully-informed, fair, and proper choice alignment for the Project." (*Atherton I* Petition at ¶ 15.[12]) Similarly, the *Atherton II* Petitioners, which originally included multiple *Atherton I Petitioners* and who are represented by the same counsel as the *Atherton I* Petitioners, include municipalities, nonprofit public benefit corporations, and unincorporated associations, who ""have a direct and beneficial interest in the approval and implementation of a well-planned, efficient, and environmentally sensitive high speed rail system within California and the San Francisco Bay area, and more specifically in the fully-informed, fair, and proper choice alignment for the Project, in full compliance with CEQA and the CEQA Guidelines." (*Atherton II* Petition at ¶ 20.) As demonstrated by their respective allegations, both sets of petitioners demonstrate a common interest in the enforcement of CEQA. (See *Planning and Conservation League, supra*, 180 Cal.App.4th at 230; *Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 299.) The *Atherton I* Petitioners vigorously litigated their claims, ultimately obtaining a judgment in their favor regarding the adequacy of the FPEIR with respect to certain issues.

[12] Respondent's Request for Judicial Notice, filed June 24, 2011, is GRANTED.

Petitioners next contend that the alternatives challenge presented in *Atherton II* is not identical to the challenge litigated in *Atherton I*, essentially arguing that a change in material facts –whether Respondent can utilize Union Pacific's ROW for the high-speed rail operations – altered the premise of Petitioners' alternatives challenge. Petitioners contend that in *Atherton I*, Respondent was "concerned with a general comparison of alternatives using the Altamont versus Pacheco alignments." According to Petitioners, "the Court considered the adequacy of the alternatives analysis under those particular circumstances and that set of facts and concluded that it was adequate. As a separate matter, the Court also determined that Respondent had not adequately considered UP's refusal to allow Respondent to use any of its right-of-way." Here, however, "Respondent has addressed the use of the UP-owned right-of-way in the Pacheco alignment by shifting the HSR alignment eastward, outside of the UP-owned right-of-way." Accordingly, "the necessity of avoiding the use of UP-owned right-of-way significantly altered the factual background for the consideration of feasible alternatives, rendering many of the alternatives included in the prior FPEIR impracticable, if not infeasible."

Although the issue of Union Pacific's ROW did arise in *Atherton I*, the Court's review of the *Atherton* I Petition and the parties' briefs in *Atherton I* supports Petitioners' position that the impact of Union Pacific's refusal to share its ROW on Respondent's alternatives analysis was not actually litigated and necessarily decided by this Court. Instead, the parties litigated and the Court necessarily decided the impact of Union Pacific's refusal to share its right of way on Respondent's environmental impact analysis and whether Union Pacific's objection triggered Respondent's obligation to recirculate the DPEIR.[13]

The Court's conclusion also is confirmed by the Judgment, in which the Court addressed Petitioners' arguments regarding the inadequacy of the Project description due to the FPEIR's

[13] In their Opening Brief in support of the *Atherton I* Petition, the *Atherton I* Petitioners did state that Union Pacific's "refusal to allow its use, coupled with the narrow area available for a rail right-of-way in this corridor [], indicated a need to revisit the feasibility and cost of this section of the alignment, as well as numerous other portions of various alignment alternatives. The need for this reconsideration was directly pointed out to the Authority prior to its decisions to certify the FPEIR and approve the project. [] The Authority explicitly rejected this comment and refused to withdraw and revise the FPEIR." This issue, however, was not litigated by the parties or necessarily decided by the Court in *Atherton I*.

failure to address Union Pacific's refusal to share its ROW. (Final Judgment, Exh. "A" at Section II.A.) The Court stated that: "The FPEIR and the Authority's findings assume that most, if not all, of the proposed high-speed rail line in the area between San Jose and Gilroy would be built within existing right-of-way, 'the existing CalTrain corridor.' [] However, Union Pacific Railroad had informed [Respondent] just prior to the publication of the FPEIR that it would not allow the Authority to use any of its right-of-way for the Project." (*Id.*, Exh. "A" at 4; *id.*, Exh. "A" at 5, 6.) The Court also agreed that Respondent improperly refused to recirculate the DPEIR after receiving Union Pacific's letter objecting to the use of its ROW:

> However, this Court concludes that various drawings, maps and photographs within the administrative record strongly indicate that it is. The record further indicates that if the Union Pacific right-of-way is not available, there may not be sufficient space for the right-of-way needed for the HSST without either impacting the Monterey Highway or without the takings of additional amounts of residential and commercial property.

(*Id.*, Exh. "A" at 20.)

The Court thus concludes that Petitioners' challenge to the Revised Final Program EIR's alternatives analysis, which is allegedly predicated on Petitioners' contention that Union Pacific's refusal to share its ROW renders Respondent's alternatives analysis inadequate, is not barred in its entirety by the doctrine of collateral estoppel.[14] However, as further discussed below, the Court questions whether some of Petitioners' specific challenges to Respondent's alternatives analysis are barred by the doctrine of collateral estoppel in light of Petitioners' failure to articulate how their challenge relates to Union Pacific's refusal to share its ROW. The Court nevertheless addresses the merits of Petitioners' challenges and concludes that, contrary to Petitioners' allegations, Respondent's alternatives analysis complies with CEQA.

C. **Respondent's alternatives analysis complies with CEQA.**

1. **Governing legal principles.**

In light of Petitioners' challenges to Respondent's alternatives analysis, the Court first

[14] The Court also is hesitant to preclude Petitioners' challenges in light of the February 3, 2011 Stipulation and Order entered by the Court wherein the parties agreed that the "Atherton 2 case will address whether the Authority Complied with CEQA and the CEQA Guidelines in preparing and certifying its Revised Final Program EIR and granting approvals based on that EIR." Although unclear from the language of the stipulation, the Court interprets this ambiguity in favor of resolving the parties' dispute on the merits.

outlines the applicable legal principles. "The lead agency is responsible for selecting a range of potential alternatives for examination and must publicly disclose its reasoning for selecting those alternatives." (CEQA Guidelines[15] §§ 15126.6(a), 15116.6(c); *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 569.) "There is no iron clad rule governing the nature or scope of alternatives to be discussed other than the rule of reason." (CEQA Guidelines § 15126.6(a).) The "rule of reason" thus requires an EIR "to set forth only those alternatives necessary to permit a reasoned choice." (CEQA Guidelines § 15126.6(f); *id.* at § 15126.6(a); *Goletta, supra*, 52 Cal.3d at 566 ("CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts, which in turn must be reviewed in light of the statutory purpose").)

"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." (CEQA Guidelines §§ 15126.6(a), (c).) Thus, "[w]hen assessing feasibility in connection with the alternatives analysis in the EIR, the question is whether the alternative is *potentially* feasible."[16, 17] (*Cal. Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 999.)

Alternatives may be eliminated from consideration in an EIR if they fail to meet most of the basic project objectives, are infeasible, or do not avoid significant environmental impacts. (CEQA Guidelines § 15126.6(c); (*id.* at § 15126.6(a) (EIR is "not required to consider alternatives which are infeasible").) The EIR must identify those alternatives that "were

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[15] "In interpreting CEQA, we accord the Guidelines great weight except where they are clearly unauthorized or erroneous." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428 n.5.)

[16] "Like mitigation measures, potentially feasible alternatives 'are suggestions which may or may not be adopted by the decisionmakers.'" (*Cal. Native Plant Society, supra*, 177 Cal.App.4th at 999.)

[17] This is in contrast to the question before an agency when making a final decision regarding a project, which is whether the alternatives are *actually* feasible. "At that juncture, the decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." (*Id.* at 981.) "'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, and technological factors."[17] (Pub. Res. Code § 21061.1.)

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." (CEQA Guidelines § 15126.6(c).) An agency's infeasibility finding must be supported by substantial evidence.[18] (*County of San Diego v. Grossmont-Cuyamaca Community College District* (2006) 141 Cal.App.4th 86, 100.) "'[W]here potential alternatives are not discussed in detail in the [EIR] because they are not feasible, the evidence of infeasibility need not be found within the [EIR] itself. Rather a court may look at the administrative record as a whole to see whether an alternative deserved greater attention in the [EIR].'" (*Goletta, supra*, 52 Cal.3d at 569 (citation omitted).)

2. **Respondent did not prejudicially abuse its discretion in refusing to consider the Setec alternatives.**

Petitioners contend the inability of Respondent to utilize the Union Pacific ROW for high-speed rail operations should have caused Respondent to reopen its consideration of alternatives. Instead, Petitioners allege Respondent simply moved the Project ROW to the east of the Union Pacific ROW and insisted that its prior alternatives analysis remained valid. Finding Respondent's actions lacking, Petitioners contracted with Setec Ferroviaire ("Setec"), a French high-speed rail expert consulting company, to develop three alternative Altamont alignments, all of which allegedly avoided any significant use of "active" Union Pacific ROW and reduced Project impacts. According to Petitioners, Respondent cursorily dismissed the Setec alternatives as either infeasible or not significantly different from what had been previously considered. Petitioners contend Respondent's conclusions regarding the feasibility of the Setec alternatives

[18] "Substantial evidence is defined in the CEQA Guidelines as 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.' [Citation.] Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. [Citation.] It does not include argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment." (*San Joaquin Raptor Rescue Center v. County of Merced* (1994) 149 Cal.App.4th 645, 654; Cal Pub. Res. Code § 21080(e); 1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2d 2011 Update) § 23.34, p. 1173 ("A reviewing court is limited to determining whether the record contains relevant information that a reasonable mind might accept as sufficient to support the conclusion reached"); CEQA Guidelines § 15384 (defining substantial evidence).)

are not supported by substantial evidence.

Specifically, Petitioners challenge Respondent's rejection of the following Setec alternatives: (1) the "south of Livermore/Pleasanton" alternative; (2) the "Fremont-area" alternatives; (3) the "Dumbarton Rail Bridge" alternative; and (4) the new alignment for the connection between Fremont and San Jose. Petitioners also contend Respondent improperly rejected a conceptual alternative connecting Highway 101 and the Caltrain alignment around and north of the San Francisco airport.[19] Finally, Petitioners allege that Respondent inappropriately dismissed new evidence presented by Setec regarding the feasibility of train-splitting without providing "supporting factual evidence" in support of its conclusions.[20]

a. Respondeat's rejection of the Setec alternative as infeasible on the basis of trainsplitting is supported by substantial evidence.

In response to Petitioners' trainsplitting argument, Respondent counters that "[a] primary reason the Setec proposal did not warrant further study is because trainsplitting is integral to the proposal." The Court previously upheld Respondent's determination regarding the infeasibility of trainsplitting in its Judgment: "The Court also finds that the FPEIR reasonably concluded that train-splitting was not a reasonable alternative, and that avoiding additional branch splits would benefit train operations and service. The FPEIR and the CEQA Findings treat the branch issue equally for both Altamont and Pacheco Pass." (Final Judgment, Exh. "A" at 18:10-16.)

In response, Petitioners present largely unsubstantiated argument regarding the feasibility of trainsplitting, as well as noting that "[i]n present its alternative, Setec included evidence from European systems showing that trainsplitting was a workable solution for the dual-destination problem, especially during non-peak hours. [] Respondent ignored this data." As explained

[19] The Court declines to address Petitioners' challenge to Respondent's rejection of this alternative. Petitioners themselves admit that this was a "somewhat conceptual" alternative that "did not include alignment details or engineering drawings." Moreover, Petitioners fail to provide a substantive explanation as to why Respondent's rejection of this hypothetical alternative was improper or articulate the precise legal authority justifying their challenge to Respondent's rejection of this theoretical alternative.

[20] Petitioners also contend that Respondent relied on its ridership and revenue modeling in support of its rejection of Setec's train-splitting model. According to Petitioners, the fact that Respondent's ridership and revenue model is invalid automatically renders Respondent's rejection of this alternative void of substantial evidence. As addressed by the Court in its Ruling on Submitted Matter in *Atherton I*, the Court agrees with Respondent that its ridership model is not flawed and is indeed supported by substantial evidence.

below, Petitioners' argument fails for several reasons.

Petitioners fail to meet their burden in establishing a successful substantial evidence challenge. Nowhere in their discussion do Petitioners "lay out the evidence favorable to [Respondent] and show why it is lacking." (See *Tracy First, supra*, 177 Cal.App.4th at 934-935.) This in itself it fatal to Petitioners challenge. (See also *Cal. Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 626 (CEQA petitioner may not "simply point[] to portions of the administrative record that favor[s] its position" to successfully carry burden on substantial evidence challenge).)

Petitioners also fail to convincingly rebut Respondent's contention that the parties' argument regarding the merits and feasibility of trainsplitting is anything more than a dispute among experts. "Disagreements among experts do not make an EIR inadequate." (See *Eureka Citizens for Responsible Gov't v. City of Eureka* (2007) 147 Cal.App.4th 357, 371-72; CEQA Guidelines § 15151.)

Finally, Petitioners fail to demonstrate how their argument regarding the feasibility of trainsplitting relates to Union Pacific's refusal to share its ROW. The Court thus questions whether this particular argument is indeed barred by the doctrine of collateral estoppel. In its Judgment, the Court upheld Respondent's determination regarding the infeasibility of trainsplitting. (Final Judgment, Exh. "A" at p. 18; see also SAR at 10292-10294 (Respondent's analysis of "Setec Assessment of Trainsplitting"); SAR at 913-914).) Petitioners fail to provide the Court with any basis to overturn its prior ruling in this regard.

b. **Respondent's rejection of the other Setec alternatives is supported by substantial evidence.**

In response to Petitioners' arguments regarding the various Setec alternatives, Respondent contends that these alternatives: (1) overlap with alternatives previously studied in the FPEIR; (2) overlap with alternatives Respondent screened out from detailed study; and (3) are infeasible. As further explained below, the Court agrees that the Setec alternatives substantially overlap with the

alternatives previously considered by Respondent.[21] The Court also agrees that Respondent's rejection of these alternatives is supported by substantial evidence. Moreover, Petitioners fail to convince the Court that the range of alternatives considered by Respondent is somehow rendered unreasonable in light of Union Pacific's refusal to share its ROW.[22]

i. South of Livermore/Pleasanton alternative

Respondents contend that Setec's "south of Livermore/Pleasanton" alternative is substantially similar to an alternative considered and screened out from detailed study in the FPEIR by Respondent on the basis of infeasibility. Specifically, Respondent concluded that the similar, previously considered alternative – the "SR-84/South of Livermore" alternative – was infeasible due to the high impacts to biological impacts and agricultural lands.

Petitioners counter that Setec's "south of Livermore/Pleasanton" alternative and the previously considered "SR-84/South of Livermore" alternative bear little resemblance to one another because Setec's alternative "includes no UP-owned right-of-way." Furthermore, the Setec alternative was "specifically formulated to avoid the previously-identified impacts associated with prior Altamont alternatives analyzed by Respondent; specifically the I-680/580 interchange, residences in Fremont, Livermore and Pleasanton, and the riparian habitat of Sunol Creek." "Respondent has not done the fine-grained mapping that would be needed to determine whether the Setec [alternative] would have significant impacts on the environment or agricultural lands."

Based on its review of the record, the Court finds Respondent reasonably concluded that Setec's "south of Livermore/Pleasanton" alternative and the "SR-84/South of Livermore"

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[21] "[A]n EIR is not required to address every '*imaginable*' project alternative." (*Cherry Valley Pass, supra*, 190 Cal.App.4th at 354.) "When an EIR discusses a reasonable range of alternatives sufficient to foster informed decisionmaking, it is not required to discuss additional alternatives substantially similar to those discussed." (*Id.* at 355.) "The "key issue" is whether the range of alternatives discussed fosters informed decisionmaking and public participation." (*Id.* at 354.)

[22] The Court previously determined that the 2008 FPEIR studied a reasonable range of alternatives as required by CEQA. The FPEIR divided the study area into six study corridors, examined different alignment alternatives and station location options within each corridor, and further broke down the alignment alternatives into segments and ultimately analyzed 21 different representative network alternatives. (Final Judgment, Exh. "A" at 17:9-14; AR at B3943.) As further discussed herein, Petitioners fail to convince the Court that it should depart from its prior determination.

alternative are substantially similar. (See SAR at 10290, SAR at 812.) Petitioners fail to articulate how the fact that Setec's "south of Livermore/Pleasanton" alternative is not located in the Union Pacific ROW affects Respondent's conclusion that the Setec alternative and the "SR-84/South of Livermore" alternative are within the same "corridor" and thus substantially similar. This leads the Court to again question whether this particular argument also is barred by the doctrine of collateral estoppel. Regardless, the Court concludes it was reasonable for Respondent to rely on its prior analysis rejecting the "SR-84/South of Livermore" alternative to reject the Setec "south of Livermore/Pleasanton" alternative.

Although Petitioners contend that Setec's "south of Livermore/Pleasanton" alternative was specifically designed to avoid the riparian habitat of Sunol Creek, this is insufficient to overturn Respondent's finding that the "SR-84/South of Livermore" alternative was infeasible due to its impacts on impacts to biological impacts and agricultural lands. In rejecting the "SR-84/South of Livermore" alternative, Respondent enumerated a number of biological and agricultural impacts as the basis of its decision. (See SAR at 10291; SAR at 913-914.) The impact to the Alameda whipsnakes in the Sunol Valley area is only one of the enumerated impacts. Petitioners fail to present any evidence undermining Respondent's conclusions with respect to the other biological and agricultural impacts relied upon to determine the infeasibility of the "SR-84/South of Livermore" alternative.

The Court also is unpersuaded by Petitioners' argument that Respondent somehow acted hypocritically by rejecting Setec's "south of Livermore/Pleasanton" alternative while studying a similar alternative for the proposed Altamont regional rail system. As Respondent explains, the slower moving regional commuter rail can operate within narrower corridors than high speed rail. Petitioner fails to point to any evidence establishing that Respondent's commuter rail study undermines its analysis and rejection of Setec's "south of Livermore/Pleasanton" alternative.[23] (See AR at C000052, 57.)

[23] In their Joint Reply Brief, Petitioners contend that "barring any evidence to the contrary, [Setec may be assumed] to have designed their route to meet HSR specifications" in advocating trainsplitting. The Court declines to entertain Petitioners' suggestion as it is contrary to the mandate that Petitioners bear the burden of establishing that Respondent abused its discretion in a CEQA action.

ii. **Fremont-area alternatives**

The Setec proposal identified three "Fremont-area" alternatives, which Petitioners contend were designed to avoid the use of aerial structures through Fremont's downtown or residential neighborhoods. These alternatives included the "powerline" alternative, the "Centerville Line" alternative, and the "Pipeline Easement" alternative. (See SAR at 808-812.) All three "Fremont-area" alternatives were rejected by Respondent.

Although Petitioners contend that Respondent's rejection of all three alternatives is unsupported by substantial evidence, Petitioners substantively address only their argument regarding Respondent's improper rejection of the "Centervilic Line" alternative.[24] With respect to the "Centerville Line" alternative, Petitioners argue that Respondent fails "to provide substantial evidence (as opposed to unsupported opinion or speculation) to explain why UP would not be willing to explore transfer of title to that unused section [of Union Pacific ROW] to Respondent," especially in light of Respondent's representation that it is engaged in "discussions" with Union Pacific "to explore how the HST system can be developed in a manner that meets the Authority's needs and respects UPRR's opecations and rights."

Respondent contends Setec's "Centerville Line" alternative is the same as the "Dumbarton – Centerville" alternative previously studied by Respondents in the FPEIR and rejected because it would require conversion of five miles of Union Pacific track to passenger use. Petitioners do not dispute that the Setec "Centerville Line" alternative is the same as the previously studied "Dumbarton – Centerville" alternative. Instead, Petitioners contend that Respondent's rejection of the alternative is not supported by substantial evidence because Respondent has not approached Union Pacific regarding its willingness to sell its track to Respondent to accommodate high-speed rail operations.

Union Pacific articulated its resopnding objection to the infringement of its operations by

[24] The Court considers Petitioners' arguments with respect to Respondent's rejection of the "powerline" alternative and the "Pipeline Easement" alternative waived. (See *Tracy First, supra*, 177 Cal.App.4th 912, 934-35.) Moreover, Petitioners acknowledge the problems "with the SFPUC water pipeline alternative and, perhaps to a lesser extent with the power line corridor alternative."

high-speed rail operations in correspondence to Respondent.[25] Union Pacific stated it "does not feel it is Union Pacific's best interest to have any proposed alignment located on Union Pacific rights-of-way. Therefore, as your project moves forward . . . , it is our request you do so in such a way as to not require the use of Union Pacific operating rights-of-way or interfere with Union Pacific operations." (SAR at 202.) Union Pacific later stated: "Our concern is that the project should not be designed to utilize or occupy any of our rights of way." (SAR at 202.) In light of Union Pacific's objections, Respondent's rejection of the "Dumbarton – Centerville" alternative on the ground it would require conversion of Union Pacific track was reasonable.

Moreover, the fact that Respondent would need to acquire Union Pacific ROW to accomplish this alternative was not the only basis for rejecting the "Dumbarton – Centerville" alternative. In both its response to Petitioners' comments regarding the Setec proposal and Respondent's "Summary Assessment of Altamont Pass Alternative in Setec Ferrdviaire Report," Respondent explained:

> The HST would still need to construct separate facilities in the corridor, as the Altamont Commuter Express and Capitol Corridor trains are FRA-compliant trains, not compatible with HST operations. The Setec Report mentions the possibility of an interchange station with BART where the lines cross near Shinn Street in northern Fremont. While advantageous to offer this connection, the location is bounded on three sides by residential neighborhoods and lacks good access. To minimize impacts on the adjacent residential uses, the stations would need to meet in an "L" configuration, with BART platforms extending from the crossing to the north and the HST and commuter platforms extending from the crossing to the east. This would entail a long connection between BART and other fail platforms. The remainder of the site is constrained by the UPRR line and Alameda Creek, which limits feasible connections to arterials and highways.

(SAR at 010288-10289; SAR at 914-915.) Petitioners fail to present any arguments undermining Respondent's analysis with respect to the other grounds for rejecting the "Dumbarton – Centerville" alternative.

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[25] The Court finds it ironic that the *Atherton I* Petitioners first challenged the FPEIR on the ground that it utilized the Union Pacific ROW despite Union Pacific's objections and the *Atherton II* Petitioners now challenge the Revised Final Program EIR on the ground it failed to consider an alternative that utilizes the Union Pacific ROW.

iii. The Dumbarton Rail Bridge alternative

As part of its Altamont Corridor alternative route, the Setec proposal included a suggestion that the Dumbarton Bridge be utilized for high-speed rail operations. (SAR at 806-7.) Setec recognized that the existing Dumbarton Bridge would need to be completely rebuilt and suggested two possible solutions for "a new rail bridge across the San Francisco Bay at Dumbarton: [¶] a lift-span or draw bridge[; or ¶] a high central pier structure like the adjacent Dumbarton highway bridge []." (SAR at 807.)

In rejecting the Setec "Dumbarton Rail Bridge" alternative, Petitioners contend Respondent ignored new evidence presented by Setec regarding "the minimal use of the passage for ship traffic, suggesting that a small swing section might well be feasible, as well as discussion of joint use and construction costs to show that even a 'high' span designed for joint use would be feasible and could be designed to avoid or mitigate significant impacts."[26]

Petitioner concedes that Setec's "Dumbarton Rail Bridge" alternative is essentially the same as the Dumbarton Bridge alternative previously considered and rejected by Respondent. Petitioners fail to articulate precisely how Union Pacific's refusal to share its ROW affects Respondent's analysis and ultimate rejection of the prior Dumbarton Bridge alternative as infeasible. Thus the Court again questions whether this particular argument also is barred by the doctrine of collateral estoppel. In its Judgment, the Court specifically held:

> The Court finds that substantial evidence in the record supports the FPEIR's explanation that putting the HST system over the existing, out-of-service Dumbarton Rail Bridge is not reasonable. [] The EIR reasonable concludes that a shared Caltrain/HST Dumbarton crossing would require at least a new double track bridge. [] The Bay Area regional Rail Plan reached the same conclusion. Furthermore, the existing Dumbarton Rail Bridge has two swing bridges that pivot to allow ship traffic, a systematic vulnerability which is inconsistent with the speed, reliability and safety requirements of the HST system.

(Judgment, Exh. "A" at 17:25-18:10.) Petitioners fail to provide the Court with any basis to overturn its prior ruling this regard.

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[26] The Court first notes that, contrary to Petitioners' contention, the Setec proposal does not appear to have proposed a swing bridge option. However, given that Petitioners insinuate that a draw span and swing span are identical, the Court nevertheless addresses Petitioners' arguments.

Moreover, based on the record, the Court continues to believe that Respondent's rejection of the "Dumbarton Rail Bridge" alternative is supported by substantial evidence despite the allegedly "new" evidence unearthed by Setec. Respondent thoroughly considered and rejected a Dumbarton Bridge alternative, which was sufficient to foster informed decisionmaking and public participation. (See SAR at 10286, 10294; SAR at 921, 923-924.) Respondent's rejection of a Dumbarton Bridge alternative was based not only on the potential configuration of a Dumbarton Bridge alternative, but also on the impacts to the bay and its aquatic resources and surrounding wetlands. Petitioners again fail to address why the evidence relied upon by Respondent in rejecting a Dumbarton Bridge alternative does not constitute substantial evidence. (See *Tracy First, supra*, 177 Cal.App.4th 912, 934-35.)

iv. **Other sections of the Setec Alternative**

In its proposal, Setec suggested several Freemont to San Jose alternatives that Setec only superficially studied, but recommended that Respondent further review. (SAR at 807.) These alternatives included: combined service with the Altamont Commuter Express, along the former Western Pacific Railroad, through north San Jose, and along I-880. (SAR at 807.) Citing SAR at 921, Petitioners contend Respondent rejected one (or more) of these alternatives "based on increased cost" compared with use of the UP/Amtrak Corridor."

The Court assumes Petitioners are referencing Respondent's rejection of the "Former WPRR Rail Line Alignment Alternative" from Warm Springs to San Jose,[27] which Respondent rejected on the following basis:

> This right-of-way is relatively narrow, with some sections at approximately 60 feet. Purchase of additional ROW necessary to widen the corridor sufficiently for both the planned San Jose BART extension and an HST alignment alternative with full grade separation Bay Area to Central Valley HST Final Program EIR/EIS would result in acquisition and relocation of numerous residential and industrial land uses with corresponding significant impacts.

(See SAR at 921.)

[27] The ambiguity stems from the fact that the only alternative referenced at SAR at 921 that was expressly rejected by Respondent on cost grounds is the "US-101 Alignment Alternative." This alternative, however, is located on the US 101 between Redwood City to South San Francisco to San Jose. (See SAR at 921.)

Insofar as Petitioners fail to articulate the connection between Respondent's consideration and rejection of this alternative and Union Pacific's refusal to share its ROW, the Court once again questions whether Petitioners' argument is precluded by the doctrine of collateral estoppel. Additionally, the Court also questions the viability of Petitioners' challenge in light of the fact that Setec's study of Altamont to San Jose connections was "superficial" at best. (See SAR at 807. Nevertheless, the Court holds that Respondent reasonable rejection of this alternative is supported by substantial evidence. Respondent evaluated this alternative in 2008 as part of its FPEIR. (See AR at B003963, 3968, 3971.) Respondent also explains the infeasibility of this alternative in its Summary Assessment of Altamont Pass Alternative in Setec Ferroviaire Report. (SAR at 10287.)

Finally, Petitioner challenges Respondent's rejection of the Setec alternative "connecting between Highway 101 and the Caltrain alignment around and north of the San Francisco airport" on the grounds of infeasibility because it may violate FAA height limits.[28] In reviewing the record, the Court concludes Respondent reasonably rejected this alternative. In support of their argument, Petitioners point to only one of the numerous grounds cited by Respondent for rejection of this alternative. The numerous grounds cited by Respondent for rejecting this alternative are outlined in the record. (SAR at 465-466; SAR at 921-22; SAR at 10285-10286.) Respondent's conclusion is supported by substantial evidence in the record.

3. **The East Gilroy/101 alternative**

According to Petitioners, the Revised Final Draft Program EIR identified only one new alternative for the area south of downtown San Jose – the "east of UP ROW alignment." Given the increase in impacts, Petitioners contend Respondent had a duty to consider other alternatives with less significant impacts. One such alternative was the East Gilroy/Highway 101 alternative that would bypass downtown Gilroy and run along Highway 101. (See Supplemental Administrative Record Addendum ("SARA") at 106.) According to Petitioners, Respondent identified the East Gilroy/Highway 101 alternative in its project-level analysis and was required

[28] Petitioners fail to provide the Court with a citation to the portion of the Setec report addressing this alternative.

to consider it in its Revised Final Program EIR. Petitioners contend Respondent dismissed Petitioners' calls to further study this alternative, instead deferring consideration of this alternative to the project level. Petitioners argue Respondent's deferral of its analysis of this alternative is suspicious, implying that Respondent pre-committed to the approval of the Pacheco Pass Network Alternative.

Respondent counters that it appropriately deferred its analysis of the East Gilroy/101 Alternative to the project level. Respondent argues that it considered a reasonable range of alternatives and was not "required to conjure up an alternative in the Program EIR to address new or different impacts between San Jose and Gilroy." Respondent further argues that it appropriately engaged in both program-level and project-level analysis concurrently and is not required to incorporate project-level information in its Revised Final Program EIR.

The Court is unconvinced that Respondent acted inappropriately in deferring its analysis of the East Gilroy/Hwy 101 alternative to the project level. Petitioners fail to explain how the East Gilroy/Hwy 101 alternative relates to the fundamental choice between the Altamont Pass or Pacheco Pass alignment. Moreover, the *In re Bay-Delta* court confirmed Respondent's right to tier its analysis of the Project into a programmatic and project-level EIR. Project level information does not necessarily need to be incorporated into a program-level EIR. (See *In Re Bay Delta* 43 Cal.4th at 1176.) Without any explanation proffered by Petitioners as to why Respondent's deferral of this seemingly project-level alternative was inappropriate, the Court cannot conclude that Respondent prejudicially abused its discretion in postponing its analysis of the East Gilroy/Hwy 101 alternative or that Respondent inappropriate precommitted to the selection of the Pacheco Pass Network Alternative.

D. <u>Petitioners fail to establish that Respondent's responses to public comments are deficient.</u>

Petitioners also contend that Respondent failed to adequately respond to comments on the Revised Draft Program EIR in the Revised Final Program EIR. Petitioners state, without further explanation or clarification, that they "have already laid out numerous instances where, rather than address a potentially significant impact identified in a comment letter, Respondent put off

further analysis to the project-level environmental review." Instead of substantively addressing the alleged deficiencies of Respondent's response to public comments, Petitioners simply cite various pages of the administrative record, thereby directing the Court to their previous comments. Petitioners' strategy is insufficient to raise a legitimate issue with respect to Respondent's responses to public comments. The Court refuses to engage in an unassisted review of the record to determine which of Respondent's responses to Petitioners' comments were deficient. Moreover, insofar as "Petitioners have already laid out numerous instances where . . . Respondent put off further analysis to the project-level environmental review," the Court assumes it has addressed Petitioners' arguments at some point in its ruling.

E. Recirculation of the Revised Program EIR.

1. Respondent was required to recirculate the Revised Program EIR.

Relying primarily on the California Supreme Court's opinion in *Laurel Heights Improvement Association v. Regents of University of California* ("*Laurel Heights II*") (1994) 6 Cal.4th 1112, Petitioners contend that significant new information was added to the Revised Draft Program EIR after its circulation for public comment and prior to its certification such that Respondent was required to circulate the Revised Draft Program EIR for public comment once more.[29] Specifically, Petitioners contend Respondent was required to recirculate the Revised Draft Program EIR because new information was included that indicated significant new impacts related to: (1) traffic impacts due to the narrowing of the Monterey Highway; (2) visual, noise, land use, and light-inducing impacts from aerial structures; (3) and traffic impacts from lane removals on streets adjoining the Caltrain ROW. Recirculation also was required because new information was included in the Draft Program EIR that indicated significantly increased noise and vibrational impacts from: (1) moving the Project ROW eastward; (2) moving the Monterey Highway eastward; and (3) the widening of the Project ROW. Finally, Petitioners note that "there would also be associated but unacknowledged construction impacts that would occur due to

[29] Petitioners incorporate by reference the *Atherton I* Petitioners' discussion regarding Respondent's failure to identify new and significant impacts, which were addressed in Section III of the *Atherton I* Petitioners' Opening Brief in Support of Objections to Supplemental Return on Peremptory Writ of Mandate.

having to relocate the Monterey Highway eastward before starting to construct the Project in this area." Petitioners argue that Respondent inappropriately deferred consideration of these new and increased significant impaets to the project level and "specifically refused to recirculate the Revised Program EIR to allow tho public the opportonity to comment on the newly-added information."

Respondent connters that substantial evidence supports its decision to refrain from recirculating the Revised Program EIR. Respondent argues that it prolperly tiered its analysis of the Project's impacts and new information related to project-level impacts does not require recirculation of the program-level EIR. In response, Petitioners contend Respondent may not ignore project-level information that implicates program-level impacts. When new information coming out of project-level studies results in changes to the Project that generate impacts at the program level, that information is required to be included in the EIR.

Respondent's analysis assumes that Respondent properly tiered its analysis of the Project into program-level and project-level components. As held by the Court in its *Atherton I* Ruling on Submitted Matter, and as also addressed below, Respondent's tiering of its impacts analysis was not always appropriate. Prior to engaging in its analysis, however, the Court first outlines the principles governing recirculation of EIRs.

Public Resources Code § 21092.1 provides: "When significant new information is added to an environmental impact report after notice has beea given pursuant to Section 21092 and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursnant to Section 21092, and consult again pursuanc to Sections 21104 and 21153 beforo certifying the environmental impaet report." "[T]he standard for recirculation [of an EIR] is not whether new information or changes to an EIR adds to information provided in a previously circulated document." (*Silverado, supra*, 197 Cal.App.4th at 302 (discussing *Laurel Heights II*).) "Rather, 'the additlon of new information to an EIR after the close of the public comment period is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a *substantial* adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect ....'"

(*Ibid.* (citation omitted).) "Thus, recirculation of an uncertified EIR under section 21092.1, is 'not required where the new information added to the EIR "merely clarifies or amplifies [citations] or makes insignificant modifications in [citation] an adequate EIR."'" (*Ibid.* (citation omitted).)

Recirculation, however, is required when "'the new information added to an EIR discloses (1) a new substantial environmental impact resulting from the project or from a new mitigation measure proposed to be implemented []; (2) a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance []; (3) a feasible project alternative or mitigation measure that clearly would lessen the environmental impacts of the project, but which the proponent's decline to adopt; or (4) that the draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless [].'" (*Id.* at 302-303; CEQA Guidelines § 15088.5.)

The substantial evidence standard of review applies to an agency's determination to recirculate an EIR. (*Id.* at 304; CEQA Guidelines § 15088.5(e).)

ii. **New information regarding significant impacts in the Revised Program EIR required recirculation.**

Petitioners first contend that Respondent was required to recirculate the Revised Program EIR after adding information regarding significant new traffic impacts associated with the narrowing of the Monterey Highway. Respondent does not contest the significance of these traffic impacts, but instead contends that it properly tiered its analysis and appropriately deferred analysis of the traffic impacts related to the narrowing of the Monterey Highway to the project level. However, in *Atherton I*, the Court rejected Respondent's position and concluded that the Revised Program EIR fails to adequately address the traffic impacts associated with the narrowing of the Monterey Highway. These traffic impacts stem directly from the fundamental choice between the Pacheco Pass and Altamont Pass alignments in connecting the Central Valley and Bay Area and are required to be addressed at the program level. Accordingly, the Court concludes that Respondent's decision not to recirculate the EIR is not supported by substantial

evidence. New information regarding the traffic impacts associated with the narrowing of the Monterey Highway required recirculation of the Revised Program EIR prior to certification.

Petitioners next contend that Respondent was required to recirculate the Revised Program EIR after adding new information related to the visual, noise, land use, and blight-inducing impacts related to the use of aerial structures. Respondent again fails to contest the significance of these impacts and instead argues that it appropriately deferred consideration of these impacts to the project level. In *Atherton I*, the Court found that Respondent properly deferred analysis of impacts associated with vertical alignment alternatives to its second-tier, project-level analysis. The Court thus holds that substantial evidence supports Respondent's decision not to recirculate the Revised Program EIR on this basis.

Petitioners also contend that Respondent was required to recirculate the Revised Program EIR after adding new information related to the traffic impacts associated with lane removals on streets adjoining the Caltrain ROW. Respondent again fails to contest the significance of these traffic impacts and instead contends that it properly deferred analysis of these impacts to the project level. The Court disagrees. In *Atherton I*, the Court held that Respondent improperly deferred analysis of these traffic impacts to the project level. The information in the Supplemental Administrative Record Addendum – specifically Respondent's alternatives analysis – indicates that the loss of traffic lanes as a result of the placement of the high-speed rail ROW is more than just a design element appropriately analyzed in a second-tier, project-level analysis. Instead, it appears that the permanent loss of traffic lanes is a direct consequence of the physical placement of the high-speed rail ROW as described in the Pacheco Pass alternative and, consequently, must be analyzed in the context of Respondent's programmatic EIR. Therefore, substantial evidence does not support Respondent's decision not to recirculate the Revised Program EIR on this basis.

Finally, Petitioners contend that the unacknowledged construction impacts associated with moving the Monterey Highway eastward required recirculation of the EIR. In its Standard Response No. 5, Respondent defers analysis of the "potential noise and vibration impacts during construction" to its "Future Project-Level Analysis of Noise and Vibration" (SAR at 452.)

Respondent states that: "Noise and vibration limits during construction will be established by the Authority which will consider the land use activities adjoining the construction sites." (SAR at 452.) Respondent does not contest the significance of this impact and instead argues that it properly deferred its analysis of these impacts to the project level. As indicated in its *Atherton I* ruling, the Court disagrees. The shifting of the Monterey Highway eastward is a program-level decision and the associated construction impacts are required to be addressed at the program level. The Court therefore holds that substantial evidence does not support Respondent's decision not to recirculate the EIR on this basis.

b. New information regarding the increased significance of previously disclosed significant impacts in the Revised Program EIR required recirculation.

Petitioners contend that new information regarding significantly increased noise and vibrational impacts associated with moving the Project ROW eastward required recirculation of the EIR. In *Atherton I*, Respondent argued, and the Court agreed, that the location of the Project ROW did not move eastward. Instead, "[t]he Revised Final Program EIR clarifies that the high-speed train alignment would be adjacent to UPRR's right of way, between UPRR and Monterey Highway . . . ." The Court therefore agrees that Respondent was not required to recirculate the Revised Program EIR on this basis.

Petitioners also contend that new information regarding significantly increased noise and vibrational impacts associated with moving the Monterey Highway eastward required recirculation of the EIR.[30] In *Atherton I*, Respondent argued that its "general, screening-level noise analysis and the minor shift of the highway for 0-60 feet in a rural area is fully captured within that prior analysis." In its *Atherton I* ruling, however, the Court disagreed with Respondent's contention, stating that it appeared that Respondent previously analyzed only the noise and vibration impacts associated with the high-speed train's operations themselves, and not

[30] In its Opposition, Respondent only asserts that it properly tiered its analysis and deferred its analysis of the impacts identified by Petitioner as a result. This argument, however, does not appear to apply to Respondent's consideration of the construction impacts associated with the shifting of the Monterey Highway. In *Atherton I*, Respondent did not contend that it properly deferred its analysis of these impacts. Instead, Respondent argued that these impacts were encompassed in its prior noise and vibration analysis.

necessarily the shifting of the Monterey Highway. Additionally, the Court could not ascertain how Respondent's original noise and vibration analysis encompassed the shifting of the Monterey Highway eastward. Respondent's 2008 FPEIR fails to mention the shifting of the Monterey Highway in the noise and vibration analysis. The Court thus holds that Respondent was required to recirculate the Revised Program EIR.

Petitioner also contends that new information regarding significantly increased noise and vibrational impacts related to the widening of the ROW on the Peninsula required recirculation of the Revised Program EIR.[31] In *Atherton I*, Respondent argued that the noise and vibrational impacts associated with the widening of the Project ROW were encompassed in its prior analysis. The Court agreed. The Court thus holds that Respondent was not required to recirculate the Revised Program EIR on this basis.

c. Respondent was not required to recirculate the Revised Program EIR as a result of Petitioners' proffered alternatives.

Petitioners contend that Respondent was required to recirculate the Revised Program EIR as a result of the Setec alternatives and the East Gilroy/101 alternative – two new, feasible alternatives that Petitioners contend would reduce or avoid the Project's significant impacts to the environment. Respondent counters that it was not required to recirculate the Revised Program EIR as a result of these two alternatives. Respondent concluded that the Setec alternative was both infeasible and substantially similar to alternatives actually analyzed by Respondent. Additionally, Respondent properly deferred its analysis of the East Gilroy/101 alternative to the project level. The Court agrees.

The CEQA Guidelines define "significant new information" as "[a] feasible project alternative or mitigation measure considerably different from others previously analyzed [that] would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it." (CEQA Guidelines § 15088.5(a)(3).) The Court previously determined that

[31] Again, Respondent's tiering argument does not appear to apply to the allegedly significantly increased noise and vibrational impacts related to the widening of the ROW identified by Petitioners. In *Atherton I*, Respondent did not contend that it properly deferred its analysis of these impacts. Instead, Respondent argued that these impacts were encompassed in its prior noise and vibration analysis.

Respondent's determination to reject the Setec alternative as infeasible due to its reliance on trainsplitting is supported by substantial evidence. Petitioners fail to demonstrate that Petitioners' and Respondent's perspectives regarding the viability of trainsplitting is anything more than a different in expert opinion. Additionally, the Court agreed with Respondent's conclusion that the Setec alternatives consist of components that overlap with alternatives previously studied in the FPEIR and overlap with alternatives Respondent screened opt from detailed study. Finally, Petitioners fail to convince the Court that Respondent improperly deferred consideration of the East Gilroy/101 alternative to the project level. The Court therefore concludes that Respondent's decision to not recirculate the Revised Program EIR in light of Petitioners' proffered alternatives is supported by substantial evidence.

d. Respondent was not required to recirculate the Revised Program EIR based on Petitioners' arguments regarding the ridership model.

Relying on the arguments presented by the *Atherton I* Petitioners, the *Atherton II* Petitioners contend Respondent also was required to recirculate the Revised Program EIR after evidence emerged demonstrating that Respondent's ridership and revenue model was invalid. Petitioners argue the invalid ridership model rendered the public's comments "essentially meaningless because the entire framework for the PEIR's analysis ... was built on an unreliable foundation." Respondent disagrees, contending that substantial evidence supports both its use of the ridership and revenue modeling conducted by Cambridge Systematics and, in turn, its decision not to recirculate the EIR in response to the University of California at Berkeley's Institute of Transportation Studies' ("ITS") peer review.

The Court concludes Respondent was not required to recirculate the Revised Program EIR in response to ITS's peer review. In *Atherton I*, the Court concluded that substantial evidence supported Cambridge Systematics' ridership model and Respondent's reliance on the model. The dispute articulated by the *Atherton I* Petitioners constituted nothing more than a disagreement among experts and the Court declined to interfere with Respondent's discretion to adhere to Cambridge Systematics' ridership model despite the criticisms presented by Petitioners and ITS. Accordingly, the Revised Draft Program EIR was not "so fundamentally and basically inadequate

and conclusory in nature that meaningful public review and comment were precluded." (See CEQA Guidelines § 15088.5(a)(4).)

F. **Substantial Evidence Challenges**

1. **Petitioners' challenges are not barred by the doctrine of res judicata.**

Petitioners contend the environmental findings to support the Project approval are inadequate because they are not supported by substantial evidence in the record. Specifically, Petitioners challenge Respondent's findings regarding the Project's biological impacts, traffic impacts, and other impacts related to the use of aerial structures as identified in Respondent's project-level alternatives analyses. Finally, Petitioners challenge Respondent's failure to mention the Setec alternative or discuss its feasibility in the Revised Final Program EIR.

Relying on *Federation of Hillside and Canyon Associates v. City of Los Angeles*, (2004) 126 Cal.App.4th 1180, Respondent contends Petitioners' challenges to the Revised Final Program EIR's findings are barred by the doctrine of res judicata. Respondent argues that the Revised Final Program EIR's findings are virtually identical to the FPEIR's findings and Petitioners' challenges were previously litigated, or could have been litigated, and are now barred.

Petitioners disagree. Although not cited by them, Petitioners' response brings to mind the Second Appellate District's decision in *Planning and Conservation League v. Castaic Lake Water Agency, supra*. Petitioners argue, in part, that their claims are not barred because they "are challenging the sufficiency of the 2010 findings Respondent adopted to support its 2010 approvals" and not the sufficiency of the 2008 findings – an argument similar to that addressed by the *Planning and Conservation League* court. There, the court determined that the petitioners were not precluded from challenging a 2004 EIR even though challenges were made to a 1999 EIR:

> After Friends's petition challenged Castaic's defective 1999 EIR, the trial court in Friends's action ordered it decertified and retained jurisdiction until Castaic certified an EIR that complied with CEQA. Friends was permitted to challenge Castaic's 2004 EIR by motion or supplemental petition in the original action, *or* by petition in a new action [], but it took neither of these alternatives. ***As the 1999 EIR and 2004 EIR are factually distinct attempts to satisfy CEQA's mandates and Friends was not required to litigate the 2004 EIR in its original action, we conclude that Friends's action and the underlying actions involved different causes of action.***

(*Planning and Conservation League, supra*, 180 Cal.App.4th at 228 (emphasis added).)

In rendering its opinion, the Second Appellate District distinguished the *Federation* case on the basis that *Federation* involved a challenge to the same EIR: "[T]he group challenged the same EIR and the material facts had not changed." (*Id.* at 229.) Accordingly, the *Federation* court "determined that the second action involved the same primary right. [] Here, unlike the situation in *Federation*, the two actions address materially different EIR's, and therefore involve distinct causes of action."[32] (*Ibid.*)

Faced with the dilemma of determining which case – *Federation* or *Planning and Conservation League* – more squarely matches the facts present before this Court, the Court concludes that *Planning and Conservation League* prevails and Petitioners claims are not barred by the doctrine of res judicata because Petitioners are challenging the Revised Final Program EIR and not the 2008 FPEIR.[33, 34]

Silverado Modjeska Recreation and Park District v. County of Orange, supra, is distinguishable. There, the writ issued in the prior action had been discharged and the very basis for the subsequent petition had been litigated during the discharge proceeding. "Res judicata bars the 2007 petition's first cause of action because that cause of action is based on the same primary right that the court in the 2003 action adjudicated in deciding the county's motion to discharge the writ, namely, the right to ensure the county's compliance with the writ's directive to obtain a study of the baseline water condition and quality in the project area, to circulate an SEIR evaluating the baseline water data collected, and to state the measures to be used to mitigate any environmental impacts of the project on water quality." (*Silverado, supra*, 197 Cal.App.4th at 298.) In discharging the prior writ, the trial court specifically held that the respondent "complied

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[32] The Court agrees with the *Planning and Conservation League* court's analysis of *Federation*. In *Federation*, the agency was never ordered to rescind its certification of the EIR at issue. (See *Federation, supra*, 126 Cal.App.4th at 1191.) In applying res judicata, the appellate court concluded that "[t]he CEQA cause of action in the prior proceeding and the CEQA cause of action in the present proceeding are based on the city's alleged failure to comply with respect to the same project, the same EIR, and substantially the same findings." (*Id.* at 1203.)

[33] In reaching its conclusion, the Court expresses no opinion regarding the respective practical and policy implications of the *Planning and Conservation League* and *Federation* cases.

[34] As previously addressed by the Court, the Court hesitates to preclude Petitioners' challenges in light of the February 3, 2011 Stipulation and Ordered entered by the Court.

with the commands of the writ" and "complied with CEQA with respect to the issues alleged in the instant action." (*Id.* at 295.)

2. **Respondent's biological impacts findings are supported by substantial evidence.**[35]

Petitioner concedes that the "CEQA findings on biological impacts in support of the project approval for both the prior and current project approval were essentially identical." Petitioners contend that "new evidence showing that the prior FPEIR had not adequately considered the Project's potential biological impacts" was submitted to Respondent during the public comment period. (*Ibid.*) Petitioners' expert opines: "[T]he analysis in the FPEIR failed to take into account any balanced and standardized way the relative importance of the various biological impacts described for the Altamont and Pacheco alignment." (*Id.* at p. 19-20.)

The Court continues to believe that the Revised Final Program EIR's analysis of biological impacts is supported by substantial evidence in the record and that the level of detail provided in the Revised Final Program EIR is adequate for a program-level analysis. (See AR at 4462-4538; SAR at 928-929.) Petitioners' challenge rises to nothing more than what appears to be a dispute among experts. "Disagreements among experts do not make an EIR inadequate." (See *Eureka Citizens, supra*, 147 Cal.App.4th at 371-72; CEQA Guidelines § 15151.) Notably, even Petitioners' expert acknowledged that "[i]n our review of Chapter 15 of the FEIR it is evident that a thorough and extensive review of back ground data has occurred." (SAR at 910.)

3. **Respondent's analysis of traffic impacts related to the narrowing of the Monterey Highway is deficient.**

Petitioners criticize Respondent for limiting "its finding of significant traffic impacts from the narrowing of the Monterey Highway to just those on the highway itself, deferring

[35] The Court questions whether Petitioners' challenge to the Revised Final Program EIR's findings regarding biological impacts are precluded by the doctrine of collateral estoppel or issue preclusion – an issue neither raised by Respondent nor specifically briefed by the parties. In *Atherton I*, Petitioners challenged the FPEIR's biological impacts findings on the ground they were not supported by substantial evidence. In the Judgment, the Court specifically held that "substantial evidence support's respondent's treatment of biological impacts to the GEA and the Refuge" (Judgment at 10:9-11) and that the level of detail in the FPEIR regarding the Project's biological impacts was adequate (Judgment at 10:17-19).

consideration of impacts on other roadways . . . ." This issue was briefed in detail by the parties in *Atherton I* and, there, the Court ruled in favor of the *Atherton I* Petitioners. Specifically, the Court held that the Revised Final Program EIR failed to adequately address the significant environmental impacts associated with the shifting and narrowing of the Monterey Highway. The Court incorporates by reference the relevant portions of its *Atherton I* Ruling on Submitted Matter.

4. Respondent properly deferred its analysis of impacts of aerial structures.

Petitioners also criticize Respondent for ignoring its own project-level analysis, which indicates that aerial structures would be utilized for some portions of the high-speed rail alignment. This issue also was briefed in detail by the parties in *Atherton I* and, there, the Court ruled in favor of Respondent. Specifically, the Court agreed that Respondent properly deferred its analysis of impacts associated with vertical alignment alternatives to its second-tier, project-level analysis. Respondent was not required to incorporate this particular project-level information into its program-level EIR. (See *In re Bay-Delta, supra*, 43 Cal.4th at 1176-77.) The Court incorporates by reference the relevant portions of its *Atherton I* Ruling on Submitted Matter.

5. Respondent did not prejudicially abuse its discretion in failing to mention the Setec alternative or discuss its feasibility.

Finally, Petitioners fault Respondent for failing to give the Setec alternative serious consideration, even failing to discuss it at all, and failing to indicate a basis for its determination that the Setec alternative is infeasible. As previously held by the Court here, however, Respondent did not abuse its discretion in refusing to consider the Setec alternative. The Setec alternative is substantially similar to the alternatives considered and screened out from detailed study in the FPEIR by Respondent on the basis of infeasibility.

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G. PROCEDURAL CHALLENGES

1. Respondent did not precommit to the approval of the Revised Final Program EIR in violation of CEQA.

Petitioners[36] argue Respondent acted in violation of CEQA and the California Supreme Court's opinion in *Save Tara v. City of West Hollywood*, (2008) 45 Cal.4th 116, by precommitting to the selection of the Pacheco Pass Network Alternative despite the Writ commanding Respondent to rescind its prior certification of the 2008 FPEIR. According to Petitioners, Respondent demonstrated its precommitment to the Project by: (1) continuing its project-level analysis despite the Judgment and Writ issued by the Court in *Atherton I*; and (2) issuing a Notice of Availability that stated that Respondent planned to certify "'the Revised Final Program EIR material along with the Final Bay Area to Central Valley HST Program EIR for compliance with CEQA'" and that Respondent would approve "'findings of fact [and] a statement of overriding considerations.'"

The Court agrees with Respondent that it did not violate CEQA by continuing its project-level work despite the Court's Judgment and Writ. The Court previously addressed this issue in its October 29, 2009 Order Denying Stay of Project-Level Environmental Studies, in which the Court denied Petitioners' request for a "stay of all respondent's activities dependent on or premised upon the approvals being ordered rescinded." (Order at Exh. "A" at p. 1.) The Court held: "The actions for which a stay is being requested are studies with no potential for adverse change or alteration to the physical environment. Additionally, the Court concludes that such studies do not create such momentum that respondent Authority would be unable to comply with its CEQA obligations are previously determined by this Court." (*Ibid.*) In light of Petitioners' failure to produce any actual, additional evidence in support of their claims, the Court finds no reason to depart from its prior holding. Additionally, as the *In re Bay-Delta* court made clear, it is appropriate for an agency for conduct its program-level analysis and project-level analysis concurrently so long as the agency acts properly tiers its analysis. (See *In re Bay-Delta, supra*, 43

[36] Petitioner Community Coalition on High-Speed Rail submitted its own brief addressing the alleged procedural violations committed by Respondent.

Cal.4th at 1176.)

The Court also agrees that while the precise language of Respondent's Notice of Availability could have been improved, this in itself in insufficient to demonstrate a level of precommitment that violates CEQA and *Save Tara, supra.*

2. **Respondent did not prejudicially abuse its discretion in asking the public to limit their comments.**

Petitioners also argue that Respondent shorted the public of its right to participation in the EIR process by suggesting that "members of the public should not comment on environmental issues that related to the decision about what alternative route from the Bay Area to the Central Valley was best, except to the extent that the public comment specifically referred to and referenced the 'revised materials' that [Respondent] was circulating." The Court disagrees and concludes Respondent did not prejudicially abuse its discretion in suggesting that the public limit their comments to the revised portions of the Revised Final Program EIR.

Where a court orders an agency to set aside its certification of an EIR and to take action necessary to bring certain portions of the EIR into compliance with CEQA, the agency is not required to start the EIR process anew. "Rather, the Agency need only correct the deficiency in the EIR that we have identified before considering recertification of the EIR." (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1112.) Respondent's actions in requesting that comments be limited to the revised portions of the Revised Final Program EIR are consistent with this concept. Respondent's actions also are consistent with the CEQA Guidelines, which allow Respondent to "request that reviewers limit their comments to the revised chapters or portions of the recirculated EIR." (CEQA Guidelines § 15088.5(f)(2).)

3. **Respondent did not prejudicially abuse its discretion in circulating Draft Program Environmental Impact Report Material.**

Petitioners argue Respondent violated CEQA by circulating "Draft Program Environmental Impact Report Material" rather than a complete, final EIR containing a draft EIR, comments, and responses to comments. The Court again concludes Respondent did not

prejudicially abuse its discretion in circulating the revised EIR material. As quoted above, upon remand, "[t]he agency need only correct the deficiency in the EIR that we have identified before consideration recertification of the EIR." (*Protect the Historic Amador Waterways, supra*, 116 Cal.App.4th at 1112.) "The form of the correction is a matter for the Agency to determine in the first instance." (*Ibid.*) "Likewise, whether the correction requires recirculation of the EIR, in whole or in part, is for the Agency to decide in the first instance in light of the legal standards governing recirculation of an EIR prior to certification." (*Ibid.*) According to the CEQA Guidelines, "[i]f the revision is limited to a few chapters or portions of the EIR, the lead agency need only circulate the chapters or portions that have been modified." (CEQA Guidelines § 15088.5(c).)

IV. DISPOSITION

For the reasons set forth above, the Petition is GRANTED in part and DENIED in part. A judgment shall be issued in favor of Petitioners, and against Respondent, granting the Petition as explained above. A peremptory writ of mandamus shall issue from this Court to Respondent, commanding Respondent to set aside its approval of the Project and to take any further action especially enjoined on it by law. The writ shall further command Respondent to make and file a return within 60 days after issuance of the writ, setting forth what it has done to comply with the writ. The Court reserves jurisdiction in this action until there has been full compliance with the writ.

In accordance with Local Rule 9.16, Petitioners are directed to prepare a judgment, incorporating this Court's ruling as an exhibit, and a peremptory writ of mandamus; submit them to opposing counsel for approval as to form in in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature and entry of judgment in accordance with Rule of Court 3.1312(b).

DATED: November 10, 2011

Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

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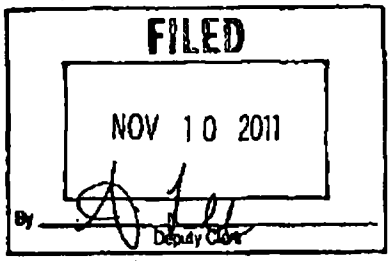
Superior Court of California,
County of Sacramento

Dated: November 10, 2011

By: S. LEE
Deputy Clerk

EXHIBIT B



SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

TOWN OF ATHERTON, a Municipal Corporation, PLANNING AND CONSERVATION LEAGUE, a California nonprofit corporation, CITY OF MENLO PARK, a Municipal Corporation, TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND, a California nonprofit corporation, CALIFORNIA RAIL FOUNDATION, a California nonprofit corporation, and BAYRAIL ALLIANCE, a California nonprofit corporation, and other similarly situated entities,

Petitioners and Plaintiffs,

v.

CALIFORNIA HIGH SPEED RAIL AUTHORITY, a public entity, and DOES 1-20,

Respondents and Defendants.

Case No. 34-2008-80000022-CU-WM-GDS

[Coordinated with Case No. 34-2010-80000679-CU-WM-GDS]

RULING ON SUBMITTED MATTER: ORDER SUSTAINING IN PART AND OVERRULING IN PART PETITIONERS' OBJECTIONS TO SUPPLEMENTAL RETURN ON PEREMPTORY WRIT OF MANDATE

On October 4, 2010, Petitioners filed Objections to Respondent's Supplemental Return outlining their opposition to Respondent California High Speed Rail Authority's Supplemental Return to the November 3, 2009 Judgment and Peremptory Writ of Mandate ("Writ") issued by this Court. In short, and as explained in further detail herein, Petitioners contend that Respondent failed to comply with the Court's directive to address various inadequacies in its Final Bay Area

to Central Valley High-Speed Train [HST] Program Environmental Impact Report/Environmental Impact Statement. The parties appeared before the Court on August 12, 2011, for oral argument,[1] after which the Court took the matter under submission.[2] The Court, having heard oral argument, read and considered the written argument of all parties, and read and considered the documents and pleadings in the above-entitled action, now rules on Petitioners' Objections to Respondent's Supplemental Return as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The Project.

> In November 2005, following a programmatic environmental review process, [Respondent] and the [Federal Railroad Administration or "FRA"] approved the [High-Speed Train or "HST"] system program for intercity travel in California .... The HST system is about 800 miles long, with electric propulsion and steel-wheel-on-steel-rail trains capable of maximum operating speeds of 220 miles per hour (mph) ... on a mostly dedicated system of fully grade-separated, access-controlled steel tracks and with state-of-the-art safety, signaling, communication, and automated train control systems. As part of the November 2005 decision, [Respondent] and the FRA selected, for further project-level study and implementation planning, a series of alignments and station locations for the HST system.
>
> For the section of the HST system connecting the Bay Area and the Central Valley, [Respondent] directed staff to prepare a separate program EIR to identify a preferred alignment within the broad corridor between and including the Altamont Pass and the Pacheco Pass.

(Supplemental Administrative Record ("SAR") at 11.)

"[Respondent] and the FRA circulated a Draft Bay Area to Central Valley HST Program EIR/EIS ["DPEIR"] in July 2007." (*Ibid.*) "In May 2008, [Respondent] and the FRA circulated a Final Program EIR/EIS ["FPEIR"] ...." (*Ibid.*) According to Respondent, the Final Program EIR "involves the fundamental choice between Altamont Pass, Pacheco Pass, or both passes, but not specific locations or vertical profiles for the rail alignments." "The first-tier project is the general choice between the Bay Area and the Central Valley, including alignments and station

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[1] During oral argument, Respondent moved to eoter two oxhibits into evidence, which request was unopposed and granted by the Court. Exhibit 1 consists of 10 slide printouts related to "*Atherton I*." Exhibit 2 consists of 25 slide printouts related to "*Atherton II*."

[2] Upon completion of the parties' August 12, 2011 presentations, the Court vacated a second hearing date, originally reserved to provide the parties with additional time for oral argument if necessary.

location options to be studied further in second-tier environmental documents." "The Final Program EIR/EIS identified the Pacheco Pass Network Alternative Serving San Francisco via San Jose as the preferred alternative" connecting the Central Valley and Bay Area. (*Ibid.*) Respondent "approved the Pacheco Pass Network Alternative in July 2008 . . . ." (*Ibid.*)

B. "*Atherton I.*"

1. The Verified Petition for Peremptory Writ of Mandate.

On August 8, 2008, Petitioners Town of Atherton, Planning and Conservation League, City of Menlo Park, Transportation Solutions Defense and Education Fund, California Rail Foundation, and Bayrail Alliance filed a Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief ("Petition") challenging Respondent's certification of the FPEIR.[3] Petitioners alleged Respondent violated CEQA by certifying an EIR that contained an inadequate project description, failed to disclose and adequately analyze and mitigate the Project's significant environmental impacts, failed to include an adequate analysis of Project alternatives, failed to adequately respond to public comments, and failed to support its factual findings with substantial evidence. They also alleged Respondent violated CEQA by failing to recirculate the DPEIR in response to new information and changed circumstances.

2. The Final Judgment.

On August 26, 2009, the Court issued its Ruling on Submitted Matter granting in part and denying in part the *Atherton I* Petition. The Court concluded:

> [P]etitioners have met their burden of showing that the EIR contains an inadequate description of the project, that respondent's finding that mitigation strategies will reduce vibration impact to a less-than-significant level is not supported by substantial evidence, that as a result of the FEIR's inadequate description of the project its land use analysis was inadequate, and that respondent improperly failed to recirculate the FEIR upon receipt of Union Pacific's statement of its position regarding its right-of-way.

(Final Judgment, Exh. "A" at 21.)

Specifically, with respect to the project description, the Court held "the description of the alignment of the HSR tracks between San Jose and Gilroy was inadequate even for a

[3] The 2008 action is referred to herein as "*Atherton I*" and the petitioners are referred to herein as "Petitioners" or the "*Atherton I* Petitioners" where appropriate.

programmatic EIR" due to the FEIR's failure to address the necessity of acquiring additional right-of-way outside the Union Pacific right-of-way ("ROW") thereby "requiring the taking of property and displacement of residents and businesses." (*Id.*, Exh. "A" at 5.) "The lack of specificity in turn results in an inadequate discussion of the impacts of the Pacheco alignment alternative on surrounding businesses and residences which may be displaced, construction impacts on the Monterey Highway, and impacts on Union Pacific's use of its right-of-way and spurs and consequently its freight operation." (*Id.*, Exh. "A" at 6.)

The Court also concluded "that various drawings, maps and photographs within the administrative record strongly indicate" the alignment was dependent upon use of Union Pacific's ROW. "The record further indicates that if the Union Pacific right-of-way is not available, there may not be sufficient space for the right-of-way needed for the HST without either impacting the Monterey Highway or without the takings of additional amounts of residential and commercial property." "These are significant impacts which were sufficient to trigger the recirculation of the FPEIR. However, respondent failed to take such further action after it received Union Pacific's statement of its position." (*Id.*, Exh. "A" at 19-20.)

Finally, the Court held "that in light of [a] contradiction between the FPEIR and the CEQA Findings, the Authority's finding that the mitigation strategies will reduce the vibration impact to a less-than-significant level is not supported by substantial evidence."[4] (*Id.*, Exh. "A" at 14.)

The Writ issued by this Court commanded Respondent to:

> 1. Rescind and set aside your Resolution No. 08-01 certifying the Final Environmental Impact Report/Environmental Impact Study for the Bay Area to Central Valley High-Speed Train Project, approving the Pacheco Pass Network Alternative Serving San Francisco and San Jose Termini, and approving preferred alignment alternatives and station location

[4] With respect to vibration impacts, the FPEIR stated:

> Although mitigation measures will reduce vibration impact levels, at the programmatic level it is uncertain whether the reduced vibration levels will be below a significant impact. The type of vibration mitigation and expected effectiveness to reduce the vibration impacts of the HST Alignment Alternatives to a less-than-significant level will be determined as part of the second-tier project-level environmental analysis.

(*Id.*, Exh. "A" at 14.)

options. This resolution is remanded to Respondent for reconsideration after completing compliance with this writ;

2. Rescind and set aside your Findings of Fact and Statement of Overriding Considerations under CEQA in support of Resolution No. 08-01. These findings are remanded to Respondent for reconsideration after completing compliance with this writ; and

3. To revise the Environmental Impact Report/Environmental Impact Statement for the Bay Area to Central Valley High-Speed Train Project in accordance with CEQA, the CEQA Guidelines, and the Final Judgment entered in this case prior to reconsidering certification of that EIR/EIS.

The Writ further provides: "Under Public Resources Code § 21168.9(c), this Court does not direct Respondent to exercise its lawful discretion in any particular way."

3. **Petition for Writ of Error *Coram Nobis*.**

On May 6, 2010, Petitioners filed a Petition for Writ of Error *Coram Nobis* contending that the revised ridership and revenue modeling used in the PEIR/EIS, and upon which Respondent relied in choosing the Pacheco Pass Network Alternative, was flawed. Petitioners alleged that the original ridership model, when applied to the data for the Project, did not provide results that were acceptable to Respondent's consultant, Cambridge Systematics, Inc. ("Cambridge Systematics"). Cambridge Systematics accordingly changed the modeling parameters to generate a revised model that was neither peer reviewed nor published. Petitioners contended that had the revised model been published during the administrative process, they would have evaluated and commented on the model. As a consequence of the concealment of the revised model, Petitioners alleged they were deprived of the opportunity to present this issue to Respondent or the Court, thereby rendering the trial of the case and the resulting Judgment unfair. Petitioners sought a writ of error *coram nobis* vacating the Judgment and reopening the proceedings to consider the newly discovered evidence.

In a Minute Order dated August 20, 2010, the Court denied Petitioners' Petition for Writ of Error *Coram Nobis* on the ground Petitioners were unable to establish all of the elements required for the issuance of a writ of *coram nobis*. Petitioners failed to demonstrate that the newly discovered evidence that Respondent allegedly concealed would compel or make probable a different result. Petitioners also failed to establish that the new evidence was not known to them

and could not have been discovered by them in the exercise of due diligence. Finally, the Court denied the Petition for Writ of Error *Coram Nobis* on the ground Petitioners had an alternate legal remedy available to them, which they were already pursuing: participation in the CEQA public comment process on Respondent's Revised Draft Program EIR. In its response to the petition, Respondent conceded it was obligated to respond to Petitioners' comments regarding the allegedly flawed ridership model. Accordingly, the Court could not conclude that Petitioners were without a viable, alternative legal remedy to address their grievances.

4. Respondent's Returns and Petitioners' Objections.

On January 6, 2010, Respondent filed an Initial Return to Peremptory Writ of Mandate confirming that on December 3, 2009, Respondent adopted Resolution HSRA 10-012, which rescinded Resolution No. 08-01 and directed "its staff to prepare the documentation needed to comply with the final judgment in this case and to circulate such documentation for the public review period required by" CEQA. (SAR at 12.)

On September 22, 2010, Respondent filed a Supplemental Return to Peremptory Writ of Mandate asserting Respondent's compliance with the Judgment and Writ and asking the Court to discharge the Writ. Respondent stated it prepared and circulated a "one-volume document entitled, Revised Draft Program Environmental Impact Report Material ("Revised Draft Program EIR") for a 45-day public comment period, which closed on April 26, 2010." "The Revised Draft Program EIR identified the Pacheco Pass Network Alternative serving San Francisco via San Jose as the preferred alternative . . . ." (SAR at 12.) Following the close of the public comment period, Respondent prepared a Revised Final Program Environmental Impact Report ("Revised Final Program EIR"). On September 2, 2010, Respondent certified the Revised Final Program EIR for compliance with CEQA, adopted findings of fact and a statement of overriding considerations, adopted a mitigation monitoring and reporting program, and selected the Pacheco Pass Network Alternative serving San Francisco via San Jose, including preferred alignments and station locations, for further study in project-level environmental documents.

On October 4, 2010, Petitioners filed their Objections to Respondent's Supplemental

Return detailing their opposition to the Revised Final Program EIR.[5] The Petitioners outlined a number of alleged CEQA violations, including the Revised Final Program EIR's failure to: include an adequate project description due to its reliance on "inaccurate ridership and revenue figures that were derived using a defective and previously-undisclosed ridership/revenue model"; fully disclose and adequately analyze the Project's "significant impacts associated with moving its right-of-way eastward outside of the right-of-way owned by Union Pacific"; include an adequate analysis of Project alternatives; adequately respond to public comments; recirculate the draft RPEIR for public comment; and support its factual findings with substantial evidence.

C. "*Atherton II*."

Also on October 4, 2010, various petitioners filed a Verified Petition for Peremptory Writ of Mandate and Complaint for Injunctive and Declaratory Relief ("Petition") challenging Respondent's certification of the Revised Final Program EIR.[6] The *Atherton II* Petitioners outlined a number of alleged CEQA violations that overlap with Petitioners' Objections to Respondent's Supplemental Return, including the Revised Final Program EIR's failure to: include an adequate project description due to its reliance on "inaccurate ridership and revenue figures that were derived using a defective and previously-undisclosed ridership/revenue model"; fully disclose and adequately analyze the Project's "significant impacts associated with moving its right-of-way eastward outside of the right-of-way owned by Union Pacific"; include an adequate analysis of Project alternatives; adequately respond to public comments; recirculate the draft RPEIR for public comment; and support its factual findings with substantial evidence.

D. **Resolution of Procedural Issues.**

In light of the complexities associated with adjudicating Petitioners' Objections to

[5] On September 23, 2010, Petitioners filed Preliminary Objections to Respondent's Supplemental Return generally outlining their objections that Respondent failed to fully comply with CEQA in revising, recirculating, and recertifying the Revised Final Program EIR for the Project.

[6] The 2010 action is referred to herein as "*Atherton II*" and the petitioners are referred to herein as the "*Atherton II* Petitioners." The *Atherton II* Petitioners originally included the Town of Atherton, City of Menlo Park, City of Palo Alto, Planning and Conservation League, Transportation Solutions Defense and Education Fund, California Rail Foundation, Community Coalition on High-Speed Rail, Midpenninsula Residents for Civic Sanity, and Patricia Louise Hogan-Giorni (collectively, the "*Atherton II* Petitioners"). As a result of a stipulation entered by the Court on or about February 7, 2011, the *Atherton II* Petitioners now include only the City of Palo Alto, Mid-Peninsula Residents for Civic Sanity, Patricia Giorni, and Community Coalition on High-Speed Rail.

Respondent's Supplemental Return and the *Atherton II* Petition, the Court instructed the parties to brief various procedural issues related to the Court's handling of these matters. The Court held a status conference with the parties on January 14, 2011, to delineate the appropriate course of action. On February 3, 2011, the Court entered a Stipulation and Order on Parties, Briefing, and Hearing outlining the parties' agreement regarding the Court's handling of these matters. The Stipulation and Order provided, in part, for the following:

> 1. The Court's review of the supplemental return on the writ of mandate in the Atherton 1 case will address whether the Authority complied with all terms of the November 3, 2009, peremptory writ of mandate, including specifically the terms of Paragraph 3 of said writ requiring that the Environmental Impact Report/Environmental Impact Statement for the Project be revised in accordance with CEQA, the CEQA Guidelines, and the final judgment entered in the case. The review will specifically include the issues raised in Petitioners' Writ of Error Coram Nobis.
>
> 2. The Atherton 2 case will address whether the Authority complied with CEQA and the CEQA Guidelines in preparing and certifying its Revised Final Program EIR and granting approvals based on that EIR.
>
> 3. In light of this stipulation and order's determination that the Court's consideration of the Atherton 1 petitioners' objections to Respondent's return on the writ in that case will encompass all of the CEQA issues raised in Atherton 2, the Atherton 1 petitioners who are also petitioners in Atherton 2 (Town of Atherton, City of Menlo Park, Planning and Conservation League, Transportation Solutions Defense and Education Fund, and California Rail Foundation) agree to file a request for their dismissal with prejudice from Atherton 2 by no later than February 7, 2011.[7]

The Court's ruling outlined herein addresses Petitioners' Objections to Respondent's Supplemental Return and Respondent's compliance with the Court's November 3, 2009 Judgment and Writ. The Court will issue a separate ruling addressing the merits of the *Atherton II* Petitioners' arguments in support of the *Atherton II* Petition.

II. DISCUSSION

A. Standard of Review.

"The trial court's task in this case [is] to determine whether there ha[s] been adequate compliance with the previously issued writ. This amount[s] to a decision whether the [Respondent] had prejudicially abused its discretion in approving the updated EIR . . . . 'Abuse of

[7] Petitioners were dismissed from *Atherton II* pursuant to a stipulation entered by the Court on or about February 7, 2011.

discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.'" (*National Parks and Conservation Ass'n v. County of Riverside* (1999) 71 Cal.App.4th 1341, 1352 (citing Pub. Res. Code § 21168.5 and *Western States Petroleum Assn. v. Super. Ct.* (1995) 9 Cal.4th 559, 570-73).)

In analyzing Respondent's compliance with the Writ, the Court bears in mind that "'[t]he EIR is the heart of CEQA,' and the integrity of the process is dependent on the adequacy of the EIR." (*Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 327 (citation omitted).) "'The EIR is the primary means of achieving the Legislature's considered declaration that it is the policy of this state to 'take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.'" (*Id.* at 328 (citation omitted).) "The EIR . . . is the mechanism prescribed by CEQA to force informed decision making and to expose the decision making process to public scrutiny." (*Planning & Cons. League v. Dept. of Water Res.* (2000) 83 Cal.App.4th 892, 910.)

"'The fundamental purpose of an EIR is "to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment."'" (*Center for Bio. Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 882 (citation omitted).) "'For the EIR to serve these goals it must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opppртunity to comment on that presentation before the decision to go forward is made.'" (*Comm. for a Better Env. v. City of Richmond* (2010) 184 Cal.App.4th 70, 82 (citation omitted).)

"'The courts [] have looked not for perfection but for adequacy, completeness, and good faith effort at full disclosure.' [] The overriding issue on review is thus 'whether the [lead agency] reasonably and in good faith discussed [a project] in detail sufficient [to] enable the public [to] discern from the [EIR] the 'analytic route the . . . agency traveled from evidence to action.'" (*Cal. Oaks Found. v. Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 262 (citations omitted).) "If a final environmental impact report [] does not "adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences

of the project, 'informed decision making cannot occur under CEQA and the final EIR is inadequate as a matter of law.'" (*Communities for a Better Environment, supra*, 184 Cal.App.4th at 82 -83 (citations and internal quotations omitted).)

B. The Revised Final Program EIR fails to adequately address the significant environmental impacts associated with the shifting and narrowing of the Monterey Highway.

Petitioners first challenge the Revised Final Program EIR on the ground it fails to comply with CEQA due to Respondent's failure to adequately analyze the significant impacts associated with: (1) shifting the Project ROW 50 to 100 feet to the east; (2) narrowing the Monterey Highway; (3) moving the Monterey Highway eastward; and (4) increasing the ROW width between San Francisco and San Jose.

1. The Project ROW remains in the same location.

Petitioners first contend the Revised Draft Program EIR "revised the preferred alternative, as required by the Court, to move it out of the Union Pacific right-of-way [] in the area of south San Jose. In doing so, Respondent took perhaps the simplest option, moving the Project right-of-way [] some fifty to 100 feet to the East." Respondent counters that the high-speed train alignment did not shift to the east: "The high-speed train alignment along Monterey Highway was never anticipated to be 'in' the UPRR right of way because the freight right of way in this area is very narrow." "The Revised Final Program EIR clarifies that the high-speed train alignment would be adjacent to UPRR's right of way, between UPRR and Monterey Highway, and that for about 3.3 miles it would utilize a portion of the Monterey Highway right of way by reducing Monterey Highway from six to four lanes, with no movement of the highway right of way. [] For the area where Monterey Highway is currently four lanes, the high-speed train alignment would require moving Monterey Highway eastward by 0-60 feet, depending on location."

Although Respondent is correct in its assertion that the Project ROW did not shift eastward, Respondent concedes that placing the Project ROW between the Union Pacific ROW and the Monterey Highway requires the highway to be shifted eastward in one section and narrowed in another. Respondent's point regarding the precise location of the Rroject ROW ignores the overriding issue presented by Petitioners related to the Project's impacts on the

environment as a result of the narrowing and shifting of the Monterey Highway, which are addressed by the Court below.

2. The Revised Final Program EIR fails to adequately address the traffic impacts associated with narrowing the Monterey Highway.

The Revised Final Program EIR provides an extensive description of the development of the Monterey Highway, including its present status. (See SAR at 166.) With respect to the Project's environmental consequences, the Revised Final Program EIR briefly addresses the potential impact of narrowing the Monterey Highway:

> As discussed above in the Affected Environment, Monterey Highway in the San Jose to Central Valley Corridor is six lanes wide for approximately six miles from Hollywood Avenue to south of Blossom Hill Road, and four lanes wide south of Blossom Hill Road. For the HST project, Monterey Highway from approximately Southside Drive to south of Blossom Hill Road (approximately 3.3 miles) is proposed to be narrowed from six lanes to four lanes to provide a cost-effective right-of-way corridor for HST by minimizing property acquisition along the HST alignment. ...
>
> With the reduction of lanes on a portion of Monterey Highway and with HST, traffic congestion is projected to increase slightly in both directions, as shown in Table 2-4. The preliminary information provided in this table is from the City of San Jose's long-range planning process and represents preliminary evaluation of LOS in the Monterey Highway corridor using the City's traffic model. The assumptions of this forecast consider a base scenario with Monterey Road being six lanes from Umbarger to south of Blossom Hill Road, and a project scenario with four lanes on Monterey Highway for this section. The forecast does not incorporate the mode shift to HST, and therefore represents a conservative scenario.

(SAR at 167.) The Revised Final Program EIR continues:

> The information in Table 2-4 above indicates that the narrowing of lanes on Monterey Highway, when viewed in isolation, would result in a diversion of traffic onto other major and more local roadways in the vicinity. The potential for traffic diversion will be examined in detail in a project-level EIR if a network alternative that includes the Monterey Highway narrowing is selected. This examination will include consideration of mode shifts from auto trips to the High-Speed Train, which is discussed in section 3.1 of the 2008 Final Program EIR.

(SAR at 168.)

During the public comment period, several Petitioners voiced their concerns regarding traffic impacts as a result of the narrowing of the Monterey Highway. These parties provided Respondent with information generated by a traffic consultant demonstrating the likelihood of traffic congestion on alternative routes as a result of the Project's narrowing of the Monterey

Highway. (SAR 893-895.) In response, Respondent updated the Revised Final Program EIR to include the following language:

> A transportation impact analysis will be conducted at the project-level, which will include a detailed evaluation of traffic, parking, pedestrian, bicycle, transit, construction and cumulative transportation impacts of the project HST project. This information will identify: (1) Changes in traffic volumes on regional roadways that result from HST construction and operations[;] (2) Changes in traffic volumes on local streets that result from passengers accessing/leaving HST stations, from project construction, and from other HST related roadway changes, and the effect of these changed volumes on roadway operations and critical intersections. . . . Detailed information and analysis of impacts and feasible mitigation measures will be included in project-level EIS/EIR.

(SAR at 169; 565.)

Petitioners now challenge the Revised Final Program EIR on the basis it fails to adequately address the Project's traffic impacts as a result of the narrowing of the Monterey Highway and improperly defers the analysis of these impacts until completion of the project-level EIR. Relying on the Third Appellate District's rationale in *Sacramento Old City Association v. City Council of Sacramento*, (1991) 229 Cal.App.3d 1011, Petitioners contend Respondent is required to analyze these impacts. Petitioners argue that Respondent's proposed mitigation measure – the potential for "mode shift" from highway travelers to high-speed rail travelers – is not certain to fully mitigate the acknowledged traffic impacts on local roads caused by the narrowing of the Monterey Highway. Petitioners also argue that Respondent was required to treat these traffic impacts as significant, to address them in the Revised Final Program EIR, and to commit to implementing project-level measures to mitigate the impact.

In *Sacramento Old City Association, supra*, the City of Sacramento certified an EIR related to the expansion of the city's existing community convention center and construction of an office tower. (*Sacramento Old City Association*, 229 Cal.App.3d at 1015.) The petitioners challenged the "validity and sufficiency of the EIR with respect to its treatment of mitigation of impacts and analysis of cumulative impacts" related to parking and traffic. (*Id.* at 1018.) In the EIR, the City determined the potential worst-case scenario regarding the project's impacts on parking and traffic and concluded that 2,621 additional parking spaces would need to be created to account for the project's impacts on parking and traffic. (*Id.* at 1020.) Instead of adopting a

particular mitigation measure to alleviate the project's parking impacts, the EIR outlined a list of potential mitigation measures for the cumulative effects of the office building and community center expansion. (*Id.* at 1020-21.)

In the portion of the opinion cited by Petitioners, the Third Appellate District addressed the petitioners' argument that the city "failed to describe and examine 'true' mitigation measures and failed to analyze the potential environmental impacts of implementing such measures. Plaintiffs contend the EIR provides no specific mitigation measures for the parking impacts, but instead offers a list of 'seven general measures of the sort that *might* be included in [the City's] *unformulated* "Transportation Management Plan"', which methodology failed to comply with CEQA. (*Id.* at 1026.)

The Court rejected the petitioners' challenge, noting "the City ... acknowledged traffic and parking have the potential, particularly under the worst case scenario, of causing serious environmental problems. The City did not minimize or ignore the impacts in reliance on some future parking study." (*Id.* at 1028.) Additionally, the City "committed itself to mitigating the impacts of parking and traffic. The City approved funds for a major study of downtown transportation." (*Id.* at 1029.) The court distinguished the *Sundstrom v. County of Mendocino*, (1988) 202 Cal.App.3d 296, decision because there the county failed to consider or address any mitigation measures at all. (*Id.* at 1028.) The court then quoted a commentator who noted that "*Sundstrom* 'need not be understood to prevent project approval in situations in which the formulation of precise means of mitigating impacts is truly infeasible or impractical at the time of project approval. In such cases, the approving agency should commit itself to eventually working out such measures as can be feasibly devised, but should treat the impacts in question as being significant at the time of project approval." (*Id.* at 1028.)

The selection of the Pacheco Pass alternative necessarily required Respondent to narrow portions of the Monterey Highway from six to four lanes. Respondent clearly recognizes that these adjustments will "result in a diversion of traffic onto other major and more local roadways in the vicinity." (SAR at 168.) In fact, in response to public comments, Respondent indicates its analysis of the Project's traffic impacts on the Monterey Highway itself was impacted by the City

of San Jose's conclusion that highway traffic would in fact be diverted onto local streets:

> The City of San Jose has confirmed that the reduction in peak hour volumes identified in Table 2.4 is due to anticipated diversion of traffic from the narrowed portion of Monterey Highway onto other roadways in the vicinity. Lane narrowing that reduces a roadway's capacity to handle a particular volume of traffic will result in drivers diverting to other streets.

(SAR at 564; see also SAR at 566.)

Despite this information, Respondent acted in a fashion directly contrary to the city in *Sacramento Old City Association*. Respondent failed to treat these impacts on local traffic as significant or outline or commit to implement any mitigation measures. Instead, Respondent deferred analysis of these impacts to the project-level at which time Respondent will conduct a traffic study and consider potential, unidentified mitigation measures. In deferring its analysis of the Project's traffic impacts on local roads, Respondent appears to have relied on the fact that current modeling tools are insufficient to allow it to determine the impact of the Project on local roads:

> The information available suggests that the collective effect of the mode shift to HST combined with the narrowing of two lanes on Monterey Highway could affect the traffic congestion benefit of HST on the roadway/highways in the area. Based on the limitations of the current modeling tools, sufficient information, however, is not available at the program level to determine the level of adverse effects or benefits resulting from narrowing of Monterey Highway on local highways and streets. A more detailed traffic analysis would be necessary at the project level to more precisely identify the magnitude of changes and whether they represent a reduction in benefit or adverse effect, including consideration of the mitigation strategies incorporated for the narrowing of Monterey Highway identified in this Revised Final Program EIR.

(SAR at 565.)

Whether current modeling tools are indeed insufficient to allow Respondent to determine the Project's impacts on local roads is not before this Court.[8] However, as the Third Appellate District stated in *Sacramento Old City Association*, where "formulation of precise means of mitigating impacts is truly infeasible or impractical at the time of project approval," "the approving agency should commit itself to eventually working out such measures as can be feasibly devised" and "***treat the impacts in question as being significant at the time of project***

[8] Petitioners do not challenge Respondent's conclusions regarding the feasibility of current modeling tools.

approval." (*Sacramento Old City Ass'n, supra*, 229 Cal.App.3d at 1028-29 (emphasis added).) It is evident that Respondent, instead of treating the Project's traffic impacts on local roads as significant, deferred its analysis of the impacts to a later phase.[9]

Relying on *In re Bay-Delta, supra*, Respondent contends that it properly tiered its analysis of the Project's traffic impacts.[10] "'[T]iering is a process by which agencies can adopt programs, plans, policies, or ordinances with EIRs focusing on "the big picture," and can then use streamlined CEQA review for individual projects that are consistent with such . . . .'"[11] (*Koster v. County of San Joaquin* (1996) 47 Cal.App.4th 29, 36.) In *Bay-Delta*, the California Supreme Court elaborated on the principle of tiering:

> A program EIR, as noted, is "an EIR which may be prepared on a series of actions that can be characterized as one large project" and are related in specified ways. [Citation.] An advantage of using a program EIR is that it can "[a]llow the lead agency to consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basis problems or cumulative impacts." [Citation.] Accordingly, a *program* EIR is distinct from a *project* EIR, which is prepared for a specific project and must examine in detail site-specific considerations. [Citation.]
>
> Program EIR's are commonly used in conjunction with the process of tiering. [Citation.] Tiering is "coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs . . . ." [Citation.] Tiering is proper "when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous environmental impact reports." [Citations.]
>
> In addressing the appropriate amount of detail required at different stages in the

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[9] Respondent criticizes Petitioners' reliance on *Sacramento Old City Association, supra*, attempting to distinguish the Third Appellate District's opinion on the basis the appellate court analyzed a project-level EIR and not a first tier or program-level EIR such as Respondent's. The Court finds Respondent's criticisms unpersuasive and declinds to distinguish the Third Appellate District's opinion on this overly simplistic basis. The Court does not dispute that the Revised Final Program EIR serves as a first-tier EIR or program-level EIR. The Revised Final Program EIR, however, "involves the ***fundamental choice*** between Altamont Pass, Pacheco Pass, or both passes . . . ." (Emphasis added.) When framed in this manner, it is apparent the Final Program EIR may essentially be viewed as a project-level EIR for the decision at hand: whether to select the Pacheco Pass or Altamont Pass as the preferred alternative connecting the Central Valley and Bay Area. As further addressed below in its tiering analysis, tiering may not be used to defer analysis of impacts specific to the planning approval at hand. (See *Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* ("*In re Bay-Delta*") (2008) 43 Cal.4th 1143, 1170.)

[10] A more detailed discussion of CEQA's tiering principles is contained herein in Section II.C.1, *infra*.

[11] Pub. Res. Code § 21068.5 (defining "tiering" as "the coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program or ordinance followed by narrower or site-specific environmental impact reports which incorporate by reference the discussion in any prior environmental impact report and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior environmental impact report").

> tiering process, the CEQA Guidelines state that "[w]here a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof . . . , the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographic scale, ***as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.***" [Citation.] This court has explained that "[t]iering is properly used to defer analysis of environmental impacts and mitigation measures to later phases when the impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases."

(*In re Bay-Delta*, 43 Cal.4th at 1170 (emphasis added); see also CEQA Guidelines[12] §§ 15152, 15385; Pub. Res. Code § 21093.)

The Revised Final Program EIR is part of a larger project intended to develop a statewide high-speed rail system serving all of California's residents and serves as a program-level EIR for the Project's preferred alternative linking the Central Valley and Bay Area. To this end, it is entirely appropriate for Respondent to break the Project into smaller, more manageable components in order to facilitate its analysis of the Project in accordance with CEQA's tiering principles. (See Pub. Res. Code § 21093(b) ("To achieve this purpose, environmental impact reports shall be tiered whenever feasible, as determined by the lead agency").)

Respondent, however, appears to ignore the fundamental purpose of the Revised Final Program EIR, which is to choose between the Pacheco Pass and Altamont Pass alignments in connecting the Central Valley and Bay Area. Respondent's certification of the Revised Final Program EIR unquestionably commits it to a definite course of action with respect to the high-speed rail alignment connecting these two regions. The traffic impacts associated with the selection of the Pacheco Pass alignment are not specific to later phases of the high-speed rail development. Instead, these impacts stem from the "fundamental choice" between the two alignments and must be addressed by Respondent in the Revised Final Program EIR. (See *In re Bay-Delta*, *supra*, 43 Cal.4th at 1170; *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 197 ("[A] decision to "tier" environmental review does not excuse a

[12] "In interpreting CEQA, we accord the Guidelines great weight except where they are clearly unauthorized or erroneous." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428 n.5.)

governmental entity from complying with CEQA's mandate to prepare, or cause to be prepared, an environmental impact report on any project that may have a significant effect on the environment, with that report to include a detailed statement setting forth '[a]ll significant effects on the environment of the proposed project'").)

Respondent identified the potential for diversion of traffic onto surrounding local roads due to the narrowing of the Monterey Highway as a result of the selection of the Pacheco Pass Network Alternative for the high-speed rail alignment. Respondent inappropriately deferred analysis of these traffic impacts to a later phase. Respondent failed to acknowledge or consider the significance of these impacts at the time it selected the Pacheco Pass Network Alternative. The Revised Final Program EIR is thus inadequate due to Respondent's failure to address the traffic impacts necessarily stemming from the selection of the Pacheco Pass Network Alternative.

3. **The Revised Final Program EIR fails to adequately address the impacts associated with moving the Monterey Highway eastward.**

In its 2008 Final Program EIR, Respondent conducted a noise and vibration analysis with respect to high-speed rail operations, which is briefly summarized as follows in the Revised Final Program EIR:

> For purpose of assessing the Bay Area to Central Valley HST noise and vibration impacts, a GIS analysis was completed for potential impacts on sensitive receptors or receivers, such as people in residential areas, schools, and hospitals. Noise and vibration impacts were evaluated for a 2,000 foot study area along the HST alignments, 1,000 from each side of the HST centerline. The relative level of potential noise and vibration impact for each HST alternative is shown in Table 4-5. The table includes the length of alignment alternatives, residential population, mixed use population, acreage of parkland, number of schools, and number of hospitals. The noise and vibration impact ratings are based on the population densities along each alignment and the proximity of parkland, hospitals, and schools where noise and vibration impacts might occur. Segments where trains would operate and higher speeds, over 150 mph, would have a greater level of impact.

(SAR at 24.)

The Court previously upheld the validity of Respondent's high-speed rail noise and vibration analysis, but found that Respondent's finding regarding the effectiveness of proposed mitigation measures was not supported by substantial evidence due to a conflict between the FPEIR and the Findings of Fact. In certifying its 2010 Revised Final Program EIR, Respondent

did not alter its noise and vibration analysis, explaining the continuing accuracy of its analysis in response to public comments:

> Noise analysis in the 2008 Final Program EIR, Section 3.04, were generally based on densities along the various alignments evaluated. As stated in this section, "Screening distances were applied from the center of alignments to estimate all potentially impacted land uses in noise-sensitive environmental settings." Given that the alignment in this area did not change but rather was more clearly defined in the 2010 Revised Draft Program EIR Material the noise evaluation did not change from the 2008 document. Mitigation strategies would not change for this alignment. Mitigation strategies for noise are provided in Section 3.4.5 of the 2008 Final Program EIR. Overall, the noise valuation and miligation strategies would not change for this alignment. Detailed noise analyses will occur for the alignments and station locations at the project-level EIR/EIS. Also see Standard Response 5.

(SAR at 537.)

Petitioners now challenge the adequacy of the Revised Final Program EIR on the ground it fails to address the noise and vibration impacts associated with moving the high-speed rail ROW eastward. Petitioners argue "both the Project ROW and the Monterey Highway would be moved closer to residences east of the existing Monterey Highway. Consequently, one would expect the noise and vibration impacts, already rated medium to high [], to be further increased."[13]

In response to Petitioners' claims, Respondent argues that its prior noise and vibration analysis remains accurate even with respect to the shifting of the Monterey Highway:

> The noise and vibration methodology, which the Court found adequate, started with a broad study area that extended 1000 feet on either side of the high-speed rail alignment centerline. [] The analysis assessed the number of people and noise-sensitive land used within a defined screening distance. [] For noise, the screening distances ranged from 375-900 feet on either side of the track centerline, depending on anticipated train speeds, the type of corridor, and ambient land uses. [] For vibration, the screening distances ranged from 120-175 feet on either side of the track centerline.

Consequently, Respondent contends that its "general, screening-level noise analysis and the minor

[13] As previously determined by the Court, the high-speed rail ROW has not shifted eastward. Instead, as required by the Court's Judgment, Respondent clarified the position of the high-speed rail ROW as being between the Union Pacific ROW and the Monterey Highway. Accordingly, the Court agrees with Respondent that its 2008 noise and vibration analysis remains accurate with respect to the high-speed train's operations. The Court therefore rejects Petitioners' claims that the Revised Final Program EIR is inadequate on this ground.

shift of the highway for 0-60 feet in a rural area is fully captured within that prior analysis."

The Court, however, agrees with Petitioners that the Revised Final Program EIR is inadequate due to its apparent failure to address the potential noise, vibration, and construction impacts resulting from the shifting of the Monterey Highway eastward. The 2008 FPEIR makes clear that Respondent analyzed the noise and vibration impacts from the high-speed rail's operations themselves, but not necessarily the shifting of the Monterey Highway eastward. For instance, Respondent's noise and vibration study area "extended 1000 feet on either side of the high-speed rail alignment centerline." (See also SAR at 537 ("Screening distances were applied from the center of alignments to estimate all potentially impacted land uses in noise-sensitive environmental settings"); SAR at 24 ("Noise and vibration impacts were evaluated for a 2,000 foot study area along the HST alignments").) Nowhere in its noise and vibration impacts analysis does Respondent mention the shifting of the Monterey Highway eastward, let alone the resulting impacts, if any.

Moreover, despite Respondent's assertions, it is unclear to this Court how the shifting of the Monterey Highway eastward factored into Respondent's original noise and vibration impacts analysis, if at all. Respondent's 2008 Final Program EIR does indicate that its noise and vibration analysis considered "the potential noise impacts from airplanes, automobiles on intercity highways, and the proposed HST system." (AR at B004100.) The 2008 FPEIR also notes that "[n]oise from highways, airports, and rail lines tend to dominate the noise environment in its immediate vicinity." (AR at B004110.) "Existing noise environments are generally dominated by transportation-related sources, including vehicle traffic on freeways, highways, and other major roads, existing passenger and freight rail operations, and aviation sources, including civil and military. Existing noise along highway and proposed HST corridors has been estimated using data in the noise element from the general plan for cities and counties in the region, along with general methods for provided by FHWA, FRA, and FTA for estimating transportation noise." (AR at B004116.) These statements appear to indicate that Respondent's noise and vibration impacts analysis may have taken the current location of the Monterey Highway into consideration. But it is unclear to this Court whether the analysis considered the location of the

Monterey Highway upon completion of the Project.

Finally, insofar as the shifting of the Monterey Highway is indeed factored into Respondent's original noise and vibration impacts analysis as Respondent contends, Respondent fails to point to any portion of the Revised Final Program EIR that contains the explanation advanced in its Opposition brief regarding consideration of the shifting of the Monterey Highway in its prior noise and vibration impacts analysis. This omission renders the Revised Final Program EIR insufficient as an informational document. (See *Comm. for a Better Env., supra*, 184 Cal.App.4th at 82.)

The Court also agrees that the Revised Final Program EIR is deficient due to its failure to address the construction impacts associated with shifting the Monterey Highway eastward. In its Standard Response No. 5, Respondent defers analysis of the "potential noise and vibration impacts during construction" to its "Future Project-Level Analysis of Noise and Vibration." (SAR at 452.) Respondent states: "Noise and vibration limits during construction will be established by the Authority which will consider the land use activities adjoining the construction sites." (SAR at 452.) The shifting of the Monterey Highway eastward is a program-level decision and the associated construction impacts are required to be addressed at the program level.

4. **The Revised Final Program EIR adequately addresses the safety issues raised by Petitioners.**

Petitioners fault Respondent for failing to disclose and address new and previously unidentified safety concerns implicated by the placement of the high-speed rail ROW between the Monterey Highway and the Union Pacific ROW. Petitioners contend "neither Respondent nor its consultants provided any substantial evidence to support a claim that a derailment or other accident that would place high-speed rail trains, UP freight trains, Caltrain passenger trains, or automobiles from the Monterey Highway, in a dangerous configuration was so unlikely as to not constitute a significant impact and would not require mitigation, including a change in alignment." Petitioners argue "[a]nalysis of these impacts as well was put off for future project-level analysis [], in spite of the fact that there was sufficient information available to do at least a

preliminary program-level analysis of impacts and potential mitigation measures."

Respondent, on the other hand, contends the "Revised Final Program EIR does not implicate a new safety concern because the high-speed train has consistently been depicted as adjacent to UPRR, between UPRR and Monterey Highway." The Court agrees with Respondent and concludes that Respondent's safety analysis is adequate.

During the public comment period, Petitioners expressed concerns regarding the safety implications of locating the high-speed rail ROW next to the Union Pacific ROW and the necessity of installing a crash wall between the two ROWs in order to protect against train derailments or similar upsets and/or similar safety measures between the high-speed rail ROW and the Monterey Highway. (SAR at 782, 897-908.) In response, Respondent explained "[t]he typical HST sections accommodate space for a safety barrier if needed." (SAR at 928.) Indeed, corrected cross-sections PP-6B and PP-6C depict what appears to be a barrier between the high-speed rail ROW and Monterey Highway. (SAR at 191, 192, 6104, 6105.) With respect to safety issues related to the location of the high-speed rail ROW next to the Union Pacific ROW, Respondent provided a sufficient program-level analysis. (SAR at 458-460.) In Standard Response 9, Respondent explained that it was aware of the safety implications of location high-speed rail operations next to freight train operations and confirmed that the "HST system will be designed in accordance with FRA implementing regulations, applicable state safety laws and regulations, and safety policies and procedures of other train systems as may be applicable, including those establishing clearance requirements for track separation, overpass structures, trenching requirements, and similar matters." (SAR at 458.)

5. Respondent is not required to re-analyze the noise and vibration impacts associated with increasing the high-speed rail ROW.

Petitioners next contend that Respondent is required to address the noise and vibration impacts associated with the widening of the Caltrain ROW in light of Respondent's recognition of the "need for limited property acquisition along the right-of-way in narrow areas to allow for a four track alignment that will accommodate UPRR freight operations. This would, of course, bring the HSR alignment closer to adjoining businesses and residences," requiring Respondent to

reanalyze the noise and vibration impacts of the high-speed train's operations on nearby residences and businesses.

The Court, however, agrees with Respondent that its analysis of the Project's noise and vibration impacts remains accurate in light of the fact that, contrary to Petitioners' assertions, the high-speed rail alignment has not changed since the circulation and certification of its 2008 Final Program EIR. Respondent's noise and vibration analysis evaluated a 2,000-foot study area along the center line of the high-speed rail alignment (1,00 feet on either side of the alignment). For noise, the screening distances ranged from 375 to 900 feet on either side of the track centerline, depending on anticipated train speeds, the corridor type, and ambient land uses. For vibration, the screening distances ranged from 120 to 175 feet on either side of the track centerline. (See AR at C027433.) Respondent identified the portion of the corridor identified by Petitioners as "densely populated, which was why Respondent ranked the corridor has having a medium noise and vibration rank." (See AR at B604118, B004124, B004132.)

Petitioners also contend that Respondent was required to address the potential noise and vibration impacts from the placement of freight train tracks closer to nearby businesses and residences. The Court agrees. In its Revised Draft Program EIR, Respondent confirms that it will need to acquire private property on the peninsula to accommodate Union Pacific's operations:

> In some locations, this right-of-way is not sufficiently wide enough to accommodate all four tracks and in some location would result in the acquisition of property. The 2008 Final Program EIR ranked property impacts along the San Francisco to San Jose corridor as low based on the fact that the alignment would be built mostly within the existing publicly owned right-of-way. The information now available indicates a need for limited property acquisition along the right-of-way in narrow areas to allow for a four-track alignment that will accommodate UPRR freight operations. Accordingly, property impacts in this corridor are now ranked between low and medium, rather than low.

(SAR at 6118.)

The Court's analysis in this regard is similar to the analysis outlined in Section II.B.3, *supra*, with respect to Respondent's failure to address the noise and vibration impacts, if any, associated with the shifting of the Monterey Highway eastward. Respondent fails to direct the Court to any portion of the Revised Final Program EIR that addresses whether Respondent's acquisition of additional right-of-way to accommodate a four-track freight train alignment will

have any impact on the nearby residences and businesses. This particular impact is unique to the "fundamental choice" between the Pacheco Pass and Altamont alternatives in linking the Central Valley to the Bay Area and Respondent is obligated to address this issue at the program level.

C. **Project changes identified in project-level environmental studies.**

Petitioners next argue that Respondent prejudicially abused its discretion in ignoring project-level information that Petitioners contend potentially affects the program-level analysis outlined in Respondent's Revised Final Program EIR. Because Respondent's opposition to Petitioners' arguments largely focuses on principles of tiering, the Court addresses the governing legal principles prior to delving into the merits of the parties' arguments.

1. **Program EIRs and tiering.**

"Under state law, a program environmental impact report is one that 'may be prepared on a series of actions that can be characterized as one large project' and are related in specified ways," including "[a]s logical parts in the chain of contemplated actions." (*In re Bay-Delta, supra*, 43 Cal.4th at 1152, 1169; CEQA Guidelines § 15168(a)(2). "An advantage of using a program EIR is that it can '[a]llow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.'" (*In re Bay-Delta*, 43 Cal.4th at 1169 (citation omitted).) "Accordingly a *program* EIR is distinct from a *project* EIR, which is prepared for a specific project and must examine site-specific considerations." (*Ibid.*)

"Program EIRs are commonly used in conjunction with the process of tiering." (*Id.* at 1170; *Al Larson Boat Shop, Inc. v. Bd. of Harbor Commissioners of the City of Long Beach* (1993) 18 Cal.App.4th 729, 740.) "'Tiering' refers to using the analysis of general matters contained in a broader EIR [] with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and concentrating the later EIR or negative declaration solely on the issues specific to later projects." (CEQA Guidelines § 15152(a); *Al Larson, supra*, 18 Cal.App.4th at 746.) "The purpose of tiering is to allow the agency to focus on decisions ripe for review." (*In re Bay-Delta, supra*, 43 Cal.4th at 1173.) The process of tiering is intended to "promote construction of ... development projects by

(1) streamlining regulatory procedures, (2) avoiding repetitive discussions of the same issues in successive environmental impact reports, and (3) ensuring that environmental impact reports prepared for later projects which are consistent with a previously issued policy, plan, program, or ordinance concentrate upon environmental effects which may be mitigated or avoided in connection with the decision on each later project." (Pub. Res. Code § 21093(a).) The Legislature expressly found that "tiering is appropriate when it helps a public agency focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous environmental impact reports." (*Ibid.*) "To achieve this purpose, environmental impact reports shall be tiered whenever feasible, as determined by the lead agency." (*Id.* at § 21093(b).)

"In addressing the appropriate amount of detail required at different stages in the tiering process, the CEQA Guidelines state that '[w]here a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval . . . the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographic scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.'" (*In re Bay-Delta, supra*, 43 Cal.4th at 1168 (citation omitted).)

As the California Supreme Court explained, however, there are limitations on an agency's ability to tier its environmental analysis of a large-scale development:

> "While proper tiering of environmental review allows an agency to defer analysis of certain details to later phases of long-term linked or complex projects until those phases are up for approval, CEQA's demand for meaningful information 'is not satisfied by simply stating information will be provided in the future.' [] As the CEQA Guidelines explain: 'Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.' [Citation.] Tiering is properly used to defer analysis of environmental impacts and mitigation measures to later phases when the impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases."
>
> * * *
>
> Stated another way, CEQA contemplates consideration of environmental

consequences at the """"earliest possible stage, even though more detailed environmental review may be necessary later."""""

(*Environmental Protection Information Center v. Cal. Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 502-3 (citations omitted).)

2. Respondent properly deferred analysis of impacts associated with vertical alignment alternatives to its second-tier, project-level analysis.

Petitioners criticize Respondent for moving ahead with project-level environmental work despite the Court's refusal to stay Respondent's project-level approvals after issuing the Writ.[14] Petitioners allege that in 2010, Respondent conducted a variety of Alternatives Analyses through which it resolved to carry forward an aerial viaduct option for certain segments of the high-speed rail alignment, which were not mentioned in the Revised Final Program EIR. According to Petitioners, having made the determination to construct elevated structures prior to the certification of the Revised Final Program EIR, Respondent was required to address the impact of its project-level decision in its program-level EIR.

In response, Respondent contends that it properly tiered its analysis of the Project, first determining in its Revised Final Program EIR the high-speed rail alignment connecting the Central Valley to Bay Area and reserving its analysis regarding the specific high-speed rail profile – below grade, at grade, or elevated – for the project level. In advancing this argument, Respondent again relies on the California Supreme Court's decision in *In re Bay-Delta, supra*. Here, Respondent's analogy to the *In re Bay-Delta* decision is apropos.

In *In re Bay-Delta*, the Supreme Court dealt with whether CALFED[15] complied with CEQA when it certified a program environmental impact statement/environmental impact report

[14] In its October 29, 2009 Order Denying Stay of Project-Level Environmental Studies, the Court denied Petitioners' request for a "stay of all of respondent's activities dependent on or premised upon the approvals being ordered rescinded." (Order at Exh. "A" at p. 1.) The Court held: "The actions for which a stay is being requested are studies with no potential for adverse change or alteration to the physical environment. Additionally, the Court concludes that such studies do not create such momentum that respondent Authority would be unable to comply with its CEQA obligations as previously determined by this Court." (*Ibid.*)

[15] CALFED is a consortium of 18 federal and state agencies formed to design and implement a long-term and comprehensive plan to restore the Bay-Delta's ecological health and improvement management of Bay-Delta resources. (*In re Bay Delta, supra*, 43 Cal.4th at 1151-52.)

("PEIS/R") designed to "address problems of the Bay-Delta system within each of four resource categories: ecosystem quality, water quality, water supply reliability, and levee system integrity." (*Id.* at 1157.) In relevant part, the court of appeal "found the CALFED PEIS/R lacking in sufficient detail regarding the sources of water that would be used to implement the CALFED Program." (*Id.* at 1169.) The Supreme Court reversed, holding that the court of appeal "erred on both points – the need to more specifically identify potential water sources and the need for additional analysis of the impacts of supplying water from each identified potential source." In doing so, the court relied on the tiering principles outlined above, holding:

> As we explain, CALFED's PEIS/R is a first-tier program EIR, and CEQA does not mandate that a first tier-program EIR identify with certainly particular sources of water for second-tier projects that will be further analyzed before implementation during later stages of the program. Rather, identification of specific sources is required only at the second-tier stage when specific projects are considered. Similarly, at the first-tier program stage, the environmental effects of obtaining water from potential sources may be analyzed in general terms, without the level of detail appropriate for second-tier, site-specific review. The CALFED PEIS/R satisfies these requirements.

(*Id.* at 1169.)

There, the CALFED PEIS/R explained its scope and purpose in the tiering scheme (see *id.* at 1170) and "identifie[d] potential sources of water – including purchases from willing sellers, water conservation by agricultural and urban users, and new or expanded surface or underground storage – that will be needed for the CALFED Program's components . . ." (*id.* at 1171). "Further, the PEIS/R addresse[d] the significant impacts of taking water from the identified components. ... These impacts are then discussed in general terms for the five CALFED geographic regions . . . . Although it does not identify specific future water sources with certainty, the PEIS/R does evaluate in general terms the potential environmental effects of supplying water from potential sources. This was sufficient." (*Id.* at 1171.) Relying on *Rio Vista Farm Bureau Center v. County of Solano*, (1992) 5 Cal.App.4th 351, the court held:

> [T]he description of potential water sources for the CALFED Program's future projects and the environmental effects of obtaining water from those sources must be appropriately tailored to the current first-tier stage of the planning process, with the understanding that additional detail will be forthcoming when specific second-tier projects are under consideration.

(*Id.* at 1172.)

Here, Respondent clearly possesses discretion with respect to tiering its analysis of the Project. (Pub. Res. Code § 21093(b).) Like in *In re Bay-Delta*, Respondent explained its "scope and purpose in the tiering scheme." (*In re Bay-Delta, supra*, 43 Cal.4th at 1170.) In the Preface of its Revised Final Program EIR, Respondent explains the programmatic nature of its analysis. (SAR at 142; see also SAR at 156.) In its Findings of Fact and Statement of Overriding Considerations, Respondent addresses in detail "The Role of Tiering and the Level of Detail for this Program EIR/EIS," explaining that "[t]he focus of the analysis is the programmatic environmental impacts associated with different network alternatives to connect the Bay Area to the Central Valley for the HST system." (SAR at 13.) Respondent explains: "The impacts analysis and mitigation strategies identified in the Revised Final Program EIR will be used in the future as a basis for second tier, detailed environmental documents assessing site-specific impacts of HST alignments and station locations that are ready for implementation in the Bay Area to the Central Valley region." (SAR at 13.) Finally, in its Standard Responses 2 and 3, Respondent further explains the tiering process and its role in Respondent's analysis of the Project's impacts.

Tiering allows the agency to focus on decisions ripe for review. (*In re Bay-Delta, supra*, 43 Cal.4th at 1173.) The planning approval at hand relates to the "fundamental choice of a preferred alignment within the broad corridor between and including the Altamont Pass and Pacheco Pass for the HST segment connecting the San Francisco Bay Area to the Central Valley." (SAR at 437.) Site-specific details related to high-speed rail vertical profiles and station locations were not the focus of the Revised Final Program EIR. (See SAR at 1094 ("The Bay Area to Central Valley High-Speed Train HST Program environmental process did not select a vertical alignment").) Therefore, the Court concludes that Respondent appropriately deferred analysis of these site-specific details to its second-tier, project-level analysis.

Finally, Petitioners' argument that Respondent was required to incorporate elements of its project-level environmental analysis into its programmatic EIR fails. A similar argument was raised and rejected by the *In re Bay-Delta* court. There, the Supreme Court also reversed the

court of appeals' determination that "specific EWA[16] details in the Action Framework that preceded the PEIS/R certification should have been included in the PEIS/R." (*Id.* at 1176.) Instead, relying on *Al Larson*, *supra*, the court held that the PEIS/R "contained a level of detail appropriate to its first-tier, programmatic nature." (*Id.* at 1176.) "In contrast with the broad programmatic nature of the PEIS/R, the EWA was designated a second-tier project from its inception." (*Id.* at 1177.) Although "CALFED worked out some of the EWA details while it was completing the final PEIS/R, [] it properly released those details in the second-tier Action Framework in June 2000, one month before it released the final PEIS/R. The Action Framework set out *specific* details regarding the EWA project components whose *general* impacts were analyzed in the PEIS/R." (*Ibid.*) "The PEIS/R therefore complied with CEQA in analyzing the impacts of the EWA in general terms and deferring project-level details to subsequent project-level EIR's." (*Ibid.*)

3. **Respondent improperly deferred analysis of impacts associated with reduced access to surface streets its second-tier, project-level analysis.**

Petitioners also contend "the San Francisco to San Jose SAAR also identified a number of streets in the vicinity of the Caltrain ROW where surface roadway traffic lanes would need to be removed due to the expected expansion of the width of the Project ROW." Respondent counters that its deferral of its analysis of road closures to the second-tier project analysis was appropriate. "The potential for road closures is a detailed design issue that must necessarily be addressed as part of the second-tier project, with further planning, preliminary engineering, and as consultation with the local governments involved takes place." Upon review of the record, however, the Court disagrees.

In support of their argument, Petitioners direct the Court to the Supplemental Administrative Record Addendum ("SARA") at pages 456, 459, 467, 477, 480, 482, and 490, all of which outline in chart form Respondent's "Evaluation Measures" as they relate to certain impacts, including "Disruption to Communities." With respect to "[l]ocal traffic effects along

[16] The EWA or "Environmental Water Account [] is a second-tier project that the CALFED agencies proposed in conjunction with the ecosystem restoration program." (*Id.* at 1173.)

alignment and at grade crossings," the Evaluation Measures' purpose was to "[i]dentify streets with ***permanent loss of traffic lanes due to ultimate ROW requirements*** and identify traffic effects at grade crossings." (Emphasis added.) With respect to each segment, it appears that the placement of the high-speed rail ROW in the location selected by Respondent will result in the loss of traffic lanes, regardless of the ultimate vertical alignment. For example:

- Segments 4A and 4B, North and South of 25th Avenue: The Project will result in the permanent loss of at least one and up to four traffic lanes along Pacific Boulevard for all of the proposed vertical alignments except for "Deep Tunnel." (SARA at 456.)
- Segment 4C, South of Cordilleras Creek to North of Woodside Road: The Project will result in the permanent loss of "1 to 2 traffic lanes along Old Country Road" for all of the proposed vertical alignments except for "Deep Tunnel." (SARA at 459.)
- Segment 5B, south of 5th Avenue to South of Ravenswood Avenue: The Project will result in the permanent loss of "one traffic lane on Alma Street between Oak Grove Avenue and Ravenswood Avenue for all of the proposed vertical alignments except for "Deep Tunnel." (SARA at 467.)
- Segment 6A, North of San Mateo County/Santa Clara County Line to South of Embarcadero Road: The Project will result in the loss of "1 traffic lane along Alma Street" for all of the proposed vertical alignments except for "Deep Tunnel." (SARA at 477.)
- Segment 6B, South of Embarcadero Road to South of Churchill Avenue: The Project will result in the loss of "2 traffic lanes along Alma Street" for all of the proposed vertical alignments except for "Deep Tunnel." (SARA at 480.)
- Segment 6C, South of Churchill Avenue to North of East Meadow Drive: The Project will result in the permanent loss of "1 to 2 traffic lanes along Alma Street" for all of the proposed vertical alignments for that section except for "Deep Tunnel."
- Segment 7A & 7B, North of Adobe Creek to North of Stevens Creek: The Project will result in the permanent loss of "one traffic lane along Central Expressway, north of Rengstorff Avenue" for all of the proposed vertical alignments for that section. (SARA at 491.)

Thus, it appears the loss of traffic lanes as a result of the placement of the high-speed rail ROW is more than just a design element appropriately analyzed in a second-tier, project-level analysis. Instead, it appears that the permanent loss of traffic lanes is a direct consequence of the physical placement of the high-speed rail ROW (regardless of any later-selected vertical alignment) as described in the Pacheco Pass alternative and, consequently, must be analyzed in the context of Respondent's programmatic EIR.

D. <u>Petitioners' challenges to Cambridge Systematics' ridership model fail.</u>

Petitioners allege that after Respondent's approval of the 2008 FPEIR, "it came to light that the ridership model/revenue model used to generate figures used in the EIR was not the model that had been documented and published by Respondent. Instead, after the documentation

had been published in August 2006, the model was further modified by [Cambridge Systematics] and this modified model was used in producing" the 2008 Final Program EIR. After reviewing this modified model, Petitioners allege "the reviewers were unanimous in concluding that the [Cambridge Systematics'] model could not be relied upon to give accurate information that could be used as the basis for making choices." Specifically, Petitioners contend Respondent: (1) inflated and constrained the frequency of service or "headway" coefficient without supporting evidence; (2) utilized mode-specific constants in the model without substantial supporting evidence; and (3) used unrepresentative and biased data in the model. Despite Petitioners' concerns, Respondent "continued to use the model in the RFPEIR and in its decision-making in re-approving the Pacheco Pass alignment for the Project."

Prior to delving into the merits of Petitioners' allegations, the Court first outlines the applicable standard of review, which guides the Court's analysis. As outlined above, '[a]buse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (Pub. Res. Code § 21168.5.) "Substantial evidence is defined in the CEQA Guidelines as 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.' [Citation.] Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. [Citation.] It does not include argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment." (*San Joaquin Raptor Rescue Center v. County of Merced* (1994) 149 Cal.App.4th 645, 654; Cal Pub. Res. Code § 21080(e); 1 Kotska & Zischke, Practice Under the Cal. Environmental Quality Act ("Practice Under CEQA") (Cont.Ed.Bar 2d 2011 Update) § 23.34, p. 1173 ("A reviewing court is limited to determining whether the record contains relevant information that a reasonable mind might accept as sufficient to support the conclusion reached"); CEQA Guidelines § 15384.)

In the event of the inevitable CEQA "battle of the experts," as is present here, it is important to note that "[d]isagreements among experts do not make an EIR inadequate." (*Eureka*

Citizens for Responsible Gov't v. City of Eureka (2007) 147 Cal.App.4th 357, 371-72; CEQA Guidelines § 15151.) "When experts in a subject area dispute the conclusions reached by other experts whose studies were used in drafting the EIR, the EIR need only summarize the main points of disagreement and explain the agency's reasons for accepting one set of judgments instead of another." (*Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1391; CEQA Guidelines § 15151.) "Technical perfection is not required; we look not for an exhaustive analysis, but for accuracy, completeness, and a good faith effort at full disclosure." (*Eureka Citizens, supra*, 147 Cal.App.4th at 372.)

Where "conflicting evidence and conflicting opinion" exist, an agency is "entitled to believe one side more than the other." (*Greenebaum v. City of L.A* (1984) 153 Cal.App.3d 391, 413; *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 120 ("On the other hand, the agency has the discretion to resolve factual issues and to make policy decisions").) "When the evidence on an issue conflicts, the decisionmaker is 'permitted to give more weight to some of the evidence and to favor the opinions and estimates of some of the experts over the others.'" (*Association of Irritated Residents, supra*, 107 Cal.App.4th at 1397 (citation omitted).) "'It is not required "that the body acting on an EIR correctly solve a dispute among experts." All that is required is that in substance the material in the EIR be responsive to the opposition, particularly where opinion and not fact is in issue.'" (*Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 102; Practice Under CEQA § 11.35, p. 563 ("[W]hen approving an EIR, an agency need not correctly resolve a dispute among experts about the accuracy of the EIR's environmental forecasts").)

"When a challenge is brought to studies on which an EIR is based, 'the issue is not whether the studies are irrefutable or whether they could have been better. The relevant issue is only whether the studies are sufficiently credible to be considered *as part* of the total evidence that supports the" agency's decision. [Citation.] 'A clearly inadequate or unsupported study is entitled to no judicial deference. [Citation.] The party challenging the EIR, however, bears the burden of demonstrating that the studies on which the EIR is based are 'clearly inadequate or unsupported.'" (*State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 795); see

also *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 409.)

"[O]ur Supreme Court has cautioned reviewing courts against performing our own scientific critiques of environmental studies, a task for which we have neither resources nor scientific expertise." (*Eureka Citizens*, *supra*, 147 Cal.App.4th at 372; *Cadiz Land Co.*, *supra*, 83 Cal.App.4th at 102.)

1. **Substantial evidence supports Cambridge Systematics' ridership model and Respondent's reliance on the ridership model.**

Petitioners challenge Cambridge Systematics' ridership model, and consequently Respondent's reliance on the ridership model, on three grounds:

Headway Coefficient: Petitioners allege that an earlier version of Cambridge Systematics' "model had a defined 'penalty' for lower frequency of service equivalent in effect to increasing the on-board time by one fifth." The final model increased the headway coefficient by a factor of five, which meant that Cambridge Systematics determined that "the time between successive train arrivals was just as important to a passenger as time spent in transit." According to Petitioners, "[t]he analysts were unanimous in criticizing this change as unwarranted and unsupported by any evidence. They pointed out that, while in an intra-urban mass transit system, it is common for a passenger to arrive at a bus stop and simply await the next bus, inter-urban transit, with its much longer travel times, generally uses a different model." Petitioners further contend that Cambridge Systematics' determination was based solely on its professional judgment and there is no evidence in the record to support Cambridge Systematics' "assumption that inter-city high-speed rail service would resemble intra-urban bus service, rather than inter-city transportation modes."

Mode-specific constants:[17] Petitioners' expert opined that the "magnitude of the Table 3

[17] Although Petitioners contend the mode-specific constant is not supported by "substantial supporting evidence," Petitioners fail to demonstrate why the evidence favorable to Respondent is lacking. Petitioners' challenge fails on this basis. (See *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 934-35 ("'As with all substantial evidence challenges, an appellant challenging an EIR for insufficient evidence must lay out the evidence favorable to the other side and show why it is lacking. Failure to do so is fatal. A reviewing court will not independently review the record to make up for appellant's failure to carry his burden'") (citation omitted).) The Court nevertheless addresses the

constants in IVT equivalent minutes appear high relative to which is desirable, and there is a danger that they may be dominating the service characteristics effect." Additionally, Petitioners' expert noted large changes made to mode-specific constants during the time period between peer review and finalization of the model, which appear to have been made "solely to make the data 'fit.'" Petitioners also note that the Institute of Transportation Studies at the University of California at Berkeley ("ITS") disagreed with the correction utilized by Cambridge Systematics, stating: "There are many ways that the model could be adjusted to correct this; we do not believe that the method chosen, which contradicts both common sense and empirical evidence, was the appropriate one."

Unrepresentative and biased data:[18] Petitioners' also criticize Cambridge Systematics' alleged use of unrepresentative data samples – an overrepresentation of rail users in the polling group – in the polling that served as the basis for the model. Petitioners allege this unrepresentative sampling led to Cambridge Systematics' difficulties in fitting their model to the empirical data on mode choice, consequently leading Cambridge Systematics to manipulate the model's coefficients and constants.

The Court disagrees with Petitioners' contentions regarding the ridership model and whether Cambridge Systematics' choice of headway coefficient, mode-specific constraints, and data samples is supported by substantial evidence. The Court agrees with Respondent that the dispute articulated by Petitioners represents the classic disagreement among experts that often occurs in the CEQA context and, for the reasons articulated below, the Court declines to interfere with Respondent's discretion to adhere to Cambridge Systematics' ridership model despite the criticisms presented by Petitioners' expert and ITS.

In response to a request by the California Senate Transportation and Housing Committee, Respondent contracted with ITS to prepare a peer review of Cambridge Systematics' Ridership

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evidence in the record supporting Cambridge Systematics' calibration of mode-specific constants to ensure the accuracy of the ridership model.

[18] Petitioners' challenge regarding the alleged use of unrepresentative data samples also fails due to Petitioners' failure to demonstrate why the evidence favorable to Respondent is lacking. (See *Tracy First*, *supra*, 177 Cal.App.4th at 934-35.) The Court nevertheless addresses the evidence in the record supporting Cambridge Systematics' use of "choice-based sampling" and calibration of mode constants.

and Revenue Forecasting Study. (SAR at 8996.) Although ITS concluded that Cambridge Systematics' work on the ridership model fell within generally accepted professional standards, ITS (and others) nevertheless criticized the model as having "significant problems that render the key demand forecasting models unreliable for policy analysis."[19] (SAR at 9005.) During the extensive review process, ITS and Cambridge engaged in a detailed debate regarding a number of issues related to the ridership model, including the three issues highlighted by Petitioners.[20]

Notably, ITS did not contend that the ridership model is "clearly inadequate or unsupported." (See *State Water Resources Control Bd. Cases, supra*, 136 Cal.App.4th at 795.) Instead, ITS concluded that "Cambridge Systematics [] has followed generally accepted professional standards in carrying out the demand modeling and analysis." (SAR at 9005.) ITS also stated: "We are, for the most part satisfied with their responses and agree that their work on this project meets generally accepted standards for travel demand modeling." (SAR at 9008.) Indeed, the credibility and qualifications of Cambridge Systematics are undisputed and Petitioners fail to convince the Court that ITS's objections to the ridership model were anything other than a difference of professional opinion.

For example, with respect to the allegedly unrepresentative polling group, ITS states only: "Since it is likely that travelers on different modes attach different degrees of importance to different services attributes (e.g. air travelers care more about travel time than auto travelers), it is likely that the resulting model gives a distorted view of the tastes of the average California traveler." (SAR at 9005.) In response, Cambridge Systematics explained that "representation of some segments in a greater proportion than their true incidents in the population due to choice-based sampling is taken into account and explicitly controlled for during the model development process" by screening, model estimation and model validation/application. (SAR at 9022.)

[19] ITS based its conclusions regarding the unreliability of Cambridge Systematics' ridership model largely on the absence of an error band analysis. (See SAR at 9092 ("[I]t is our professional opinion that because they did not provide these error bands, and because our experience in these error bands can be very wide, that nevertheless we could not rely on these things").)

[20] The expert's debate regarding the merits of the ridership model is well documented. (See SAR at 9045-9059 (Cambridge Systematics' response to ITS's Draft Report); SAR at 9085-9063 (ITS's Response to Cambridge Systematics' comments to Draft Report); SAR 9003-9013 (ITS's peer review report of ridership model); SAR 9065-9074 (Cambridge Systematics' Response/Final Report regarding ITS's peer review study).)

In Standard Response No. 4, Respondent also noted "random sample surveys of the entire population are a notoriously poor technique for gathering information on market segments that represent a relatively small segment of the population." (SAR at 443.) Respondent highlighted the California Statewide Household Travel Survey, which failed to provide a dataset that was representative of general travel preferences of Californians, as an example of this problem. Relying on published studies, Respondent explained that "[t]he use of targeted sampling procedures and discrete choice analysis have been developed and widely used, in part, to address the difficulty and cost of collecting sufficient data for model estimation using simple random sampling techniques." (*Ibid.*) The survey dataset from the California Statewide Household Travel Survey was thus supplemented using a "choice-based sampling" technique. "However, since more observations were collected from rail riders and all passengers than their share of the interregional travel market, an adjustment had to be made once the models were estimated. The adjustment process is called a 'calibration of mode constants.' By calibrating the mode constants, travel market shares are adjusted to reflect the true market shares in the population." (*Ibid.*)

With respect to the headway coefficient, ITS stated: "Unfortunately, some of the a-priori expectations used by CS are valid for intra-regional, but not for inter-regional ridership models. Specifically, the modelers increased the parameter for headway ... and set it to a value typically found in intra-regional travel demand models." (SAR at 9006.) ITS continues: "The modelers' expectation would be reasonable if this was an urban travel demand model, but it is incorrect in the present context." (SAR at 9009.) The strength of ITS's opinion is tempered by the following conclusion, which supports the Court's conclusion that ITS's criticisms of the ridership model are clearly based on a different of professional opinion: "It has been argued that if service headways are sufficiently low, high-speed rail travelers may indeed use the system in a manner similar to some urban transit riders, arriving at stations randomly and waiting for the next trains. For such travelers, constraining the waiting time coefficient to equal that for travel time may be appropriate. It is clearly inappropriate for air travelers, however." (SAR at 9010.)

In response, Cambridge explained its constraining of the headway coefficient:[21]

> Service headway (frequency) was constrained during model calibration to address on overestimation (compared to observed base year date) of air trips in markets with low frequency air service and an underestimation o[f] air trips in markets with high frequency air service. Service headway coefficients were set to match in-vehicle time coefficients based on professional judgment of the model development team. This constraining was deemed to be a more reasonable approach than use of higher mode-specific constants that would have a greater impact on the sensitivity of the model. The merits of different potential interpretations and values for the headway coefficient were documented in draft and final versions of the model development report [ ]. The value of constrained headway coefficient was within the reasonable values presented to peer review.[22]

(SAR at 9036; SAR at 9053-9054 (disagreeing with ITS's concerns regarding the constraining of the headway coefficient).) In Standard Response No. 4, Respondent further explained:

> Comments regarding the level of constraint have generally focused on the coefficient for service headway being constrained to be equal to the coefficient for in-vehicle travel time. Comments have incorrectly related headway to the average wait time that results from service headways. The headway coefficient is not a coefficient on average wait time. The impact of average wait time for specific modes (air, conventional rail, and high speed rail) has been included in mode specific constants for those modes. Instead, headway represents a convenience measure and should not be related to average wait time coefficients used in urban

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[21] Petitioners dispute Respondent's contention that ITS "'acknowledged' that high-speed rail's high-frequency of service justified setting the headway coefficient at a value appropriate for urban mass transit systems." Citing SAR8996, Petitioners contend ITS only stated "it may be appropriate when service headways are very low (i.e., during peak travel hours). However, the modelers set the headway coefficient at a value of one under all circumstances, even during non-peak hours when headways were much longer." Nothing in SAR8996 supports Petitioners' assertion. SAR8996 is the first page of a letter from Respondent to The Honorable Sen. Alan Lowenthal, dated August 2, 2010, in which Respondent "addresses the procedure and final outcome of this assessment by ITS, as well as the Authority's conclusion as to the findings of the assessment" and goes on to address the ITS Peer Review Procedure. The text that appears to come closest to Petitioners' point is located at SAR9010, which is quoted by the Court above. This paragraph, however, fails to make any reference to peak versus off-peak travel times and simply indicates that constraining the waiting time coefficient to equal that for travel time is inappropriate for air travel, not high-speed rail travel. These statements clearly represent the difference of opinion held by ITS and Cambridge Systematics regarding whether various modes of transportation are analogous to high-speed rail.

[22] Petitioners challenge Respondent's contention that the headway coefficient value of 1.0 was within the range of values considered by the peer review panel. Petitioners contend this self-serving statement is unsupported by any evidence in the record and directly contradicts the peer review panel's recommendation that high-speed rail be treated differently than urban transit. The Court observes that the portions of the SAR cited by Respondent fail to support Respondent's contention that the headway coefficient value of 1.0 was within the range of values considered by the peer review panel. (See SAR at 9036, 9053-54.) The Court also reviewed the July 2005 Findings from First Peer Review Panel Meeting (AR at F4118-4148), the July 2006 Findings from Second Peer Review Panel Meeting (AR at F4149-4187), and the July 2007 Findings from Third Peer Review Panel Meeting (AR at F4188-4197) for evidence in support of Respondent's contention and found no reference to a headway coefficient value of 1.0. The Court is not convinced, however, that this omission renders the Revised Final Program EIR inadequate. Additionally, the *Findings from Second Peer Review Panel Meeting* indicate that "frequency has a different impact on interregional travel than it does on urban travel." (AR at F4175.) This statement, however fails to carry the force that Petitioners suggest and, read in isolation as Petitioners advocate, fails to provide the Court with any substantive information regarding determination of the headway coefficient.

> transportation modeling or other high speed rail models that use different model constructs. Accordingly, the headway coefficient was constrained, and as a result reflects the unique case of high-speed trains that offer more frequent interregional service than is currently available on conventional intercity rail services such as Amtrak. The adjustment made to the headway coefficient was within the range of reasonable values presented to peer review during the model development.

(SAR at 445.)

Cambridge Systematics also described in detail its method for calibrating the mode-specific constants used in the ridership model. (See SAR at 9040 -9043.) Cambridge Systematics explained: "Past experience with forecasting ridership for new urban and intercity rail projects suggests the presence of optimism bias." (SAR at 9040.) In order to minimize the negative impacts of optimism bias, Cambridge Systematic engaged in an iterative process to calibrate the mode-choice constants for existing auto, air, and rail modes to reflect the market shares for each intercity mode. "[I]n each of the intercity travel markets the HSR constants have been determined by the final model estimation results and the final set of calibrated constants for air and conventional rail services." (SAR at 9042.)

At the conclusion of the parties' written debate, Respondent invited both ITS and Cambridge Systematics to orally present their opinions to Respondent on July 8, 2010. The parties engaged in a thorough debate regarding their respective positions, which again emphasized the experts' differences in professional opinions regarding the ridership model. Of particular interest to this Court is Professor Brownstone's statement that "[t]he key problem that I've brought up here is really a problem of the whole way that statistics is used in public policy, meaning that we do not typically demand accurate statistical measures of accuracy from the forecasts we make." Although Professor Brownstone's statement was made in the context of his discussion regarding the lack of an error band analysis in the ridership model, this clearly statement clearly captures the basis for the difference in opinion between ITS and Cambridge Systematics, which was expressly noted by Respondent when it explained its decision to adhere to the ridership model. In its August 2, 2010 correspondence to Senator Alan Lowenthal, Respondent explained:

> While Professor Brownstone and Dr. Neumann expressed strong mutual respect

> for each other's reputation and work, we believe that the robust exchange of opinions as captured in the ITS Final Report and the July 8th presentation frames a ***classic disagreement between the academician and the industry practitioner.*** In the Authority's view, the professional opinions of the industry practitioner carry more weight in this particular 'real world' context. CS has a wealth of travel demand modeling experience accrued over 35 years with the most respected "real-life" transportation customers in the USA and abroad. CS is highly regarded in the industry and even more recognized by the ITS team as "the best firm in the business." We find that CS has provided a thorough response to the ITS Final Report and has shown that it has based its ridership and revenue model development on well-proven, and widely accepted and applied techniques in the industry. This conclusion is supported by two highly respected regional agencies, MTC, and LA Metro. In light of today's industry standards, the Authority plans to continue to utilize the current ridership and revenue model developed by CS for input to its environmental review, business planning, and system development.

(SAR at 8999 (emphasis added).)

The Court cannot conclude that Respondent prejudicially abused its discretion in relying on Cambridge Systematics' ridership model. Cambridge Systematics' analysis is clearly not inadequate or unsupported and Respondent reasonably relied on Cambridge Systematics' conclusions in approving the ridership model after extensive debate regarding ITS's criticisms of the model. Respondent's thorough explanation regarding its selection is contained in the record.

IV. DISPOSITION

Petitioners' Objections to Respondent's Supplemental Return are SUSTAINED in part and OVERRULED in part as discussed herein. Petitioners are directed to prepare a supplemental peremptory writ of mandamus consistent with the Court's ruling; submit it to opposing counsel for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court in accordance with Rule of Court 3.1312(b).

DATED: November 10, 2011

Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

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Superior Court of California,
County of Sacramento

Dated: November 10, 2011

By: S. LEE
Deputy Clerk

Case No. S222472

IN THE SUPREME COURT OF CALIFORNIA

Friends of the Eel River, et al. v. North Coast Railroad Auth., et al.

Supporting Evidence for Farm Bureau Amicus Brief

Exhibit J

44072 SERVICE DATE – LATE RELEASE DECEMBER 12, 2014
EB

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35861

CALIFORNIA HIGH-SPEED RAIL AUTHORITY—PETITION FOR DECLARATORY ORDER

Digest:[1] The Board concludes that 49 U.S.C. § 10501(b) preempts application of the California Environmental Quality Act, to the extent discussed below, to the construction of a high-speed passenger rail line between Fresno and Bakersfield, Cal.

Decided: December 12, 2014

On October 9, 2014, the California High-Speed Rail Authority (Authority) filed a petition requesting that the Board issue a declaratory order regarding the availability of injunctive remedies under the California Environmental Quality Act (CEQA) to prevent or delay construction of an approximately 114-mile high-speed passenger rail line between Fresno and Bakersfield, Cal. (the Line). The request for a declaratory order will be granted, as discussed below.

BACKGROUND

The Authority's petition concerns construction of the Line, which would be the second section of the planned statewide California High-Speed Train System (HST System). The HST System would, when completed, provide high-speed intercity passenger rail service over more than 800 miles of new rail line throughout California. The Board found in 2013 that it has jurisdiction over the HST System. Cal. High-Speed Rail Auth.—Constr. Exemption—in Merced, Madera & Fresno Cntys., Cal. (HST System Jurisdiction Decision), FD 35724, slip op. at 2 (STB served Apr. 18, 2013) (Vice Chairman Begeman concurring in part and dissenting in part); Cal. High-Speed Rail Auth.—Constr. Exemption—in Merced, Madera & Fresno Cntys., Cal. (Merced-to-Fresno), FD 35724, slip op. at 12-15 (STB served June 13, 2013) (Vice Chairman Begeman concurring in part and dissenting in part and Commissioner Mulvey concurring). The Board has granted petitions for exemption, subject to environmental and other conditions, permitting construction of the first segment of the HST System, between Merced and Fresno, Cal., and for the Line. Id. at 17-28; Cal. High-Speed Rail Auth.—Constr. Exemption—

[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

in Fresno, Kings, Tulare, & Kern Cntys., Cal. (Fresno-to-Bakersfield), FD 35724 (Sub-No. 1) (STB served August 12, 2014) (Vice Chairman Miller concurring and Commissioner Begeman dissenting). The Authority states that it has commenced work on the Merced to Fresno segment and is currently in the process of implementing and/or procuring construction contracts for a majority of the Line.

In its petition, the Authority requests that the Board issue an expedited declaratory order finding that CEQA injunctive remedies are not available with respect to the Line. The Authority states that seven lawsuits have been filed challenging its compliance with CEQA with respect to the Line and that the petitioners seek injunctive remedies under CEQA that would prevent or delay the Authority's ability to proceed with construction of the Line. The Authority argues that 49 U.S.C. § 10501(b) preempts such CEQA remedies because, if successful, injunctive relief would enjoin construction of a Board-authorized project. The Authority asserts that it completed the CEQA environmental review and documentation process for the Line in May 2014. Therefore, according to the Authority, the Board need not address whether CEQA is generally preempted with respect to the Line; rather the Board need only address whether injunctive remedies under CEQA that would result in a work stoppage are available as a remedy in the CEQA enforcement lawsuits that have been filed against the Authority.

The Authority notes that the Board has previously found that § 10501(b) preempts CEQA with respect to a line subject to Board jurisdiction, citing DesertXpress Enterprises, LLC—Petition for Declaratory Order, FD 34914 (STB served June 27, 2007), and North San Diego County Transit Development Board—Petition for Declaratory Order, FD 34111 (STB served August 21, 2002). The Authority argues that, while it elected to complete the CEQA process for the Line even after the Board had determined that it had jurisdiction over the HST System, it made clear during the environmental review process for the Line that it was not waiving any preemption arguments related to CEQA that might be available to the Authority, in the event of a court challenge to its CEQA compliance.[2]

The Authority further claims that Town of Atherton v. California High-Speed Rail Authority, 175 Cal. Rptr. 3d 145 (Ct. App. 2014), in which the California Court of Appeal held that the "market participant" doctrine[3] negated § 10501(b) preemption, should not affect the Board's decision in this proceeding. According to the Authority, the Atherton court affirmed a lower court decision finding that the Authority had complied with CEQA (specifically, that its programmatic environmental documentation concerning routing for the HST System was proper). As a result, the Authority states, Atherton did not decide the issue the Authority asks the Board to address here – whether a state court under CEQA can enjoin construction of a line the Board has authorized. The Authority also contends that the market participation doctrine was misapplied by the court in Atherton, as another California Court of Appeal recently found in

[2] Pet. 10 n.8.

[3] An explanation of the doctrine, and why the Board believes it does not apply here, is set forth below.

Friends of the Eel River v. North Coast Railroad Authority, 178 Cal. Rptr. 3d 752 (Ct. App. 2014), petition for review accepted by the California Supreme Court on December 10, 2014.

Rail Unions[4] and the State Building and Construction Trades Council of California support the Authority's petition. Other commenters (collectively, Opponents)[5] request that the Board deny the petition.[6] According to Opponents, the Board should not issue a decision in this proceeding because Atherton conclusively addresses the issues presented here, and the doctrines of res judicata, collateral estoppel, and waiver preclude a decision by the Board. Opponents claim, relying on Atherton, that the market participant doctrine exception to preemption applies here. Opponents also argue that § 10501(b) preemption would intrude upon the state of California's sovereignty by interfering with the internal controls and limitations the state has placed on the Authority, its own agency.

Furthermore, Opponents argue that expedited consideration of the petition is unnecessary and that the preemption issue the Authority asks the Board to address is not ripe. According to Opponents, the Authority has no immediate plans to begin construction of the Line. Therefore, Opponents assert, the injunctive relief that the Authority claims could delay the project is not imminent and likely would not occur before July 2015, the earliest that a hearing on the merits of the pending CEQA lawsuits is expected. Opponents also point out that Eel River, the California state court decision that disagreed with the Atherton court's analysis of the market participant doctrine in the context of § 10501(b) preemption, may be appealed to the California Supreme

[4] The Brotherhood of Maintenance of Way Employes Division/IBT; the Brotherhood of Railroad Signalmen; the International Association of Sheet Metal, Air and Transportation Workers Mechanical Division; the American Train Dispatchers Association; the Brotherhood of Locomotive Engineers and Trainmen/IBT; the National Conference of Firemen and Oilers District of Local 32BJ, SEIU; and the International Brotherhood of Electrical Workers (collectively, Rail Unions) filed a joint reply.

[5] Opponents include the litigants in the seven CEQA lawsuits (County of Kings, Citizens for High Speed Rail Accountability, Kings County Farm Bureau, City of Bakersfield, County of Kern, Dignity Health, First Free Will Baptist Church of Bakersfield, Coffee-Brimhall LLC, and the City of Shafter (collectively, CEQA Litigants)); Community Coalition on High-Speed Rail, Transportation Solutions Defense and Education Fund, and California Rail Foundation (collectively, Transportation Groups); United States Representatives David G. Valadao, Jeff Denham, Kevin McCarthy, and Devin G. Nunes; Senator Andy Vidak and Assemblywoman Diane L. Harkey of the California State Legislature; Friends of Rose Canyon; Madera County Farm Bureau (Farm Bureau); MEL's Farms; Roar Foundation; Jacqueline Ayer; Carol Bender; William C. Descary; Kathy Hamilton; and Alan Scott.

[6] Union Pacific Railroad Company (UP) also filed a reply. UP does not take a position regarding the preemption issues but requests that the Board not issue any decision that would compromise UP's ability to protect its freight rail network.

Court.[7] According to Opponents, the disposition of any such appeal would clarify the preemption issues raised in this proceeding. Therefore, Opponents argue that if the Board does not deny the Authority's petition, it should order additional briefing and/or wait to issue a decision.

On November 18, 2014, the Authority filed a motion for leave to reply and a reply. The Authority acknowledges that Board rules prohibit such a reply, but it argues that its filing will ensure that the Board has a complete record in this proceeding and the filing will not delay the proceeding or prejudice any party. On November 20, 2014, Transportation Groups filed an opposition to the motion for leave to reply, or, in the alternative, a motion for leave to file surreply. Transportation Groups argue that the Board should deny the Authority leave to reply because the filing would prejudice opposing parties by denying them the opportunity to respond to new arguments and would impermissibly give the Authority opportunity to reargue and expand upon previous arguments. In the alternative, Transportation Groups request that the Board grant parties 10 days to file replies to the Authority's November 18 filing.

DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 to issue a declaratory order to eliminate controversy or remove uncertainty. In this case, there is uncertainty as to whether, and the extent to which, the Board would find that CEQA is preempted with regard to the Line. Accordingly, we instituted a proceeding to consider the issues raised in the Authority's petition and provided an opportunity for interested persons to file replies. Following careful consideration of the Authority's petition and the opponents' arguments, we will issue this declaratory order to provide our views on the preemption issue.

Procedural issues. We will not order additional briefing in this proceeding. The procedural schedule that we adopted provided 28 days for any interested persons to file substantive replies, which we believe was enough time for parties to do so. In fact, many parties filed substantive replies in the time period we provided, and we believe the existing record provides an adequate basis for us to consider and address the issues presented here.[8]

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[7] The Friends of Eel River and Californians for Alternatives to Toxics initiated appellate review of the Eel River decision in the California Supreme Court on November 7, 2014 (Friends of Eel River v. North Coast Railroad Authority, Case No. S222472). According to the Supreme Court of California's docket, the petition for review was accepted on December 10, 2014.

[8] We will grant the petitions for leave to intervene filed by Farm Bureau, Roar Foundation, and Transportation Groups. We will accept late-filed replies of Senator Vidak; U.S. Representatives Valadao, Denham, McCarthy, and Nunes; and MEL's Farms in the interest of compiling a more complete record. Roar Foundation's request for an extension of time will be denied because Roar Foundation has already filed a substantive comment, and, as noted, we have a sufficient record to address the issues in this proceeding. Roar Foundation argues that the proceeding should be delayed to allow argument from parties that may be affected by future segments of the HST System. However, the Board's decision instituting a proceeding invited

(continued . . .)

We will deny the Authority's motion for leave to file a reply. Our rules do not permit a reply to a reply. 49 C.F.R. § 1104.13(c). Here, the parties have provided extensive arguments on the scope of federal preemption as it applies to the Line. A reply by the Authority is not necessary to provide the information we need to provide our views on preemption and address matters within the Board's expertise. Transportation Groups' opposition to motion for leave to reply or, in the alternative, motion for leave to file surreply is therefore denied as moot.

We also will not delay issuing a decision addressing the preemption issue. The issue is ripe for a decision because several CEQA lawsuits have been filed and, regardless of Opponents' suggestions to the contrary, permanent injunctive relief has already been requested and a preliminary injunction could be requested at any time in those pending lawsuits. Moreover, the Authority states that, contrary to the claims of some of the Opponents, it is in the process of implementing and/or procuring construction contracts for a majority of the Line and uncertainty regarding the preemption issue could impact its ability to proceed. Lastly, this decision will inform interested parties and the California Supreme Court of our views on federal preemption of CEQA and the market participant doctrine as they relate to this matter involving railroad transportation within the Board's jurisdiction under § 10501(b). See Atherton, 175 Cal. Rptr. 3d at 161 n.4 (noting that, as the agency authorized by Congress to administer the Interstate Commerce Act, the Board is "uniquely qualified" to address whether § 10501(b) preempts state law and that a request to the Board for a declaratory order would be the remedy for the Authority's preemption claims). Thus, we will issue this decision now to assist in the resolution of the conflict between Atherton and Eel River on federal preemption of CEQA in cases involving rail line construction.

Waiver. Transportation Groups suggest that the Authority has waived its right to assert any CEQA preemption arguments before the Board because they failed to raise the issue sooner.[9] We disagree.

Since the Board asserted jurisdiction over the HST project in April 2013, the Authority has consistently explained in its environmental documentation that it reserves the right to assert federal preemption in response to any potential legal challenge to its CEQA compliance.[10] Thus, it has expressly stated that it does not waive the right to claim preemption.

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comments from all interested parties. To the extent there are additional arguments related to future segments that have not been presented here, parties may raise them in future proceedings.

[9] See Transportation Groups Reply 5-6.

[10] See Pet. 10 n.8 (quoting Fresno-Bakersfield HST Segment Final EIR/EIS 1-4: "[c]ompleting the state environmental review process does not waive any preemption argument that may be available to the Authority in the event of a legal challenge"; and citing Palmdale-Burbank HST Segment Notice of Preparation, n.1, repeating that the Authority reserved its right to assert preemption).

In addition, the fact that the Authority did not previously seek a ruling on preemption in the Board's previous proceedings concerning the HST System does not amount to a waiver, as those proceedings did not squarely involve the CEQA preemption issue now presented to the Board. In decisions issued in April and June 2013, the Board held that it had jurisdiction over the HST project, HST System Jurisdiction Decision, slip op. at 2, and authorized the construction of the Merced to Fresno HST section, Merced-to-Fresno, slip op. at 12-15. In Fresno-to-Bakersfield, in a decision issued on August 12, 2014, the Board authorized construction of the Line. While the Authority possibly could have raised the CEQA preemption issue during the course of those proceedings, the preemption issue was not directly relevant to those proceedings (such that the Board would have needed to decide the issue at that time), nor would it have affected the outcome of those proceedings.[11]

Transportation Groups suggest that the Authority could have asked the state court in Atherton to refer the CEQA preemption issue to the Board. However, while the Authority could have asked for such a referral from the court, it was not required,[12] and a decision not to request such a referral does not mean the Authority's arguments before the Board are waived.[13] Also,

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[11] In deciding whether to authorize a proposed rail construction (whether under the 49 U.S.C. § 10901 formal application process or, as here, the exemption process in 49 U.S.C. § 10502), the Board considers and weighs the evidence before it on the transportation merits of the proposed construction and the adequacy of the environmental review under the National Environmental Policy Act. Those are the issues that the Board analyzed in both Fresno-to-Bakersfield and Merced-to-Fresno (where the Board also explained why the HST System was within its jurisdiction as part of the interstate rail system).

[12] See 14500 Ltd. LLC—Pet. for Declaratory Order, FD 35788, slip op. at 2 (STB served June 5, 2014) (issues involving the federal preemption provision contained in 49 U.S.C. § 10501(b) can be decided by the Board or the courts in the first instance); Jie Ao & Xin Zhou—Pet. for Declaratory Order, FD 35539, slip op. at 4, 7-8 (STB served June 6, 2012) (explaining that state court may resolve preemption issues, as long as it applies applicable Board and court precedent).

[13] The issue of whether a party has waived an argument usually (though not always) arises on appeal after a party fails to present the argument to the Board during the course of on-going Board proceedings. In such a case, a reviewing court will generally deem the argument waived and will not address it because the Board has not had the opportunity to address the issue in the first instance. See Erie-Niagara Rail Steering Comm. v. STB, 247 F.3d 437, 443-44 (2d Cir. 2001); W. Res., Inc. v. STB, 109 F.3d 782, 793-94 (D.C. Cir. 1997). See also Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc., 435 U.S. 519, 553-54 (1978) (explaining that parties need to forcefully raise issues during the course of agency's proceedings).

Here, there are no other current proceedings involving the Authority or the Line pending before the Board. The Authority has now raised the issue of potential CEQA preemption for this rail transportation project by requesting that the Board institute a declaratory order proceeding under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 to address the uncertainty that now exists regarding

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the Authority's decision not to appeal the Atherton decision to the California Supreme Court (or ultimately even the United States Supreme Court)[14] does not affect whether the Authority has waived its CEQA preemption arguments before the Board. A decision not to appeal a state court judgment does not affect whether a party has timely raised arguments or issues before the Board.

Collateral estoppel and res judicata. Opponents argue that res judicata (claim preclusion) and collateral estoppel (issue preclusion) prohibit the Board from granting the Authority's petition because the Atherton court has already addressed the issue of whether CEQA is preempted with respect to the Line.[15] We believe neither issue nor claim preclusion bars the Board from issuing a declaratory order providing its views in the circumstances presented here. As discussed in more detail below, two California state appellate courts have now issued conflicting opinions addressing whether CEQA is preempted by § 10501(b). In Atherton, a California Court of Appeal held that CEQA was not preempted by § 10501(b) with respect to the Authority's programmatic environmental documentation concerning routing of the HST System. More recently, however, another California Court of Appeal found in Eel River that CEQA was preempted by § 10501(b) where, as with the Line, the case involves rail transportation within the Board's jurisdiction. Because of these conflicting opinions regarding CEQA preemption and because the Board is "uniquely qualified" to determine the preemption question,[16] the Board provides this interpretation of its statute pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 721 in order to remove the uncertainty that exists with regard to the Board's preemption analysis.

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the issue. Neither of those statutory provisions contains a time limit for when a declaratory order must be requested.

[14] See Transportation Groups Reply 6.

[15] Transportation Groups Reply 4-11; CEQA Litigants Reply 3-4. Claim preclusion "embodies the principle 'that a party who once has had *a chance to* litigate a claim before an appropriate tribunal usually ought not to have another chance to do so.'" SBC Commc'ns v. FCC, 407 F.3d 1223, 1229 (D.C. Cir. 2005) (discussing general elements of claim preclusion under federal law); see also Brother Records, Inc. v. Jardine, 432 F.3d 939, 943 (9th Cir. 2005) (discussing the elements of claim preclusion under California law). Issue preclusion "bars relitigation of an issue by a party 'that has *actually litigated [the] issue.*'" SBC Commc'ns, 407 F.3d at 1229.

[16] Atherton, 175 Cal. Rptr. 3d at 161 n.4. See N.Y. & Atl. Ry. v. STB, 635 F.3d 66, 70 (2d Cir. 2011); Adrian & Blissfield R.R. v. Vill. of Blissfield, 550 F.3d 533, 539 (6th Cir. 2008); New Orleans & Gulf Coast Ry. v. Barrois, 533 F.3d 321, 331 (5th Cir. 2008); Emerson v. Kan. City S. Ry., 503 F.3d 1126, 1130 (10th Cir. 2007); Green Mountain v. Vermont, 404 F.3d 638, 642 (2d Cir. 2005) ("the Transportation Board is 'uniquely qualified to determine whether state law . . . should be preempted' by the Termination Act."); see also Jie Ao & Xin Zhou—Pet. for Declaratory Order, slip op. at 4, 7-8 (a state court may resolve preemption issues, as long as it applies Board and court precedent). Moreover, in this case, one of the conflicting opinions could frustrate the Board's recent approval of the construction of the Line, as discussed below.

Section 10501(b) Preemption. The Interstate Commerce Act is "among the most pervasive and comprehensive of federal regulatory schemes." Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 318 (1981). The preemption provision of the Act, as broadened by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, expressly provides that the jurisdiction of the Board over "transportation by rail carriers" is "exclusive." 49 U.S.C. § 10501(b). The statute defines "transportation" expansively to encompass any property, facility, structure or equipment "related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use." 49 U.S.C. § 10102(9). Moreover, "railroad" is defined broadly to include a switch, spur, track, terminal, terminal facility, freight depot, yard, and ground, used or necessary for transportation. 49 U.S.C. § 10102(6). Section 10501(b) expressly provides that "the remedies provided under [49 U.S.C. §§ 10101-11908] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." Section 10501(b) thus is intended to prevent a patchwork of local regulation from unreasonably interfering with interstate commerce. See Norfolk S. Ry.—Pet. for Declaratory Order, FD 35701, slip op. at 6 & n.14 (STB served Nov. 4, 2013); H.R. Rep. No. 104-311, at 95-96 (1995), reprinted in 1995 U.S.C.C.A.N. 793, 808. As the courts have stated, it is "difficult to imagine a broader statement of Congress's intent to preempt state regulatory authority over railroad operations" than § 10501(b). CSX Transp., Inc. v. Ga. Pub. Serv. Comm'n, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996).

In interpreting the reach of § 10501(b) preemption, the Board and the courts have found that it prevents states or localities from intruding into matters that are directly regulated by the Board (e.g., rail carrier rates, services, construction, and abandonment). It also prevents states and localities from imposing requirements that, by their nature, could be used to deny a rail carrier's ability to conduct rail operations. Thus, state or local permitting or preclearance requirements, including environmental permitting or preclearance requirements, are categorically preempted as to any rail lines and facilities that are an integral part of rail transportation. See Green Mountain R.R., 404 F.3d at 643; City of Auburn v. United States, 154 F.3d 1025, 1027-31 (9th Cir. 1998) (if local authorities have the ability to impose environmental permitting regulations on railroads, this power will in fact amount to economic regulation if the carrier is prevented from constructing, acquiring, operating, or abandoning a line).

Other state actions may be preempted as applied – that is, only if they would have the effect of unreasonably burdening or interfering with rail transportation, which is a fact-specific determination based on the circumstances of each case. See N.Y. Susquehanna & W. Ry. v. Jackson, 500 F.3d 238, 252 (3d Cir. 2007) (federal law preempts "state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation"); Joint Pet. for Declaratory Order—Bos. & Me. Corp. & Town of Ayer (Ayer), 5 S.T.B. 500 (2001), recons. denied (STB served Oct. 5, 2001); Borough of Riverdale—Pet. for Declaratory Order—N.Y. Susquehanna & W. Ry., FD 33466, slip op. at 2 (STB served Feb. 27, 2001); Borough of Riverdale—Pet. for Declaratory Order—N.Y. Susquehanna & W. Ry., 4 S.T.B. 380, 387 (1999).

Not all state and local regulations that affect rail carriers are preempted by § 10501(b). State and local regulation is appropriate where it does not interfere with rail operations. Localities retain their reserved police powers to protect the public health and safety so long as their actions do not unreasonably burden interstate commerce. Green Mountain, 404 F.3d at 643. Thus, the Board has stated that it is reasonable for states and localities to request rail carriers to: (1) share their plans with the community when they are undertaking an activity for which another entity would require a permit; (2) use state or local best management practices when they construct railroad facilities; (3) implement appropriate precautionary measures at the railroad facility, so long as the measures are fairly applied; (4) provide representatives to meet periodically with citizen groups or local government entities to seek mutually acceptable ways to address local concerns; and (5) submit environmental monitoring or testing information to local government entities for an appropriate period of time after operations begin. Ayer, 5 S.T.B. at 511. Electrical, plumbing, and fire codes also are generally applicable. Green Mountain, 404 F.3d at 643. State and local action, however, must not have the effect of foreclosing or unduly restricting the rail carrier's ability to conduct its operations or otherwise unreasonably burden interstate commerce. CSX Transp., Inc.—Pet. for Declaratory Order, FD 34662, slip op. at 5 (STB served May 3, 2005). In short, states and towns may exercise their traditional police powers over the development of rail property to the extent that the regulations "protect public health and safety, are settled and defined, can be obeyed with reasonable certainty, entail no extended or open-ended delays, and can be approved (or rejected) without the exercise of discretion on subjective questions." Green Mountain, 404 F.3d at 643.

Finally, the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., applies to rail constructions like the HST System that require a license under 49 U.S.C. § 10901, and the Board can adopt appropriate environmental mitigation conditions in response to concerns raised by the parties, including local entities, during the NEPA review.[17] Indeed, to reduce or mitigate potential environmental impacts of proposed constructions discovered during the NEPA review, the Board usually imposes extensive environmental mitigation conditions on rail construction approvals.[18]

Application here. As previously noted, the Authority asks us to issue a declaratory order finding only that a prohibitive injunction under CEQA is preempted, not its compliance with CEQA itself. Specifically, the Authority claims that it does not seek preemption of other injunctive

[17] The Board's decision permitting construction of the Line came after extensive environmental review had been completed, including preparation of an Environmental Impact Statement (EIS) under NEPA. The Federal Railroad Administration (FRA) was the lead agency in the EIS prepared for the Line, because it is providing some of the funding, but the Board participated in the EIS process as a cooperating agency. After carefully reviewing the EIS, the Board adopted it in its decision in Fresno-to-Bakersfield and required compliance with all of the environmental mitigation imposed by FRA. See Fresno-to-Bakersfield, slip op. at 5-7, 16-19.

[18] See, e.g., Ala. R.R.—Constr. & Operation Exemption—Rail Line Extension to Port MacKenzie, Ala., FD 35095, slip op. at 21, App. 1 (STB served Nov. 21, 2011) (imposing 100 mitigation measures on an approximately 35-mile rail line).

remedies such as a court order requiring revised environmental analyses or additional environmental mitigation under CEQA, so long as there is no work stoppage.[19] However, as a practical matter, we find it difficult to separate the prohibitive injunctive remedy available under CEQA from a California state court's ability to enforce compliance with CEQA itself. In other words, if a state court cannot compel compliance with CEQA by ordering a halt to the agency's proposed action, it is unclear how CEQA could be enforced. The primary way a state court could meaningfully enforce CEQA would be to temporarily halt the Authority's ability to proceed with construction (i.e., a prohibitive injunction) pending the completion of any further environmental analysis and development of additional environmental mitigation that the court might find to be required. Indeed, if a California court were to find that the Authority had not fully studied the impact of the Line under CEQA, and in turn that additional mitigation might be required, but the Authority had already begun construction activities or had even completed construction, the court's after-the-fact order could have already been rendered meaningless. Therefore, because we do not have a persuasive argument for separating CEQA's prohibitive remedy from its other injunctive remedies, we discuss the core issue as whether CEQA as a whole – which is usually enforced through a third-party enforcement action – is preempted with regard to the Line.

Applying the well-established preemption principles here, the Board concludes that CEQA is categorically preempted by § 10501(b) in connection with the Line. As the Board has previously found, CEQA is a state preclearance requirement that, by its very nature, could be used to deny or significantly delay an entity's right to construct a line that the Board has specifically authorized, thus impinging upon the Board's exclusive jurisdiction over rail transportation. DesertXpress Enters., LLC—Pet. for Declaratory Order, slip op. at 5 (CEQA *per se* preempted for proposed 200-mile high-speed passenger system). See also N. San Diego Cnty. Transit Dev. Bd.—Pet. for Declaratory Order, slip op. at 9 (finding state and local requirement to apply for permit and prepare environmental report before constructing track to be preempted); Eel River, 178 Cal. Rptr. 3d at 767-71 (CEQA preempted for railroad projects because, in the context of railroad operations, CEQA "is not simply a health and safety regulation imposing an incidental burden on interstate commerce"). Accord City of Auburn, 154 F.3d at 1027-31; Green Mountain, 404 F.3d at 642-45. In addition, a CEQA enforcement suit in this context attempts to regulate a project that is directly regulated by the Board. Section 10501(b) expressly preempts any state law attempts to regulate rail construction projects, as they are under the Board's exclusive jurisdiction. See CSX Transp., Inc.—Pet. for Declaratory Order, slip op. at 3.

Moreover, while the Board has recognized that voluntary agreements between rail carriers and state or local entities might not be preempted under § 10501(b),[20] we conclude that any implied agreement allegedly created by the Authority's voluntary compliance with CEQA's

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[19] Pet. 10.

[20] See Ayer, 5 S.T.B. at 512 (explaining that a railroad's voluntary agreements may be an exception to § 10501(b) preemption); Twp. of Woodbridge, N.J. v. Consol. Rail Corp. (Woodbridge 2000), NOR 42053, slip op. at 4-5 (STB served Dec. 1, 2000), clarified in decision served March 23, 2001(Woodbridge 2001) (same).

procedures during the environmental review for the Line is not controlling. As the Authority explains, CEQA compliance for the HST System began prior to the Board's assertion of jurisdiction over the project. Following issuance of the HST System Jurisdiction Decision in April 2013, the Authority has consistently stated in its environmental documentation that it reserves the right to assert federal preemption in response to any potential legal challenge to its CEQA compliance.[21] Thus, to the extent any implied agreement existed, the Authority expressly modified that agreement once the Board asserted jurisdiction.

Even assuming arguendo that the Authority's previous CEQA compliance created an implied agreement, the Board concludes that any such agreement unreasonably interferes with interstate commerce and is not enforceable under § 10501(b). As the Board has explained, a railroad's agreements with state or local entities may be preempted by § 10501(b) if the agreement unreasonably interferes with interstate commerce or railroad operations. Woodbridge 2000, slip op. at 4-5; Woodbridge 2001, slip op. at 3.[22] See Blanchard Sec. Co. v. Rahway Valley R.R., 191 F. App'x 98, 100 (3d Cir. 2006) (unpublished) (following Woodbridge 2000). Here, the Board's jurisdiction extends to the Line because, as we have found, the Line would be constructed and operated as part of the interstate rail network. Merced-to-Fresno, slip op. at 11-15. Moreover, the Board specifically authorized the construction of the Line after a review of the environmental impacts under NEPA and the transportation merits of the project. Fresno-to-Bakersfield, slip op. at 12-21. The Line nevertheless is now the subject of seven CEQA enforcement suits in California state court that could block or significantly delay the Authority's right to proceed with the project. We believe that this conflict with our jurisdiction runs contrary to Congress's intent. In particular, we conclude that any implied agreement to comply with CEQA that potentially could have the effect, through the mechanism of a third-party enforcement suit, of prohibiting the construction of a rail line authorized by the Board unreasonably interferes with interstate commerce by conflicting with our exclusive jurisdiction and by preventing the Authority from exercising the authority we have granted it. See Blanchard, 191 F. App'x at 100 (finding state law claims seeking enforcement of contract with railroad preempted because they would interfere with the reactivation of a rail line). Therefore, to the extent the Authority's previous voluntary CEQA compliance created an implied contract,

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[21] See Pet. 10 n.8 (quoting Fresno-Bakersfield HST Segment Final EIR/EIS 1-4: "[c]ompleting the state environmental review process does not waive any preemption argument that may be available to the Authority in the event of a legal challenge"; and citing Palmdale-Burbank HST Segment Notice of Preparation, n.1, repeating that Authority reserved its right to assert preemption).

[22] The facts here are distinguishable from Woodbridge. In Woodbridge 2000, the Board found that a voluntary agreement between a railroad and a municipality in which the railroad agreed to limit certain nighttime operations was not preempted, because the railroad "ha[d] not shown that enforcement of its commitments would unreasonably interfere with the railroad's operations." Woodbridge 2000, slip op. at 5. The Board later clarified that decision by explaining that it did not preclude the railroad from arguing in subsequent proceedings that the agreement did interfere with interstate commerce. Woodbridge 2001, slip op. at 3.

the Board concludes that any such agreement is preempted under § 10501(b) because of its impact on interstate commerce.

Opponents rely on the California Court of Appeal's decision in Atherton, which previously found that CEQA is not preempted by § 10501(b) with regard to construction of the HST System. However, to the extent our analysis above conflicts with that decision, we respectfully disagree with the court's analysis.

First, the Atherton court did not directly decide, see 175 Cal. Rptr. 3d at 161-62, whether CEQA qualified as a state permitting or preclearance requirement "that, by its nature, could be used to deny a railroad the ability to conduct some part of its operations or to proceed with activities that [the Board] has authorized." Id. at 159-60. However, to the extent Atherton can be read to suggest that CEQA is not a preclearance requirement, the court's analysis, in our view, is incorrect. Consistent with our prior decisions such as DesertXpress, we conclude here that CEQA is a state preclearance requirement because the environmental review process under CEQA can be used under state law, through an enforcement proceeding, to block a Board-authorized rail construction project. Indeed, another California Court of Appeal in Eel River, 178 Cal. Rptr. 3d at 769-70, recently explained that the environmental review process under CEQA, though it serves a laudable and important purpose, qualifies as a state preclearance requirement that "could significantly delay or even halt a project in some circumstances," and therefore is categorically preempted.

Moreover, the court in Atherton failed to acknowledge another reason why CEQA is categorically preempted by § 10501(b): that because environmental review under CEQA attempts to regulate where, how, and under what conditions the Authority may construct the Line, the application of CEQA here would constitute an attempt by a state to regulate a matter directly regulated by the Board – the construction of a new rail line as part of the interstate rail network. See CSX Transp., Inc.—Pet. for Declaratory Order, slip op. at 3 (§ 10501(b) categorically preempts any "state or local regulation of matters directly regulated by the Board – such as the construction, operation, and abandonment of rail lines"); Franks Inv. Co. v. Union Pac. R.R., 593 F.3d 404, 410-11 (5th Cir. 2010); Adrian & Blissfield R.R., 550 F.3d at 539-40.

Ultimately, the Atherton court appears to have assumed that CEQA was indeed preempted, but then held that an exception to federal preemption – the market participation doctrine – applied to block any preemption of CEQA in this particular case. See 175 Cal. Rptr. 3d at 162-68. However, we agree with the Eel River court that the market participation doctrine does not apply in the context of a CEQA enforcement suit for a railroad project under our jurisdiction and that, consequently, the Atherton court incorrectly applied it to bar federal preemption of CEQA. Eel River, 178 Cal. Rptr. 3d at 774-78.

As both the Atherton and Eel River courts explain, the market participation doctrine shields state action from federal preemption where the state's action is proprietary in nature and not regulatory – i.e., the state is acting as a participant in the marketplace and not as a regulator. See Eel River, 178 Cal Rptr. 3d at 774-76 ("[T]he market participation doctrine gives governmental entities the freedom to engage in conduct that would be allowed to private market participants. It accomplishes this end by allowing the governmental entity to avoid a charge by

aggrieved third parties that its actions are preempted by federal law.") (citations omitted); Atherton, 175 Cal. Rptr. 3d at 163-64. The Atherton court held that the market participation doctrine barred preemption under § 10501(b) because it found that the Authority's HST project, and its related CEQA compliance, was proprietary in nature and that the Authority was not acting as a regulator. See 175 Cal. Rptr. 3d at 164-68. However, as the Eel River court explained, even if a state agency's action can be viewed as "'proprietary' and the initial decision to prepare the EIR a component of this proprietary action, a writ proceeding by a private citizen's group challenging the adequacy of the review under CEQA is not part of this proprietary action." 178 Cal Rptr. 3d at 776. Indeed, when a state invokes the market participation doctrine, it usually does so *"defensively"* to protect its actions from federal preemption. Id. (emphasis in original). However, when bringing a CEQA enforcement suit, "[p]etitioners seek to stand the market participation doctrine on its head and use it to avoid the preemptive effect of a federal statute the state entity is seeking to invoke." Id. As the Eel River court noted, "[n]one of the cases involving market participation use the doctrine in this context, and such a use would be antithetical to the purpose underlying the doctrine." Id. Thus, we agree with the Eel River court's conclusion that "[t]he aspect of CEQA that allows a citizen's group to challenge the adequacy of an EIR when CEQA compliance is required is clearly regulatory in nature, as a lawsuit against a governmental entity cannot be viewed as part of its proprietary action, even if the lawsuit challenges that proprietary action." Id.[23]

In addition, in the context of applying the market participation doctrine, the Atherton court relied upon the alleged requirements of California's Proposition 1A (the bond measure that provides funding for the HST System) and the Authority's subsequent voluntary attempted compliance with CEQA to demonstrate that the Authority was acting as a market participant. See 175 Cal. Rptr. 3d at 165-67. While the Board will not attempt to interpret the requirements of Proposition 1A, as that is for a state court to decide, we do not believe the actions that the

[23] Opponents cite to numerous market participation doctrine cases, almost all of which are discussed in both the Atherton and Eel River decisions. None of these cases support Opponents' arguments because, as the Eel River court explained, they all involved situations where the state or municipality used the market participation doctrine defensively to shield its actions in procuring goods and services from federal preemption. See, e.g., Transportation Groups Reply 11-22, citing Bldg. & Constr. Trades Council v. Associated Builders & Contractors, 507 U.S. 218 (1993); Johnson v. Rancho Santiago Cmty. Coll., 623 F.3d 1011 (9th Cir. 2010); Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 498 F.3d 1031 (9th Cir. 2007); Tocher v. City of Santa Ana, 219 F.3d 1040 (9th Cir. 2000), abrogated in part by City of Columbus v. Ours Garage & Wrecker Serv., Inc., 536 U.S. 424 (2002); Cardinal Towing & Auto Repair, Inc. v. City of Bedford, 180 F.3d 686 (5th Cir. 1999). In this case, the relevant regulatory actions are not the procurement of goods or services for the Line, but rather the third-party enforcement suits filed against the Authority. Indeed, this case is analogous to the so-called Grupp cases discussed in Eel River, in which the courts held that when a third party "relies on a state law of general application to challenge a state proprietary action, that challenge operates as a regulation, rather than a part of the proprietary action being challenged." 178 Cal. Rptr. 3d at 776-77.

Authority has taken under Proposition 1A and CEQA are the relevant actions for purposes of determining whether the market participation exception to preemption should apply. As noted above, the relevant question under the market participation doctrine is whether a third-party enforcement action under CEQA constitutes state proprietary or regulatory action. As the Eel River court explained, such an action is a regulatory, not a proprietary action.[24]

State sovereignty. Finally, Opponents argue that any preemption of CEQA here would infringe upon California's state sovereignty by interfering with the state's right to dictate how its own agency (the Authority) must proceed when building a state project.[25] Opponents assert that Proposition 1A requires the Authority to comply with CEQA as a condition of obtaining and using Proposition 1A funding to construct the HST.[26] However, as we have noted, the relevant regulatory actions for purposes of our preemption analysis here are the third-party CEQA enforcement suits, not the state law that authorized funding for the HST System. Our analysis indicating that § 10501(b) preempts third-party attempts to enforce CEQA against a state agency does not infringe upon California's state sovereignty because the CEQA enforcement actions are not being brought by the state. Rather, the enforcement actions in state court are being brought by third parties against a state agency under the guise of state law.

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[24] Opponents, like the Atherton court, suggest that the relevant action for purposes of determining preemption here consists of the Authority's internal approvals related to the HST project and voluntary attempted compliance with CEQA. Transportation Groups Reply 11-22. Opponents suggest that preemption only applies where there is an "external" attempt to regulate a rail carrier. See, e.g., id. at 21-22 (characterizing the N. San Diego and Eel River cases as involving "external" attempts to regulate). We do not need to decide whether Opponents' internal/external distinction is controlling, however, because the relevant actions here are indeed "external" attempts to regulate a project, under the Opponents' own definition of "external." The relevant regulatory actions here are the "external" third-party CEQA enforcement suits being brought against the Authority – not any internal decisions the Authority has made. Such lawsuits can regulate rail transportation just as effectively as a state statute or regulation. See Maynard v. CSX Transp., Inc., 360 F. Supp. 2d 836, 840 (E.D. Ky. 2004) (explaining that common law suits constitute regulation); Guckenberg v. Wis. Cent. Ltd., 178 F. Supp. 2d 954, 958 (E.D. Wis. 2001) (same) (citing and quoting Cipollone v. Liggett Group, Inc., 505 U.S. 504, 521 (1992)). In addition, Opponents suggest that attempted regulation of state rail agencies like the Authority should be treated differently than local rail agencies under § 10501(b), or that only regulatory actions against private railroads are subject to preemption. See Transportation Groups Reply 21-22, 28. However, no such distinctions exist in the case law applying § 10501(b). See, e.g., Eel River, 178 Cal. Rptr. 3d at 760 (attempt to regulate activities of local rail carrier preempted); N. San Diego, slip op. at 1-2, 7 (same); Ala. R.R., slip op. at 5 (state railroad's construction of new rail line under Board's exclusive jurisdiction). See also California v. Taylor, 353 U.S. 553, 561-68 (1957) (state owned railroads generally subject to federal rail regulation in the same manner as private railroads).

[25] See Transportation Groups Reply 23-29; CEQA Litigants Reply 4.

[26] See Transportation Groups Reply 23-29.

In addition, as we have noted, we do not opine here on whether Proposition 1A requires the Authority to comply with CEQA as a condition of its funding. Whether CEQA compliance is required before the Authority is allowed to obtain or use Proposition 1A funding is a question of state law for a state court to decide. Fresno-to-Bakersfield, slip op. at 11 ("[I]t is not our role to determine whether the Authority has complied with state or Federal funding requirements. That is an issue to be decided by the appropriate courts."); Cf. Nixon v. Mo. Mun. League, 541 U.S. 125, 134-37 (2004) (explaining that even if a federal statute were to preempt a state requirement directed at a state agency, the state legislature still has the authority to control the funding of the state agency and implicitly the state agency's actions).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The Authority's petition for declaratory order is granted to the extent discussed above.

2. The motions to intervene are granted, and the late-filed comments of Senator Vidak; U.S. Representatives Valadao, Denham, McCarthy, and Nunes; and MEL's Farms are accepted into the record.

3. The Authority's motion for leave to file a reply is denied. Transportation Groups' opposition to motion for leave to reply or, in the alternative, motion for leave to file surreply is denied as moot.

4. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman. Commissioner Begeman dissented with a separate expression.

COMMISSIONER BEGEMAN, dissenting:

Since the Authority first came to the Board in March 2013, the majority's main focus has been on getting out of the Authority's way instead of providing much needed review and oversight (which could have occurred during the Board's construction application process) and ensuring that conflicts with stakeholders (e.g., freight carriers, Mercy Hospital) would be resolved. Although the majority's unobtrusive posture continues, today's overreaching order also clears the citizens of the State of California from the Authority's path. Just as I could not support the majority's prior oversight avoidance, I cannot support moving a significant piece of the Authority's decision-making beyond the reach of the people whose interests the Authority purportedly serves.

It is well established that the Authority and the Federal Railroad Administration (FRA) have worked together on a number of joint environmental reviews of the HST System. During these reviews, "the Authority served as the lead state agency for compliance with the California

Environmental Quality Act (CEQA), and FRA and the Authority served as co-leads for compliance with NEPA. These joint reviews have produced single environmental documents titled "environmental impact reports/environmental impact statements" (EIR/EIS) to meet the obligations of both CEQA and NEPA, respectively."[1] In approving the two segments over my objections, the Board twice adopted such joint documents, including numerous CEQA mitigation provisions.

If the Authority was interested in foregoing its CEQA commitments under the guise of federal preemption, it could have revised either of the two EIR/EISs prior to the Board's adoption of them. After all, the Board claimed jurisdiction over the project in advance of issuing a final decision (including the adoption of the joint environmental documents) to approve construction of the first section in June 2013. But the Authority took no such action on either segment. The Board adopted both of the joint environmental documents, arguably making the Authority fully accountable for both CEQA and NEPA mitigation.

The Authority has not asked the Board to shield it entirely against California's environmental laws (which may have to do with the conditioning of the November 2008 bond measure supporting the Project on CEQA compliance). The petition for declaratory order instead states that the Authority "completed the CEQA process when it completed and certified the EIR . . . for the Fresno-Bakersfield HST Segment in May of 2014" and thus "does not seek declaratory relief regarding non-injunctive remedies, such as an order requiring revised environmental analyses or additional environmental mitigation . . . ."

Yet the majority has decided to go even further than the Authority requested by finding that CEQA is "categorically preempted." In other words, there is now no means of enforcing CEQA with respect to the Project. Authority claims of CEQA compliance will be merely claims, and deviations from any of the CEQA provisions included in the Board's own-approved EIR/EISs will not be challengeable.

Ironically, today's ruling could have unintended consequences for the long-term prospects of the Project. Although the majority claims that its decision does not implicate the bonding monies, those claims certainly bind no one in the State of California. The majority's decision to remove this element of compliance oversight for the Authority may instead serve only to spur further litigation.

It is within the Board's discretion to issue a declaratory order and it should decline to do so here.[2] The Authority has come before the Board many times asserting its commitment to both CEQA and NEPA. This agency has adopted that commitment into its orders and many

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[1] See, e.g., Cal. High-Speed Rail Auth.—Constr. Exemption—in Fresno, Kings, Tulare, & Kern Cntys., Cal., FD 35724 (Sub-No. 1), slip op. at 2 n.3 (STB served Aug. 12, 2014).

[2] See 5 U.S.C. § 554(e); 49 U.S.C. § 721 (the Board has the discretion to grant or decline petitions for declaratory order).

stakeholders have relied on the Authority's representations over the years. The Authority should live up to its commitments and the Board should refrain from undermining them.

I dissent.